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Uruguay must investigate and prosecute crimes of the past

In a report issued today, Amnesty International urged Uruguay to remove all legal barriers to investigation and prosecution of crimes committed during the military and civilian governments of the 1970s and 1980s.

In May the Supreme Court concluded that two former military officials could not be charged with enforced disappearances because the crime was not incorporated into domestic law until 2006 and could not be applied retroactively.

They were instead convicted of the ordinary criminal offence of the “aggravated murder” of 28 people and sentenced to 25 years’ imprisonment.

The practical effect of treating such grave human rights violations from the period of military dictatorship as ordinary criminal offences rather than crimes against humanity means that the cases are subject to a statute of limitations.

The cases could be closed as early as 1 November 2011 as under the Penal Code the statute of limitations for aggravated murder is 26 years and 8 months. The time is counted from the return to civilian rule on 1 March 1985.

“This latest Supreme Court ruling is an affront to the victims and their relatives,” said Hugo Relva, legal adviser at Amnesty International.

“It contravenes the rule of international law that enforced disappearances, as crimes against humanity, are not subject to statutes of limitations”, said Hugo Relva.

Uruguay’s efforts to bring to justice those responsible for past human rights violations have been patchy and at times contradictory.

An attempt in May to annul the effects of the Ley de Caducidad de la Pretención Punitiva del Estado, or Expiry Law, was narrowly defeated in Congress.

This law prevents the prosecution of police and military personnel for crimes committed before 1985, covering the eleven-year period of military and civilian rule when torture, killings enforced disappearances and other serious human rights violations were committed. The law had previously been upheld in two popular consultations in 1989 and 2009.

In February 2011, the Inter-American Court of Human Rights held Uruguay responsible for the disappearance in 1976 of María Claudia García Iruetagoiena de Gelman and for suppressing and substituting the identity of her daughter María Macarena Gelman García.

The Court ordered the State to investigate and prosecute the crime of enforced disappearance as such and

that, as continuous crimes, the application of the 2006 law to these cases was not a retroactive application of criminal law.

The Inter-American Court also emphasized that Uruguay should ensure the Expiry Law no longer represented an obstacle to the investigation and prosecution of this case or others and urged the State not to apply any other norms, including statutes of limitations, limiting criminal responsibility which would obstruct criminal investigations into these cases.

“The executive, the legislature and the judiciary to ensure that no human rights violation are left in impunity,” said Hugo Relva.

At least 34 people were subjected to enforced disappearance in Uruguay under the military and civilian governments of 1973 to 1985 and at least a further 100 Uruguayans disappeared in Argentina at the time. Among these, were 12 cases of children, four of whom were born while their mothers were being held by the military. Thousands of people were tortured and ill-treated during the same period.

An enforced disappearance is an arrest, kidnapping, or similar act by police or other state officials that the state refuses to acknowledge and in many cases actively hides.