

The Impact of Social Movements on State Policy: Human Rights and Women Movements In Argentina, Chile And Uruguay

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THE IMPACT OF SOCIAL MOVEMENTS ON STATE POLICY:
HUMAN RIGHTS AND WOMEN MOVEMENTS IN
ARGENTINA, CHILE AND URUGUAY

VOLUME I

A Dissertation

Submitted to the Graduate School
of the University of Notre Dame
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for the Degree of

Doctor of Philosophy

by

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THE IMPACT OF SOCIAL MOVEMENTS ON STATE POLICY:
HUMAN RIGHTS AND WOMEN MOVEMENTS IN
ARGENTINA, CHILE AND URUGUAY

Abstract

By

Cora Fernández Anderson

Under what conditions does a social movement have an impact on state policy and gets their main demands addressed? This dissertation explores these questions through a structured and focused comparison of two social movements in three Latin American countries: Argentina, Chile and Uruguay. The cases analyzed in this project are the human rights movement and their demand for justice for the past abuses of the military dictatorship, and the women's movement demand for the decriminalization of abortion from the time of each country's democratic transition until 2007.

This dissertation argues that for non bread and butter issues to be addressed by the government a social movement organized around them must be present. The movement has to be strong in terms of its power to attract supporters, since it is mainly responsible for placing the issue on the political agenda. Non-bread-and-butter issues such as those espoused by the social movements studied here are not considered a priority by public opinion in developing countries, and thus have a hard time reaching the political agenda

if no movement mobilizes behind them. In addition, the social movement needs political allies in power for the issues to move forward: for bills, once introduced, to be debated and passed in Congress, for government programs to be implemented, and for institutions to be created that address the movements' demands. Finally, not all those politicians ideologically close to the movement will respond to its demands in the same way.

Political and strategic considerations play a role here. The weaker the president is when assuming power and in particular the greater the need for support from leftist constituencies, the more the government will try to advance the main demands of these social movements.

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For Omar and Isaf

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CHAPTER 1

INTRODUCTION

In 1991, during an interview with a Spanish TV channel, Hebe de Bonafini, President of the *Asociación de Madres de Plaza de Mayo*, referred to President Carlos Menem as “*una basura*.”¹ Menem sued her for “*desacato*,” contempt for presidential authority. Bonafini responded by noting the irony that the same president who gave presidential pardons to the members of the military juntas convicted for devising a systematic plan to abduct, torture and execute suspected opponents of the regime that ended with the disappearance of at least 9,000 people,² was initiating a judicial action for nothing more than an insult. “*No tengo miedo a la prisión porque habiendo tantos asesinos sueltos no queda tan mal que una vaya a la cárcel*,”³ said Bonafini.

Fifteen years later, in January 2006, and under an administration from the same political party of Carlos Menem, Hebe de Bonafini decided to end the “*Marchas de la Resistencia*,” a demonstration organized yearly since 1981 because, she stated, “*ya no*

¹ Literally “a piece of trash.”

² Figures are controversial and human rights movements and government reports disagree on the exact number of disappeared. Here I quoted the lowest figure, that which is included in the CONADEP report.

³ “I do not fear going to prison. When so many murderers are free, it doesn’t look as that bad to go to jail” Cited in “*Bonafini ratificó su fuerte cuestionamiento a Menem*” in *La Nación*, May 6th, 1998. Viewed on September 24th, 2009 at http://www.lanacion.com.ar/nota.asp?nota_id=95705

tenemos un enemigo en la Casa Rosada.”⁴ Referring to one of the 26 meetings she had with President Kirchner during his mandate, Bonafini said “*Faltaba un pucherito en el medio para comerlo juntos, porque me sentía en mi casa.*”⁵

The struggle of the Argentine human rights movement for truth and justice regarding the abuses committed by the military dictatorship has gone through steep ups and downs since the return to democracy in 1983: from a hopeful beginning with the Truth Commission and the trials to the military junta in 1986 under the Alfonsín administration, to the Menem presidential pardons and finally back to the reopening of all trials in 2003 under Nestor Kirchner. In a span of several years from the 1990s to early 2000s, the human rights movement went from being completely ignored to being received in the House of Government twenty six times in four years.

What explains state policies in non bread and butter issues? Do social movements influence the policy making process? How can we understand the variation in governments’ response to social movements’ demands for rights? Under what conditions does a social movement have an impact on state policy and gets their main demands addressed? This dissertation explores these questions through a structured and focused comparison of two social movements in three Latin American countries: Argentina, Chile and Uruguay. The cases analyzed in this project are the human rights movement and their demand for justice for the past abuses of the military dictatorship, and the women’s movement demand for the decriminalization of abortion. The time periods covered in

⁴ “We don’t have an enemy in the Pink House (Government House) anymore” quoted in “*Hebe de Bonafini, la seducción de Kirchner y el final de un ciclo*” in *Clarín*, January 28th 2006. Viewed on September 24th, 2009 at <http://www.clarin.com/diario/2006/01/28/elpais/p-02201.htm>

⁵ “There was only one thing missing, a stew to eat together, because I felt at home” quoted in “*Hebe de Bonafini, la seducción de Kirchner y el final de un ciclo*” in *Clarín*, January 28th 2006. Viewed on September 24th, 2009 at <http://www.clarin.com/diario/2006/01/28/elpais/p-02201.htm>

both cases will be from the time of the three countries' respective democratic transitions until the year 2007. The analysis in this project is the product of two years of field research in these countries, interviewing close to sixty movement members, academics and government officials, and collecting information from movements' archives, government documents, and newspaper sources.

This dissertation argues that for non bread and butter issues to be addressed by the government a social movement organized around them must be present. The movement has to be strong in terms of its power to attract supporters, since it is mainly responsible for placing the issue on the political agenda. If there is no social movement, the chances of these issues entering the agenda -- a prerequisite for achieving an impact on state policy -- are very slim. Non-bread-and-butter issues such as those espoused by the social movements studied here are not considered a priority by public opinion in developing countries, and thus have a hard time reaching the political agenda if no movement mobilizes behind them.

However, not every government will react to a social movement in the same way, regardless of how strong the movement might be. Strength alone cannot take the movement all the way. Thus, the movement needs political allies in power for the issues to move forward: for bills, once introduced, to be debated and passed in Congress, for government programs to be implemented, and for institutions to be created that address the movements' demands. A movement's potential allies are determined by the ideology and the position towards the movement's demands of those in power. However, it is a movement's choice whether to work with the potential allies in power or not towards the advancement of its demands.

Finally, to explain the difference in degree of response from some of these administrations, a third variable is included. Not all those politicians ideologically close to the movement will respond to its demands in the same way. Political and strategic considerations play a role here. The weaker the president is when assuming power and in particular the greater the need for support from leftist constituencies, the more the government will try to advance the main demands of these social movements.

The present study attempts to make contributions at multiple levels. With respect to the literature on social movements' outcomes, this project offers evidence that shows that the debate between internal and external conditions of movement success is false and that both should be taken into account. It looks at elite allies not only as an external condition but also as a strategic choice of the social movement at stake. It also focuses on the developing world and specifically on an area of the world –Latin America- where the impact of social movements has been understudied. In addition, whereas most studies focus on one or at most two dimensions of state response, this project studies the impact of each variable along all five dimensions of state response: access to government, setting the agenda, government policy, policy implementation, and institutional change.

Finally, this dissertation also makes two contributions in terms of the chosen methodology. First, it moves beyond descriptive accounts of movement's outcomes and the use of statistical methods that show correlations between movements' goals and state policies to *explain how* movements impact state policy by making a self-conscious attempt to lay out the casual mechanisms in place. Second, the use of the comparative method provides the first systematic study of movements' impact on state policy in Latin America within and across countries and movements.

The current project is structured in the following way. The current chapter takes a look at the scholarly works relevant for this project, presents the theoretical model, and defines the dependent and independent variables. It also justifies the case selection and the methodology used. Finally, it presents the alternative hypotheses and states why they hold less explanatory power than the model advanced in this project. Part I deals with the case of the human rights movement. Within this section, Chapters 2, 3 and 4 present the history of the domestic human rights movements and the evolution of government policies in Argentina, Chile and Uruguay respectively, and systematically analyses the dependent variable identifying the particular occasions in which the movement influenced human rights policy and those in which it did not. Chapter 5 applies the theoretical model to these three cases to show how the strength of the movement and the availability of political allies were key factors in understanding when the movement achieved impact on state policy and when it failed to do so. This chapter provides a within- and across-country comparison of the cases. Part II does the same thing for the case of the women's movement. Chapters 6, 7 and 8 present the evolution of the women's movements and the government policies on the issue of abortion for these same countries. Chapter 9 applies the theoretical model to these cases. The goal behind Chapter 10 is to rebut in more detail the alternative explanations presented in Chapter 1. It provides empirical evidence that underemphasizes the role of public opinion, international factors, the Armed Forces and the Catholic Church in the government's policies and response to these social movements. Finally, Chapter 11, based on the analysis done in the previous chapters, presents a comparison across movements and countries, and the final conclusions of this study.

1.1. Why Study the Outcomes of Social Movement Mobilization?

The stated goal of all social movements is social change. Change is usually pursued through strategies that target the state and attempt to influence the policy making process to advance a movement's particular cause. The literature on social movements has traditionally focused on explaining the emergence of social movements, leading to the development of the main theories in the field: resource mobilization, political opportunity structure, and cultural and framing approaches. Once a neglected area of research, in the last decade scholars have increasingly turned to analyzing the impacts of social movements on state policy (Amenta et al. 1992 and 1994; Tarrow 1993; Giugni, McAdam and Tilly 1999; Cress and Snow 2000; Soule and Olzak 2004; Giugni 2004). To adopt such a focus not only fills a gap in the theoretical literature, but it also illuminates the potential paths to social change that social movements may offer. As Gamson asked in the first important work on the topic: Why should we study social movements at all if they have no impact on social change? Of what use is a theory of the emergence of social movements if in the real world they produce no change whatsoever? (Gamson 1975).

1.1.1. Social Movements' Outcomes: Prevailing Approaches.

Scholars have debated whether *the internal characteristics* of a movement (membership, organization, strategies) (Gamson 1975; Schattschneider 1960; Cobb & Elder 1972, Andrews 2001) as opposed to *the external context* (political opportunities, public opinion support) (Burstein et al 1995; Kriesi et al 1995; Kitschelt 1986, Tarrow 1998), are responsible for advancing a movement's cause. Inspired by the literature on

the theory of resource mobilization dominant in the 1970s, which explained the emergence of a movement based on the organizational, networking and financial resources available to the participants, one group of authors contended that internal characteristics, which they deemed to be crucial for the sustenance of the movement over time, also explained the level of success of a movement in terms of achieving a change of state policy. A second group that privileged external factors at the moment of explaining the emergence of a social movement did the same when faced with the question of when movements are more successful in having their demands addressed.

Some scholars have already pointed out that this debate may be more apparent than real since internal and external conditions may actually interact (Amenta et al 1992; Giugni 2004). For example Giugni states that it may be the external context that determines the strategies of action. This dissertation agrees with the fact that both internal and external conditions should be present for a movement to succeed. The theoretical model advanced here states that both the strength of a movement and the presence of potential allies within the political system are important conditions to increase a movement's impact on public policy.⁶ In addition, although the presence of potential allies in power is an external condition, it is also related to the movement's strategy, and thus to an internal condition. Allies sympathetic to the movement may be available, but whether to work with political insiders or not is a choice the movement has to make.

The branch of the social movement literature that has focused on the external conditions for movement success has been more voluminous than that on internal factors. Many scholars working within this approach have embraced the concept of "political

⁶ However, this investigation is not concerned about how each movement achieves its strength. It limits itself to measure this quality and does not analyze the style or level of organization that allowed the movement to reach this condition.

opportunity structures” (Eisinger 1973; Tarrow 1998), which was used initially to examine how the shifting institutional structure and the ideological disposition of those in power influenced the timing of the emergence of a movement (McAdam 1996, 24). Scholars have since relied on this concept to analyze movements’ outcomes (Kitschelt 1986; Kriesi et al. 1995; Tarrow 1998; Kane 2003; Soule and Olzak 2004; Giugni 2004), although they have chosen to analyze different dimensions of what could be conceived as part of the “political opportunity structure”: the party system; elite divisions; the configuration of power; state centralization, the regime; the presence of elite allies; and the degree of openness of the polity. Because the widespread use of the concept has led to its overstretching and consequent loss of meaning (McAdam 1999, Gamson and Meyer 1996), many scholars have opted to use political variables in their analysis of movements’ outcomes without referring to the notion of political opportunities. One of these political variables that has received increasing attention recently is that of elite allies (Kriesi 1995; Tarrow 1998; Kane 2003; Soule & Olzak 2004; Giugni 2004). Because social movements lack power vis-à-vis the state (Piven & Cloward 1979), they cannot translate their protests directly into policy without the help of political insiders. When a government sympathetic to the movement is in power, the chances of its demands being addressed are higher (Kriesi 1995).

Scholars in this tradition have dealt mainly with studies of only one movement (Tarrow 1998; Kane 2003; Soule & Olzak 2004) in one country;⁷ Kriesi et al. (1995) and Giugni (2004), who present cross-movement and cross-national comparisons, are notable

⁷ Although both Kane and Soule & Olzak have US states as their units and thus provide a comparative framework.

exceptions.⁸ These works have also limited themselves to studying social movements in developed countries. But are elite allies also important for social movements' demands in the economic and political setting of developing countries, where the quality of democracy is lower? Since increasing levels of discontent with democratic institutions and their lack of adequate representation boosted the creation of social movements, perceived by many as the only way of making people's demands for policy change heard, in the first place, should we expect these movements to seek alliances with sympathetic political elites in order to influence state policy, as they do in the developed world? The mere availability of potential allies does not imply that the movement will choose to push for their demands through political insiders, and social movements in the developing world could perceive more disruptive and intransigent strategies to be a better tool in this context. There is thus a need to expand research on this topic to different social movements and new regions of the world. This is one of the goals of the present project.

1.2. Latin American Social Movements

If the developing world is an area that has been understudied in the field of social movements' outcomes, Latin America is a good place to start filling this gap. This region of the world has seen the creation of many important social movements in the past 30 years around such widely diverse issues as human rights in the late 70s (*Madres de Plaza de Mayo* in Argentina), unequal land distribution in the 80s (*Movimento de Trabalhadores Sem Terra* in Brazil), unemployment and indigenous rights in the 90s (*Piqueteros* in Argentina and *Zapatistas* in Mexico respectively). Most of these

⁸ Although Kriesi's work does not actually test the theoretical model. It just provides illustration of the proposed model with different movements across different countries, leaving Giugni as the only scholar that has analyzed the impact of political allies within a comparative framework.

movements have been highly significant since they have created new repertoires of contention and some of them, like the human rights and indigenous movements, have even influenced the development of international law worldwide (Sikkink and Booth Walling 2007).

Among the wide variety of social movements in the region, two were chosen as case studies for this project: the human rights movement and their demand for justice for the crimes committed by military dictatorships and the women's movement and their demand for the decriminalization of abortion. The human rights movement has been a significant actor in the Southern Cone both in the struggle against military dictatorships and later during democratic times. The legacy of human rights abuses has been a relevant issue for the newly Latin American democracies and the variety of approaches taken by each country to deal with it makes it an interesting case to analyze how social movements impacted these decisions. The struggle for the decriminalization of abortion is a more recent issue for Latin American democracies than that of human rights, but one that has also produced diverse government policies across countries and administrations. The rationale behind these choices is explained in more depth in the section on case selection.

While there is a large literature on Latin American social movements, most of these studies have focused on the emergence of these movements rather than on their outcomes, and in the few cases in which scholars have examined the impact of social movements, they have concentrated on the period of military rule and regime transitions, leaving the impact of social movements on state policy in democratic times largely unexplored. This is the case, for instance, with the literature on Latin American human rights movements (Brysk 1994; Loveman 1998; Sikkink 1996). Alison Brysk's work on

the Argentinean human rights movement's looks at the movement's role in the advancement of the democratization process as a whole, but does not address its level of success in having its particular demands attended. The only work I know of that examines the human rights movement's impact during democratic times is that of Michelle Bonner (2007), which also focuses on the Argentinean case. But, unlike the present study, Bonner focuses on a purely internal process of the movement – framing – to understand its success and ignores other relevant political processes highlighted in this project. This project adds to Bonner's work in that it looks at external conditions of this movement's impact, and also offers a comparative framework across movements and countries.

As for the women's movement, the literature presents the same problem as that on human rights: it focuses mainly on the emergence of the phenomenon (Borland 2004; Baldez 2002; Gonzalez & Kampwirth 2001) and pays little attention to its consequences. When it has turned to study the impact of a social movement it has done so in relation to the impact of the women's movement in the democratic transition (Baldez 2002; Jaquette and Wolchik 1998; Waylen 2000; Craske & Molyneus 2002) and on women's increased political participation (Waylen 2000; Craske & Molyneux 2002), but not on the movement's impact on particular issue areas such as sexual and reproductive rights and abortion (an exception is Franceschet [2004]). In addition, almost all of these studies are edited volumes with each chapter focusing on different Latin American countries and different aspects of the movement, and thus they lack a systematic comparison across cases. None has done a detailed and systematic study of government responses to

women's movement demands across countries. This is what this dissertation sets out to do.

1.3. Policy Area Studies

Finally, the topic addressed in this dissertation has been touched upon from a different angle by studies interested in the particular issue areas chosen here as case studies: human rights (Zalaquett 1992; Pion Berlin 1993; Acuna & Smulovitz 1995; Barahona De Brito 1997 and 2001; Roniger 1997, Roniger & Sznadger 1999; Evans 2007) and gender policies (Htun 2003; Blofield 2007). Most of these studies focus on factors that influence public policies, such as regime type and institutional or economic conditions, but largely ignore the role of the movements that advance these issues in the first place. This dissertation fills this gap by placing social movements at the core of its research question. While it is true that the existence of a strong social movement is not enough to ensure a change in policy, in issue areas such as human rights and gender policies, which do not constitute a priority for societies of developing countries (see public opinion polls in Chapter 10), the organization of social movements around these demands is key to initiating the process of policy change. If there is no movement that mobilizes to make these issues visible and works for them to enter the political agenda, it is very unlikely that any policy change will happen at all (Weldon 2002). This is the rationale for giving the social movement such an important role in this investigation.

The literature on human rights policy has been influenced by works on democratic transitions (O'Donnell & Schmitter, Linz & Stepan 1996). These scholars have by and large understood human rights policies as determined by the type of transition each

country went through (Acuna and Smulovitz 1995; Pion Berlin 1993; Barahona de Brito 1997; Roniger 1997; Roniger & Sznadger 1999), downplaying the role of human rights movements.⁹ While the nature of the transition and particularly the strength of the military at the time may have *partially* determined whether the military was able to secure an amnesty for human rights abuses from the first democratic government (in the following sections I show the limits of this argument), the influence of the transition increasingly diminished with the passage of time as politicians responded to democratic incentives, not to previously struck bargains (Hunter 1997).

A similar problem appears among the literature on gender policy. Most studies that seek to explain a policy area relevant for women downplay the role of the women's movement (Htun 2003; Blofield 2007). My point of departure is that the women's movement has played a central role in making the problems generated by the prohibition of abortion visible and therefore these movements also deserve a central role in academic research. Two of these studies have dealt in depth with the issue of abortion policy in two of the countries included in this project, and thus deserve closer examination.

One of the first attempts to explain why abortion has not been decriminalized in the Southern Cone was made by Mala Htun (2003). Htun contends that how issue networks mobilize to have their demands included on the political agenda depends on the "fit" the network has in the state -- meaning the opportunities that political institutions offer to the group in question. This fit, in turn, depends on institutional and political conditions such as the party system, the presidential commitment to gender issues, church-state relations,

⁹ Within this group there are of course differences of grade. Acuna & Smulovitz includes the role of the human rights movement though among many other factors. In her 2001 article Barahona de Brito also makes a point of giving the movement a stronger role than in her previous work (1997). Pion Berlin explicitly states that the movement had no role. Roniger & Snadger does not mention it.

and authoritarian legacies. Whereas Htun focuses her explanation on the role of “issue networks,” by which she means networks that mobilize around specific policy issues and that usually involve actors from both state and society (Htun 2003: 15), my focus on social movements is limited to exclusively civil society actors. While it is true that, to use Htun’s concept, “issue networks” may be built during the movement’s struggle to advance its demands, I consider these alliances between the movement and some government officials and/or legislators not as a given, but as one of the strategies available to a social movement, which I see as increasing the chances of having its demands addressed. As I claimed earlier, the availability of sympathetic allies in government does not automatically imply that a movement will choose to work together with them. My work shares with Htun’s a focus on particular presidential preferences in terms of gender policies (all countries included in the study have strong presidential systems), but deemphasizes church-state relations, which are found to be less relevant than her study suggests (I discuss this point further later in this chapter and more extensively in Chapter 10). Finally, I argue that the issue of abortion does not have a logic of its own and that we can usefully generalize across issue areas as different as human rights and gender.

Another relevant work on abortion policies is Merike Blofield’s study of divorce and abortion in Argentina, Chile and Spain (2007). Like Blofield, I dismiss public opinion as a key factor in explaining abortion policies, and I agree that the women’s movement was responsible for introducing the issue to the political agenda. However, I disagree with her emphasis on income inequality as the main explanatory variable of her model. Her argument states that a more unequal society gives the Vatican more social and political

influence than that of feminist groups (Blofield 2007: 9). The case of Uruguay (which is included in my study but not in hers), belies this argument. Levels of inequality in Uruguay are broadly similar to those in Argentina (their Gini coefficients were 45 and 42 in 1992 and 50 and 46 in 2005, respectively; see Table 1.1)¹⁰, but in these countries the state has different relations with the Catholic Church and women's groups. In addition, the Uruguayan congress passed a law decriminalizing abortion in November 2008, while such a prospect remains a distant possibility in Argentina.¹¹ Even including Chile which traditionally had had a more unequal society (its Gini coefficient is 55 and 52 in 1992 and 2005 respectively), the differences in income inequality among these three countries are not sufficiently significant to explain the wide variation in their abortion policies. And the decreasing trend of inequality in Chile, as evidence by its falling Gini coefficient, seems not to be improving the influence of women's movements. The case of Brazil, which has one of the most unequal societies in the world (with a Gini coefficient of .59 as of 1998), casts even greater doubt on Blofield's theory. While not decriminalizing abortion in all circumstances, Brazil has advanced farther towards this goal in accepting abortion in cases of rape; Argentina and Chile, which have much more equal societies, have not. Like Htun, I privilege a political over an economic explanation for abortion policies, but I depart from both studies in that I make the women's movement the center of my research and I systematize the responses it received from successive democratic governments after the democratic transitions.

¹⁰ All Gini data comes from Human Development Index reports.

¹¹ Congress passed the law which was later vetoed by President Vázquez.

TABLE 1.1
GINI COEFFICIENTS
IN THE SOUTHERN CONE
1986-2005

	1986	1991	1996	1998	2005
Argentina	44.51	45.35	48.58	49.84	50.03
Chile	56.43	55.52	55.06	55.74	52
Uruguay	-	42.16	43.76	45.18	46.24
Brazil	59.25	57.37	59.19	59.23	56.39

Source: Human Development Index Reports.

1.4. Social Movements and Policy Change: Defining the Dependent Variable

For students of social movements embarking on a study of how, when, and why social movements might have an impact on state policy, it is not self-evident what “state policy” entails, and what a fair and feasible test of social movement influence might be. Scholars have debated what, precisely, can and should be explained in the study of social movement outcomes. Most acknowledge that movements have both intended and unintended consequences (Amenta and Young 1999; Andrews 2001; Giugni 2004) and that their influence goes beyond the state to reach society as a whole (Rochon & Mazmanian 1993; Tarrow 1998; Amenta and Young 1999) and even the lives of individual participants (McAdam 1999). But these endeavors have encountered serious methodological difficulties, leading most scholars to focus on the intended outcomes –as deduced from the movement’s goals - on state policy.

Following this latter group of scholars, this dissertation takes as its dependent variable the state response to social movements' demands. I am not measuring the impact of a movement in the sense of whether or not that movement benefits from state policies (Gamson 1975; Amenta et al. 1992 and 1994) – for example, if the actions of the women's movement generate policies that actually diminish women's mortality- but whether a movement's demands are “picked up” by state policies at all, that is, if the state passes legislation and/or implements new programs that address the movement's demands regardless of whether or not they are successful. Scholars do not always agree, however, on how to conceptualize these intended outcomes at the state level. Gamson (1975) and others (Amenta et al. 1992 and 1994; Tarrow 1993; Cress and Snow 2000) differentiate between two dimensions of this phenomenon -- access to government and new advantages for movements' members. Other scholars define state policy in terms of the passage of specific legislation (Burstein & Freudenburg 1978, Kane 2003, Soule & Olzak 2004, King et al. 2005) or the level of governmental resources devoted to the relevant area (Amenta et al. 1994; Giugni 2004). These conceptualizations ignore something critical: the complex political process that lies between the social movement's initial challenge and the policy response, be it in terms of policy, budget, or new gains (Burstein et al. 1995). In order to fill this gap, Schumaker (1975) and Kitschelt (1986) add three dimensions to Gamson's original two,¹² operationalizing state response in a more complex way. Drawing from both sets of authors this dissertation disaggregates state response along five dimensions (See Table 1.2).

¹² Gamson's original dimensions to measure social movement's impact were: a) new advantages for the movement in terms of the stated program, and b) access or acceptance (Gamson 1975).

TABLE 1.2
DIMENSIONS OF THE DEPENDENT VARIABLE:
STATE RESPONSE

Dimension	Definition	Indicators
Access	The social movement is acknowledged as an interlocutor and received by the government (President, ministries, Congress)	<ul style="list-style-type: none"> - Number of times received by the President, legislators and relevant Ministries. - Number of times the movement has been consulted on policy making related to their demands. - Number of incidents of repression against the movement, and who within the movement is targeted. - Number of members arrested, and which branches of the movement are targeted.
Agenda Setting	The social movement places its demands on the government agenda.	<ul style="list-style-type: none"> - Number of bills in Congress that have not been discussed or have not been passed but that relate to the issue advanced by the movement. - Issue appears in electoral platform of main political parties.
Government Policy	Legislation, presidential decrees and court decisions advancing or rejecting movement demands	-Number and content of favorable and unfavorable laws, decrees and court decisions.
Policy Output	Implementation of that legislation. Although policy is crafted at a national level, the implementation deals mostly with local levels of government (in this work, the city and suburbs of the respective capital cities).	<ul style="list-style-type: none"> -Number of completed and ongoing trials against human right abusers. - Number of military officers that were not promoted after being impeached by the human rights movement. -Proportion of non-criminalized abortions¹³ conducted without requiring the intervention of a judge. - Maternal mortality rates caused by unsafe abortions - Number of convictions for illegal abortions
Institutional Change	The creation of new state agencies or changes in existing institutions to deal with the issue at stake, taking into account the starting point.	-Relevance of these agencies in policy making measured in terms of budget, human resources and programs implemented.

The first dimension of state response to social movements is that of *access*. A social movement is considered to have access to the government when it is acknowledged as a

¹³ Argentinean law allows abortions in case of rape of a mentally disabled woman or when the mother's health is at risk. However, public hospitals still deny women this right without getting a judge's approval, which many times arrives when it is too late to perform an abortion.

valid interlocutor and received by the authorities to discuss its demands. I measure the level of access by the number of times each movement was received by the president and ministries when appropriate. I will also specify if these meetings were demanded by the movement or required by the government itself with the purpose of consultation. Access is denied to the movement when their demands are ignored by the government when designing policies relevant to them, and even more when the movement is not allowed to even express its voice by means of repression. Thus, this dimension is also measured by the number of incidents of repression suffered by the movement and the number of its members that were arrested. The sources used to code these different indicators vary according to each country and movement and will be discussed in detail in Chapter 5 and 9.

The second dimension is that of *agenda setting* and it aims to determine when a social movement is able to place its demands on the political agenda. I chose three indicators to measure this: a) the number of bills introduced in congress that refer to the movement's demands; and (b) the presence or absence of these issues in the electoral platforms of the main political parties.

The third dimension, *government policy*, refers specifically to presidential decrees, legislation and court decisions related to the social movement's demands at stake. The fourth dimension, *policy output*, analyzes the implementation of the legislation defined in dimension three. In the case of the human rights movements, given that the demand that this project focuses on is that of justice, the indicator for this dimension is the number of trials and convictions achieved under each administration. A second indicator, used

particularly for the case of Argentina,¹⁴ is that of the number of military officers' promotions questioned by human rights movements because of the participation of those officers in the military repression that were denied by the Senate. In the case of the women's movement, since none of the countries have actually decriminalized abortion as of November 2010, it is not possible to measure how well this policy has been implemented. In this case, policy output will measure if the current policies that rule the practice of abortion are implemented in a way that addresses some of the women's movements demands or not. In this sense in Argentina, the number of non criminalized abortions that were allowed to be practiced without the intervention of a judge will be analyzed. In the case of Chile, which has the most punitive law, the number of actual convictions of women that had an abortion will be taken into account. In all cases, the implementation of initiatives that fall short but are paving the way towards abortion decriminalization will be evaluated.

Finally, the last dimension of state response deals with *institutional change* and accounts for the creation of new government agencies to address the movements' demands. While there is an implied progression of increased state response that goes from dimension one (access) to dimension four (policy output), the fifth dimension (institutional change) is not necessarily indicative of a deeper level of response. Many times, institutional changes are implemented that have no real implications or consequences for actual policy changes. This is the case when new government agencies are created but not given adequate budgets, human resources, or the proper autonomy and authority to make and implement significant decisions. These institutional changes thus

¹⁴ This data was available for the case of Argentina. For the other two cases there was only some incomplete information available.

can be mere window dressing. Thus I also analyze the budget and authority assigned to these new institutions in order to determine if these government agencies represent real advances for the social movement or not.

The five dimensions of state response will be considered in light of four different state actors at the national level that may be targeted by a social movement:

1. President and Vice President
2. Legislators in Congress
3. Ministry of Health and Justice, depending on the issue area
4. Supreme Court

The research will take into account the possibility of potentially contradictory responses of different government branches and/or agencies to the movements' demands. For instance, a movement can receive access to and positive responses from the executive branch but be resisted by the Supreme Court or the lower ranks of the judiciary. In such cases, the research will analyze the power struggles within the government and what these imply in terms of the movements' influence on these struggles, their resolution or lack of and the final state response.

Given the issues chosen, the analysis will focus on the response of these four national institutions. The abuse of human rights committed by past military dictatorships is a national issue and therefore has been dealt with at the national level.¹⁵ The same is true of proposals to de-criminalize abortion, which also belongs to the realm of national politics. Although Argentina is a federal country, civil and criminal law are established at the national level and have jurisdiction in all the provinces. The same is true of Chile and

¹⁵ Examples from Argentina are: CONADEP (National Commission on Disappeared People), *Punto Final* legislation (1986), Due Obedience Law (1987), presidential decree granting amnesty to the military heads of state (1990), Supreme Court resolution nullifying *Punto Final* and Due Obedience Law (2005).

Uruguay since they are unitary states. Once state actors meet with social movement representatives and enact policy to address movement goals, the implementation phase moves from the national to the provincial or, in some cases, municipal level. When this is the case, for example when faced with the judicialization of abortions allowed by the law in Argentina, the areas to be analyzed will be the capital city of each of the country cases.

There are theoretical reasons to believe that social movements may have different levels of success, and influence on state policy, at the different stages of the policy process (cf. Schumaker 1975; Kitschelt 1986; King et al. 2005). According to the literature, movements are generally more influential in setting the agenda than in passing legislation (Burstein & Freudenburg 1978; Andrews 2001; King et al. 2005), in part because mobilization is effective at increasing the salience of a topic, but less so when technical knowledge of the legislative process and crafting is required, and also because the decision to include an item on the agenda is less consequential for politicians than that to vote for a law (King et al. 2005). The “action-reaction” model cited by Andrews (2001) goes as far as stating that movement mobilization has little or no direct influence beyond the initial point of setting the agenda. However, other scholars have found that movements have also played a role in later stages of the policy process, such as the implementation phase, when they help to encourage compliance with public policies (McVeigh et al. 2003). Yet, these are the only examples found that have begun to address which particular factors are more conducive to impacting state policy in each of these different stages. By disaggregating state response on these five dimensions, I begin to address this question.

1.5. Explaining Movement Outcomes: Introducing the Theoretical Model.

This dissertation argues that for a social movement to have its demands addressed by state policy, two conditions are required. First, the movement has to be strong since it is mainly responsible for placing the issue on the political agenda (the second dimension of state response). If there is no social movement organized around these issues, the chances of these issues entering the agenda -- a prerequisite for achieving an impact on state policy -- are very slim. Second, the movement needs political allies in power for the issues to move forward: for bills, once introduced, to be debated and passed in Congress (dimension three), for government programs to be implemented (dimension four), and for institutions to be created that address the movements' demands (dimension five).

This entire dissertation rests on the claim that social movements are relevant for advancing issues of justice for human rights abuses and women's rights. In developing countries which have not yet resolved basic problems of economic development and welfare, politics and electoral contention usually revolves around economic issues such as inflation and unemployment. The only issue that has emerged in the electoral debates of this last decade as a strong contender with such urgent bread-and-butter issues is that of personal security, a logical outgrowth of the sharp increase of violent crimes in these countries (See chapter 10 for statistics and public opinion polls on this topic). With basic issues such as economic and personal security unresolved for all of these countries' populations, it is logical that they will be the ones to monopolize electoral campaigns and debates.

Thus, the issues that concern this project --justice for human rights abuses and the decriminalization of abortion- rank low, if at all, in people's priorities when electing their representatives. This is the reason why politicians are able to ignore them. The lack of justice for human rights abuses affects a small percentage of these countries' populations directly. Without minimizing the impact of military repression, there were "only" 10,000, 4,000 and 36 deaths/disappearances in Argentina, Chile and Uruguay respectively (King 1989; Loveman 1998).¹⁶ Even accounting for the families of the victims, this does not represent a large percentage of these countries' total population. The demand for justice will not appear in the political agenda if there is not a group that organizes around it, defines it as "an issue" and keeps it alive when other, more "important" issues for the majority of the population, take the spotlight.

The same is true of the decriminalization of abortion. Even if abortion is an issue that should concern all women, who represent around half of these countries' populations, the truth is that the lack of legal abortion in these countries is a problem for poor women, not for all of them. Upper- and middle-class women who want to have an abortion have no problem paying for it, and have abortions under excellent sanitary conditions with no risk to their lives. Poor women are the ones who, unable to pay for an abortion at a private clinic, resort to any means possible to end their pregnancy, usually trying to induce abortions themselves or going to poorly skilled health providers. While poor women may represent a large percentage of these countries' populations, they are usually marginalized and ignored, and thus lack a voice in electoral politics.

¹⁶ These data are controversial since governments and human rights movements disagree on the numbers, especially in Argentina and Chile where disappearance was a wide practice. King has estimated these data based on a comparison of official data with movements' claims.

Without affecting directly a large part of the population, there is then no direct electoral incentive for politicians to address this issue. However, there have been governments that have done so. What is their incentive to do so? What conditions are needed for these issues to get onto the political agenda, be debated and enacted into law?

Issues such as justice for human rights abuses and abortion need, as a first step, a strong movement to define them as such and be forced onto the political agenda. As Alyson Brysk's states in her work on the human rights movement in Argentina "absent foreign intervention, it is difficult to find a case of human rights reform without the presence of a human rights movement" (1994: 168). In her work on abortion policies, Blofield states that in the absence of strong feminist movements, even left parties tend not to take women's rights as seriously (Blofield 2006: 36). In a study of policies to address violence against women in 36 countries, Weldon finds that "there was no single government initiative adopted in the absence of a women's movement" (Weldon 2002: 78). Thus, the first hypothesis of this project states that:

A strong social movement is a necessary condition for issues that affect a minority of the population to be introduced onto the political agenda. The stronger the movement, the greater the likelihood it will have an impact on state policy.

A strong social movement is a necessary but not sufficient condition for their demands to be addressed by government policies. Not all governments respond to the movement in the same way, even in the presence of large mobilizations. The annual "*Marchas del Silencio*" demonstrations of the Uruguayan human rights movement have consistently mobilized at least 40,000 people since 1996. Yet, different administrations have had different reactions to them: while the second Sanguinetti administration (1995-

2000) completely ignored the movement, Batlle (2000-05) partially addressed their demand for the truth about the abuses committed. But it was not until the government of Tabare Vázquez (2005-09) that the first trials and convictions for human rights abuses took place. Thus, a social movement needs political allies in power to press their demands within the political system. While the existence of a movement is critical for the second dimension of state response –political agenda- the presence of political allies is necessary for the following dimensions: for bills to be introduced, for laws to be passed, for programs to be implemented, and for government agencies to be created.

What, then, explains why some governments are more likely to respond to these social movements than others? What characteristics should politicians have in order to be considered potential movement allies? First, *leftist governments are more likely to respond to human rights and women's movements' demands than right-wing ones*. Given that the issues advanced by these two movements are of a progressive character, leftist politicians will be more likely to sympathize with them than their rightist counterparts. Chapter 5 and 9 will show that the rise to power of leftist administrations in the three countries in the 21st century (Kirchner 2003-07 in Argentina, Bachelet 2005-09 in Chile, Vázquez 2005-09 in Uruguay) has – to differing degrees - generally increased the response of governments towards human rights and women's movements in these countries. I emphasize “to differing degrees” since the differences are important depending both on the issue and on the level of response the movement achieved in each country.

Ideology is a general predictor of government responsiveness to social movements, but not one without problems. As will be addressed in the following section where I

discuss the operationalization of the variable “movement allies,” there are certain problems that need to be dealt with by measuring the concept in a different way. Thus, I complement this measure with the personal position each politician has on the issue demanded by the social movement.

However, even when the government is led by movement allies, the level of response to the movements’ demands may vary, with some governments being more responsive than others. Kirchner’s leftist government in Argentina has been the most responsive of all to the human rights movement since it has taken important political steps such as nullifying the impunity laws that allowed the military in the past to escape justice. Leftist governments such as Lagos and Bachelet’s administrations in Chile have been more open to receiving the human rights movement and including them in some government policies than their predecessors, but they did not go as far as nullifying the amnesty law. Uruguay presents a situation similar to that of Chile with leftist president Tabaré Vázquez. This variation can thus be accounted for by a third variable: political weakness. This project hypothesizes that *the weaker a left or center left president is when assuming power and in particular the greater his/her need for support from leftist constituencies, the more the government will try to advance social movements’ main demands*. President Kirchner was elected in Argentina with 22% of the vote in May 2003. In addition, he came to power only two years after the 2001 political and economic crisis, which had created a context in which politicians and political parties lacked credibility. He needed to increase his legitimacy and support as a new president and he searched for the support of the human rights movement by addressing most of their demands. Other leftist presidents such as Bachelet in Chile and Vazquez in Uruguay won the presidential elections with 53.5% and

51.70% respectively. They had no particular need to address social movements' demands in search for extra support for their administration.

1.6. Defining the Independent Variables

In this section I define and operationalize the main independent variables of this study, and lay out the main predictions.

1.6.1. Movement Strength

The first necessary variable for a movement to generate some impact on the state response dimensions is the strength of the movement. Most scholars have measured movement strength in terms of its level of mobilization – operationalized as the number of protest events it organized in a given period (Burstein and Freudenburg 1978; Giugni 2004; more), or its level of organization - operationalized as the number of members, chapters in a given territory, or financial resources a movement has (Weldon 2002; Kane 2003; Giugni 2004; Soule & Olzak 2004).

The human rights movement presents a challenge to the measures traditionally used by the literature. In terms of using the number of protests organized by the movement in a given period, a movement like the *Madres de Plaza de Mayo* have mobilized every single Thursday since 1977 until this very day. It has also organized two annual demonstrations --one on March 24th on the occasion of the anniversary of the 1976 coup d'état and the other in early December called the March of Resistance- since the early 1980s. Thus, an account of the number of protests will not show changes in the strength of the movement. A similar situation is true for the other movements and countries. Data on the organizational strength of movements are not readily available in detail for the

country-years analyzed in this project. In addition, the kind of human rights movements analyzed in this project – those formed by family members of the victims of the dictatorship- are organizations that are structurally limited in how much their membership can expand, since becoming a member requires having had a victim in the family.

To compensate for these difficulties, movement strength is measured here in two ways. An initial account of their strength would be given based on what other academic accounts have said about each of the cases (Weldon 2002). The second measure used would be the movement's power to convene. By this I mean the number of participants the movement manages to attract to its main annual demonstrations. I thus expect a social movement with strong power to convene to have more impact on state policy.

I have chosen the events to code based on those that appear year after year in the OSAL chronologies of social activity for Latin American countries. In the case of the human rights movements in Argentina, I consider the demonstration organized around the anniversary of the 1976 coup d'état on March 24th and the organization of the "*Marcha de la Resistencia*" (March of Resistance)¹⁷ in early December of each year. In the case of Uruguay, I take the attendance attracted by the "*Marcha del Silencio*" (March of Silence), which has been organized every year on May 20th since 1996.¹⁸ In the case of Chile I

¹⁷ The March of Resistance is a 24 hours demonstration in which the *Madres de Plaza de Mayo* walk around the square. The first one was organized in 1981 still under the military dictatorship and since then the *Madres* have organized it every December. On December 2006 the *Asociacion de Madres de Plaza de Mayo* announced that was the last demonstration since the government was not considered as the enemy anymore.

¹⁸ The March of Silence is organized every year since 1996 to commemorate the assassination of legislators Zelmar Michelini and Hector Gutierrez Ruiz on May 20th 1976 in Buenos Aires.

focus on the demonstrations organized by the human rights movement around the anniversary of the 1973 coup d'état on September 11.

In terms of the women's movement I look at the activities organized on September 28,th the International Day for the Decriminalization of Abortion established by feminist Latin American groups in 1994.¹⁹ In the case of the women's movement, since the number of protests does fluctuate by year unlike that of the human rights movement, following the literature on the topic I complement this measure with that of number of protests per year. I created a dataset based on OSAL country reports of protest activity. Finally, I add another indicator to measure the power to convene, which is the number of alliances with other social actors –unions, professional associations, universities and other social movements- the women's movement have managed to achieve.

The information on the attendance of these events was collected from both newspapers articles and estimates provided by the movements themselves, where available, to compensate for possible bias in reporting. In the case of Argentina I consulted the newspapers *Clarín* and *Página 12*. In the case of Uruguay, I read reports from the newspaper *La República*, and in Chile, newspapers *El Mercurio* and *La Nación*. My choice of newspapers was based on availability and on which ones reported more information on the events of interest.

1.6.2. Political allies

The opportunity to strike political alliances has been identified as one dimension of the political opportunity structure (McAdam 1996 cited in Giugni 2004), and thus, many scholars have used it as a variable to explain the impact of social movements on state

¹⁹ On November 1994 the V Feminist Meeting of Latin America and the Caribbean held in San Bernardo, Argentina agreed that September 28th will be declared as the Day for the Right to Abortion.

policy. Most have measured it in terms of the percentage of movement sympathizers in the government at a particular point in time (Giugni 2004; Soule & Olzak 2004; Kane 2003). Some scholars have defined movement *sympathizers* as those politicians who have been supportive of the movement as evidenced by their attendance at the movement's protests and initiatives they have taken from positions of power to favor their demands (Cress and Snow 2000). This latter operationalization runs the risk of confusing the independent and dependent variables, and for this reason it is not used here. Since the dependent variable of this study is state response, it is necessary to avoid taking policy initiatives as a measure of the independent variable. A more common way of identifying movement supporters has been to point to those political parties standing on the left of the ideological spectrum (Giugni 2004; Kane 2003; Soule & Olzak 2004) since it is assumed that they will favor more liberal and progressive policies than right-wing parties. Since this measure has no overlap with the indicators used for the dependent variable and the social movements chosen for this study are of a progressive kind, I consider ideology an adequate way of measuring movement allies, though it is not one without problems.

While it is easy to identify leftist parties in Uruguay and Chile since these countries have programmatic political parties, Argentina poses a particular challenge in this respect since its parties are not easily classified along the ideological spectrum. The Peronist party in particular, and the Radical Party to a lesser extent, has within its organization leaders and members that range from right to left in their ideological convictions. Thus, when classifying the ideological inclination of Argentine presidents, their views on economic policies –whether they favor a small or an intervening state in the economy– and not their party affiliation will be considered as the defining element of their ideology.

However, the ideological dimension generates an additional problem. In Uruguay, the experience of the conservative *Partido Blanco*, which suffered military repression for its strong opposition to the military dictatorship, may have had an influence on the stance of its leaders towards the human rights movement. In addition, some politicians on the left on economic policies may oppose the decriminalization of abortion based on religious principles. Thus, it is necessary to disaggregate the political parties and look at the politicians' relationship to the issue advanced by the social movement.²⁰

In the case of the human rights movement, I examine the personal histories of presidents, ministers, senators and deputies from the transition to democracy until 2007 and coded them in terms of the following categories:

1) Victims of the military dictatorship: defined as having personally been imprisoned, kidnapped, tortured, or exiled, or having had a close relative (children, parents or siblings) suffered the abuses listed above, killed, or disappeared;

2) Human rights advocates: defined as having been active in human rights organizations during the dictatorship and/or during democratic times. It applies also to those who defended political prisoners during those years;

3) Guerrilla members: defined as having participated in guerrilla groups before and during the military dictatorship. These are: *Montoneros*²¹ and *Ejército Revolucionario del*

²⁰ Though offering some problems, I do keep the measure of political allies in terms of ideology for two reasons. First, it has been used in the literature and thus it is interesting to see if it can explain or not politicians behavior towards movements. Second, the empirical chapters will show that ideology holds an important explanatory power. The problems identified here are only exceptions that are addressed with the other complementary measure.

²¹ *Montoneros* was a left wing guerrilla group within the Peronist Party during the 1960s and 70s.

Pueblo (ERP)²² in Argentina, *Frente Patriótico Manuel Rodríguez* (FPMR)²³ and *Movimiento de Izquierda Revolucionaria* (MIR)²⁴ in Chile and *Tupamaros*²⁵ in Uruguay.

4) Collaborators with the dictatorship: defined as having held one of the following positions during the military dictatorship: a position in the executive branch at the national (military junta and ministries), provincial (governors), and local levels (mayors). Among those appointed to national ministries, those coded are those who served as ministers, secretaries, undersecretaries and their advisers. From the position of Director and down they are considered to be technical and not political appointments. In the case of the judicial branch, those coded as positive were members of the Supreme Court during that time and/or federal judges appointed by the military. The posts of ambassadors are included only when they were appointed by the military dictatorship and/or if they were appointed to major powers or border countries considered key for the country's foreign policy. I also code children and spouses of the dictators as collaborators given that they are assumed to have a predisposition to legislate against the prosecution of human rights abuses.

I expect politicians who were victims, human rights activists, or guerrilla members to sympathize with the human rights movements' demands. Those that held a position of

²² The People's Revolutionary Army was created on 1969 as the military branch of the communist Party in Argentina.

²³ The Manuel Rodríguez Patriotic Front was created in 1983 by the Communist Party as an armed resistance against the Pinochet regime.

²⁴ The Revolutionary Left Movement was a Marxist Leninist political party created in 1965 by student organizations with strong support among trade unions and urban lower classes which took up arms during the 1970s.

²⁵ *Tupamaros* was an urban guerrilla during the 1960s and 70s.

power during the dictatorship and their close families are expected to oppose this movement.

In addition, when studying women's policies scholars have looked at what they refer as "the structure of gendered opportunities" (Soule & Olzak 2004) measured, for example, by the number of women in the executive and legislative branches. There is a debate around whether more women in power imply a greater likelihood for gender policies to be passed and implemented (Chant & Craske 2007). Many argue that the passage of quotas for women in legislatures have not necessarily brought to power more sympathizers of gender policies (Htun and Jones 2002). In Argentina for example, some parties assign those seats to wives and daughters of the male politicians already established in the party, inhibiting the advancement of independent women that, it is assumed, will be more inclined to support policies that advance gender rights. In addition, many women that participate in politics do not necessarily support women's issues; they may be interested in traditional political issues. To account for these, I consider not only the number of women in office, but also take into consideration their past commitment with gender issues.

I expect women in power with a history of commitment to gender issues to be sympathetic to the movement for the decriminalization of abortion. I expect women in power who have only displayed interest for traditional political issues to either oppose or ignore the movement's demands. I thus code politicians in the following categories:

- a) Very committed to gender issues: legislator that fits at least one of these descriptions:
 - has been part of the women's movement before being elected

- defines herself as a feminist
- when asked about her interests in Congress mentions gender as one of them²⁶
- has introduced more than one bill on sexual and reproductive rights other than those on abortion (to prevent conflating the independent with the dependent variable).

b) Committed: legislator that fits at least one of these descriptions:

- has introduced one bill on sexual and reproductive rights other than those on abortion
- has introduced a bill to sign into the CEDAW
- has introduced a bill to create a Commission on Gender Issues and/or establish a gender agenda.

c) Somewhat committed: legislator that has introduced bills on gender issues other than sexual and reproductive rights such as the political participation of women, women's rights within the family and violence against women.

d) Indifferent: defined as having not introduced any bill on any gender issue.

e) Opposed: legislator that fits at least one of the following descriptions:

- has voted against key gender bills (other than those related to abortion) such as the ratification of CEDAW, voluntary sterilization, access to contraceptives and sexual education.
- has introduced at least one bill restricting sexual and reproductive rights (other than those related to abortion).

I expect those politicians codified as “very committed” and “committed” to gender issues to be sympathetic to the women's movements demand to decriminalize abortion. I expect those that have been codified as “somewhat committed”, “indifferent” and “not committed” to oppose the women's movement in this issue.

²⁶ This description applies only to Argentinean politicians since they are asked about their main area of interest in the annual booklet of legislators in Congress.

Finally, based on the common claim in the literature that the political influence of the Catholic Church is partly responsible for Latin American strict laws penalizing abortion (Htun 2003; Borland 2004; Blofield 2007), I code politicians based on whether they had a secular or religious university education. I identify university education of the political elite as a key mechanism through which the Church influences government policies blocking the availability of allies to the movement for decriminalization.

1.6.3. Political weakness

Political weakness is defined as a situation in which a president assumes power with a low percentage of electoral support and lacking majorities in at least one of the chambers of Congress. Thus, it is measured by the percentage of votes with which he was elected to power, and the presence or absence of congressional majority in Congress. I expect governments elected with a low percentage of electoral support and/or lacking majorities in Congress to be more responsive to social movements' demands.

1.7. Case Selection

Definitions of social movements are abundant in the literature. Based on some of the most commonly used (McAdam 1982; Tarrow 1994; McAdam, McCarthy & Zald 1996; Tilly 1999), I define a social movement as an excluded group united by a common purpose and social solidarity in the pursuit of social change which presents a sustained challenge to power holders using, at least occasionally, extra-institutional means of struggle. Based on this definition I selected two social movements -- the human rights movement and the women's movement -- for inclusion in this study. Given the complexity of following all their activities, I chose only one demand sponsored by each:

the demand for justice for the past abuses of the military dictatorship and the demand to decriminalize abortion, respectively. I analyze these two movements and compare their activities and impact on state policy across countries – in Argentina, Chile and Uruguay- and across time –from their transition to democracy (1983, 1990 and 1985 respectively) until 2007.

The choice of studying Latin American social movements follows from the fact that all the major works in the field of social movement outcomes are based on cases drawn from the U.S. and Western European countries (Gamson 1975; Kitschelt 1986; Giugni, McAdam & Tilly, eds 1999; Giugni 2004). While the literature on Latin American social movements is broad, most has been devoted to researching the emergence and development of these movements and relatively few have focused on their impact, with a few exceptions (Brysk 1994; Loveman 1998; Keck and Sikkink 1998; Franceschet 2004). In addition, these works have been mostly case studies and do not systematically compare different movements within and across countries, which is one of the goals of this project. Thus, this dissertation seeks to fill this gap and test whether theories developed to understand the impact of social movements in developed democracies can travel to Latin America's emerging democracies.

Within Latin America, Argentina, Chile and Uruguay were chosen because they share general social, economic and cultural characteristics that allow us to control for the influence of these factors. I chose three countries to increase the number of observations, but I also wished to limit the number of cases in order to permit a qualitative, in-depth study of each. In addition, these three countries have relatively similar levels of GDP per capita and scores of inequality, and have consistently ranked toward the top of all Latin

American countries in the Human Development Index (See table 3). These similarities in their socio-economic development allow me to discard theories that focus on these factors as main variables (see Blofield 2006). They also share a similar cultural and historical background, a fact that reduces the significance of cultural explanations. They were colonized by Spain, gained independence during the same period (early 19th century), speak the same language and the majority of their populations identify as Roman Catholics. In addition, their ethnic composition is quite similar since these countries received a significant number of European immigrants at the turn of the 20th century which added to the original indigenous-Spanish mix, a characteristic that culturally differentiates them from the rest of the region. The three countries experienced a military dictatorship during the 1970s and 80s categorized by O'Donnell (1973) as bureaucratic authoritarian- with a legacy of human rights abuses which led to the emergence of human rights movements and their demand for justice. They also share restrictive legislation on abortion, although with different levels of prohibition, a necessary characteristic for a women's movement to espouse the demand for decriminalization.

These cases also provide enough variation on the dependent variables (state response to social movement), the main independent variables (movement strength and political allies) and on those identified by alternative theories (see following sections) to allow for a fair comparison. In terms of the human rights movement, Argentina has been the country that has addressed its demands the most, followed by Chile and Uruguay, in that order; Uruguay has only recently under the Vazquez administration begun the prosecution of those responsible for the past abuses. While none of these countries has

yet to decriminalize abortion, Uruguay came closest to doing so when in November 2008 Congress passed a law towards this end that was later vetoed by President Vazquez. Argentina is in an intermediate position with some bills being introduced in Congress but none having reached the plenary sessions for debate, and Chile lags behind with the most restrictive law that prohibits abortion even when the mother's life is at risk and there is no prospect of changing this law in the near future.

This dissertation also examines issue areas as diverse as the demand for justice for human rights abuses and the decriminalization of abortion, a choice that requires justification. The logic of this case selection begins from the observation that at least some scholars believe there may be variation across issue areas in which a social movement is advancing its demands (Kriesi et al 1995; Htun 2003). The issue of abortion in particular has been judged by some to be so controversial --in the sense of provoking more moral conflict around absolutist values than other issues- that some authors prefer to separate it even from other gender policy issues such as gender equality and divorce, stating it has its own logic (Htun 2003, 6). However, I do believe that while of course each issue area has its own particularities, there is always room to generalize about the way social movements achieve impact. The goal of this project is to try to understand when social movements get their demands addressed by the state. The idea behind choosing cases as dissimilar as these two movements resides in the desire to explore if there are certain conditions under which any movement --regardless of its goals, membership, and particular demands--can achieve an impact on state policies.

1.8. Methodology

Scholars have acknowledged that establishing causal links between the actions of a social movement and the adoption of state policy is one of the main challenges confronting students of social movements (Tarrow 1993; Giugni, McAdam and Tilly eds. 1999; Amenta 1992; Giugni 2004; Andrews 2001). The emergence of movements often coincides with other political changes, which increases the difficulty of sorting out those responsible for policy reforms (Tarrow 1993). Conditions that produce the rise of a social movement –e.g. an economic crisis- may also influence state policy directly (Amenta and Young 1999). Indeed, statistical analyses of comparative studies on social movements' outcomes often highlight co-variation between movement mobilization and state response but fall short of establishing a causal connection (Kane 2001; McVeigh et al 2003; Giugni 2004). They can claim only that a movement's demands were addressed by the government, but they fail to show how this happened and whether this would have happened had the movement not been present.

This project proposes to conduct an in-depth qualitative analysis of two social movements and their impact on state policy to unveil the mechanisms that were at play and work towards establishing causality. Following George and Bennett (2005), the chosen methodology is a structured and focused comparison. By structured I mean the comparison will be done in a systematic way, asking the same questions about all the cases under study so as to standardize the data collection. By focused I mean that the research will examine one particular aspect of the historical cases: their impact on state policy (George and Bennett 2005: 67).

The choice of methods is justified by the fact that it is not enough to show that political allies were favorable to the movement when a policy reform was passed. It is necessary to find out *how* it happened. This is the main gap in the literature that needs to be addressed. Did the movement approach legislators to formally present its demands and lobby for them? Did the movement present a particular bill or program to be adopted by the government? How successful was the movement in these attempts? How often did its members meet with the government? If they met, what did the government ask for in exchange? Were there any attempts by the government to co-opt movement leaders? Or on the contrary, did government officials approach the movement to learn their views about a project that would address their demands? Did government officials ask for political support or to stop disruptive protests in exchange? These are the kinds of questions that guided the process of information gathering through interviews with movement participants, government officials, and local academics. The analysis of the timing of the contacts between movement and government, and the protests and policy reforms, will help sort out if there was a causal link between the proposed variables.

Many scholars have suggested the use of the comparative method as a way to address the problem of causality (Tarrow 1993; Tilly 1999; Giugni 2004). In the past, research focused on single case studies (Amenta et al. 1992 and 1994; Tarrow 1993), the comparison of one movement's performance across states within the same country (the US) (Cress and Snow 2000; McCammon et al. 2001; Kane 2003; Soule and Olzak 2004; King et al 2005) or across countries (Kitstchelt 1986; Rucht 1999). There is only one study that compares different movements across countries (Giugni 2004). The present

project is organized around a comparative design that will takes shape along three dimensions:

- Within-case analysis: I will observe the same movement across time facing different administrations within a single country.
- Cross-country analysis: I will observe the same kind of movement in different political contexts.
- Cross-case analysis within the same country: I will observe two different movements acting in similar political conditions within the three countries.

By studying two movements in three countries across five different administrations since the return to democracy—with the exception of Chile that had only four until the cut off year, 2007-, there are a total of close to thirty observations to test the theoretical model in a rigorous way.

1.9. Alternative Explanations

There are four main hypotheses that need to be considered as alternatives to the model presented here: 1) social movements are not a relevant actor in determining state policy; 2) public opinion is a key variable explaining when states put the demands of social movements on the political agenda; 3) state responses are shaped by international factors; and 4) the role of institutions that oppose the movement's demands. In this section I will present and rebut each of them, a task that will be done in more depth in Chapter 10.

Before presenting these alternatives I want to make clear that there is a difference between the first alternative explanation and the other three. While the hypothesis that

denies any influence to social movement is a competing explanation since it attacks the main assumption of this project –that is, that social movements matter in some way, the other three may be seen as complementary. This project does not deny that public opinion, international factors and counter-institutions have exercised some influence in the way the government responds to social movements. However, this investigation has found that their role is much smaller than expected and advanced by other scholars and that the theoretical model proposed here has more explanatory power than these other independent variables. These other factors are relevant as general enabling conditions. They are variables that are considered in the strategic calculation of a weak government seeking leftist allies at the time of deciding whether or not to address the demands of social movements, but they are not variables that can account by themselves for the government's policies in these issue areas. The mechanism through which they become relevant is through the movements' allies. No direct influence between them and state response was found. In Chapter 10 these variables will be measured and analyzed to provide evidence of their less relevant role.

1.9.1. Social movements have no impact on state policy

This first competing explanation challenges the main premise of the literature on social movements, that social movements have any impact on state policy at all. Within this approach movements are seen as an epiphenomenon of a broader context, and it is this context that is responsible for determining state policy. The literature on welfare policy suggests, for example, that economic and political conditions determine policy changes (Skocpol and Amenta 1986). Social movements are just another consequence of this broader context (Goldstone 1980; Kitschelt 1986, Amenta and Young 1999).

However, in line with this dissertation's main argument, scholars like Weldon (2002) have shown that without the presence of a social movement, issues such as the prevention of violence against women are not tackled at all by governments. Brysk makes a similar claim when she states that "absent foreign intervention, it is difficult to find a case of human rights reform without the presence of a human rights movement" (Brysk 1994, 168). Thus, even if social movements may be considered "another consequence" of a broader context identified as the "real cause" of policy change, the fact that without a movement the issue will not be defined as such and therefore addressed, shows that even as an intervening variable social movements are a key part of the causal chain and thus should be taken into consideration in policy studies.

1.9.2. The role of public opinion

Some scholars have recently begun to take public opinion into account as a mechanism through which social movements can achieve policy impact (Burstein and Freudenberg 1978; Burstein 1999; Burstein and Lipton 2001; Giugni 2004). From this perspective social movements are thought to be unable to influence policies directly. Based on the assumption that the main goal of politicians is to be re-elected (Mayhew 1974, Downs 1957) or to progress in their careers as politicians (Morgenstern and Nacif 2002; Samuels 2003) and that following public opinion is a way of enhancing their chances for re-election, movements are seen as more likely to have an impact on state policy when they manage to capture public support (McAdam 1982).

While both theoretically and intuitively this seems to be a strong hypothesis, the present research found no relation between public support for the movements' demands and state responses. For most of the period analyzed here, neither human rights nor

abortion have ranked high in the priority list of these societies when asked about the most important problems facing the government (see Chapter 10 for public opinion data on this). In most of the polls these two items were not even mentioned. Merike Blofield's study on divorce and abortion policies in Argentina, Chile and Spain shows a similar result (Blofield 2006): abortion was legalized in Spain with a similar percentage of the public in favor of decriminalization as in Argentina and Chile today, yet these two countries are nowhere near passing a similar law.

1.9.3. The role of international factors

Scholars have studied the influence of international factors in both human rights and gender policies (Sikkink 1996; Brysk 1993; Blofield). Some like Sikkink and Brysk have looked at how international human rights networks have accomplished change in human rights policies domestically. Others like Blofield have looked not only at the role of feminist transnational movements but also at shifts in the Vatican and how both of these external factors influence gender policies at the national level.

However, they all recognize that international factors do not work directly, but through the decision making calculus of politicians (Sikkink 1996, 75; Blofield 2006, 31). In this sense, there is thus no contradiction with the theoretical model introduced in this dissertation. In addition Brysk highlights the fact that transnational human rights networks are much more efficient during dictatorial than democratic times. When democratic transitions begin, the attention of these networks is redirected to other more extreme cases of human rights violations and thus the pressure for changes in these newly democratic countries' policies diminishes (Brysk 1993, 280). Since this dissertation is

dealing exclusively with democratic times, the role of these networks is thus less relevant.

Finally, throughout the narrative of the cases some international developments will be mentioned and their importance for government's response to social movements will be taken into consideration. One such case is the detention of Pinochet in London in 1998 and the impact it had on the opening of trials particularly in Chile. However, as it will be dealt with more extensively in Chapter 4, research has shown that the increase in the number of indictments was prior to this event and thus cannot be attributed to the developments in London exclusively (Collins 2005).

1.9.4. The strength of institutions opposing social movements' demands

A social movement does not act in isolation, but in a context in which other institutions also try to influence state policies. The relevance of institutions such as the Armed Forces or the Catholic Church in the definition of government policies is a factor that is usually ignored by the literature on social movements' outcomes, with some exceptions (Bustein et al 1995), but it is one that is usually present in the public policy literature.

The research on human rights policy in the Southern Cone relies heavily on the literature on democratic transitions (O'Donnell & Schmitter, Linz & Stepan 1996) to explain the policies implemented in this area. In line with this literature, these studies emphasize the role that the kind of transition had in the way new democratic governments were able to deal with human rights abuses (Acuna and Smulovitz 1995?; Pion Berlin 1993; Barahona de Brito 1997; Roniger 1997; Roniger & Sznadjer 1999). From this perspective, the trials of the military junta were possible in Argentina because the

military left power after a humiliating defeat in the Malvinas/Falklands war. On the other hand, Chile and Uruguay implemented more moderate human rights policies because they went through pacted transitions controlled by the military.

As we will see in the present study, while the power of the armed forces and the level of civilian control over the military are relevant conditions governments take into account when deciding whether or not to address human rights movement's demands for justice, these factors have not proved to have had as strong an influence as the literature on transitions suggests. As we shall see in Chapter 10 the power of the armed forces and the level of civilian control over the military in the three countries are not strictly correlated with the development of human rights policies. In the mid-1990s Chile had a strong military that was beyond civilian control, while Argentina had achieved a high level of civilian control over the military. However, the balance of state response to human rights movements in both countries was very similar: some truth and no justice.²⁷ Further, even when the Chilean armed forces had a larger influence on the country's policy than was the case in Uruguay, Chile managed to initiate the search for justice only five years after the democratic transitions.²⁸ By contrast, it took twenty-four years for anyone to be convicted for human rights abuses in Uruguay, whose military was much less influential than its Chilean counterpart.²⁹

²⁷ Both countries had truth commissions, CONADEP in Argentina, and the Rettig Commission in Chile. Argentina had some trials in the 1980s but these convictions were made null by the presidential pardons in the early 1990s. See the future chapters for details of these processes.

²⁸ On May 30th, 1995 DINA chief Manuel Contreras and former DINA operations chief Pedro Espinoza were convicted to seven and six years respectively.

²⁹ On March 29, 2009 the military officers Jose Gavazzo, Ricardo Arab, Jorge Silveira, Ernesto Ramas y Gilberto Vazquez were convicted to 25 years. The former military officer Luis Maurente and the police officers Ricardo Medina y Jose Lima were convicted to 20 years.

In the work on gender policy, scholars usually identify the power of the Catholic Church in Latin America and its relationship with the state as one of the main factors to explain the restrictive legislation on abortion, and more generally, the difficulties in asserting sexual and reproductive rights (Htun 2003; Borland 2004; Blofield 2007). Again, while the Church is clearly a relevant actor, it is important to identify the precise causal mechanism behind that influence, and how the church influences state policy in order to prevent women's movements demands from being addressed. Some scholars argue that the relevant mechanism lies in the influence the Church exercises over the state as established by the national constitution in each country (Borland 2004). Others focus on the relationships each government establishes with the Catholic hierarchy: while a friendly relationship makes change more difficult, a confrontational relationship may open the window of opportunity for gender policies to be advanced (Htun 2003). Still others point to the influence the Church has in society, measured for example by the number of Catholics that practice their religion, rather than at the political level (Borland 2004). Finally some scholars contend that there is a mutually beneficial alliance between the Church and economic elites (and right-wing political parties) in which the Church gains a channel for its moral politics in exchange for giving the elites moral legitimacy (Blofield 2007).

Given the wide variety of causal mechanisms, Chapter 10 provides a measure of the Church's power and its relationship with the state in each country in order to evaluate these competing claims. The main finding is that it is not the reach the Catholic Church has in society, or the particular state-church relations established in the Constitution or by the government in power which is relevant. Consistent with some of Blofield's

arguments, it is the way the Church manages to reach the political elite and thus alienate politicians away from the women's movement that matters the most. This finding is consistent with the model proposed in this project that emphasizes the role of political allies gained by the social movements for their demands to be addressed. Those politicians educated in Catholic institutions are less likely to become allies to the women's movement and more likely to put hurdles in the movement's legislative initiatives. According to this finding, the Catholic Church influences state policy not via its strong presence in society or through its formal and informal relations with the state, but through a much more indirect way, university education.

PART I

STATE RESPONSES TO HUMAN RIGHTS MOVEMENTS

IN ARGENTINA, CHILE AND URUGUAY

Introduction

In the 1970s, the countries of the Southern Cone saw the establishment of military dictatorships that implemented state terror policies that left a legacy of human rights abuses unseen before in their history. Although estimates of the level of repression during those years are a matter of controversy, King (1989) has compared numbers from government reports, international and domestic human rights organizations and academic investigations and has arrived at the figures presented in Table 2.1. Argentina was the country with the highest number of disappearances while Uruguay's regime chose to use imprisonment as its preferred repression tactic. Given the extended use of this practice, it was the country with the highest rate of political prisoners in the world during the 1970s (Amarillo y Serrentino 1988).³⁰ Chile used both methods of repression extensively.

As a response to state terror, a human rights movement emerged in each of these countries. What is usually referred to as 'the human rights movement' in the region, amounts to a diverse array of social movements organizations and NGOs that are united in their demand for truth, memory and justice in relation to the abuses committed by the

³⁰ This fact was stated by the General Secretariat of the International Commission of Jurists who in 1974 organized an observance mission to Uruguay together with Amnesty International.

TABLE 2.1
LEVEL OF REPRESSION
IN THE SOUTHERN CONE

	Argentina	Chile	Uruguay
Number of deaths/disappeared	10,000	4,000	36
Deaths/disappeared per 1,000 population	0.40	0.40	0.01
Number of prisoners	7,000	28,000 ³¹	4,000 ³²
Prisoners per 1,000 population	0.03	0.6	1.4
Number of exiles	500,000	40,000	500,000
Exiles per 1,000 population	18.9	4.9	176.41

Source: King 1989

military dictatorship. Pre-existing organizations such as the *Liga por los Derechos del Hombre* (League for Human Rights), *Servicio de Paz y Justicia* (Service for Peace and Justice, SERPAJ) and the *Asamblea Permanente de Derechos Humanos* (Permanent Assembly of Human Rights, APDH) in Argentina, and the Catholic Church in Chile mobilized from the beginning of the dictatorship to assist victims in legal and humanitarian ways. New organizations were also created specifically for these purposes, such as the Uruguayan branch of SERPAJ (Service for Peace and Justice) and *Centro de Estudios Legales y Sociales* (Center for Legal and Social Studies, CELS) in Argentina.

³¹ This number is not from King 1989. It has been updated to reflect the number of Chileans that suffered imprisonment and torture as acknowledge by the Valech Commission of 2003.

³² The report done by Uruguayan historians in 2009 acknowledged the existence of 5,925 prisoners. See *Página 12*, “En Uruguay presentan una investigacion sobre la dictadura” March 24th 2009. Viewed at www.pagina12.com.ar on March 24th 2009.

Finally, families of the victims began to mobilize in response to their personal tragedies, quickly becoming the faces of the movement as a whole.

While strongly united during the times of the dictatorship when the main demand was for the return of the “disappeared” alive (“*Aparición con vida*”), once democracy returned and governments began addressing these grievances in different ways, the first differences emerged between the human rights organizations in each of these countries. As can be expected, disagreements about the methods of protest, strategies or the position to take towards specific government policies became common. Given the difficulties involved in following each of these organizations in detail throughout the years of democratic governments in each of the country cases, this project has decided to focus on the organizations built by families of the victims. The authority and leading role that these organizations developed within the human rights movement at large and the novelty of the crime of “disappearance” around which they organized is the justification for this choice. Thus, the movements that were analyzed in this project are: the *Madres de Plaza de Mayo* (Mothers of the Plaza de Mayo) in Argentina, the *Agrupación de Familiares de Detenidos Desaparecidos* (Association of Families of the Detained-Disappeared) in Chile, and the *Madres y Familiares de Detenidos Desaparecidos* (Mothers and Families of the Detained-Disappeared) in Uruguay. In cases in which other human rights organizations shared these demands and/or also played an important role in their accomplishment, they will also be reported here.

The goal of Part I is to analyze the interaction between human rights movements and the different administrations in power since the democratic transition in the three countries of interest: Argentina, Chile and Uruguay. The first three chapters of this

section (2, 3 and 4) present the demands of each of these human rights movements and the response they got from the state since the return to democracy until the year 2007. This is done through the measurement of each of the dimensions of state response defined in Chapter 1. Chapters 2, 3 and 4 analyze each of the countries separately. The detailed narratives show how whenever there were instances of accountability for human rights abuses, the human rights movement was most of the times behind these initiatives. The movement has been influential not only in introducing the demand for justice in the political agenda, but also in working together with politicians in power to make this happen, and finally in monitoring government programs to ensure they were implemented in the way they were meant to. Chapter 5 presents the application of the theoretical model to these three cases. It shows how movements' impact on state policy was possible due to movements' strength and the availability of allies in government to work with.

CHAPTER 2

THE IMPACT OF THE HUMAN RIGHTS MOVEMENT ON STATE POLICY IN ARGENTINA

2.1. The *Madres de Plaza de Mayo*

On April 30th, 1977, fourteen women met in the main square of Buenos Aires, the *Plaza de Mayo*, to present a letter to the president of the military dictatorship at the time, Jorge Rafael Videla, demanding to know the fate of their disappeared children. After having visited all the government offices they could think of to ask about their sons and daughters, having been ignored or rejected each time, these middle aged women decided to join their individual efforts and without realizing it they created one of the strongest pillars of the opposition to the Argentinean dictatorship.³³ On August 22, 1979 they decided to give their group a formal organization and created the *Asociación de Madres de Plaza de Mayo*.

The demands the group articulated during the years of the dictatorship did not change once democracy arrived. These were a) “*Aparición con vida*” and b) “*Juicio y castigo a todos los culpables*,” which quickly became slogans that summed up the movements’ demands of the government. The first demand literally called for the disappeared to “appear” alive. This particular statement requires a little explanation since, as the Mothers have clearly said many times against those that characterized them as naïve for asking for their children back, this statement does not imply that they think that they are

³³ For a detailed history of the *Madres de Plaza de Mayo* see Ulises Gorini 2006 and 2008

still alive. By the beginning of the democratic transition, when none of them “came back,” they knew they must have probably been killed. However, since nobody has told them what had happened to them, they decided they were not going to be the ones that stated that they were dead. The statement “*Aparición con vida*” signified their struggle to demand of the state to clarify what happened to them, who kidnapped, tortured and killed them, when, where and how: it was, in other words, a demand for Truth (Gorini 2008, 25; Vázquez 2007: 21). The second demand the Mothers would carry throughout all the democratic governments -was that of justice: trial and punishment for all those who were responsible for the human rights abuses (Leis 1989: 42).

The way they asked for these two demands to be fulfilled by the government changed over time and in response to each policy implemented by the different administrations. They asked for a bi-cameral congressional commission to investigate the crimes, they rejected military justice and demanded civil jurisdiction, they opposed pardons, and they advocated Truth trials and the acceleration of the trials once justice seemed to be underway. However, these two demands of truth and justice remained firm from the beginning of their struggle under the military dictatorship until today (2011) when a democratic government has finally encouraged the prosecution of all responsible for the abuses. In the following sections these demands and the correspondent response the movement got from the government will be analyzed in more detail.

Their methods of action have always been non-violent. They have resorted to traditional strategies such as demonstrations and petitions, but have always been creative in their use of them. The “*Marcha de la Resistencia*” (March of Resistance) for example,

which began under the military dictatorship in 1980 and still continues until today,³⁴ consists of a 24 hour walk around *Plaza de Mayo* held in December of every year. They have also published their own newspaper since 1984, and in 2000 they founded a “popular” university with the goal of creating a space of cultural resistance.

In 1986, the original group of *Madres* suffered a split, among other things, because of disagreements on how to position themselves towards the human rights policies of the Alfonsín administration (1983-89) (Gorini 2008). The group that remained in the *Asociación* was in favor of a stronger opposition stance since it believed there was not a real commitment to their cause in the government’s human rights policies. Their leader was Hebe de Bonafini, the current president of the group until this day. The breakaway group agreed that government policies were far from ideal, but was more inclined to appreciate some steps taken by the Alfonsín administration such as the work done by CONADEP³⁵ and the trials of the military commanders. Since then, this group began to be known as “*Madres Línea Fundadora*” (Mothers, Foundational Branch). While both of them belong to the broader human rights movement and share most of the same demands, this study follows closely the trajectory of the original group, the *Asociación de Madres de Plaza de Mayo*.

The current chapter is divided in two. The first section offers a descriptive narrative of the history of the Madres de Plaza de Mayo starting with their role in the 1983

³⁴ Since the Mothers of Plaza de Mayo split in 1986, one of the branches-The *Asociación de Madres de Plaza de Mayo* headed by Hebe de Bonafini- decided in 2006 that this was the last year of the demonstration since the government in power was not an enemy of the human rights movement anymore. However, the other branch –*Madres Línea Fundadora*- has continued to organize the event until the present. See Vazquez 2007 for more information on these marches.

³⁵ *Comisión Nacional sobre la Desaparición de Personas* (National Commission about the Disappearance of People). Created on December 15th 1983 by Alfonsín to find out about the human right abuses during the military dictatorship (1976-1983).

democratic transition and analyzing each of their interactions with the administrations in power since then and until 2007. It is organized around the different demands the human rights movement posed and the response they got from the different governments. The second section offers a systematization of this narrative. With the goal of comparing across cases, it codes state response to the movements' demands following the five dimensions discussed in Chapter 1: 1) access, 2) agenda setting, 3) government policy, 4) policy output; and 5) institutional change (see Table 1.1).

The analysis shows the Argentinean human rights movement had two moments of large impact on government policies: the creation of the Truth Commission under Alfonsín and the re-initiation of the trials against those responsible for human rights abuses during the Kirchner administration. These moments coincide with the two left leaning administrations in power since the democratic transition. Alfonsín addressed only some of the movements' demands and always on his own terms. By contrast, Kirchner fulfilled almost every request the Madres made to him and in the way the movement wanted. The fact that, unlike Alfonsín who was elected with more than 50% of the vote, Kirchner was a weak president in need of legitimacy explains this difference. Alfonsín did not need the human rights movement to govern, while Kirchner did. Human rights was one of the progressive issues Kirchner chose to embrace in order to build a leftist alliance as a social base for his government.

2.2. Human Rights Movements' Demands

As I mentioned before, the *Madres de Plaza de Mayo* together with the broader human rights movement constantly articulated two demands of the government: the truth

about and justice for the human rights abuses committed during the military dictatorship. However, throughout the years, these general demands were expressed in more specific ways. In this section I trace the movement's specific demands and the corresponding response from the state to see when the movement was able to have some impact on state behavior and when it was not.

In 1981, still under military rule, the leaders of the main political parties created a discussion group that came to be known as "*Multipartidaria*" (multi-party meeting), in order to begin planning a democratic transition to civilian rule. After Argentina's defeat in the Malvinas/Falkland war,³⁶ these meetings intensified. Human rights movements were not included in the conversations. However, eighty *Madres* decided to join the meetings even without an invitation and presented a document with their demands regarding the disappeared (Vazquez 2007, 23; Leis 1989, 21). Their insistence gained them the inclusion of the issue of human rights on the agenda. Nevertheless, no public statement on this matter came out of these meetings since the issue did not make it to the final conclusions (Leis 1989, 21). This was a sign that democratic times were not going to be easy for their struggle.

However, the issue of human rights was not going away any time soon. Given the fact that this was the beginning of the democratic transition, human rights was a key issue with which the future government would have to deal. The Armed Forces had already placed the issue in the public eye when on April 28th 1983 they released what was known as "The Final Document" justifying their policies of repression, and an "Institutional

³⁶ On April 2, 1982 the military government decided to invade the Malvinas/Falklands Islands, in hands of the United Kingdom since 1832, but claimed by the Argentinean government ever since. On June 14th, Argentina surrendered increasing the lack of legitimacy the military government had at the time given its incapacity to deal with the economic crisis.

Act” that treated all operations against terrorism as “acts of service” and thus not subject to criminal prosecution. In addition, two weeks before the presidential elections on October 1983, they passed a “Law of National Pacification” and an Amnesty Law that applied to all acts committed by the state and/or terrorist organizations between 1973 and 1982 (Acuña and Smulovitz 1995, 47). Thus, even if political parties had wanted to ignore the issue of human rights abuses advanced by the movement, they were now forced to take a stand on the Armed Forces’ last minute policies.

In the electoral campaigns of 1983, the two main political parties –*Partido Justicialista* (PJ) and *Union Cívica Radical* (UCR) - included the issue of human rights in their platforms (See Table 2.2). They both rejected the National Security Doctrine the military used to justify the human rights violations (Leis 1989, 30). In this sense, neither of them defended the abuses. Nevertheless, they differed in what was to be done about them. The Peronist candidate, Italo Luder, ran on a platform that did not assign human rights a relevant role and did not propose any measure to address the human rights movements’ demands. When asked about the Amnesty Law passed by the military he stated that “*desde el punto de vista jurídico sus efectos serán irreversibles, dado que en el derecho penal se aplica la ley mas benigna*” (From a juridical point of view the effects of this law are irreversible, given that Argentinean criminal law upholds the principle of applying the most beneficial law).³⁷ Luder was confident about his electoral success since the Peronists had never lost an open democratic election in the past. He had no need to court the human rights movement or those constituencies that supported their demands

³⁷ See *La Nación*, August 2, 1983. Hemeroteca del Congreso de la Nación. Buenos Aires, Argentina. The principle of applying the most beneficial law implies that if there are two different laws in relation to a particular crime, he who is prosecuted has the right to have the most lenient of those applied to his case.

(Acuña and Smulovitz 1995, 48). The Peronist Party had within its members a wide spectrum of positions towards this issue. While it was the party that had the most victims of the military repression, it was also the party that, in power before the military coup, had also implemented state policies to “eliminate” the existing guerrilla groups and thus actually initiated the repression that was later continued by the military.³⁸ In addition, the relationship between the Peronism and the Armed Forces had been historically tense, having been ousted twice by coups in the past. Luder thus privileged the relationship with the Armed Forces over the human rights movement.

Raul Alfonsín, the Radical candidate, constructed his entire campaign around the issue of human rights and there is general agreement that this was the key to his electoral success (Gorini 2008, 47; Acuña and Smulovitz 1995, 48). As a founder of one of the organizations in the human rights movement –*The Asamblea Permanente por los Derechos Humanos, APDH*- he had a past of personal commitment to human rights that legitimized his campaign proposals in this area. This was also a good strategy to differentiate himself not only from his internal opposition within the UCR which had good relations with the military, but once the primaries were over, with the Peronist candidate (Acuña and Smulovitz 1995, 49). He was able to sense the majoritarian consensus around the need to address human rights abuses (See Chapter 10 for public opinion polls on this issue), and decided to appeal to this sector of opinion in an election that most analysts agreed would be won by the Peronist candidate. Thus, in his electoral campaign he announced he would annul the Amnesty Law. Also, during his campaign,

³⁸ Decree No 261/75, February 5th 1975 and Decree No 2772, October 6th 1975. They stated that the Armed Forces could do any military operation that was deemed necessary to “neutralize and/or eliminate” the subversive groups acting in the country.

Alfonsín was approached by a group of lawyers from the University of Buenos Aires that were interested in designing policies to address human rights abuses during the dictatorship (Nino 1996, 61).³⁹ They began to meet regularly with Alfonsín and they became his advisors on human rights policies. All his future measures in this area would be thought through and drafted by this group, in particular by Carlos Nino and Jaime Malamud Goti. The group had no frequent contact with the human rights organizations- in particular with those groups of victims such as *Madres*, *Abuelas*⁴⁰ and *Familiares*⁴¹ -⁴² and as it will be seen later in this chapter, had also a different plan in mind for how to address the abuses committed by the military dictatorship.

In December of 1983, immediately following the election of the first democratic president after seven years of dictatorial government, there was a debate within the human rights movement about what the demands should be now that the dictatorship was over. The *Madres* were convinced that the fight should continue, but that this was the beginning of “another struggle” (Gorini 2008). In this sense, they did not change their basic demands for truth and justice, but from now on they could demand how this could be achieved. In the beginning there was a general agreement among the movement on

³⁹ The group was formed by Carlos Nino, Jaime Malamud Goti, Genaro R. Carrio, Eugenio Bulygin, Eduardo Rabossi, Martin Farrell and Ricardo Guibourg. For a more detail description of this group and ideas see interviews with Jaime Malamud Goti and Eduardo Rabossi in Archivo de Historia Oral. Programa de Historia Política. Instituto Gino Germani, Universidad de Buenos Aires, Argentina.

⁴⁰ The *Asociación Civil Abuelas de Plaza de Mayo* is a human rights organization created in 1977 with the goal of finding the children abducted from their families during the military dictatorship, and to return them to their original families.

⁴¹ *Familiares de Detenidos Desaparecidos* is a human rights organization created in 1976 with the goal of demanding the return of their family members that have been disappeared by the military dictatorship.

⁴² Interview with Valeria Barbutto, from the program ‘*Memoria y Lucha contra la Impunidad*’ (Memory and Struggle Against Impunity) from CELS, interviewed in Buenos Aires, on August 15, 2008. See also interviews with Jaime Malamud Goti in Archivo de Historia Oral. Programa de Historia Política. Instituto Gino Germani, Universidad de Buenos Aires, Argentina.

what to ask for: 1) a bicameral congressional commission to investigate the abuses committed by the military government, 2) punishment for those responsible, 3) civil jurisdiction for the trials, and 4) the replacement of those judges appointed during the dictatorship. These demands were transmitted to President Alfonsín in the *Madres'* first meeting with him on November 1983 even before he took office (Gorini 2008, 36).⁴³

2.2.1. Congressional commission vs. CONADEP

The first demand –to form a bicameral congressional commission- was quickly rejected by the first democratic government. Alfonsín knew that human rights was a sensitive issue among the Armed Forces and preferred to keep tight control over these policies instead of giving a free license to Congress. Because the suggested commission would have had wide powers, including that to call suspects to appear before Congress to testify, Carlos Nino notes that Alfonsín feared that such a commission would give legislators an opportunity to compete the distinction of lambasting the military the most (Nino 1996: 71). However, given that he had assigned human rights such a central place in his campaign he could not ignore this demand altogether. He proposed instead the idea of creating a Commission of Notables reporting directly to the Presidency, which came to be known as *Comisión Nacional sobre la Desaparición de Personas*, CONADEP (National Commission on the Disappeared) with more limited powers than the proposed congressional commission.⁴⁴ It would be in charge of receiving claims and evidence and handing them over to the judiciary, finding out the whereabouts of the disappeared and

⁴³ Gorini also mentions the Mothers ask Alfonsín not to receive the presidential band and cane (*banda presidencial y baston de mando*) from the military dictator Reynaldo Bignone, but that it would be a very powerful gesture to have a common citizen give it to him. For whatever reason Alfonsín did not do as the Mothers asked (Gorini 2008, 36)

⁴⁴ Presidential Decree 187/83.

the abducted children, denouncing any attempt of hiding or destroying evidence, and presenting a final report of the investigation to the President. It was not given judicial powers. Most scholars agree that CONADEP was created as a result of the pressure brought by the human rights movement to investigate the situation of the disappeared and as a response to their demand for a congressional commission (Nino 1996; Acuña and Smulovitz 1995, 53; Jelin 1995; Verbitsky 2003, 51; Gorini 2008, 69).⁴⁵ Although the creation of CONADEP fell short of what the movement had asked for, the movement's impact on the government's decision to create CONADEP was nonetheless clear. Years later, in his Memoirs, Alfonsín acknowledged the impact that the demand for a congressional commission had had on his decision.⁴⁶

The creation of CONADEP is emblematic of what happened in almost every case that an issue was placed on the human rights agenda during the Alfonsín administration. The human rights movement was strong enough to force the issues onto the public agenda and to draw a government response, but the response was never what the movement actually wanted. Alfonsín was a strong president elected with 51.70% of the votes in 1983. His human rights policies were designed by the group of his advisors, and even when he met with the *Madres* four times during his six-year mandate, their specific views and concerns were never considered at the moment of crafting the policies. Except for the first meeting before he took power, the other three are remembered by both sides –the movement and the government- as tense and contentious (Gorini 2008, Vazquez 2007;

⁴⁵ The same is mentioned by Eduardo Rabossi. In Archivo de Historia Oral. Programa de Historia Política. Instituto Gino Germani, Universidad de Buenos Aires, Argentina

⁴⁶ “La CONADEP fue la respuesta específica del gobierno a los reclamos de constituir, con el mismo fin, una comisión parlamentaria bicameral”, CONADEP was the specific governmental answer to the demands of creating, with the same goal, a bicameral congressional commission (Alfonsín 2004, 39)

Nino 1996: 79).⁴⁷ It appeared as if when implementing human rights policies Alfonsín was addressing general public demands –that something had to be done about the past abuses- but not the movement-specific demands. Paradoxically, the fact that the movement’s demands were widely supported beyond their membership allowed Alfonsín to respond to some of its demands but on his own terms and taking into account political and strategic considerations, such as for example his relationship with the Armed forces or electoral concerns.

Only after Alfonsín announced the creation of CONADEP did the government contact the human rights movements to ask for its support. Jelin interpreted this action as evidence that it was impossible for the government to elaborate a human rights policy that did not have the support of the movement (Jelin 1995, 130). However, since the government had not contacted the movement in advance, it seemed all Alfonsín was looking was for acceptance of an already decided policy, not real participation and input. The first reaction of all the human rights organizations, even the APDH of which Alfonsín was a founding member, was to reject the Commission, since it was seen as an instrument of the president to avoid a “real” investigation.⁴⁸ In the eyes of these organizations, instead of creating a commission with real investigative power, the President was giving them one that would limit itself to gathering information and receiving claims. The government even asked Adolfo Pérez Esquivel, director of

⁴⁷ Both advisors Malamud Goti and Eduardo Rabossi mentioned they did not meet with the human rights organizations when they were designing the policies for Alfonsín. Interviews to both of them found in Archivo de Historia Oral. Programa de Historia Política. Instituto Gino Germani, Universidad de Buenos Aires, Argentina

⁴⁸ Interview to Eduardo Rabossi. In Archivo de Historia Oral. Programa de Historia Política. Instituto Gino Germani, Universidad de Buenos Aires, Argentina

SERPAJ and Nobel Peace Prize winner, to head the commission. Pérez Esquivel had been one of the most vocal activists in favor of creating the bicameral commission. After consulting with all the human rights organizations he told the government he would accept with a condition: that there should be civil jurisdiction for human rights trials.⁴⁹ The government never got back to him (Jelin 1995: 129; Gorini 2008: 77).

Notwithstanding the initial rejection, the creation of CONADEP created intense debates within the human rights organizations. Once the names of those in charge of the commission were known, some members of the movement began to think something positive could come out of its activities since they were all respectable people from all areas of society.⁵⁰ Also, the president decided to assign six extra seats for Senators and Deputies, in order to come closer to what the movement was asking for. In the end, almost all human rights organizations decided to participate. APDH put its infrastructure at the service of the Commission, and this allowed the creation of five operational secretariats which were filled by their members. Only SERPAJ and *Madres* declined to participate. However, even if not as a movement, many of the *Madres* individually appeared before the Commission to tell their personal story. CONADEP ended up presenting 1086 cases to the judiciary due to the pressure of the victims and human rights groups (Nino 1996: 80).

⁴⁹ Gorini mentions that all the organizations except the *Madres* advised Perez Esquivel to accept to head the CONADEP (Gorini 2008:78)

⁵⁰ The Commission was chaired by writer Ernesto Sabato. The other members were: Ricardo Colombres (jurist), Rene Favarolo (doctor), Hilario Fernandez Long, Protestant Bishop Carlos T. Gattinoni, Gregorio Klimovsky (scientist), Rabi Marshall T. Meyer, Catholic Bishop Jaime F. de Nevares, Eduardo Rabossi (philosopher), Magdalena Ruiz Guinazú (journalist). Graciela Fernandez Meijide from APDH was the Secretary.

2.2.2. *Punishment for all vs. limited justice*

The second clear demand from the human rights movement was punishment for all those responsible for human rights abuses. The first democratic government responded to this demand with a strong measure -already announced in the electoral campaign- the nullification of the self-amnesty law passed by the military before leaving power. However, Alfonsín also announced that prosecution would be restricted to the heads of the military and the guerrilla movements,⁵¹ and passed a reform of the military code in order to allow for military jurisdiction to hear the trials.

These last two measures became the focus of the human rights' movement opposition. Since early on, Alfonsín's legal advisors intention was all along to have "limited justice"⁵² meaning that a limited amount of those responsible would be prosecuted (Leis 1989: 45; Acuña and Smulovitz 1995: 90; Jelin 1995: 125; Nino 1996: 68; Gorini 2008: 53). His judicial advisors Carlos Nino and Jaime Malamud Goti believed that only the members of the military junta and the top military officers (up to the rank of Colonel) should be prosecuted. Alfonsín also wanted to prosecute some lower-ranking officers that had committed atrocities that had received widespread media attention, such as Alfredo Astiz.⁵³ The spoken agreement before assuming power was to prosecute no more than one hundred people. However, right after Alfonsín took power,

⁵¹ Presidential decree 157 and 158.

⁵² "*La idea básica de los juicios era que había que limitarlos*" (the basic idea about the trials was that they should be limited). Malamud Gotti, Alfonsín's advisor on human rights issues together with Carlos Nino recounting the early meetings with Alfonsín before he was elected and how it was clear already from that point that they would not try to apply justice in all cases. See interview to Malamud Gotti in Archivo de Historia Oral. Programa de Historia Política. Instituto Gino Germani, Universidad de Buenos Aires.

⁵³ An intelligence officer of the Navy during the dictatorship he was involved in widely reported cases such as the kidnapping of Azucena Villaflor, founder of the *Madres de Plaza de Mayo*, the Swedish 17 year-old citizen Dagmar Ingrid Hagelin and two French Nuns, Alice Domon and Leonie Duquet.

those of his advisors who were closer to the military –Horacio Jaunarena and Raul Borras- began to ask the number should not exceed ten or even five (Nino 1996,:70).⁵⁴

In light of the events that followed -the military uprisings and the reasons offered for passing the *Punto Final* and Due Obedience Law (see following sections for an explanation of these events)- it is important to keep in mind that the idea to limit the punishment of those responsible was present right from the start of Alfonsín's administration, even at the moment when the Armed Forces were at their weakest point.

Alfonsín's idea of letting the armed forces "purge" themselves from their "tainted" elements was the basis for his policy of allowing military courts to hear the cases of human rights abuses during the dictatorship. The rationale for this policy was that this would allow them to fulfill both of their goals: to sanction the military involved in the abuses while at the same time incorporate the armed forces into the democratic game (Acuña and Smulovitz 1995: 50). However, the human rights movement saw in this no sign of "justice" and considered these policies as limiting the effect of the nullification of the self-amnesty law (Gorini 2008: 94). At the time, the movement's pressure was not enough to make the administration change its mind about these policies. Alfonsín sent the corresponding bills to Congress deciding to begin the military trials. But once in Congress, many legislators supported the movements' demands and thus introduced what seemed at the time minor changes to the bills that ended up opening the window for the civil jurisdiction the movement has been asking for (Acuña and Smulovitz 1995: 53; Verbitsky 2003: 58; Gorini 2008: 98).

⁵⁴ See also Interview to Malamud Gotti for a more detailed story behind this incident. In Archivo de Historia Oral. Programa de Historia Política. Instituto Gino Germani, Universidad de Buenos Aires.

The original bill introduced in the Congress by Alfonsín had the goal of reforming the military code to allow for the prosecution of the military leaders. While from that time forward the bill excluded common crimes from military jurisdiction (addressing the movement's demand), it would not be in effect retrospectively.⁵⁵ The rationale behind this bill was flawed since, on one hand, to justify the end of military jurisdiction for common crimes the government claimed the unconstitutionality of a separate justice system for some citizens and the violation of the "equal under the law" principle, while at the same time it was confirming this inequality by allowing past crimes to fall under military tribunals. To try to reconcile this contradiction, the bill established an instance of appeal before the Federal Courts. Faithful to the original idea of limited justice, this bill also stated the presumption of due obedience.

The *Madres de Plaza de Mayo*, opposing the governments' project, submitted a detailed document stating their position to Congress before the bill was debated (Gorini 2008: 97). It clearly argued for the unconstitutionality of both the military jurisdiction for common crimes and the law of due obedience. In addition, the *Madres* decided to stay during the debate to increase the pressure with their very presence. In the Lower Chamber many legislators criticized the governments' proposed bill echoing the movements' demands.⁵⁶ The first amendments to the bill in the Lower Chamber were consistent with the movement's positions. It was decided that the presumption of due obedience could not be established a priori but should be left to the discretion of the judge hearing each case. Thus, the president's desire to establish the application of due

⁵⁵ According to Verbitsky, this was an agreement between Alfonsín administration and the Armed Forces. See Verbitsky 2003,:53.

⁵⁶ See *Diario de Sesiones de la Camara de Diputados de la Nacion*, January 5, 1984 and *Diario de Sesiones del Senado de la Nacion*, January 31, 1984.

obedience to all the defendants under a certain military rank was thwarted. In addition, in order for the military courts not to drag out the cases indefinitely, the Lower Chamber set a time limit of 180 days for them to act on the cases raised against the military juntas. Opposition was even stronger in the Senate, where the Radical Party did not have a majority. The Peronist legislator Vicente Saadi called the bill a “covert amnesty.” After a long debate, Senator Elias Sapag (from the provincial party *Movimiento Popular Neuquino*) agreed to support the measure, supplying the government with enough votes to pass the bill, if the due obedience was not applied when dealing with “abhorrent or atrocious” acts. The bill was passed as Law 23,049. Given that the law lacked a definition of what such acts were, this amendment would lead to the failure of Alfonsín’s strategy of limited justice.

While the human rights movement was changing the government’s strategy for addressing human rights, the armed forces were not helping the administration either. The military tribunals did not cooperate with the government and on September 21, 1984, they declared that the orders given by the military leaders against the ‘terrorist subversion’ were “both in terms of content and form, indisputable” (Diaz Colodrero and Abella 1987: 108). On October 4th of that same year the Federal Courts decided to take charge of the situation, marking the end of the military jurisdiction. Thanks to the unwillingness of the military to prosecute their own officials, the movement’s demand of civil trials was now a reality. The path to prosecute the members of the military juntas was then open.⁵⁷

⁵⁷ The transfer from the military to the civil jurisdiction was in the case of the military juntas, the Military Courts were still hearing many other cases not involving the top military officers.

Given these past actions by the government, the human rights movement was also skeptical about the civil trials. Most Federal Judges had been in the judiciary during the military dictatorship and this did nothing to enhance the movement's trust in the process. As usual, the *Madres* were the most critical among the human rights organizations of the government's policies. For legal reasons the trial against the military junta was going to deal with only 711 of the cases since they were the ones with the most available evidence and witnesses. For the *Madres*, this implied ignoring their demand to know the truth and have justice in each of the 30,000 cases of disappearances⁵⁸ (Gorini 2008: 369). They also opposed the fact that the government seemed to consider the prosecution of the military junta members as the last step in their human rights policy, signifying an end to reviewing the past abuses. The suspicion of the human rights movement was confirmed by Carlos Nino, one of Alfonsín's advisors, who in his book acknowledged that a secret meeting took place between Alfonsín, his advisors (Malamud Goti and himself) and Federal Court judges in which the Alfonsín team asked the federal judges to establish the principle of due obedience in their sentence to ensure that no officers below the military juntas would be prosecuted and convicted (Nino 1996: 86).

On April 22, 1984 the eight organizations comprising the human rights movement called for a demonstration outside the Courtroom where the trial was starting; 50,000 people gathered (Nino 1996: 82). The main demands heard in the streets were the same ones the movement had voiced from the beginning: "trial and punishment for the military junta members and all those responsible," "no to amnesty, masked or open," and "Congressional investigation of state terrorism" (Gorini 2008: 373). Notwithstanding

⁵⁸ The CONADEP reported 8,900 cases of disappearances but the human Rights movement always claimed there were more, and estimated the number around 30,000.

their disagreement with some or most of the judicial proceedings, the *Madres* and the main human rights activists were present in the courtroom. The seriousness of the judges and the procedures, and the strength of the accusations, surprised many within the movement and they began to trust the process more than they had expected to (Gorini 2008: 433). Eight hundred and sixty six witnesses appeared in court, most of them survivors that told their stories of detention and torture. If the publication of CONADEP's report had begun to build a new social understanding of what happened in the country during the dictatorship, the images of the military junta on TV appearing in court confirmed this even more.

However, the *Madres* were not satisfied with this version of the events. Although both the report and the trials confirmed the existence of a systematic plan to eliminate the opposition, the government's case was based on what was known as the "two devils theory," which the *Madres* rejected. This theory maintained that two sides, both of which engaged in violence, were responsible for the tragedy of the 1970s: the guerrilla movements and the military repression (Diaz Colodrero and Abella 1987: 12). The *Madres* and the rest of the human rights movement did not agree with equating both actions and they have fought until the present for the notion that state repression is distinctive from any crime committed by individuals or civil society groups. For their understanding to become the official story, the *Madres* would have to wait for Nestor Kirchner to come to power in 2003.

TABLE 2.2

HUMAN RIGHTS MOVEMENT DEMANDS AND STATE RESPONSE TO THEM

IN ARGENTINA

1983-2007

Demands	Alfonsín 1983-89	Menem 1989-99	De la Rúa 1999-2001	Duhalde 2002-03	Kirchner 2003-07
1- Congressional commission to investigate abuses	CONADEP. Commission of experts under presidential authority.				
2- Punishment for all those responsible	In favor: Derogation of military self amnesty. Limited justice. Prosecution of military juntas. Against: Punto Final. Due obedience.	Presidential Pardons			Civil trials are re-opened.
3- Civil justice jurisdiction for abuses	Against: Initial military jurisdiction. In favor: Civil jurisdiction only after unjustified delays.				
4- Truth Trials	NA	Truth Trials	Truth Trials	NA	NA
5- Allow extraditions	NA	Presidential decree denying cooperation with Judge Garzón.	Presidential decree denying all extraditions.	Decree still in place.	Done. Repeal of the presidential decree.
6- Annulment of "impunity laws"	No response	Congress derogates them. No legal power.	No response	No response	Both Congress and Supreme court annul these laws.

TABLE 2.2. (CONTINUED)

Demands	Alfonsín 1983-89	Menem 1989-99	De la Rúa 1999-2001	Duhalde 2002-03	Kirchner 2003-07
7- Judiciary Reform. Removal of judges appointed under the dictatorship. Supreme Court Impeachment*	Most judges are promoted. Supreme Court renewed and new federal judges appointed in Buenos Aires, not the rest of the country.	No response	No response	No response	Some judges from the times of the dictatorship are removed. Impeachment and renewal of the Supreme Court.
8- “ <i>cárcel común</i> ”, the military should be sent to state and not military prisons	NA	NA	NA	NA	Kirchner voices his support for this demand. Minister of Defense recommends this to judges.
9- Acceleration of trials	NA	NA	NA	NA	Presidential decree 606. Creation of the Program Truth and Justice for this purpose. Creation of the Unit of Assistance and Following of HR trials.
10- Military Justice reform	Military jurisdiction is eliminated but not retrospectively.	No response	No response	No response	Bill in congress to end Military justice jurisdiction. (Passed under Cristina Fernandez’s administration)
11- Law declaring “disappearance” a crime against humanity	No response	No response	No Response	No response	Congress ratifies Convention Against Forced Disappearance.

*The Supreme Court judges are appointed by the President and can only be removed by an impeachment process called *juicio político* ("political trial"). This process is carried out by the Argentine Senate.

On December 9th, 1985 the Federal Court sentenced General Jorge Rafael Videla and Admiral Emilio Eduardo Massera to life in prison; General Roberto Viola to seventeen years in jail; Admiral Armando Lambruschini to eight years behind bars; and Brigadier General Orlando Ruben Agosti to three years and nine months. General Leopoldo Galtieri, Admiral Anaya, Brigadier General Lami Dozo, and Brigadier General Graffigna were found not guilty for lack of evidence. After hearing the sentences, Hebe de Bonafini, the leader of *Madres*, full of anger put on her white scarf over her head and left the room (Gorini 2008: 501). The sentences disappointed many, including many within the Radical government but for a different reason. The government was hoping that the Federal Court would define what ‘abhorrent and atrocious acts’ were so as to ease the anxiety of lower-ranking military officers by ruling that the due obedience clause would apply to them. But, on the contrary, the sentence explicitly stated that given the way the repressive apparatus was organized, subordinate officers had had wide latitude in deciding the fate of the disappeared. In addition, the sentence referred all the information related to the cases for which the junta members had been convicted to the Military tribunals to prosecute the rest of the military officers responsible for these crimes (this was usually referred as *Punto Numero treinta* -Point Number thirty- of the sentence). This seemed not to be the final step of the human rights policy, but just the beginning. Horacio Verbitsky interviewed one of the six federal judges of the Federal Court that prosecuted the military junta. When asked why they did not followed Alfonsín’s request, the judge stated that they were not willing to abdicate the role that society had awarded them in this democratic transition in the service of the government’s political strategy.

They were of the opinion that the trials should continue, and this view was reflected in their sentence (Verbitsky 2003: 108).

From this point onwards, the judiciary, which had been heavily criticized by the human rights movement because of its silence during the military dictatorship, became an unexpected ally. Judges who individually were presiding over prosecutions of military officers, collectively became the main threat to the government's plan of limited justice, unwillingly steering the administration's policy towards addressing the movement's demands. Why judges were so receptive to human rights cases has still not been explained. Whether their high receptivity to the cause of the human rights movement was based on ethical principles, a feeling of remorse for not having done enough during the military dictatorship, or simply because times had changed and now society opposed the military regime it had once supported, judges became facilitators of the human rights movement's demands (Jelin 1995: 135). However, this was not the way the human rights movement perceived it. Frustrated with the short sentences given to the members of the military juntas, they overlooked the verdicts that were favorable to them, and in their Monthly Journal the *Madres* denounced the lack of independence of the judiciary.⁵⁹ The judiciary was also the target of criticisms in the March of Resistance of that year that began only two days after the final verdict was announced (Gorini 2008: 514).

At that point, the government realized that it would have to end the trials of lower-ranking officers through a political measure, since the judiciary was not going to do it for them. The first step it took was to release the document called "Instructions to military

⁵⁹ Periódico de las *Madres*, January 1986. Seen at the Library of the Asociación de *Madres* de Plaza de Mayo, Buenos Aires, Argentina. The main title of that Edition was "*Genocidas absueltos*" (Those who committed genocide are acquitted)

prosecutors” in an attempt to influence the way the trials would be handled. This directive provoked a strong opposition from within the Peronist party and even among some sectors of the Radical party, and of course among the human rights movement. On May 16th, 1986 the movement organized a demonstration protesting these instructions, which was well attended, even by Radical leaders.⁶⁰ The Federal Court of Buenos Aires threatened to resign altogether. The Federal Court of Rosario and La Plata, upset at the government’s intrusion in judicial matters, removed all the cases from the military courts and took them under their jurisdiction (Verbitsky 2003: 136).

Given the lack of success of this first measure, on December 5th, 1986 the government introduced a new bill in congress to put an end to the prosecutions. The bill established a sixty-day limit for filing claims for human rights abuses, after which the right to file a complaint would expire. This bill was denounced by the human rights movement as a “covert amnesty” and on December 16th organized a major demonstration against the law which was attended by 60,000 people (Diaz Colodrero and Abella 1987: 15). The bill passed in Congress on December 23rd. The government strategically passed this law at the end of December in an effort to limit the number of cases that could be filed within sixty days (because in Argentina January is a month of judicial holiday, and most courts would not be in session, litigants would have only thirty days to set the judicial process in motion). But then the unexpected happened. The Federal Courts of Córdoba, Bahia Blanca, Tucumán, Rosario, Mendoza, Comodoro Rivadavia and La Plata decided to suspend the judicial holiday and used those sixty days exclusively to work on human rights cases. By February 23, 1987, the deadline established by the law, close to

⁶⁰ Radical politicians such as Cesar Jaroslavsky (president of the Radical party in the Lower Chamber), Enrique Nosiglia and Marcelo Stubrin attended the demonstration.

four hundred military officers had been indicted (Acuña and Smulovitz 1995: 61). The judiciary had once again struck down the government's strategy in favor of the human rights movement's demands.

The uncertainty the government's policy created about how many and which military officers would be prosecuted naturally generated increased tension within the armed forces. In April 1987, inspired by a Major who refused to appear in court in the city of Córdoba, a military rebellion started. The group asked for the resignation of the Chief of Military Staff Ríos Ereñú and for amnesty. The popular mobilization to oppose the military rebellion was immediate. Political and social leaders signed a commitment to defend democracy.⁶¹ However, this commitment included a point accepting different levels of responsibility in the human rights abuses. The government then had the approval of the main political and social sectors to finally ensure that lower military officers would not be prosecuted. On April 19, Easter Sunday, Alfonsín addressed the crowds gathered in *Plaza de Mayo* and told them that in order to avoid blood being spilled he would go personally to meet with the rebels. What actually happened in the meeting is still unknown, but what happened next allows us to piece together how the negotiation took place. The rebels surrendered and were detained and put on trial, but before a military court. The Chief of the Military Staff was replaced, but not with someone particularly fond of the rebels.⁶² A bill stating the presumption of due obedience was sent to Congress, and was passed on June 6th, 1987. A demonstration organized by the human rights movement gathered around 15,000 people in front of the Congress building to

⁶¹ This was called "*Acta de Compromiso Democrático*" (Democratic Commitment Act)

⁶² The rebels wanted the Chief of Staff to be General Isidro Caceres, but Alfonsín appointed General Jose Dante Caridi.

protest the law (Leis 1989: 50). On June 22nd, the Supreme Court declared the law constitutional.

Before the *Punto Final* and Due Obedience Law there were claims against 1195 officers. As a result of the two laws, all charges were dismissed. The *Punto Final* Law benefited 730 of them, while the due obedience law applied to 379 of them.⁶³

There were two other military rebellions, in January and December of 1988,⁶⁴ but they had involved internal conflicts between factions of the military, not the human rights trials⁶⁵ (Acuña and Smulovitz 1995: 67). As such, they received much less support from other military officers, and they were quickly suppressed by the higher-ranking officers without concessions. However, the frequency of military rebellions gave way to a new phase in which human rights issues began to lose relevance and the new urgent issue for the government and society as a whole was how to ensure the subordination of the military to civilian authority (Acuña and Smulovitz 1995: 65).

In addition, a new event would damage human rights movements' image even more. On January 23rd, 1989, a group related to the 1970s guerrilla movement *Ejercito Revolucionario del Pueblo*, ERP (Popular Revolutionary Army) took over a military garrison in *La Tablada*. The control of the uprising by the military took more than twenty four hours and the result was thirty-nine deaths and sixty-two wounded. The group claimed that they had solid evidence that a coup d'état was being planned by the military

⁶³ *Madres de Plaza de Mayo* website. Viewed on August 18, 2008 at www.Madres.org

⁶⁴ On January 1988 Aldo Rico, leader of the Holly Week uprising, rebelled again in Monte Caseros. He demanded a change in his detention conditions. On December 1988, Coronel Seineldín organized another rebellion in Villa Martelli which was easily put down.

⁶⁵ The 1988 insurrections were related to the fact that the “*carapintadas*”(as those who rebelled in 1987 were called) rejected the punishment imposed by the military chiefs after their first 1987 uprising.

and that they were defending democracy.⁶⁶ This was a key incident that allowed the military to regain some of its lost legitimacy after many years. They showed there were able to repress an uprising and that their struggle against ‘subversive’ guerrilla groups in the 1970s was somewhat justified, given that they were active even at that time (Acuña and Smulovitz 1995: 75). In addition, two members of this group were active members of the human rights movement. Even when these organizations rejected the violence of these acts, they still suffered widespread criticisms in the press and the public eye.

In 1989, in the mist of a deep economic crisis with annual hyperinflation rates of 1,923%, the presidential elections were won by the opposition candidate, the Peronist Carlos Saul Menem. As a former political prisoner (he was incarcerated for five years during the dictatorship), he had supported the human rights movement’s demand of a bicameral congressional commission⁶⁷ and opposed the due obedience law (Nino 1995: 101). However, Menem’s platform included appeals of “national reconciliation” –the typical argument employed by those opposing prosecution of human rights crimes- and his discourse around the issue of amnesty was always vague (Peronist Platform 1989: 41). In June 1989 President Menem declared that even if he did not personally favor amnesty, this was an exclusive prerogative of Congress, and that “it is the representatives of the people who have to deal with the issue.”⁶⁸ But in the following months he said he

⁶⁶ The incidents in *La Tablada* are still not clear. Many in the human rights movement believe that the group “*Todos por la Patria*” was set by the military so as to repress them and gain public legitimacy. The movement has since then defended the prisoners and denounced their torture. The case has even reached the American Court of Human Rights.

⁶⁷ See *Tiempo Argentino*, January 10th, 1984. See Chronology in Diaz Colodrero and Abella 1987.

⁶⁸ Quoted in Periódicos *Madres de Plaza de Mayo*, Year V, Number 54, June 1989.

was ready to close the open wounds of the Argentine society, and that “I cannot even tolerate looking at a bird in a cage” in reference to the military that were imprisoned.⁶⁹

On August 10th of that same year, the *Madres* called for a popular demonstration against amnesty and hunger that drew around 15,000 people.⁷⁰ The following month, on September 8th, human rights organizations called for another demonstration to reject impunity at which close to 200,000 people were present.⁷¹ This second march was attended by a wide array of political actors, including many Radical politicians. The UCR suggested organizing a national referendum on the issue of amnesty, but the *Madres*, based on the experience of Uruguay, opposed the proposal: “The crimes are not subject to a referendum. Those who break the law have to be held accountable.”⁷²

Ignoring the human rights movements’ demands, the large popular demonstrations, and public opinion polls that showed that 68% of the population rejected this measure (Acuña and Smulovitz 1995:81), President Menem pardoned those convicted for human rights abuses during the past dictatorship. This was done in two phases, the first presidential decree on October 8th 1989 benefitted 277 military officers, among which there were not only those accused of this kind of crime, but also, for irregularities in the Malvinas/Falklands war of 1982 and for participating in the military rebellions during the Alfonsín administration. The second presidential decree, passed on December 29th, 1990, benefitted the military junta members and other high top military officers, as well as the

⁶⁹ Quoted in Periódico *Madres de Plaza de Mayo*, Year V, Number 55, July 1989.

⁷⁰ Periódico de las *Madres de Plaza de Mayo*, Year V, Number 57, September 1989.

⁷¹ Periódico de las *Madres de Plaza de Mayo*, Year V, Number 58, October 1989.

⁷² Ibid.

heads of the guerrilla organizations. With these two measures, the number of convictions dropped to zero.

It has been said that in line with his idea of limited justice, Alfonsín wanted to grant an amnesty to all those condemned or prosecuted before the end of his mandate.⁷³ There had been reports that this was also discussed with the newly elected president in 1989 – Carlos Menem- when in the mist of the economic crisis Alfonsín decided to step down and hand over power six months ahead of schedule (Acuña and Smulovitz 1995: 77; Nino 1995: 103; Verbitsky 1993: 35).⁷⁴ Even if these stories are true, when the pardons were issued, Alfonsín stated that “this generalized and indiscriminate measure, instead of pacifying the country, can increase the danger of violence and political instability” and he described the measure as “a dangerous political step backwards.”⁷⁵

The Presidential pardons left the human rights movement in disarray but the same demands, now more urgent than ever, remained intact: nullification of the impunity laws and pardons to achieve truth and justice. Since the government was ignoring the movement’s demands for justice, it decided to address other minor issues the movement favored. One of them was that of economic reparations.⁷⁶ The other was the recognition

⁷³ Acuña and Smulovitz (1995, 59) cite two sources that state that Alfonsín had made a secret promise to General Rios Ereñu to give an amnesty before the end of his mandate.

⁷⁴ It is interesting that according to Acuña and Smulovitz it was Alfonsín who suggested a joint decree of both presidents given amnesty to the convicted military. In this case the story says that it was Menem that rejected the proposal since he wanted to take all the benefits of this decision in terms of a better relationship with the military. Carlos Nino’s version of these events states that it was Menem who asked Alfonsín to give amnesty to the military, and it was Alfonsín who rejected the option.

⁷⁵ Quoted in Periodico de *Madres de Plaza de Mayo*, Year V, Number 59, November 1989.

⁷⁶ Law No 23.793 (pensions for family members of the disappeared); Law No 24.043 (Economic reparations for those incarcerated before 1983); Law No 24.411 (Benefits for family members of those disappeared or killed by the armed forces or paramilitary groups before 1983)

of the situation of ‘forced disappearance’ for families of the victims to be able to regularize their legal status (CELS 1994).⁷⁷ These demands were shared by most of the human rights organizations but were rejected by the *Madres de Plaza de Mayo*. The fact that the same government that was denying them justice for their children was offering them money for their loss was seen as a bribe.

2.2.3. *Truth trials*

With no prospects of achieving justice for the human rights abuses after Menem’s pardons, the movement decided to at least get at the truth about them. In 1996 naval officer Adolfo Scilingo publicly confessed to journalist Horacio Verbitsky that he participated in the “Death Flights,” a procedure during the dictatorship in which prisoners were drugged and thrown from planes into the sea. The horror of those confessions led the way for the first legal claim to the “right to the truth” sponsored by CELS, the human rights organization with the legal expertise needed.⁷⁸ The goal was for the judiciary to re-open the investigation in any possible way, if not to punish those responsible, at least to know what happened to the victims.⁷⁹ The case reached the Supreme Court, which ruled against the right to the truth. CELS decided to go one step further and presented their case to the Interamerican Human Rights Commission (CELS 1998). Both parties were summoned to negotiate, and in November 1999 they reached an agreement in which the Argentinean state acknowledged the right to the truth declaring it has no statute of

⁷⁷ Since most of the victims were “disappeared” and no bodies were found, these people were not “dead” for legal purposes. This situation created innumerable legal problems to their families in terms of disposing of properties under the victim’s names or if they wanted to remarry.

⁷⁸ This was done in the case for Emilio Mignone and Marta Vazquez’s daughters in the mega-case ESMA. This is the biggest judicial case and it investigates the crimes against humanity committed in the ESMA (Navy School), the biggest center of detention during the military dictatorship.

⁷⁹ Interview Valeria Barbutto from the program ‘*Memoria y Lucha contra la Impunidad*’ (Memory and Struggle Against Impunity) from CELS, interviewed in Buenos Aires, on August 15, 2008.

limitations. After this, cases were opened in the Federal Courts in the cities of La Plata, Bahía Blanca and Cordoba (CELS 2000).

Even though this was a demand purely processed through the judicial system, politics was not missing. In 1999, a new administration took power led by President Fernando De la Rúa, a candidate from the UCR. Despite running in a coalition with the left-wing party FREPASO (whose members had authored the bill to nullify the laws of impunity), the electoral platform lacked any reference to the issue of human rights (CELS 2000). His government had a clear policy of denying all of the movement's demands. Ricardo Lopez Murphy, who had worked in the Economic Ministry under the military dictatorship, was appointed as De la Rúa's Defense Minister. Many in the Armed Forces justified the military repression and were not sanctioned by the government. Due to the government's line, the Armed Forces felt no pressure to appear in Court when named in the Truth Trials, which caused numerous delays in these proceedings.

2.2.4. Extradition requests

In 1998, motivated by the perseverance of the Argentinean human rights movement and by the lack of justice in Argentina,⁸⁰ Spanish district attorney Carlos Castresana filed a case against Argentinean military officers based on the principle of universal jurisdiction for cases of genocide and terrorism.⁸¹ As a result, Baltazar Garzón, the judge hearing the case, asked Argentina for the extradition of 39 officers accused of these crimes. In a context in which the Argentinean government was ignoring their demands, the human rights movement saw these trials as their only chance for justice and thus

⁸⁰ Interview to Carlos Slepoy, Argentine lawyer exiled in Spain that played a key role in the Spanish trials against the Argentinean military dictatorship. See *Clarín* June 6 1999.

⁸¹ Spain does not have judicial clauses that give jurisdiction to Spanish judges in cases in which its citizens are victims of crimes in other countries.

asked the government to allow the extradition of these officers. Menem rejected all of the extradition petitions and in the name of “national sovereignty” even passed a presidential decree stating the government should not give judicial assistance to foreign judges’ investigations.⁸² In 2000, under the De la Rúa administration (1999-2001), Interpol ordered the international capture of 97 Argentinean military officers based on Garzón’s request. On December 5th, 2001 President De la Rúa followed Menem’s steps and passed a presidential decree stating that the Foreign Affairs Ministry should reject all extradition requests for crimes committed in the national territory.⁸³ The movement opposed this measure and demanded its annulment. It even resorted to a public denunciation of this decree under the Interamerican Commission of Human Rights stating that it violated the international principle of “extradition” (CELS 2003, 39). Once President Kirchner took power, he met with the *Madres* on June 3rd 2003, and this was one of their demands.⁸⁴ One month later, President Kirchner repealed the 2001 decree.

2.2.5. *Rejection of Impunity Laws*

Ever since the *Punto Final* and Due Obedience Law were passed by Congress in the 1980s, the human rights movement demanded that they are declared null and void. In January 1998, a group of legislators⁸⁵ from the opposition to Menem’s government (the FREPASO-Radical coalition called *La Alianza*), introduced a bill based on the movements’ cause. When the bill was discussed in a special congressional committee, the

⁸² Decree N 111/1998

⁸³ Decree No 1581/2001

⁸⁴ See Pagina 12, 5 June 2003

⁸⁵ The bill was introduced by six legislators from Alianza: Juan Pablo Cafiero, Alfredo Villalba, Diana Conti, Alfredo Bravo, Adriana Puiggrós and Jorge Riva. All of them belonged to FREPASO, a left wing party that emerged in the mid 1990s in opposition to Menem’s neoliberal economic policies.

majority of legislators decided in favor of the '*derogación*' (to repeal) and not the '*anulación*' (to be declared null). The difference is not minor since to '*derogar*' a law implies it is not valid from that point in time onwards, but the action has not the retrospective effects that the '*anulación*' has. The bill was then sent to the floor of the congress and was passed by both chambers in March of that same year, right in time for the anniversary of the coup d'état (CELS 1998).⁸⁶ The repeal had strong symbolic power, but as mentioned above, no legal effect and thus no change in the judicial proceedings was possible. Meanwhile, the only cases that were allowed to move forward were those related to the abduction of the children of the disappeared, a crime that was not included in the impunity laws. By the end of 1998, six military officers,⁸⁷ including two members of the military juntas (Jorge Rafael Videla and Emilio Massera) were imprisoned awaiting trials in cases of abduction of minors (CELS 1998).

This development, in addition to the progress of the Truth Trials, encouraged the human rights movement to keep on fighting. In March 2001, in a case sponsored by CELS on the disappearance of José Poblete and his family, Judge Cavallo ruled that the impunity laws are "invalid, unconstitutional and null" (CELS 2002). The measure was ratified by the Federal Courts before the end of that year. At that point, the issue depended on a decision of the Supreme Court. The impeachment processes against the five judges associated with the Menem administration –that will be covered in more detail in the following sections- began in 2003 and allowed for the turnover in this institution, giving the movement a higher chance of obtaining a favorable ruling. The

⁸⁶ Law No 24,952.

⁸⁷ Jorge Rafael Videla, Emilio Massera, Jorge Acosta, Héctor Febres, José Supicich and Hugo Franco.

Menemist Court would have probably not ruled to their favor. In November 3rd 2002, the newspaper Clarín reported that the Chief of Staff from the Army, Ricardo Brinzoni met secretly with Supreme Court Judges Julio Nazareno and Augusto Belluscio to “express his worries” about the ruling of the court in this particular case. The transitional government of Eduardo Duhalde did nothing to discipline his Chief of Staff at the time. In fact, his Defense Minister Horacio Jaunarena publicly stated the need for a ruling favorable to the military. When military bishop Antonio Juan Baseotto met with the Supreme Court with similar intentions, Judge Adolfo Vazquez told him not to worry since the Court would rule for the constitutionality of the impunity laws (CELS 2003: 48). CELS denounced Vazquez for “*prejuzgamiento*” meaning the improper disclosure of his opinion before his official ruling was handed down. Together with other human rights organizations, CELS also presented this case to the Interamerican Human Rights Court.

It was thus not until there was turnover in the Court that on August 24, 2004 it ruled in the case of Clavel Arancibia that crimes against humanity have no statute of limitation. The following year, in June 14 2005, the Supreme Court ruled that the impunity laws in the Poblete case initiated by CELS were unconstitutional.

While awaiting these judicial rulings, the *Madres* and other human rights organizations met with President Kirchner on June 3rd, 2003 essentially to demand an end to the impunity laws (CELS 2003: 40). In July the President publicly communicated his agreement with a bill introduced in Congress by leftist deputy Patricia Walsh to nullify these laws. A month later, in August 20, 2003 the Senate passed the law.⁸⁸ The President’s signal in favor of this law was key for his legislators to vote for it. The law would not have been able to pass without them. More than 5,000 people including human

⁸⁸ Law No 25,779.

rights organizations, neighborhood assemblies and leftist political parties celebrated outside the congressional building.⁸⁹

The annulment of Menem's pardons followed a similar trajectory. On March 19, 2004 Federal Judge Canicoba Corral ruled the presidential pardons unconstitutional, a measure that was later confirmed by the Federal Courts of the city of Buenos Aires. On March 26th 2006 the *Madres* met with Supreme Court newly appointed Judge Eugenio Zaffaroni to ask the Court to rule in relation with the presidential pardons. Once the Attorney General, Esteban Righi, ruled in the same way as the Federal Courts, the Supreme Court nullified the pardons in July 15, 2007 in the case against General Santiago Omar Riveros.

2.2.6. *Judicial System Reforms*

The demand for the reforms of the judicial system included two specific requests. The first, which was stated from the beginning of the democratic transition, was that judges with links to the military, in particular, those which had rejected the *habeas corpus* presented by the families of the disappeared, be removed from office. When Alfonsín came to power in 1983 he appointed a new Supreme Court and new federal chambers for the City of Buenos Aires. His human rights advisor Malamud Goti recommended some of the names of the candidates. But this was not the case with the provincial judges. Alfonsín refused to appoint them and thought the provinces ought to do so. As a consequence, the same judges that were in place during the dictatorship remained in their offices.⁹⁰ This would become a major obstacle for the trials for human rights abuses.

⁸⁹ See *Página 12* August 21, 2003.

⁹⁰ Interview with Jaime Malamud Goti, Archivo de Historia Oral. Programa de Historia Política. Instituto Gino Germani, Universidad de Buenos Aires, Argentina.

Although the removal of judges linked with the military dictatorship continued to be a demand sponsored by the Madres throughout all democratic administrations, it lost some relevance once the judicial proceedings were stopped first by the Impunity laws and later by the presidential pardons. However, once the trials were re-opened during the administration of Nestor Kirchner, the need to remove some judges gained new prominence. One of the main obstacles to these new trials was the presence of some judges within the *Cámara de Casación* (Court of Criminal Cassation).⁹¹ The president of this tribunal, Alfredo Bisordi, became the main example of a judge ideologically close to the military dictatorship that was creating obstacles for human rights trials to proceed. During the dictatorship he held a position in the federal court of Judge Norberto Giletta, famous for rejecting the judicial petitions of the families of the disappeared. He even justified the subordination of the judiciary to the military during the dictatorship in a public meeting in the Senate when his promotion was being discussed. In 2007 the tribunal he chaired had 200 human rights cases before it pending resolution, some of which had been pending for more than three years.

On March 19th, 2007, a group of 61 survivors of the military repression denounced Judge Bisordi and three other members of the *Cámara de Casación* accusing them of purposely delaying their cases.⁹² On March 24th, in the act commemorating the anniversary of the 1976 coup d'état President Kirchner took up the movements' demands and spoke against this tribunal and their inexplicable delays: "*Yo le digo a la Justicia y se*

⁹¹ The Court of Criminal Cassation is a higher judicial instance which receives appeals in cases in which one part believes the lower courts have done an incorrect interpretation or application of the law, or that the judicial procedure was not carried out according to legality.

⁹² They denounced Judge Alfredo Bisordi, Ana María Capolupo de Duranona y Vedia, Eduardo Riggi y Gustavo Hornos, all members of the *Cámara de Casación*.

*que el Consejo de la Magistratura me va a escuchar, por favor basta.” Juicio y castigo, eso necesitamos. Yo les juro que empujo y empujo pero hay jueces y fiscales que se hacen los distraídos.”*⁹³ Only five days later the Tribunal re-activated cases that had been dormant for three years.⁹⁴

The second demand related to the composition of the judicial branch has been to impeach the Supreme Court. During the Menem administration (1989-99) the number of Supreme Court judges was increased from five to nine with the goal of controlling the judiciary.⁹⁵ Menem assigned those seats through highly questionable selection processes to five judges with close ties to him and created what society began to call an “*automatic or addicted majority*” (CELS 2003: 93).⁹⁶ The Supreme Court never ruled against the executive during those years.

The demand to remove the Supreme Court emerged in the aftermath of the December 2001 popular uprising. The Court had ratified every single government policy during the 1990s, and as such was considered partly responsible for the political and economic crisis the country was going through at the time. It was one of the symbols of corruption and of the lack of credibility of the political and judicial system. This was a widely held demand. On February 11, 2002 a survey conducted by Rouvier y Asociados showed 78%

⁹³ “I tell the Judicial system, and I know the Consejo de la Magistratura is going to listen to me: enough please! Trial and Punishment, this is what we need. I swear that I push and push for this but there are judges and prosecutors that look to the other side.” Translation by author. See “Digo a la Justicia que basta!” in *Página 12*, March 25th, 2007.

⁹⁴ See *Página 12*, “*Sin coartada*”, March 29th, 2007. Viewed on March 30th, 2007 at www.pagina12.com.ar

⁹⁵ For a detailed story of the reform of the Supreme Court during the Menem administration see Horacio Verbitsky 1993.

⁹⁶ The “automatic majority” was formed by judges Julio Nazareno, Eduardo Moliné O’Connor, Adolfo Vázquez, Guillermo López y Antonio Boggiano. They were appointed in the Senate with almost no discussion, since there have been previous political agreements to do so.

of those surveyed expressed the view that Supreme Court Judges should resign. An IBOPE survey from March 11, 2002 showed 90.3% of the people supporting the statement “all the members of the Supreme Court should be removed.”⁹⁷ The *Madres* and the rest of the organizations that formed part of the human rights movement, usually in line with most popular movements’ demands, joined in these demands.

Thus, the Supreme Court impeachment was not a demand associated with the human rights movement alone or specifically with the *Madres*. However, there are important reasons for including this particular demand in this narrative. First, as was seen in the previous section, the impeachment and renewal of the Court was a key step for one of the human rights movement’s main demand –that of the nullification of the impunity laws and the presidential pardons- to be addressed. Second, disregarding how many other popular movements embraced this demand, the human rights movement as a whole, in particular through the actions of *Madres* and CELS, had an important role in achieving this.

In June 2003, in the first meeting the *Madres* had with the newly elected President Kirchner one of their main demands was the renewal of the Supreme Court.⁹⁸ The very next day the President spoke to the country and asked Congress to impeach the Supreme Court judges.⁹⁹ Already during 2002, CELS and other NGOs that dealt with institutional and judicial issues¹⁰⁰ had come together and elaborated two documents --“*Una Corte*

⁹⁷ See www.nuevamayoria.com

⁹⁸ See *Página 12*, June 4, 2003.

⁹⁹ See *Página 12*, June 5, 2003.

¹⁰⁰ *Asociación por los Derechos Civiles, Poder Ciudadano, Fundación Ambiente y Recursos Naturales, Instituto de Estudios Comparados en Ciencias Penales y Sociales, Unión de Usuarios y Consumidores*. See these documents at www.cels.org.ar

para la Democracia I and II’ (A Court for Democratic Times I and II)-- which offered suggestions to ensure fair and transparent procedures for the selection of new judges. On June 5th, Gustavo Beliz, the Minister of Justice at the time, met with these organizations to discuss their proposals. Only two weeks later, on June 19th, President Kirchner passed a decree modifying the selection process of Supreme Court Judges inspired in these two documents (CELS 2002).¹⁰¹ On June 4th, 2003 Congress began the impeachment process against Supreme Court Judge Julio Nazareno. He, Guillermo Lopez, and Adolfo Vazquez chose to resign when faced with the threat of impeachment. By resigning, they would be allowed to keep their extremely generous pension. Eduardo Moline O’Connor and Antonio Boggiano chose not to resign and were impeached.

While it can be argued that it was in Kirchner’s political interest to impeach a Supreme Court so aligned with his predecessor, he did not resort to appointing new judges that were close to him, but set up a transparent system to do so which was carried out in each future appointment. In addition, while there were other factors that influenced the President’s decision –such as the fact that this was a widely held demand and that after the December 2001 crisis a move to co-opt the Supreme Court as that of Menem would have been too risky politically- the human rights movement also played an important role. First, the Court’s renewal was a necessary step to achieve the annulment of the impunity laws. If Kirchner resolved to make human rights an important issue in his administration, this was a needed measure. In addition, it is significant that his

¹⁰¹ Decree No 222/03. Most of the NGOs recommendation were adopted: self-limitation of the Executive Power in appointing judges, public access to the candidates’ and family income and assets, period of citizenship consultation to raise objections or support for the candidate, selection criteria should take into account gender, field of specialization, regional representation, and commitment with democracy and human rights.

announcement was made one day after meeting with the *Madres* and other organizations within the movement. Finally, CELS impact was clear since it was this organization's suggestions that were incorporated into the presidential decree that set up the selection mechanisms for the future.

2.2.7. “Cárcel Común”

In 2006, once the Supreme Court ruled that the impunity laws and the presidential pardons were unconstitutional, civilian trials for the abuses committed during the military dictatorship were re-opened. However, when indicted and incarcerated awaiting trial, most officers were sent to military jails in which they had enjoyed many privileges. In an article from October 2006, the newspaper *La Nación* states that only 29 out of the 210 indicted military officers are awaiting trial in civilian prisons. The buildings in which most of them lived did not resemble a prison at all; there were no cells or bars but there were open patios and gardens and computer rooms with internet access, and they had access to their weapons.¹⁰² Some of them were reported to be seen walking freely in Buenos Aires, or walking to the Military Hospital to receive medical treatment.¹⁰³

The human rights movement considered this situation not only one of unequal treatment (in comparison to common criminals incarcerated in civilian prisons for much more minor transgressions), but they also worried it may endanger the continuation of the trials. On December 10th 2007, military officer Hector Febres, incarcerated awaiting trial and accused of more than 300 cases of torture and disappearances, was found dead in his

¹⁰² See *Crítica* May 22, 2009. “*Fin a una Cárcel VIP de represores*”. Viewed on August 30th, 2009 at www.criticadigital.com

¹⁰³ This was the case of Astiz which medical personnel said they see him regularly and claim that he even has an office within this building. See *La Nación*, October 14th, 2006, “*Denuncian que Astiz es un preso VIP*” www.lanacion.com.ar

“cell.” The autopsy revealed he had been poisoned. This opened an investigation which revealed that Febres had access to unlimited visits which were not registered in the books. His murder has not yet been clarified, but one of the hypotheses is that he was killed to prevent him from accusing other officers responsible for the same deeds.

The irregular conditions of detention of the military officers accused of human rights abuses let the movement to ask for them to be sent to “*cárcel común*,” meaning regular civilian prisons. It became a common slogan seen in all human rights demonstrations from that point onwards. President Kirchner supported this demand and in August 2006 he publicly asked for all the repressors to be sent to civilian prisons.¹⁰⁴ That same year, the Ministry of Defense had passed resolution 444 asking the judges and public prosecutors to reconsider the detention of those awaiting trial in military facilities (CELS 2008: 47).

Under the Cristina Fernandez de Kirchner administration 43 convictions were handed down as of September 2009. In eleven of these, the judges have made explicit in their rulings that the conviction has to be served in civilian prisons. The rest made no specific reference to this issue. This has been an important step, although the decision to include this clause or not seems to depend on the individual judge hearing the case. There has been yet no general policy to address this issue. In mid 2008, only 17% of the 250 indicted for crimes during the dictatorship were serving their sentences in civilian prisons.¹⁰⁵

¹⁰⁴ See *La Nación*, October 14th, 2006, “*Denuncian que Astiz es un preso VIP*” www.lanacion.com.ar

¹⁰⁵ See the report elaborated by the Unit of Assistance for Human Rights Abuses. “Un Camino para agilizar los juicios” *Página 12*, August 29th, 2007.

2.2.8. Acceleration of trials

After the Supreme Court opened up the possibility of re-initiating trials against those responsible for human rights abuses in June 2005, the movement began asking for the acceleration of these judicial proceedings. CELS reports that in that year around 500 cases were opened. The number went up to 992 by the end of 2007, of which 281 defendants were indicted and awaiting trial in prison (CELS 2005 and 2008). The amount of work these trials added to an already strained and overload judicial system has meant that there is no prospect of making rapid progress in these prosecutions. CELS has calculated that even if trials begin to speed up (as they did in 2008 when there were 30 convictions), they would last until the year 2024.¹⁰⁶

These delays created many problems. First, the victims and their families have already waited more than twenty years since the return of democracy in 1983 to see their demands of justice addressed. Second, given the amount of time that has passed, many of those responsible for these abuses are dying. CELS reports keep track of each of the defendants and they have shown that in 2005 79 of them died. By 2007, 140 had passed away without being held accountable for their crimes (CELS 2005 and 2008). Finally, there are procedural forms that have contributed to these delays and created new difficulties. There is currently a separate trial going on for almost each defendant. This has forced witnesses to appear in court and re-live their suffering many times. In addition, this has increased the risks to their personal safety, as seen in the case of Julio Lopez, a witness in the trial against Etchecolatz who disappeared after he gave his testimony.

¹⁰⁶ Report viewed at <http://www.cels.org.ar/common/documentos/IA2009%20-%20Resumen%20Ejecutivo.pdf> on September 20, 2009.

In this context, the human rights movement has demanded the government take measures to ensure all those responsible for abuses are held accountable as quickly as possible. On November 10th 2004 the government created the Unit for Assistance for the cases for human rights abuses to increase efficiency and speed up these trials under the authority of the *Procuración General de la Nación* (the Attorney General's Office). However, in 2006 there were only two convictions. In December 2006 after the disappearance of Julio Lopez the APDH mobilized other human rights organizations and launched the campaign “*100 sentencias ya!*” (one hundred sentences now!).¹⁰⁷ In addition, in their private meetings with President Kirchner in February 2005 and December 2006, the *Madres* strongly complained about the delays in the judicial proceedings.

The root of this problem is not only the traditional slow pace of the judicial system in Argentina. An additional problem is that many judges are not sympathetic to the human rights movement's demands and therefore place as many obstacles in the way of the trials as they can. As was mentioned in a previous section, the human rights movement has since the very beginning of democratic times demanded the removal of all the federal judges that were linked to the military dictatorship. Since this has not been done, this remains a problem in achieving justice in the current judicial proceedings.

2.2.9. The Reform of Military Justice

The reform of Military Justice has been a constant demand of the human rights movement since the transition to democracy, tied to the demand for civilian trials of the military officers responsible for human rights abuses. In 1984 the Alfonsín administration

¹⁰⁷ See *Página 12*, “*En busca de más de 100 condenas*”, December 1, 2006. Viewed on December 3rd, 2008 at www.pagina12.com.ar

restricted the military jurisdiction by adding an instance of civilian judicial review of military sentences.¹⁰⁸ However, Alfonsín's plan was for the Armed Forces to purge themselves, and to accomplish this he believed military justice was the place to do so. When this law was being debated in the Congress, the *Madres* and other human rights organizations erupted in protest in the gallery.

A deeper reform had to wait until President Kirchner took power. In April 2007, he introduced a bill in Congress establishing the end of military tribunals and for all crimes committed by military officers to be heard in civilian courts. Only acts of indiscipline specific to the military career were left within the military sphere. On August 7th, 2008, already under the Cristina Fernandez administration, Congress passed the law derogating the military code.¹⁰⁹ The human rights movement celebrated outside the Congressional building. The President of *Madres*, Hebe de Bonafini saluted the measure saying that “*siempre criticamos que los militares se juzguen entre ellos.*”¹¹⁰

I acknowledge the human rights movement inclusion of this demand as one of their own was not the only factor that made the governments of both Kirchners put an end to military justice. The revision of the system of military justice had been agreed to by the Argentinean government in cases presented before the Interamerican Human Rights Courts.¹¹¹ However, three factors need to be highlighted. First, the end of military

¹⁰⁸ Law 23.049, 1984.

¹⁰⁹ Law 26.394, 2008.

¹¹⁰ “We always criticize the fact that the military were tried by other military” See *Página 12* “Los cambios en la justicia militar”, August 8, 2008. Viewed on August 8th, 2008 at www.pagina12.com.ar

¹¹¹ Two cases in which the parts agreed that the Military Justice System has to be reformed: 1) Rodolfo Correa Belisle v. Argentina (Nro. 11758) from August 24th, 2004, and 2) Arguelles y otros vs. Argentina (Nro. 12.167).

jurisdiction for regular crimes is a demand that was closely associated with that of justice for the crimes committed during the dictatorship. In this sense, Kirchner's proven commitment to the other human rights demands shows that this was one more step in his human rights agenda. Second, one of the cases that reached the Interamerican Commission of Human Rights had been sponsored by CELS, the human rights organization within the movement that has always provided the legal expertise the movement needed. Finally, President Kirchner's bill was based on a Working Committee created by Ministry of Defense Nilda Garre which also included a member of CELS, and thus their recommendations were incorporated into the bill. In opposition to President Alfonsín, Kirchner needed the human rights movement's support and thus always consulted the movement in each round before launching his human rights policies.

2.2.10. Forced Disappearance as a Crime Against Humanity

As early as 1984 the Madres had asked Alfonsín in a private meeting for the crime of disappearance to be declared a crime against humanity (Gorini 2008: 190). More than two decades had to pass for this demand to be addressed. On December 20th, 2006 the United Nations unanimously approved an international convention that acknowledged the crime of forced disappearance as such. On February 6th, 2007 the Argentine First Lady Cristina Fernandez de Kirchner and the leaders of the two groups of *Madres*, Hebe de Bonafini and Marta Vazquez, met in Paris to open the ceremony that launched this convention. In this occasion Foreign Affairs Ministry Jorge Taiana explicitly acknowledged the role of the human rights movement in the governments's policy: "*El compromiso con ellos (el movimiento de derechos humanos) y con sus luchas ha estado en la base de la decisión del Gobierno de asumir la promoción y defensa de los derechos*

humanos como un eje fundamental de su política, tanto a nivel nacional como International.”¹¹²

The signing of the Convention on Forced Disappearance was a major accomplishment for the *Madres*. This was so, not only because of the international character of the convention, but for the specific criminal category they helped develop. Hebe de Bonafini explained why this was so in one of their usual Thursday’s rounds in *Plaza de Mayo*: “*Para nosotras es un momento muy fuerte, porque las Madres somos la única organización que no ha aceptado la muerte de los hijos. (...) Así que la desaparición forzada de personas, crimen de lesa humanidad reafirma la posición de las Madres. Es la posición más clara y más ética; desde el principio dijimos que jamás venderíamos la sangre de nuestros hijos.*”¹¹³ After the signing of the international convention, the Argentinean government introduced a bill in Congress to ratify it. This was done on November 17th, 2007.

2.3. Systematizing State Response

To make more systematic the government response to the *Madres de Plaza de Mayo*, I code state responses, following Schumaker and Kitschelt’s previous work, along five dimensions (Schumaker 1975; Kitschelt 1986): 1) access, 2) agenda setting, 3)

¹¹² “The commitment with them (the human Rights movement) and with their struggles has been at the root of the government’s decision to promote and defend human Rights as a fundamental axis of its national and International policies” See *Página 12*, “*Un Avance para el Fin de la Impunidad*” By Jorge Taiana, February 6th 2007.

¹¹³ “For us this is a very important movement, because the Mothers is the only organization that hasn’t accepted the death of their children (...) Thus, the notion of forced disappearance as a crime against humanity confirms our position. This is the clearest and most ethic position, from the very beginning we stated that were were not going to sell the blood of our children” Viewed on September 20th, 2009 at <http://www.madres.org/asp/contenido.asp?clave=2094>

government policy, 4) policy output; and 5) institutional change (see Table 1.1). Table 2.3 summarizes the analysis of these dimensions for the Argentinean case.

The first dimension of state response is access, and it is measured in two ways: first, by the number of times the *Madres de Plaza de Mayo* met with the president, and second, by the number of incidents of repression the group suffered under each administration. As is shown in Table 2.3, there is a wide variation in how much access the movement had over the years. In the periods in which government human rights policy was more active and positive in terms of the movement's demands –the administrations of Alfonsín and Kirchner- the *Madres* were received by the President more frequently and suffered less repression. President Kirchner in particular met with the group frequently - twenty six times - which represents approximately a meeting every two months during his four years in office, and this figure does not take into account the times he met with other human rights organizations. Alfonsín, who won the first democratic elections after the military dictatorship in 1983 with the issue of human rights as a key element of his platform, only met four times with them. Kirchner's first meeting with the *Madres* was on June 4th, 2003, only ten days after assuming power,¹¹⁴ a sign of the high priority human rights would have under his administration. In addition, some of these meetings were not requested by the *Madres*, but by Kirchner himself, like that of January 15th, 2004 to inform the *Madres* of the existence of torture training among the military as late as 1994.¹¹⁵ In times when government policies were less responsive towards the movement,

¹¹⁴ See *Página 12*, “Un día lleno de pañuelos blancos en la Rosada,” June 4th, 2003 Viewed on April 26th, 2008 at www.pagina12.com.ar

¹¹⁵ Viewed in www.Madres.org on August 24th, 2008

TABLE 2.3

STATE RESPONSE TO HUMAN RIGHTS MOVEMENTS

IN ARGENTINA

1983-2007

Dependent Variable. State Response to Argentinean Human Rights Movement					
Dimensions	Alfonsín 83-89	Menem 89-99	De la Rúa 99-01	Duhalde 02-03	Kirchner 03-07
1.1. Access. No of meetings with the President	4	0	1	0	26
1.2. Access. No of incidents of repression*	1	3	2	0	0
2. 1. Agenda Setting. Inclusion of human rights issues in party's platform.	Strongly in UCR platform, less in PJ.	Not in PJ or UCR platform.	Not in PJ or Alianza platform.	NA	Not in PJ's 3 presidential candidates or in UCR.
2.2. Agenda Setting. No of bills related to human rights introduced in Congress**	Absolute n:40 Average bill per year: 6.6	Absolute n:50 Average bill per year:5	Absolute n:7 Average bill per year: 3.5	Absolute n:9 Average bill per year: 6	Absolute n:35 Average bill per year: 8.7

TABLE 2.3 (CONTINUED)

Dimensions	Alfonsín 83-89	Menem 89-99	De la Rúa 99-01	Duhalde 02-03	Kirchner 03-07
3-Government Policy pro or against human rights	Pro HR: derogates self-amnesty CONADEP, trials of military junta. Against HR: <i>Ley Punto Final</i> /Due Obedience. Supreme Court rules the laws constitutional	Against HR: pardons. Decree against extraditions. Pro HR: recognition of forced disappearance and economic reparations. Congress derogates <i>Ley Punto Final</i> and Due Obedience. Truth Trials	Against: decree against extraditions		Pro HR: Congress and Supreme Court annul <i>Ley Punto Final</i> and Due Obedience. Forced disappearance Convention ratified. Supreme Court Impeachment.
4-Policy Output. No. of judicial convictions.	Sixteen, but only nine in prison after Punto Final and Due Obedience Laws.	Zero in prison after pardons.	Four	No new convictions.	Sixteen (reached fifty seven in April 2009).
4- Policy Output. No of military officers questioned by hr org that were not promoted by the Senate.	Zero	Two. First time Senate takes human rights organizations into account.	Zero	Two.	No promotion is suggested if not previously checked with hr org.
5-Institutional Change: creation of hr government institutions	HR undersecretary to continue CONADEPs job.				HR Secretariat. National Archives of the Memory. Unit of Assistance and Following of HR trials. Truth and Justice Program.

*These are incidents in which members of the human rights groups are particularly targeted and arrested

**Those codified are only the bills strictly related to the demands of the human Rights movement. When comparing the number of bills it is also important to take into account the number of years in power of each of the presidents. The irregularity of presidential mandates in Argentina is the reason behind introducing the second measure: average bills per year.

in particular during the Menem administration, the *Madres* never got to meet with the president and they suffered police brutality. In 1995 after hanging a sign in the Navy School of Mechanics (*Escuela Mecánica de la Armada*, (ESMA))¹¹⁶ which read “School of Assassins,” they were repressed “as much as the worst times of the dictatorship” (Vazquez 2007: 42). Two people were detained and 40 were left wounded.¹¹⁷

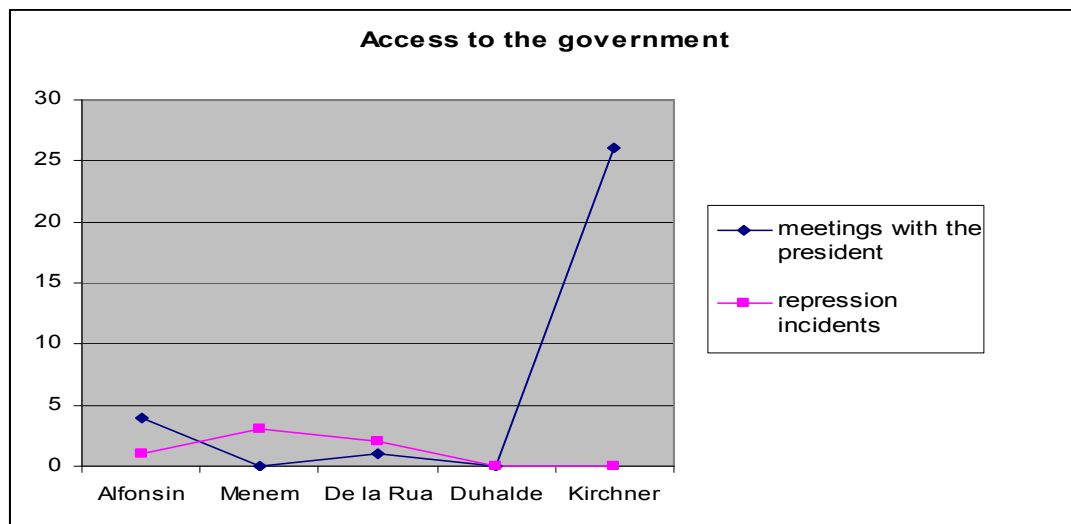


Figure 2.1: Number of Meetings between *Madres de Plaza de Mayo* and the President and number of incidents of repression under each democratic administration. 1983-2007.

The second dimension of state response is Agenda Setting, and it is measured first, by taking into account if the issue of human rights was present in the platforms of the two main political parties (PJ and UCR), and second, by counting the number of bills that were introduced in Congress (whether or not they were passed) that relate to the issue of

¹¹⁶ ESMA was the Navy School building that became the biggest center of forced disappearance and torture during the military dictatorship. It is now a museum of Memory and a space for the defense of human rights.

¹¹⁷ See *Página 12*, “*Los otros 24*” March 25th, 2006. Viewed on March 30th, 2007 at www.pagina12.com.ar

justice for past human rights abuses. This measure takes into account whether the proposed bills would have advanced the movement's cause or to the contrary if they represented a setback.

The issue of human rights was clearly present in the electoral platforms of the main candidates at the beginning of the transition, but it faded with the passage of time. In 1983, both the Radical and Peronist platforms contained elements of a human rights policy. They both rejected the doctrine of national security imposed by the military regime (Radical Platform 1983, 34; Peronist Platform 1983, 51), and both called for trials of the abusers (Radical Platform 1983: 36; Peronist Platform 1983: 22 and 26). Both are also equally vague in terms of how this would be accomplished.

In 1989, the issue was still there, but it was less prominent. The Peronist platform had an indirect reference to the issue in the section on Defense Policy. In a subsection called "Reconciliation," the party explained the need to reverse a situation that was increasing "differences" between civil society and the military and that "conspired against national unity and institutional stability" (Peronist Platform 1989: 41). The call for "reconciliation" has been the usual argument of those who opposed prosecutions of those responsible for abuses. Thus, the platform was already suggesting the pardons that Menem passed once in power. On the other hand, the Radical candidate, Eduardo Angeloz, publicly expressed his opposition to an amnesty law (Acuña and Smulovitz 1995: 77) but his platform has no reference to the issue of human rights at all (Radical Platform 1989). The 1995 and 1999 electoral platforms of both parties lacked any reference to the issue of human rights.

The 2001 political crisis led to the implosion of political parties and a series of provisional presidencies. Eventually, the formula settled upon to resolve the political crisis was to hold a new, special election in May 2003. Because it was called rather abruptly, outside the normal electoral calendar, parties had little time to prepare for it. The Radical Party presented a very informal draft of its platform, essentially just to fulfill the requirements of the electoral board; but the “platform” was neither properly printed nor distributed.¹¹⁸ In it, there was a section entitled ‘Human Rights Policies’ which was not present in previous platforms. However, it referred to the need to respect civil, political, cultural, social and economic rights in general and had no reference to the demands advanced by the *Madres* and the other human rights organizations. Also as a consequence of the crisis of political parties, the Peronist Party held no primaries and presented three different presidential candidates: Carlos Menem, Alberto Rodriguez Saa and Nestor Kirchner. In none of their platforms was the issue of human rights as defined by the movement present. This is not surprising in the case of Menem and Rodriguez Saa, but it is in that of Kirchner. After he was elected human rights became one of the areas in which his government was active. However, there are no references to these policies in his political platform. In fact, the issue was not discussed at all in electoral debates. The only demand advanced by the human rights movement that was already in Kirchner’s platform was the removal of the sitting judges on the Supreme Court. In conclusion, after the 1983 presidential elections the issue of human rights has been absent from electoral platforms and debates.

¹¹⁸ The electoral platform was so informal that it was actually very difficult to find. Members of the Party told me that given the internal crisis the institution was going through there was not much discussion and debate around it and the Party’s committees that needed to approve it did not even meet.

The second way of measuring if the human rights issue was on the political agenda is to look at the number of bills introduced in Congress per administration. Those coded in this category are bills within the human rights policy area strictly related to the demands of the movement that were not passed by Congress (those passed are analyzed under the dimension of ‘government policy’). Given the irregular duration of presidential mandates in Argentina a second measure is introduced: average of human rights bills introduced per year. Although the issue of human rights disappeared from the parties’ electoral platforms after 1983, the demands of the human rights movement seem to be present on the legislative agenda in all the administrations: beginning very strongly during the first democratic government (6.6 bills per year), they retained relevance during the ten years of the Menem administration despite the president’s policies being opposed to the movement’s demands (5 bills per year), diminished a little during the De la Rúa administration (3.5 bills per year), began to rise again under Duhalde’s transitional presidency despite the critical times after the December 2001 crisis (6 bills per year), and finally peaked under the Kirchner administration (8.75 per year), which is consistent with the priority given to this policy area by the executive branch.

Of all the bills introduced in Congress several spoke more directly to the main demands of the movement. The first entry in Table 2.4 refers to the bills calling for the creation of a Bicameral Commission to investigate the abuses of human rights committed during the military dictatorship which, as seen in previous sections, was a standard demand from the movement since early on. Even after Alfonsín decided against it and created a special committee of notables (CONADEP) to report directly to the president, Congress still insisted on a Bicameral Commission even under the Menem

TABLE 2.4
HUMAN RIGHTS BILLS INTRODUCED IN CONGRESS
IN ARGENTINA
1983-2007

Human Rights bills in Congress	Alfonsín 1983-89	Menem 1989-99	De la Rúa 2000-01	Duhalde 2001-02	Kirchner 2003-07
Bicameral commission	4	3			
Amnesty	For: 8 Against: 2	For: 5 Against: 3 Neutral: 5	Against: 1	Against: 1	For: 2 Against: 8 Neutral: 1
Against decree denying extradition		1	2	1	1
Improve access to justice		4			7

Source: by author based on databases on Congressional website¹¹⁹

administration. A second group of bills relevant for the movement were those trying to pass an amnesty for the abuses committed during the military dictatorship (classified as “For amnesty” in Table 2.4), and those trying to prevent the passing of such a legal instrument or annulling those already conceded (classified as “against amnesty” in Table 2.4). The demand to prosecute those responsible was present in Congress throughout all the administrations, even under seemingly hopeless circumstances such as the ten years of the Menem administration with the presidential pardons.

A third entry in Table 2.4 refers to the bills calling for the annulment of the presidential decrees rejecting collaboration with Spanish Judge Baltazar Garzón in the investigation of crimes during the military dictatorship (Decree N 111/1998) and that

¹¹⁹ See Congressional website with database on bills at <http://www.diputados.gov.ar/>

prohibited the extradition of those accused of these crimes to stand trial in other countries (Decree No 1581/2001). Though the decrees were finally annulled by President Kirchner in 2003, Congress had put the movement's demand in the agenda from the very beginning under the Menem administration.

Finally, Congress has also been receptive to the movement's demand of improving the access to justice to bring the perpetrators to trial. This is particularly the case once the judicial avenue was re-opened under the Kirchner administration. Seven bills introduced in Congress during these years picked up the movement's demands of protecting the witnesses, accelerating trials, and limiting the option of house arrest in cases of crimes against humanity such as those committed by the military dictatorship.

The third dimension, government policy, deals with whether administrations advanced the movements' demands for justice or stalled them. This particular dimension has been analyzed in depth in the previous section.

The fourth dimension of state response is that of *policy output*. Since the main demand posed by the human rights movement analyzed here is that of justice for past abuses, the policy output has been measured in two ways: first, by the absolute number of convictions of abusers obtained under each administration, and second, by the number of military officers whose nominations were questioned by the human rights movement who were subsequently promoted to higher office by the Senate.

In terms of convictions, Argentina shows an almost schizophrenic pattern (see Figure 2.2). The first democratic government under President Raul Alfonsín showed a strong determination to achieve justice for the crimes committed by the dictatorial government. It was the first time that a country prosecuted its own military commanders for human

rights abuses. However, as explained before, Alfonsín's policy right from the beginning was to have "limited justice." The sixteen convictions shown in Figure 3.2 represent five military dictators,¹²⁰ six people convicted for the abduction of children of the disappeared,¹²¹ and five other defendants in cases of abuses committed in the case known as "Camps" or "44" were handed down before the laws that put a stop to these trials took effect.¹²² Moreover, of these sixteen, only nine (the first two groups)¹²³ remained in jail after the passing of the *Ley de Punto Final*¹²⁴ and the Due Obedience Law.¹²⁵

During the Menem administration, the number of those convicted or serving sentences in prison dropped to zero due to the presidential pardons awarded to all those who had been convicted or were in the process of being prosecuted.

¹²⁰ Jorge Rafael Videla, Emilio Eduardo Massera, Orlando Ruben Agosti, Roberto Viola, and Armando Lambruschini.

¹²¹ Rodolfo Oscar Silva, Raquel Teresa Leiro, Ruben Luis Lavallen, Jorge Hector Vidal, Teresa Isabel González and Nelson Ruben. The last two were sentenced to 3 years of prison in suspense so they never served time in prison.

¹²² The Causa Camps investigated the crimes of the Police of the Province of Buenos Aires during the military dictatorship. The investigation began with the presidential decree 280/84. Those convicted were: Ramon Camps (25 years), Miguel Etchecolatz (23 years), Ovidio Pablo Riccheri (14 years), Jorge Berges (6 years) and Norberto Cozzani (4 years and a half), all benefited by the due obedience law and later by the pardons conceded by Carlos Menem.

¹²³ The five military dictators plus four of the six convicted for the appropriation of children. The other two were given 3 years of prison in suspense.

¹²⁴ Law No. 23492 passed in 1986 set a time limit for the investigation and prosecution of those suspected of human rights abuses during the dictatorship.

¹²⁵ Due Obedience Law (law No. 23521) passed in 1987 exempted subordinates from being prosecuted when they were carrying out orders.

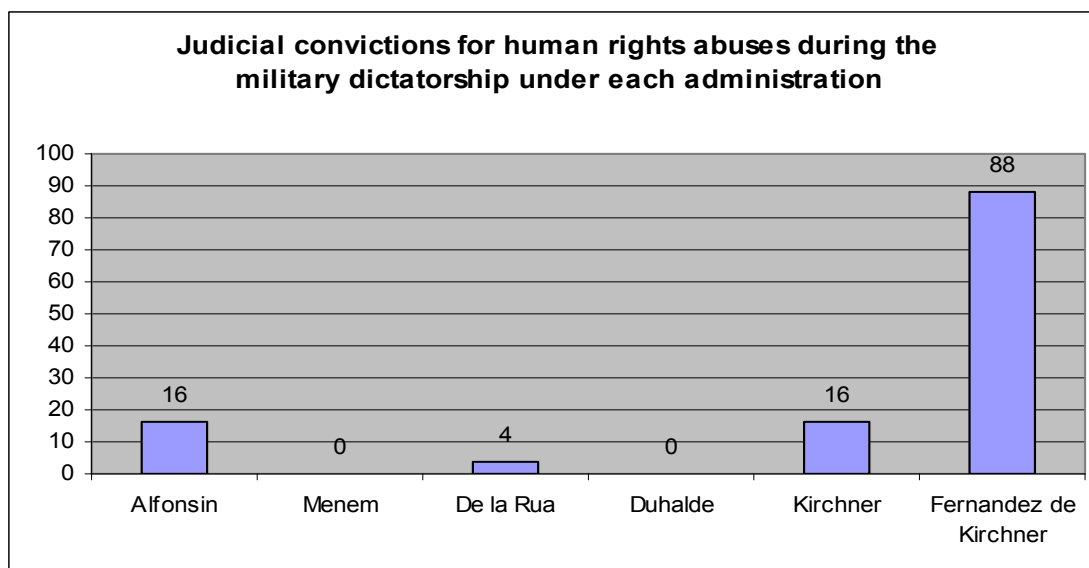


Figure 2.2. Number of Judicial Convictions by Administration (non-cumulative) in Argentina 1983-2011.

Source: By author based on CELS data and Clarín and Página 12 articles.¹²⁶

Other crimes were left out of both the Due Obedience Law and the presidential pardons; these referred to the illegal appropriation of children during the military dictatorship. It was common practice during those times that disappeared women that were pregnant at the time of their kidnapping and gave birth in the detention centers had their babies taken away from them and handed over to families with connections to the military.¹²⁷ These were the only trials that were allowed to continue after what was referred to as “the impunity laws.”¹²⁸ Under these circumstances, there were four

¹²⁶ The convictions reported under the Fernández de Kirchner administration are those until October 2010.

¹²⁷ The Abuelas de Plaza de Mayo, a movement created to search for those children and restore them to their original families, estimates that there were around 500 cases. In 2009, 97 of these children (now adults already) had been located, identified and restored to their families.

¹²⁸ The expression “impunity laws” refer to the Full Stop Law and the Due Obedience Law since their passage sanctioned the reign of impunity for those responsible of human rights abuses.

convictions during the De la Rúa administration.¹²⁹ During the Duhalde administration, no new convictions were obtained. It was not until the Kirchner administration took power and the impunity laws were declared null both by Congress and the Supreme Court that prosecutions were allowed to proceed and the number of convictions begins to rise again: reaching a total of 108 as of October 2010.

A second way to trace the impact of the human rights movement in terms of policy output is to analyze the promotion of military officers. In Argentina, the Executive nominates candidates for promotion, and the Senate sets aside time for names to be ‘*impugnados*’ (questioned) by any civil society organization or individual. Human rights organizations have paid attention to this process and questioned the names of all those officers that appeared in the testimonies of CONADEP as having been involved in repressive incidents during the military dictatorship. Until 1994, the Senate had not acted upon these reports and had confirmed the promotion of all of the ‘questioned’ officers.¹³⁰ In 1994, for the first time two officers of the Navy, Antonio Pernias y Juan Carlos Rolon, questioned by the human rights organizations, were denied promotion. The two military officers were asked to appear before the Senate and when questioned on their activities during the military dictatorship Antonio Pernias admitted having used torture as a tool of interrogation (CELS 1994).¹³¹ Even when President Menem defended these promotions,

¹²⁹ Retired Colonel Ceferino Landa and his wife Mercedes Moreira were convicted to 9 years and a half and 5 years and a half respectively for the illegal appropriation of Claudia Poblete. Military doctor Norberto Atilio Bianco and his wife Susana Werly were convicted to 11 years for the appropriation of two children.

¹³⁰ Information given by Valeria Barbuto from the program ‘*Memoria y Lucha contra la Impunidad*’ (Memory and Struggle Against Impunity) from CELS, interviewed in Buenos Aires, on August 15, 2008.

¹³¹ “*Las ordenes dadas en esos momentos eran difíciles. Pero en ese momento esa era la herramienta. Me refiero particularmente a interrogatorios y tormentos*” (The orders received in those times were hard.

after having heard these confessions, the Peronist senators voted against the nominees. Since then, human rights organizations' reports received more attention in the Senate, but did not always result in the denial of promotions. In the following years, until 2003, the most the human rights movement could expect was for the questioned promotions to be put on hold. Once Nestor Kirchner took power there was a change in this trend. From 2005 onwards when Nilda Garre was appointed Minister of Defense, the Executive did not send an officer's name to the Senate without checking first with CELS (the human rights organization that has a complete archive with the list of repressors and their involvement in human rights abuses) about whether or not an officer had been identified as a repressor.¹³²

Finally, the last dimension of state response refers to the creation of government institutions to address the human rights movement's demands. In September of 1984 President Alfonsín created the "*Subsecretaría de Derechos Humanos*" (Undersecretariat of Human Rights) as a permanent institution dependent on the Presidency to continue the work initiated by CONADEP. Since its creation, the Commission had gathered the accusations, written reports, and reconstructed the network of repression. But its main goal was to present the accusations to the judicial system for the trials to continue. The main problem, recognized by the first person to direct this institution Eduardo Rabossi, was that it lacked ministerial rank.¹³³ The effectiveness of the institution was quickly

But at the time, they were the tool available. I am referring particularly to the interrogations and torture)
Author translation (CELS 1994).

¹³² Information given by Valeria Barbuto from the program '*Memoria y Lucha contra la Impunidad*' (Memory and Struggle Against Impunity) from CELS, interviewed in Buenos Aires, on August 15, 2008

¹³³ Interview to Eduardo Rabossi, first Subsecretario de Derechos Humanos (1984-89). In Archivo de Historia Oral. Programa de Historia Política. Instituto Gino Germani, Universidad de Buenos Aires

questioned by all human rights organizations mainly because of its slow pace of work, especially in contrast to the dynamic work of CONADEP (Jelin 1995, 132). It was also highly criticized by the *Madres* because it began to exhume the corpses of those who had been presumed disappeared, but without the criminal prosecution of those responsible. Because they could thus lead to the lapsing of the statute of limitations, the exhumations were firmly opposed by *Madres*.¹³⁴

When Nestor Kirchner came to power he upgraded the Undersecretariat of Human Rights to full cabinet rank, with a significant infrastructure and budget (CELS 2008: 29). This change was positively received by human rights organizations, but they nonetheless still voiced important reservations about the way the institution worked. CELS was critical of the fact that the Secretary had only worked on prosecuting the human rights cases already open in the country, unnecessarily duplicating the functions of the judicial system, instead of concentrating on solving the organization, coordination and budget problems that the re-opening of the trials had created.¹³⁵ On December 16th, 2003 President Kirchner created the *Archivo Nacional de la Memoria* (National Archives of Memory) as an organ within the portfolio of the Secretary of Human Rights. Its role so far has been to centralize the existing archives from CONADEP, the *Subsecretaría*, and the information collected through the paperwork required by the government for the families to receive economic reparations (CELS 2008: 42).

¹³⁴ To read more about the position against exhumations see Gorini 2008, 301)

¹³⁵ Some of the problems the re-opening of trials are facing are: the low quality of federal tribunals in the provinces, the resistance of the Criminal National Chamber of *Casación*; the deficiencies and delays of the system of criminal investigation for such complex cases, the lack of protection for witnesses and victims, the lack of coordination between cases to speed up the judicial process (CELS 2007, 19). For a more detailed criticism of the workings of the Secretariat see CELS 2008, 42. (19)

A particular problem that has received scant attention by the Secretary of Human Rights has been the lack of protection granted to witnesses in human rights cases, a problem that was exposed by the ‘disappearance’ of witness Julio Lopez after appearing in court in the trial against Miguel Etchecolatz on September 18, 2006 (CELS 2008: 42). This case immediately provoked the human rights movement to demand to know what happened with what became to be referred to as “the first disappeared under democracy.” The monthly demonstrations asking “where is Lopez?” became an embarrassment to a government that had taken much pride in its human rights policies. In response to these demands, on May 2007 President Kirchner created the *Programa Verdad y Justicia* (Program for Truth and Justice) under the portfolio of the Chief of Ministers. Its role was to follow up on the processes of memory, truth and justice in order to evaluate needs and remove obstacles, the protection of witnesses being one that was clearly identified by this time.

2.4. Conclusions for Argentina’s case

This chapter has shown that the Argentinean human rights movement, and in particular the Madres, had two moments of a strong impact on government policies, though to differing degrees: the Alfonsín and Kirchner administrations.

The strongest impact during the first democratic government was seen in the creation of the CONADEP. Even though this was not the particular institution demanded by the movement –which insisted on a bicameral congressional commission- even President Alfonsín has acknowledged the movement’s role in his decision. In the rest of Alfonsín’s human rights policies --the trials of the military junta and all the policy steps taken

towards this goal- the direct relationship between movement influence and government actions is less clear. It is hard to establish who came up with the idea of prosecuting those responsible for human rights abuses first. This is relevant in particular because most regime transitions until that time gave a general amnesty to all sides and left past abuses uninvestigated. The 1975 trials against the military junta in Greece were the exception. Sikkink claims that the first recommendation of trials appeared in the special report on Argentina of the Interamerican Commission of Human Rights in 1980, and it was right then that the human rights movement began to ask for them (Sikkink 2008, 6). Alfonsín's human rights advisors Carlos Nino and Jaime Malamud Goti were in England and Germany respectively during the dictatorship and had begun to think about the possibility of the trials before coming back to Argentina when it seemed the regime was coming to an end (Nino 1996).¹³⁶ Goti states that while abroad they met with officials from the Interamerican Human Rights Court, union members and academics and began to talk about that possibility. When they first met with Alfonsín, they found he was very receptive to the idea of some sort of trials, though the specifics had not yet been defined. Even if the idea of the trials may have not originated within the human rights movement, this became a main demand very quickly among all of the organizations.

While the notion of having some judicial proceedings against the military dictatorship became popular both among the movement and the government, the differences in how this process would be implemented divided them into opposite camps. As was stated before, limited justice was on the government's agenda right from the beginning. This was confronted by the human rights movement that wanted to hold all those responsible

¹³⁶ See interview with Jaime Malamud Goti in Archivo de Historia Oral. Programa de Historia Política. Instituto Gino Germani, Universidad de Buenos Aires, Argentina.

accountable for every single abuse committed during the dictatorship. The outcome of this fight during the Alfonsín administration was mostly won by the government. The movement's demands were not taken into account and Alfonsín managed to impose his notion of limited justice, although not without a cost. In this struggle the judiciary became an ally of the movement and put many obstacles in the way of the executive's decision to limit trials. The previous narrative gives a detailed account of these obstacles. In the end, Alfonsín managed to limit them –through the due obedience law- but in a way that was politically costly. The image of a president elected on a principled campaign of human rights and democracy he was able to build eroded.

Alfonsín was a strong president, elected with 51.70% of the vote and he did not need the human rights movement's support to legitimize him. As a founding member of one of the human rights organizations, APDH, he already had credibility in this field. However, due to his personal commitment to human rights, he did in fact address some of the movement's demands. Although CONADEP delivered truth, and some justice and accountability were achieved through the trials, these never took the form the movement wanted: there was no bicameral congressional commission and no extensive trials. The human rights movement was not consulted, and human rights policies were designed without their input by Alfonsín's advisors in this field. The movement made it difficult and costly for Alfonsín to carry out his policies as he wished. It was not easy for him to continue to be seen as a champion of human rights when the movement itself was strongly criticizing his policies. Nonetheless Alfonsín had enough political support at the time to go ahead with his human rights plan.

During Menem's administration the human rights movement suffered major setbacks. The presidential pardons were hard to swallow. The policies that were supposedly in favor of the movement such as those of economic reparations were not well received by some organizations within it such as the *Madres*. While the level of mobilization decreased in comparison with previous years, the movement remained standing (See Chapter 5). It continued to fight in the small margins that were left in such a context. Its members pushed for truth trials, an initiative that began within the movement and was led by CELS. Through the appeal to the Interamerican Human Rights court they managed to force the Argentinean government to acknowledge the right to the truth. This was an astounding accomplishment considering the Menem government's human rights policies. The second accomplishment was the repeal of the impunity laws in Congress. Here, the strong links between the movement and some leftist legislators were key for the bill to be introduced in Congress (See Chapter 5). The fact that it was debated and later passed was due to the lack of legal consequences the bill had. The original bill would have gone further and declared those laws unconstitutional and null, but it was changed in the congressional discussions. The political context was not yet ripe for this to happen.

De la Rúa's administration gave human rights no priority whatsoever, which is surprising given that FREPASO, the political party on the left which had many members who had close relationships with the movement, formed part of the government's coalition. The fact that the president was ideologically more to the right and that it had close relations to the military was evident in his choice of Defense Minister: Ricardo Lopez Murphy. The presidential decree that denied all extraditions to stand trial abroad

for deeds committed in national territory was a clear sign that the government opposed the movement's demands of foreign trials for those accused of human rights abuses.

However, it was during his administration that federal judge Cavallo ruled in March 2001 that the impunity laws were unconstitutional and null. Like under Alfonsín, the judiciary, though generally controlled by the executive (as seen during the Menem administration), was showing some independence trends and striking back. The human rights movement, and CELS in particular, was responsible for initiating the Poblete case in which Judge Cavallo ruled in favor of the movement, showing the relevance of the movement in achieving this ruling. However, even when the judiciary had again become a good ally of the movement, as in times of Alfonsín, this was not enough to change government's policy. It was well known at the time that the Supreme Court was going to rule that the impunity laws were constitutional. This was even openly admitted by Judge Vazquez in a meeting with Bishop Baseotto (CELS 2003: 48). It took the December 2001 popular mobilization, the human rights movement's actions against the Court and the coming to power of President Kirchner for the scenario to change dramatically allowing for a court ruling favorable to the movement.

The Kirchner administration was by far the most responsive of all Argentine administrations examined here to the movement. Kirchner was both a leftist and a weak president in need of legitimacy; these circumstances combined to create a situation in which the human rights movement became a highly desirable ally (See Chapter 5 for a more detailed explanation). Kirchner not only responded to almost all of the movement's demands, but also, contrary to Alfonsín, he responded in the way the movement wanted. The *Madres* gave Kirchner a strong dose of legitimacy given the symbolic power they

developed during the more than twenty years of constant struggle. His twenty six meetings with them, his kind words towards them, his constant reference to the Madres' heroic struggle in his speeches, and the way he invited them to participate in the majority of governmental events are clear evidence of President Kirchner 's wishes to "seduce" them. That his mission was accomplished is clear by Hebe de Bonafini's words towards him, a woman that has always been characterized by her strong character and her intransigence. Bonafini's decision to end the *Marcha de la Resistencia*, a tradition started during military times and carried over throughout all the democratic governments, because she felt "the government is not the enemy anymore" is a clear sign of this.¹³⁷

Many have accused the *Madres* of being co-opted by the government. There could be a strong case for this if Kirchner had limited himself to rhetorical speeches about human rights, without backing up his verbal commitment with actions. However, President Kirchner has in fact been highly responsive to the movement: as evidenced in Table 2.2, he impeached the Supreme Court, allowing for the impunity laws and presidential pardons to be ruled unconstitutional and for the re-opening of trials; he did not send the names of any military officers for promotion to the Senate before consulting with the human rights movement's databases; he signed and ratified the Convention on Forced Disappearance that acknowledged forced disappearances as a crime against humanity; and he introduced a bill to eliminate the military justice code and jurisdiction (later passed under his wife's administration). After decades of being ignored, it is hard to blame the *Madres* for supporting a government that gave them almost everything they demanded.

¹³⁷ Quoted in *Clarín* "Hebe de Bonafini, la seducción de Kirchner y el final de un ciclo", January 28th 2006. Viewed on September 24th, 2009 at <http://www.clarin.com/diario/2006/01/28/elpais/p-02201.htm>

It is worth highlighting that the human rights movement got different responses from the executive branch and the judiciary on particular occasions. When this happens, given the strong presidential character of the Argentine political system, it is very hard for the judiciary to tweak the executive's hand. This was clear during Alfonsín's administration and again with De la Rúa and the defiance of Judge Cavallo ruling for the unconstitutionality of the impunity laws. Judges alone cannot guide state response. In order for "state response" to change, the executive also has to change. Someone with the political will to make human rights a relevant issue – such as President Kirchner- has to come to power in order for the judicial process to be re-opened. The only time when it seemed the judiciary won this internal battle with the executive branch was in the case of the Truth Trials under the Menem administration. However, this battle was won by an International Human Rights Court, not a domestic one, and this was the fact that made all the difference.

CHAPTER 3

THE IMPACT OF THE HUMAN RIGHTS MOVEMENT ON STATE POLICY IN CHILE

3. 1. Introduction

The Chilean human rights movement has been characterized as the strongest of its kind in the region during the military dictatorship (Barahona de Brito 1997: 113 and 2001:135; Loveman 1998). It was the only one of the cases analyzed here which enjoyed the open and unconditional support of the Catholic Church. In addition, given the following that the Allende government (1970-73) had created among international leftist circles –for being the first attempt at a peaceful road to socialism- the Chilean human rights movement emerged within an already strong international support network. However, once the democratic transition started, the movement increasingly weakened. The Catholic Church closed the *Vicaría de la Solidaridad*¹³⁸ and international financial support dissipated. In addition, part of the human rights movement decided that it was necessary to work from within the government, and thus abandoned activism and joined the Aylwin administration. Carlos López, who at that time was the Executive Secretary of the Chilean Commission of Human Rights recalls, that during the dictatorship they had

¹³⁸ The *Vicaría de la Solidaridad* was the institution Pope Paul VI created after the *Comite para la Paz* was dissolved by the dictatorship in 1975. The character of “Vicaría” (Vicariate) allowed the Church to continue their work in defense for human rights.

close to 6,000 volunteers and that in less than eight months once the democratic transition was in its way, this network was deactivated.¹³⁹

As in the case of Argentina the human rights movement was and is comprised by a variety of organizations. Both victims' (*Agrupación de Familiares de Detenidos Desaparecidos*, AFDD; and *Agrupación de Familiares de Ejecutados Políticos*, AFEP¹⁴⁰) and support organizations (*Corporación de Promoción y Defensa de los Derechos del Pueblo*, CODEPU¹⁴¹; *Vicaría de la Solidaridad*; *Fundación de Ayuda Social de las Iglesias Cristianas*, FASIC;¹⁴² *Comisión Chilena de Derechos Humanos*) were created throughout the dictatorship to oppose the Pinochet regime and demand justice.¹⁴³ The *Agrupación de Familiares de Detenidos Desaparecidos* was the first victim's organization to be created and has been especially active both during the dictatorship and democratic times. It has been a permanent advocate (?) for human rights policies.¹⁴⁴ The AFEP at no time reached the same prominence and symbolic role enjoyed by the AFDD, even when its membership base was broader (Collins 2005: 133). One of the reasons for the AFDD's main role may be related to the particular type of crime around which they mobilized –the disappearances - a novelty at the time in the field of repressive tactics.

¹³⁹ Author's interview with Claudio Fuentes, Santiago de Chile, November 5th, 2007.

¹⁴⁰ The Association of Families of the Politically Executed was created on November 1978 as a splinter organization from the AFDD, given the specificity of their struggle.

¹⁴¹ The Corporation for the Promotion and Defense of People's Rights, a human rights NGO, was created on November 8th 1980 to assist victims of human rights abuses and their families in their struggle against impunity.

¹⁴² The Christian Churches Foundation for Social Help was created on April 1st 1975. It is an ecumenical organization committed to the respect of human rights.

¹⁴³ The National Association of Former Political Prisoners is another human rights organization but it did not emerge until 1998 after Pinochet was imprisoned in London.

¹⁴⁴ Author's interview with Claudio Barrientos, professor in the School of History, Universidad Diego Portales, Santiago de Chile, November 2nd, 2007.

Thus, this dissertation will focus on the AFDD's demands and actions to analyze its impact on human rights policies in Chile.

Following the organization of Chapter 2, the first section of this Chapter offers a descriptive narrative of the history of the AFDD and their interactions with the governments in power since the democratic transition until 2010. It is organized around the demands the human rights movement posed and the response they got from the different administrations. The second section systematizes this narrative coding state response to the movements' demands following the five dimensions discussed in Chapter 1: 1) access, 2) agenda setting, 3) government policy, 4) policy output; and 5) institutional change (see Table 1.1).

The analysis shows that the human rights movement has been only partially successful in influencing human rights policies in this country. Once the strongest human rights movement in the region, its strength rapidly decreased after the democratic transition. The few times the AFDD in particular had a clear impact on human rights policy was by stalling government proposals that went against their cause. Here, the close relationship with Socialist legislators proved to be key in defeating these bills. Paradoxically, Chile has the largest number of judicial convictions for human rights abuses of the three cases. Chile's movement found no receptivity within the executive and legislative branches for their demand for justice and the amnesty law protecting the perpetrators has not been repealed as of August 2011. However, human rights lawyers were able to find loopholes in the existing legal framework and were able to move judicial cases forward. Accountability in Chile was achieved to a greater degree through the judiciary than through political means.

3.2. Agrupación de Familiares de Detenidos Desaparecidos (AFDD)

On December 1973, three months after Pinochet's coup d'état, the Chilean Catholic Church created the *Comité para la Paz* (Committee for Peace); an ecumenical committee to attend to the needs of those persecuted by the military regime, seek the release of political prisoners, and help those fired from their jobs for political reasons.¹⁴⁵ It was under this organization that the families of the disappeared began to meet informally to exchange information and support each other in the search for their relatives.

In July 1975, the Brazilian newspaper *O'Dia de Curitiba* and the Argentine magazine *LEA* published a list with the names of 119 Chileans who had disappeared, stating that they had killed each other outside Chile.¹⁴⁶ Faced with what they thought was the dictatorship's attempt to respond to the demands of the international community for information about the whereabouts of the disappeared, the families decided to give a more formal structure to their group and created the *Agrupación de Familiares de Detenidos Desaparecidos* (Association of Families of those Detained and Disappeared, AFDD onwards) (AFDD 2002).

Chile was the first country to have people “disappeared,” a repressive practice that later would be borrowed by the Argentine and Uruguayan dictatorial regimes.¹⁴⁷ Those who had family members that were active in the resistance to Pinochet's government thought their loved ones could be sent to jail and even sentenced to life in prison, but never imagined they would “disappear” and that nothing else would be heard of or known

¹⁴⁵ In 1975 Pinochet demanded the dissolution of this Committee. It is then that the Catholic Church created the *Vicaría de la Solidaridad*.

¹⁴⁶ This was found later to be an intelligence operation to justify the killing of the disappeared.

¹⁴⁷ Disappearances became the main repressive tactic in Argentina. In Uruguay its use was not as widespread as in Argentina and Chile.

about them until this very day. Given the novelty of this repressive tactic, initially the goal of AFDD was to free their family members, wherever they might be. They first began to search prisons and medical facilities and with the legal assistance of the *Vicaría de la Solidaridad*¹⁴⁸ they presented writs of *habeas corpus* to the courts. From early on they developed a judicial strategy of action, notwithstanding the meager results they obtained during the dictatorship. Another important goal of the organization was to let both Chileans and the rest of the world know what was going on under Pinochet's regime. They thus organized hunger strikes to attract attention and international tours to denounce the recurrent human rights abuses. As early as 1978 they resorted to judicial action and denounced the director of the intelligence agency (DINA) director, Manuel Contreras Sepulveda, for the disappearance of 70 people.¹⁴⁹

In 1978, the Catholic Church received information under the confidentiality of confession about the existence of unidentified bodies buried in the lime powder ovens of Lonquén. This discovery made the AFDD realize that it was highly improbable that their family members were still alive. However, the families decided they wanted to find them, even if they were dead. Thus, from then onwards until this very day, the main goals of the organization were defined as: 1) finding the places where the disappeared were buried illegally, 2) penal and social justice for those killed, and 3) reconstructing their historical memory (AFDD 2002: 14). As with the case of Argentina, this project would focus in particular on the demand for justice for human rights abuses.

The AFDD has been historically closely linked with the Chilean Communist Party given that many of its most active members are part of this party (Collins 2005). This,

¹⁴⁹ The civil courts sent the case to the military justice and it thus went no further than this.

among other reasons, has created internal divisions along the way. In 1999 after the death of their President Sola Sierra, the fracture deepened and two factions were created based on whether or not they supported the Communist Party. The sector defined as pro-PC has been the one that had led the organization since this split (Collins 2005).

3.3. Human rights movement demands

As in Argentina, truth and justice have been the main demands of the families of the victims in Chile. Since its origins the AFDD gave equal emphasis to both of their main goals: 1) to have the perpetrators convicted and 2) to know the fate of their family members (Collins 2005). Three additional demands related to these two have been: 3) the democratization of the judiciary, 4) the ratification of international human rights treaties, and 5) the creation of a human rights institute. The following section describes how these general demands took different forms throughout the years depending on the political context and the response received from the administration in power.

3.3.1. Calling for Justice. Demands to Repeal the 1978 Amnesty Law

If justice was to happen in Chile at all, the first thing that needed to happen was for the 1978 amnesty law¹⁵⁰ to be repealed. This law passed by the military dictatorship declared an amnesty for all crimes committed between 1973 and 1978, the period of massive state repression. The AFDD has been protesting this law ever since. In 1978 they organized a 17-day hunger strike that took place in three Catholic churches and in the UNICEF building in Santiago to reject the military's self pardon. By this time the support the organization had abroad was such that the hunger strike was joined by people in 70

¹⁵⁰ Presidential Decree 2.191, April 19, 1978

cities around the world.¹⁵¹ From then onwards, this has been their number one demand, since the law undermines their ability to achieve truth and justice for their relatives (AFDD 1989). The law is still in place (as of December 2009) and no administration had showed a serious commitment to repealing it.

During the democratic transition, in his presidential campaign Patricio Aylwin promised to repeal the Amnesty Law (Collins 2005).¹⁵² The Basic Government Program of the *Concertación*¹⁵³ clearly stated that the political alliance was committed to truth, justice and the liberation of political prisoners (Barahona De Brito 1997:104). But once Aylwin was in power this commitment was not respected. In April of 1991 the AFDD met with Justice Minister Francisco Cumplido. As was the case in all their meetings with the government, AFDD representatives asked when and how was the government going to repeal the 1978 amnesty law. Viviana Díaz, president of the AFDD, recalls Cumplido saying that for him it was a surprise that this issue was part of the programmatic campaign of the *Concertación*, and that he did not know how it arrived there. He added that it was going to be very difficult for this to happen because the government did not have a majority in congress.¹⁵⁴

¹⁵¹ Author's interview with Viviana Díaz, AFDD, Santiago de Chile, September 24th, 2008.

¹⁵² Author's interview with Pedro Matta, former political prisoner and organizer of the political prisoners association of human rights, Santiago de Chile, October 24th, 2007.

¹⁵³ The *Concertación* is the name given to the political coalition of left and center parties that was founded in 1988 and was in power from the 1990 democratic transition until March 2010 when they lost elections to right wing coalition candidate Piñera.

¹⁵⁴ Author's interview with Viviana Díaz, AFDD, Santiago de Chile, September 24th, 2008.

TABLE 3.1
HUMAN RIGHTS MOVEMENT DEMANDS
AND STATE RESPONSE TO THEM
IN CHILE
1990-2010

	Aylwin 1990-94	Frei 1994-2000	Lagos 2000-06	Bachelet 2006-10
1- Justice: Annul Amnesty Law	Against HR: Supreme Court ratifies amnesty law. Aylwin Law.	Against HR: Bill Figueroa Otero.	Against HR: Bill to reduce penalties in exchange for information.	Pro HR: <i>Concertación</i> meets with AFDD to write a bill to repeal amnesty. Lower chamber passes it, but it is subsequently abandoned.
2- Truth: a) Commission to investigate the truth; b) Armed Forces to turn over information on the hr abuses; c) Find the bodies of the disappeared	Rettig commission. Corporación Nacional de Reparación y Reconciliación	<i>Mesa de Dialogo.</i>	Valech commission. <i>Mesa de Dialogo</i>	Re-opening of Valech.
3- Democratization of judicial branch		Judicial Reform		Appointment of some judges linked to the dictatorship.
4- Ratification of human rights international treaties	Signing of Interamerican Human Rights Convention	Signing of Interamerican Convention on Forced Disappearance but still not ratified		Ratification of Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity, the International Criminal Court and the UN Convention on Forced Disappearance
7-Creation of a HR Institute			Lagos announces the creation of the Human Rights Institute	Creation of the Institute with opposition of the AFDD.

Whether for lack of political will due to alleged negotiations with the right, or because it was politically impossible given Pinochet's *leyes de amarre*¹⁵⁵ and the government's lack of majority in Congress –as was claimed by his supporters- Aylwin did not push for the law to be repealed. However he was in favor of reinterpreting this law in a way of getting to the truth of what had happened in the cases reported in the Rettig Report¹⁵⁶ (Collins 2005: 84). Thus, a fight between the Supreme Court and the *Concertación* government began. The government drafted proposals for interpreting the amnesty law in a way that would not preclude investigation, and that would leave crimes against humanity (such as the disappearances) outside of its scope. However, they were not given serious consideration by the high Court. On August of 1990 the Supreme Court ruled that the application of the amnesty law to the cases of the detained and disappeared was constitutional and that it did preclude investigation. In addition, the Court continued to give military courts jurisdiction over human rights cases. The Court's attitude was not surprising given the fact that 12 of the 17 judges were appointees of the Pinochet regime (Collins 2005: 78). The government's response was to state that it would continue investigations, in effect disregarding the Court's rulings (Barahona De Brito 1997: 176). But the Supreme Court was determined to enforce its ruling and in January 1991 the tribunal suspended Judge Carlos Cerdá for refusing to apply the amnesty law in a case of disappearance.

¹⁵⁵ In English, literally "tying up laws." This is the name given to a bundle of legislation Pinochet passed before handing over power to the first democratic government with the goal of retaining power over various policy areas.

¹⁵⁶ The Rettig Report was the name given to the final Report of the Truth Commission created by the Aylwin's administration. It will be discussed in detail in the section below.

The human rights movement decided to intervene in this fight and on December 1990 together with ten deputies it announced that it would raise constitutional challenges against the high tribunal. This was finally done on December 1992, when three court ministers and the military prosecutor general were accused in the lower chamber of Congress of gross abandonment of their duties. The result was only partially successful. On January 1993 the Senate approved the impeachment of Minister Hernán Cereceda, but the other judges were exonerated.

On May 28, 1993, the Army expressed its growing disapproval of the increasing number of human rights cases being heard in the courts. Troops wearing black berets were deployed in an unannounced show of force in the middle of downtown Santiago – an incident which was from then onwards known as “*el boinazo*.”¹⁵⁷ Aylwin strongly condemned the Army’s actions (Barahona De Brito 1997: 180). With the goal of addressing the Army’s concerns, the Christian Democratic President of the Senate, Gabriel Valdez, proposed in June of that same year to establish a three- month limit for the resolution of all cases outside the Amnesty Law. The proposal divided the parties of the *Concertación*, and since Aylwin opposed it, the bill was dropped. However, aware of the gravity of the circumstances Aylwin met with Pinochet. He clearly stated that if he wanted the trials to be closed the Army would have to admit their responsibility and provide information on the cases of the disappeared, a condition the Army Chief was not willing to accept (Barahona De Brito 1997: 181).

On August 3rd, 1993 Aylwin introduced a new bill to Congress –which came to be known as the Aylwin Law- with the goal of expediting the human right cases. The proposal included the appointment of Visiting Judges in charge of these cases and the

¹⁵⁷ “Boina” in Spanish is beret, and “azo” is an augmentative suffix.

guarantee of anonymity for informants who come forward with information about the disappeared. Initially the Socialist Party and the Party for Democracy (PPD) accepted the bill even as they suggested some major changes. However, after meeting with the AFDD and its lawyers they rejected the bill (Barahona De Brito 1997: 182).¹⁵⁸ The AFDD was concerned that the newly appointed Visiting Ministries could be members of the military judiciary. The demands for informants' anonymity also provoked strong opposition. The Socialist Party and the PPD asked Aylwin to withdraw the bill so as to avoid a split in the *Concertación*. The President agreed and decided that a legislative solution for the human rights problem was not possible and thus, from then onwards the judiciary would be the one to deal with it. This has been for most part the policy of the *Concertación* administrations ever since. Viviana Díaz, president of the AFDD recalls the struggle against the Aylwin Law with these words: “*El gran logro en el gobierno de Aylwin fue echar abajo la ley de punto final.*”¹⁵⁹ Most sources confirmed the key role the AFDD claimed for itself in the failure of this initiative (Diego Portales 2003; Barahona De Brito 1997).¹⁶⁰

On March 1994 Eduardo Frei, representing the Christian Democratic Party, was elected President of Chile. During his political campaign he promised to continue Aylwin's search for justice (Barahona de Brito 1997: 185) and the repeal of the amnesty law was still in the *Concertación*'s electoral platform (Diego Portales 2003). He even met

¹⁵⁸ Author's interview with Claudio Fuentes, Santiago de Chile, November 5th, 2007. The monthly bulletins of the AFDD reflect the frequent and numerous meetings they had with Socialist legislators throughout the years.

¹⁵⁹ “The biggest success during the Aylwin administration was to defeat the “Full Stop” Law.” Author's interview with Viviana Díaz, AFDD, Santiago de Chile, September 24th, 2008.

¹⁶⁰ Author's interview with Claudio Fuentes, Santiago de Chile, November 5th, 2007.

with the AFDD before taking power and told the group that his doors would always be open for them.¹⁶¹ However, once in power the human rights issue was assigned no priority. “*Resulta que las puertas no se abrieron por seis años*” stated AFDD’s President Viviana Díaz in referente to Frei’s indifference.¹⁶² The only time President Frei agreed to receive the members of the AFDD was when, after being ignored by him for so long, they decided to stage a sit-in at the square across the government palace of La Moneda and stated they would not leave until they could see him. Finally, the meeting took place in January 1999. The resistance of the President to meet with them was expressed in the organization’s monthly bulletin, which on this date was titled “*El Presidente Frei cedió después de 5 años.*”¹⁶³ The movement recalls this meeting as one in which the President listened to them “in silence and with indifference” and agreed to commit to nothing.¹⁶⁴

Although falling short of the human rights movement’s demands, former President Aylwin had a human rights agenda. On the contrary, Frei had none.¹⁶⁵ He has been characterized as conducting a “*poítica de prescindencia*” in this area given the lack of consensus even within his own governing coalition (Vicaría 1995: 5).¹⁶⁶ Whenever the

¹⁶¹ The meeting took place on February 25th 1994, when Frei had already been elected president but had not yet assumed power. Author’s interview with Viviana Díaz, AFDD, Santiago de Chile, September 24th, 2008.

¹⁶² “But it happened that the doors were not opened during those six years,” Author’s interview with Viviana Díaz, AFDD, Santiago de Chile, September 24th, 2008.

¹⁶³ “President Frei conceded after five years” *Boletín Informativo AFDD*, January 1999, year 6, number 60. Archives of the *Vicaría de la Solidaridad*, Santiago de Chile.

¹⁶⁴ *Boletín Informativo AFDD*, January 1999, vol. 6, no. 60. Archives of the *Vicaría de la Solidaridad*, Santiago de Chile.

¹⁶⁵ Author’s interview with Claudio Fuentes, Santiago de Chile, November 5th, 2007.

¹⁶⁶ *Situación de los Derechos Humanos Durante el Segundo Semestre de 1995*, page 5. Vicaría de la Solidaridad.

human rights issue entered the political agenda it was to limit the ongoing trials. The first attempt of this sort was in May 1995 when the government introduced a bill in Congress that would have allowed courts to suspend trials in which penal liability has expired. The AFDD reported in their monthly bulleting the government's indifference towards them: “*el goierno envió un proyecto de ley al parlamento para resolver el problema de los derechos humanos sin recibir ni conocer la opinión de los familiares de detenidos desaparecidos*”¹⁶⁷ The main ally of the human rights movement at the time, the Socialist Party, rejected the proposal and it was dropped.¹⁶⁸ But the most controversial of these attempts was the support the government gave to a bill presented by Senator Miguel Otero from the right-wing party *Renovación Nacional*. In his proposal all pending trials (600 at the time) were to be heard by special judges who would have the right to close cases if no new information was forthcoming. The government introduced an amendment to the bill, in what came to be called the Figueroa-Otero agreement,¹⁶⁹ stating that those involved in human rights crimes would be asked to testify but would not be prosecuted or arrested and their identities would be kept confidential. Again, the human rights movements together with the Socialist Party denounced this bill as an attempt to put an end to the trials calling it “*una ley de punto final*.”¹⁷⁰ While the proposal was debated in the Senate committees, the human rights movements organized a 48 hour-vigil outside

¹⁶⁷ *Bolegin Informativo AFDD*, September 1995, year 2, number 19. Archives of the *Vicaría de la Solidaridad*, Santiago de Chile.

¹⁶⁸ The Socialist Party was one of the main groups targeted by Pinochet's repression and thus most of its members were committed to the human rights movement's demands (Barahona de Brito 2001, 135)

¹⁶⁹ Acuerdo Figueroa-Otero, Figueroa was the last name of the government's Minister of Justice. See *Situación de los Derechos Humanos Durante el Segundo Semestre de 1995*, page 6. *Vicaría de la Solidaridad*. In Archives from the *Vicaría de la Solidaridad*, Santiago de Chile.

¹⁷⁰ Literally “a full stop law,” called like this because it would put an end to the trials against the military.

the legislature, which was joined by legislators opposed to the bill (Vicaría 1995 II: 7).¹⁷¹ Frei was forced to withdraw the proposal. As with the “Aylwin Law” the movement’s biggest success during the Frei administration was to prevent the establishment of more obstacles for the ongoing trials.¹⁷²

In response to the ongoing debate, on October 1st the AFDD presented its own bill,¹⁷³ which proposed that the amnesty law could not be applied in cases characterized as crimes against humanity by international law. In addition, all cases were to be transferred to civilian courts, and the bill also proposed the lifting of the veil of “military secrecy” that had shrouded most of the military documents (Vicaría 1995 II).¹⁷⁴ The bill failed to be discussed in Congress.

Meanwhile, the fight between the *Concertación* government and the Supreme Court for the jurisdiction of the amnesty law continued. This time, the opposition to the tribunal was not led and supported by the executive but was waged only by a fraction of the political parties that comprised the governing *Concertación* alliance. On September 8th, 1996 the Chamber of Deputies presented a constitutional accusation against the high court ministers Zurita Campos, Alvarez Garcia, Navas Bustamante and Ortiz Sepulveda for dereliction of duty by applying the amnesty law in the case of the murder of a Spanish

¹⁷¹ *Situación de los Derechos Humanos Durante el Segundo Semestre de 1995*, page 7. Vicaría de la Solidaridad. See also Boletín *Informativo AFDD*, December 1995, year 2, Number 22.

¹⁷² Author’s interview with Viviana Díaz, AFDD, Santiago de Chile, September 24th, 2008. Juan Carlos Vega from CODEPU also acknowledged the importance of the movement in stopping this bill. Author’s interview conducted in Santiago de Chile on September 22nd, 2008.

¹⁷³ See AFDD, “Propuesta para la Paz y Reconciliación.” In Archives of the *Vicaría de la Solidaridad*, Santiago de Chile.

¹⁷⁴ *Situación de los Derechos Humanos Durante el Segundo Semestre de 1995*. Vicaría de la Solidaridad. In Archives of the *Vicaría de la Solidaridad*, Santiago de Chile.

citizen, Carmelo Soria Espinoza, on July 1976. The impeachment was proposed by four Socialist deputies, five from the PPD and two Christian Democrats.¹⁷⁵ The government and the Christian Democratic Party expressed their opposition to the accusation and the proposal was defeated in the lower chamber.¹⁷⁶

On September 23rd, 1996, the Military Prosecutor asked the Supreme Court to instruct lower courts to apply the 1978 amnesty law to all cases. The AFDD together with other human rights organizations, the PPD, and the Socialist Party made a legal presentation to the court demanding the request be rejected (Vicaría 1996 II).¹⁷⁷ The AFDD also met with the president of the Supreme Court and with the Minister of Justice Soledad Alvear to express its worries about this issue.¹⁷⁸ The tribunal did not go as far as instructing this order, but it did recommend the rapid resolution of the 100 pending human rights cases.

However, 1997 marks the year of an important change within the Supreme Court. After two years in which the amnesty law was increasingly applied to human rights cases,¹⁷⁹ on November 19th the Court reversed an amnesty law ruling in which a military court had previously decided to close the investigation of the 1974 arrests and disappearances of two Socialist Party members. This was the first time the Court had taken such a stance. Following this new trend on December 31st of that same year the

¹⁷⁵ The accusation was signed by Socialists Camilo Escalona, Isabel Allende, Fanny Pollarolo, Isidoro Tohá and Jaime Naranjo; from the PPD, Jorge Schaulsohn, Guido Girardi, Víctor Barrueto and Guillermo Ceroni; and Christian Democrats Gabriel Ascencio y Erick Villegas also joined, acting against the leadership of their party.

¹⁷⁶ See *El Mercurio*, September 8th 1996.

¹⁷⁷ *Situación de los Derechos Humanos Durante el Segundo Semestre de 1996 Vicaría de la Solidaridad*. In Archives of the *Vicaría de la Solidaridad*, Santiago de Chile.

¹⁷⁸ Boletín Informativo AFDD, October 1996, Vol. 3, No. 32.

¹⁷⁹ *Situación de los Derechos Humanos Durante el Segundo Semestre de 1995 and Primer Semestre de 1996. Vicaría de la Solidaridad*. In Archives of the *Vicaría de la Solidaridad*, Santiago de Chile.

tribunal reversed a new application of the amnesty law by a military court, this time in the famous case “Operación Albania.”¹⁸⁰

These two rulings advancing the demands for justice took place while President Frei had set in motion a reform of the Supreme Court composition. Although as was showed above, Frei was not a president receptive to human rights movement’s demands, his reform of the Supreme Court (which was motivated for other reasons)¹⁸¹ had significant, favorable, and unexpected consequences for the advancement of human rights trials. The number of judges was increased from 17 to 21, and most of the incumbent judges at the time were asked to retire. Thus, in 1998 only 4 of the 21 members of the court were appointees of the Pinochet era (Collins 2005: 112). The reform diminished the number of military allies on the high court and increased the chances that the human rights movement could achieve justice. These first 1997 rulings in favor of accountability were followed by ever more favorable measures handed down by the newly appointed Supreme Court. On September 9th, 1998 the court ruled that the crime of disappearance where no body was found was the equivalent of kidnapping and could be prosecuted as such. This implied that the crime was “*un delito permanente*” (a permanent crime), a crime that was still being committed in the present, and thus, not subject to the amnesty law which only applied to crimes committed between 1973 and 1978 (Collins 2005: 115). This was an argument human rights lawyers had used since the beginning of the trials but it was acknowledged by the Court only in 1998. On September 11th of that same year the

¹⁸⁰ In the case referred as “Operación Albania” 12 members of the Manuel Rodríguez Patriotic Front (FPMR) were killed in June 15 and 16, 1987 in an alleged armed confrontation with regime security forces.

¹⁸¹ The judicial reform was carried out in order to modernize judiciary for economic reasons.

court ruled for the first time that the Geneva Convention on the state of war was applicable to the period referred to in the amnesty law.¹⁸² These rulings were always passed with the opposition of the Army's Auditor to the court. Again, the argument that international law should take precedence over domestic law was made in all briefs filed by human rights lawyers. These rulings of the Supreme Court indicate a new direction in Chile's judiciary, one that is usually perceived to be a consequence of Pinochet's arrest in London, but the shift actually took place before these Pinochet's arrest (Collins 2005). The generational renewal of Supreme Court judges with members who had been educated in the relevance of international law were key to the advancement of the human rights trials.¹⁸³

Unlike the previous two presidents from the *Concertación* –Aylwin and Frei- Ricardo Lagos' electoral platform did not include the repeal of the amnesty law. Nonetheless, in the seven meetings with President Lagos the AFDD had throughout his term, they insisted on this demand. On August 2003 Lagos openly gave his reasons for not doing so to the press: “*A los organismos de derechos humanos no les gustó que no haya aceptado enviar un proyecto revocando la ley de amnistía creada por el gobierno de Pinochet. No tengo fuerza política para revocarla.*”¹⁸⁴ Later in the year in a document entitled “*No hay mañana sin ayer*” (There's no tomorrow without yesterday), Lagos confirmed this position stating that he left the interpretation of the Amnesty Law in the courts' hands (Diego Portales 2004). Human rights lawyer José Zalaquett describes Lagos as a “card

¹⁸² See *El Mercurio*, “Suprema Aplica Pactos de Ginebra por Desaparecidos,” September 11, 1998

¹⁸³ Author's interview with Claudio Fuentes, Santiago de Chile, November 5th, 2007.

¹⁸⁴ “The human rights organizations don't like the fact that I have not sent a bill repealing the amnesty law of Pinochet's government. I do not have enough political strength to do so.” See *La Nación*, August 18th, 2003. Cited in Diego Portales 2004.

dealer” (Collins 2005: 117) who sent the issue of finding the disappeared to the *Mesa de Dialogo* (see following sections) and the issue of the amnesty law to the courts.

However, events developed in a way that forced Lagos to take action in the human rights arena. On May 2003 the president of the opposition party *Union Demócrata Independiente* (Independent Democrat Union, UDI), Pablo Longueira, met with President Lagos to present a human rights proposal that he said had been agreed to by relatives of the disappeared (Vicaría 2003 I: 82). The AFDD immediately denied they had anything to do with this bill. The proposal offered economic reparations to the victims, the establishment of a time limit for the trials, the reduction of penalties to encourage informants, and the possibility of declaring the disappeared to be “presumed dead”. The AFDD rejected the proposal on the grounds that it was interfering with and limiting the trials. They claimed its purpose was to establish the death of the victims so that the amnesty law could be applied to the cases of the disappeared.¹⁸⁵

The proposal coming from the right-wing parties forced the government to take a stance on human rights and elaborate its own bill. In this case Lagos’ policies did not emerge as a direct response to the human rights movement’s demands. After receiving proposals from religious groups and different political parties, on August 2003 President Lagos announced his human rights program with the goal of accelerating the human rights trials, giving economic reparations to the victims, and ensuring a legal framework that would prevent these abuses from happening again. He thus introduced three bills in Congress: the first established incentives for people to provide information about the crimes against the disappeared; the second modified Law 19.123 of reparations, widening

¹⁸⁵ The Supreme Court has ruled in 1998 that the crime of disappearance was not subject to the amnesty law since it was a permanent crime still being committed, as long as no body had been found. Establishing the death of the disappeared might have erased this option.

the benefits to the families of the victims; and the third erased the criminal records of those convicted by military tribunals between 1973 and 1990. The last two bills were easily passed by Congress, but the first encountered strong opposition. The bill proposed a distinction between the level of responsibility of those who organized the repression and gave the orders, on the one hand, and those who were merely obeying them, were only accomplices, or were responsible for concealing the crimes, on the other. For those in this second group, there would be a reduction of sentences provided they collaborated with authorities by providing information. The identity of the informant would be preserved in anonymity (Diego Portales 2004). The Socialist Party rejected the bill. AFDD's president at the time, Lorena Pizarro, also rejected it stating that this was yet another proposal to ensure impunity (Vicaría 2003 II: 78). On April 2004 the bill was passed in the lower chamber while AFDD members present in the debate were forced to leave the building (Vicaría 2004 I). However on March 2005 the bill was rejected by the Senate. After an amendment was passed to gain the support of the Socialist Party, right-wing parties considered the incentives for informants to not be large enough and voted against the bill.¹⁸⁶

In 2004 the case of Miguel Angel Sandoval, who disappeared in 1975, reached the Supreme Court. The Sandoval case was considered to be a key test for the applicability of the amnesty law to the cases of the disappeared (Collins 2005). It was expected that whatever the court decided in this case would be highly influential for close to 300 other cases of disappearance. The government's legal agency, the *Consejo de Defensa del Estado* (CDE) had a prosecuting role in this case and had argued since the beginning for

¹⁸⁶ Proyecto Internacional de Derechos Humanos. Londres. Boletín No 109. March 1-15 2005. Viewed on October 30th 2008 at www.memoriaviva.com

the conviction of those responsible. However, in 2004 the head of this institution Clara Szczeranski came out in favor of not applying the amnesty law to this particular case but against the use of this legal loophole in future cases. The AFDD and other human rights organizations immediately condemned these statements, asked President Lagos to request Szczeranski's resignation, and denounced her in court for dereliction of duty (Vicaría 2004 II). The government responded that it did not agree with her statements but left her in her position. On November 17th 2004 the Supreme Court ruled against the application of the amnesty law to the crime of disappearance. This ruling has been considered historic since it opened the way to the continuation of the trials related to this particular human rights abuse.

On March 2006 Socialist candidate Michelle Bachelet took power as the fourth president from the *Concertación*. Her personal history as a victim herself of the military dictatorship gave high hopes to the human rights movement. She announced her intention to repeal the amnesty law and created a working group of legal experts to analyze what would be the best way to do so.¹⁸⁷ On April 21st of that same year a group of senators from the *Concertación* introduced a bill in Congress proposing the annulment of the amnesty law.¹⁸⁸ But it never reached the plenary sessions for discussion despite the fact that the *Concertación* had a majority in both chambers for the first time since the transition to democracy.

The case of the amnesty law and its incompatibility with international treaties signed by Chile was taken to the Interamerican Human Rights Court, which on September 26th

¹⁸⁷ Two professors from the Universidad Diego Portales: Jorge Mera and Antonio Bascunan.

¹⁸⁸ Senators Guido Girardi Lavín, Juan Pablo Letelier, Alejandro Navarro and Mariano Ruiz Esquide.

2006 ruled against the Chilean state and ordered the government to make sure that the amnesty law would not be applied again in any case of crimes against humanity (Diego Portales 2007).¹⁸⁹ In addition it called for all the cases in which the amnesty law had been applied to be re-opened. The IHRC considered the existence of this law by itself to be a violation of human rights and incompatible with the American Convention of Human Rights. It stated that all executions committed by the military regime were crimes against humanity, thus not subject to amnesty.

Once the IHRC ruling was announced, President Bachelet stated that Chile would fulfill its obligations with the international community. However she did not propose or support any concrete measures for doing so (Portales 2007). On June 11th 2008 a bill was introduced by *Concertación* legislators Alvear, Escalona, Girardi and Urrutia that would have made it impossible to apply amnesty to crimes against humanity and in the case of genocide. The bill was rejected in the Senate in March 2009. The president of the Senate, Jovino Novoa (UDI) introduced the bill in fifth place to be voted when only two senators from the *Concertación* were present. As a result, the bill was rejected by 9 votes against it (all from RN and UDI), and only two votes in favor.¹⁹⁰

However, the IHRC decision had an impact on the courts' behavior. After this ruling Chilean courts rarely applied the amnesty law in human rights trials. On April 2007 the Supreme Court ruled that the amnesty law could not be applied to any crime of execution in 1973. The novelty of this ruling was that for the first time all the Supreme Court judges

¹⁸⁹ This ruling was made in the case Almonacid Arellano and others vs. Chile. The murder of Almonacid, a Communist Party member, in 1974 was heard by the domestic courts and the amnesty law was applied in 1998.

¹⁹⁰ See Diario de Sesiones March 18th, 2009. Viewed on March 20th, 2010 at www.senado.cl

agreed on it.¹⁹¹ However, judges found other ways to avoid convicting those responsible for the abuses. Throughout 2007 the tendency was to resort to applying the statute of limitation, or to considerably reduce the penalties based on the justification that a long time has passed since the crimes were committed (Portales 2008). This is such that by 2008, out of 260 perpetrators who were convicted, only 51 were actually in prison (Portales 2009, 20).

3.3.1.1. The quest for accountability. Trials against Pinochet.

On December 1997, the DINA chief Manuel Contreras declared in a trial that he had always acted “according to orders given by the President of the Republic who, as the maximum authority behind the DINA was the only one who could order missions” (Collins 2005: 114). This was the first public acknowledgment of Pinochet’s responsibility for human rights abuses. On March 10th, 1998, General Pinochet stepped down as Army Commander in Chief. The following day he assumed his lifetime seat in the Senate. Protests took place outside the Palace of congress, and legislators from the *Concertación* entered the building carrying the pictures of the disappeared.

As a direct consequence of Contreras’ admission of Pinochet’s responsibility and preparing for the Pinochet’s accession to the Senate, on January 20th of 1998 the Communist Party presented a complaint of genocide against the dictator for the 1976 disappearance of five of the party’s leaders (Collins 2005: 140). Surprisingly the courts accepted it. Notwithstanding his judicial immunity as a Senator, by the end of 1998 fifteen criminal complaints against him were accepted by the courts. One of these was led by AFDD’s president at the time Soledad Sierra (Vicaría Informe 1998 I).

¹⁹¹ See *Página 12*, “La Corte anulo la amnistía de Pinochet”, April 1st, 2007.

In the Spring of 1998 Pinochet decided to go to England to have some medical exams performed. On October 16th, 1998 he was arrested by Scotland Yard in London based on a judicial order of Spanish judge Baltasar Garzón who was hearing the case of Spanish citizens who had been victims of the military repression in Chile.¹⁹² Frei's government immediately demanded an explanation from the United Kingdom, arguing that Pinochet was travelling on a diplomatic mission. The AFDD and the rest of the human rights organizations, pleasantly surprised by the news, celebrated their success. When the trial was opened in Spain in 1996, the AFDD contacted the Spanish lawyers in charge of the process and requested to be included as a plaintiff. They began working on this case, legalizing and certifying every single document they had on each of the disappeared to send to Spain. The goal was to show how justice has been denied to them in Chile in order to justify the need for the international trial. From their perspective, Pinochet's arrest made those two years of hard work worthwhile.¹⁹³

The arrest injected new vitality to the AFDD and the rest of the human rights movement. The AFDD declared itself to be in a state of "permanent vigil." Given the time difference between London and Santiago, they organized night long vigils to watch closely the developments of the case. In addition, an organization of former political prisoners was created to gather information on cases and to locate key witnesses to testify in the trial.¹⁹⁴ The actions of the human rights movement paid off initially when the House of Lords and British Home Secretary Jack Straw ruled in favor of Pinochet's

¹⁹² On July 1996 the National Spanish Court, the highest judicial body of the country, ruled in favor of the court's jurisdiction to hear cases of Spanish citizens disappeared and killed by the Chilean military regime.

¹⁹³ Author's interview with Viviana Díaz. AFDD, Santiago de Chile, September 24th, 2008.

¹⁹⁴ Author's interview with Pedro Matta, political prisoner, Santiago de Chile, October 24th 2007

extradition to Spain. However, by the beginning of the year 2000 the defense claimed Pinochet's health prevented him from being subjected to a trial. After conducting medical examinations on March 2nd, 2000 Jack Straw accepted these claims and allowed Pinochet to return to his country on "humanitarian grounds."

That same day of Pinochet's arrival, human rights lawyers and one legislator from the Socialist Party¹⁹⁵ made a presentation to Judge Guzman (who was hearing the domestic cases against Pinochet), demanding his *desafuero*, a judicial process to lift his immunity to criminal prosecution. On May 23rd of that same year the Court of Appeals ruled in favor of this measure by a margin of 13 votes to 9. On August 8th, the Supreme Court confirmed the *desafuero* by 14 votes against 6. By the end of the year 2000 202 trials had begun against Pinochet.

On July 1st, 2002, the Supreme Court ruled that Pinochet was not mentally fit to stand trial in a 4 to 1 vote in the case known as "*Caravana de la Muerte*."¹⁹⁶ Although he managed to avoid conviction, this was not a complete victory. As in the trial in London, Pinochet's defense was unable to prove his innocence and he was only freed due to health reasons. In addition, since he was declared mentally incompetent, he was forced to resign his seat as a designated Senator, decreasing the traditional control he had over this chamber since the transition. There are also many versions of the story which state that there was a secret agreement between the government and the Army. The government committed to having Pinochet absolved for health reasons in exchange for having him

¹⁹⁵ The human Rights lawyers were Hugo Gutiérrez, Eduardo Contreras, Carmen Hertz, Hiram Villagra, Alfonso Insunza, and Boris Paredes. Juan Bustos was the Socialist legislator involved in this presentation.

¹⁹⁶ Caravan of Death was the name given to a special group in the Chilean Army that went around the country in October 1973 after the coup murdering more than 120 people opposed to the regime, mainly members of the Socialist Party, MIR (Revolutionary Left Movement) and the Communist Party.

resign his seat in the Senate (Diego Portales 2003: 192). Judge Guzman –hearing the cases against Pinochet- alleged that he was subjected to “subtle and not-so-subtle” pressures by government officials to bring the case to a halt (Collins 2005: 118).¹⁹⁷

However, this was not the end of cases brought against Pinochet. On April 23rd, 2006 the Supreme Court ruled in favor of Pinochet’s *desafuero* in the case known as *Operación Colombo*. In October of that same year Pinochet was put under house arrest for the crimes of murder, disappearance and torture in the detention center in Villa Grimaldi. However, an unexpected event put a halt to all these trials. On December 10th 2006 Pinochet died of a heart attack in a Military Hospital. At the time, the Court of Appeals had confirmed 9 indictments against him (Diego Portales 2007). He died with no convictions against him.

3.3.1.2. Successes and failures in the struggle against the 1978 Amnesty Law

The demand for the repeal of the amnesty law has not been addressed to this day (December 2009). None of the democratic governments introduced a bill or supported those presented in Congress by individual legislators of the *Concertación* or by the AFDD. The argument used by these administrations was that they did not have the necessary majority in Congress to do so. However, the government had a congressional majority under the Bachelet administration and the law was not passed, suggesting this justification was unreliable.

Notwithstanding the persistence of the law, the human rights movement has scored some partial successes in the way the law has been interpreted. While before 1997 most judges and the Supreme Court chose to close cases automatically without even starting an

¹⁹⁷ This fact was also mentioned in my interview with Pedro Matta, Santiago de Chile, October 24th, 2007

investigation, after this date the courts began to reject its application in the cases of the disappeared, and when they did apply it, they did so in the later stages of a case, thus allowing for a full investigation to take place. The 2004 Supreme Court ruling on the Sandoval case was taken as the test case for the application of the amnesty law. The fact that the court ruled against its application in the cases of disappearance was a major success for the human rights movement. However, we must take into account the fact that jurisprudence is not binding in the Chilean judicial system. The interpretation of the law is only valid for the current case and does not automatically apply to similar ones (Collins 2005: 156). This fact points to the need for repealing the amnesty law once and for all if real justice is to be achieved in the cases of human rights abuses. In the current situation whether or not the amnesty law is applied depends on the judge hearing the case, which makes justice highly unpredictable. And although there has been a gradual increase in rulings against the application of amnesty, some rulings have allowed the amnesty law to prevail. What is more worrisome for the human rights movement is that there is also a possibility that this trend may be reversed at any moment, particularly now that a right-wing government had come to power as a result of the 2009 elections. Sebastian Piñera, the victorious presidential candidate for the right-wing alliance of parties, had already stated before his election that he planned to shorten the trials for human rights abuses.¹⁹⁸ In 1995 he was the author of a bill to extend the 1978 amnesty law to the crimes committed up until 1990.

3.3.2. *Where Are the Disappeared? The Struggle for the Truth*

Members of the AFDD have consistently demanded that their missing relatives be found. Once they realized that their loved ones were not going to return alive, they began

¹⁹⁸ See *Clarín*, “Piñera promete acortar los juicios contra los militares”, November 13th 2009.

to ask for their bodies. When the democratic transition started in 1988, the AFDD thought the newly elected government would put pressure on the military and police forces to hand over the archives of the repression and to reveal what they knew about the disappeared. However, not much time had passed when they realized that even though Pinochet was leaving power he ensured things would still be under his control. Not only was the transition going to take place under the rules of the 1980 Constitution, but also right before handing in power (between December 1989 and March 1990) Pinochet passed the “*leyes de amarre*.” Pinochet limited the number of public sector posts the new administration was able to appoint, attempted to pack the Supreme Court and the Constitutional Tribunal with sympathetic judges, decided to remain as Commander in Chief until 1997, placed his unconditional supporters in the top military positions, and established that the military budget could never fall below the 1989 level adjusted for inflation. He ordered the *Centro Nacional de Informaciones* (National Center of Information, CNI) and the *Dirección de Inteligencia Nacional* (National Directory of Intelligence, DINA) to destroy their archives and in January 1990 he passed the Organic Constitutional Law of Congress which prohibited congressional investigations of his government.

All these measures would prove to be a difficult obstacle standing in the way of the demand for truth. Each of the four democratic governments of the *Concertación* attempted to find out the truth about the human rights abuses through different means, but the military has not collaborated at all in this endeavor. This is true even after many of Pinochet’s ‘*amarres*’ were modified, even after his imprisonment in London, and even after he passed away. The armed forces have consistently not cooperated with the

successive governments in releasing any new information or opening archives to help the families of the victims learn the truth. Moreover, whenever they did provide new information, it was eventually discovered to be false.

3.3.2.1. The Commission of Truth and Reconciliation

On January 25th, 1990 the AFDD met with President Patricio Aylwin and presented him with a proposal for a commission to investigate the truth about human rights abuses. The President replied by saying he would study the proposal and highlighted the political difficulties of such an endeavor (AFDD 1990). He suggested the way of avoiding these difficulties might be to pass a supreme decree calling for the creation of a commission,¹⁹⁹ which in fact ended up being the way the commission came into existence on April 24th.²⁰⁰ Aylwin told the AFDD that the Commission should have a pluralist character including members from all areas of society. The AFDD accepted this condition as long as the members were not been involved in the crimes they were supposed to investigate. The AFDD was also given the opportunity to suggest possible members. In the end, two of the final members were picked from those the movement had selected: Jaime Castillo Velasco²⁰¹ and José Zalaquett.²⁰² In spite of Aylwin's agreement not to appoint any members with links to the abuses, the three right-wing representatives had all held positions under Pinochet's regime; one of them chaired the Human Rights Commission and the other was a member of the Supreme Court.

¹⁹⁹ Author's interview with Viviana Díaz, AFDD, Santiago de Chile, September 24th, 2008.

²⁰⁰ Supreme Executive Decree No. 355. On April 23rd the AFDD sent a letter to the President demanding that he speed up the creation of the commission. The next day the decree was passed (AFDD 1990).

²⁰¹ Co- founder of the Chilean Human Rights Commission.

²⁰² Human rights lawyer and former Chair of Amnesty International's Executive Committee.

The movement's input into this commission in the end was limited to the suggestion of two of its nine members.²⁰³ Despite being involved in the initiative to create the Commission, they had no input in its design and in the articulation of its mission. Thus, when the AFDD heard the name given to the commission –Truth and Reconciliation– they were surprised to learn that the word ‘Justice’ had been dropped. This was for them a clear sign that Aylwin's government would not give priority to their demand of justice.²⁰⁴ It was their first disappointment.

The Commission was, as in Argentina, formed by a group of notables appointed by the President. Its goals were to produce both a ‘global’ and ‘individual’ truth, accounting for the general circumstances that led the way to the military repression and for each of the cases of human rights abuses. It was to recommend reparation policies and measures to create a culture of respect for human rights in order to avoid a repetition of history. As a concession to the right, the crimes to be investigated were terrorist acts resulting in death, excluding other violations such as torture, and the period of investigation would include both Allende and Pinochet's government (Barahona de Brito 1997: 155-156). This equating the victims of state repression and guerrilla violence was of course rejected by the human rights movement.²⁰⁵ Confirming the AFDD's worst fears that

²⁰³ The Commission of Truth and Reconciliation was presided over by Raul Rettig Guissen. Its members were: Jaime Velasco (founder of the Chilean Human Rights Commission), José Luis Cea Engaña (a conservative constitutional lawmaker), Monica Jimenez de la Jara (a member of the Christian Democratic party), Ricardo Martin Díaz (Ex minister of the Supreme Court under Pinochet, President of the military regime's Commission of Human Rights and designated Senator), Laura Novoa Vazquez (lawyer and personal friend of the President), Gonzalo Vial Correa (Minister of Education under Pinochet in 1979), José Zalaquet (human rights lawyer and former Chair of Amnesty International), and Jorge Correa.

²⁰⁴ Author's interview with Viviana Díaz, AFDD, Santiago de Chile, September 24th, 2008.

²⁰⁵ Author's interview with Viviana Díaz, AFDD, Santiago de Chile, September 24th, 2008.

justice would not play any part in the Commission's work, the rules also ensured that the names of those found guilty would not be made public, and the commission had no power to call individuals to testify. The government's goal was for the commission to be a means towards truth and moral and political justice, not retributive justice (Barahona de Brito 1997: 157). The final limitation was that of its timing; the commission was to finish its work in nine months.

In spite of its strong disagreements with the Commission's mission and composition, the AFDD cooperated fully with this institution, as did the rest of the human rights organizations. However, no branch of the Armed Forces cooperated at all (Collins 2005: 82).²⁰⁶ The military responded to the Commission's numerous requests for information that it had been destroyed, or that it was protected by secrecy laws (Barahona de Brito 1997: 158). Most of the information that went into the final report came from the human rights movement's records, in particular from the archives of the *Vicaría de la Solidaridad*, which had done a very efficient job of keeping and organizing the files of the victims. In this sense, the human rights movement was disappointed once again. Even when they recognized that the Commission's acknowledgement that the state committed human rights abuses was an important step, the commission added next to nothing in terms of knowing the truth of what happened to the victims and the location of their bodies.²⁰⁷ All the information published in the report had already been in their hands for many years.

²⁰⁶ Author's interview with Viviana Díaz, AFDD, Santiago de Chile, September 24th, 2008.

²⁰⁷ Author's interview with Viviana Díaz, AFDD, Santiago de Chile, September 24th, 2008.

The report established the institutional responsibility of the armed forces for state repression and the existence of 2,115 cases of deaths as a consequence of state actions, and 641 caused by terrorist acts. In addition, it made a series of recommendations, some of which the Aylwin government implemented. It recommended economic reparations, which were carried out through the Reparations Law of January 1992²⁰⁸ and the Law of the Exonerated in August 1993.²⁰⁹ In addition the commission stated the need to reform the judiciary and the armed forces to prevent a similar situation from repeating itself. This proved to be much harder to achieve, as will be seen in following sections.²¹⁰ The military's response to the commission was that of denial. It did not apologize for its deeds; indeed, the military blamed Allende's government for starting the wave of violence, and stated once again that there existed a state of war during the Pinochet regime (Barahona de Brito 1997: 166).

Given that the Rettig Commission (as it was known because of the last name of its president) had a mandate to work for nine months, another institution was created to investigate the cases that were not covered by the original one. On February 8, 1992 the government created the *Corporación Nacional de Reparación y Reconciliación* (National Corporation of Reparation and Reconciliation).²¹¹ The inclusion of the word 'reparation' was due to AFDD's insistence, given that Aylwin wanted it to be a commission of

²⁰⁸ The law awarded a monthly salary of 380 dollars to 7,000 families in addition to health and educational benefits.

²⁰⁹ The law compensated 55,000 former public and private employees fired for political reasons during the Pinochet regime.

²¹⁰ The government encountered strong resistance from the right, the Supreme Court and the military to these reforms, and they failed to be passed in Congress.

²¹¹ Law 19.123.

‘reconciliation’ alone (Barahona de Brito 1997: 174). Its mission included the task of locating the bodies of the disappeared. However, this was not possible given the lack of cooperation from the military. By January of 1994 the *Corporación* was still searching for 1,553 bodies; of the 2,119 pending cases, it obtained partial information on only 793. In 1996, when the *Corporación* ended its mandate the AFDD acknowledged the new information but criticized the fact that there were still more than 1,000 disappeared persons to be found.²¹²

3.3.2.2. *Mesa de Diálogo*

Towards the end of his mandate, in the context of Pinochet’s arrest in London, President Frei abandoned his indifference towards the issue of human rights and proposed the creation of a *Mesa de Diálogo* (dialogue table) to find a consensual solution to the problem of the disappeared. He invited representatives from different sectors of society to be part of this initiative: four members of the Armed Forces, four human rights lawyers,²¹³ and ten other renowned personalities from the religious and secular worlds. The AFDD and other victim’s organizations were invited but declined to participate. They considered the primary goal of the initiative was to bring General Pinochet back to Chile. In addition, they thought this instance represented an obstacle to the ongoing civil trials, and that it was limiting the issue of human rights to finding the bodies of the disappeared (Vicaría 2000 I).²¹⁴ The only human rights organization that took part in this initiative was FASIC. The Mesa created deep divisions within the human rights

²¹² Boletín Informativo AFDD, December 1996, Vol. 3, No. 34.

²¹³ These were the human Rights lawyers that accepted to participate in this government initiative: Jaime Castillo Velasco, Pamela Pereira, Roberto Garretón, and Héctor Salazar

²¹⁴ Boletín Informativo AFDD, August 1999, year 6, number 67

community, and many relatives of victims withdrew their cases from the lawyers that participated in this initiative (Collins 2005).

Once Frei's presidency was over and socialist president Ricardo Lagos took power in March 2000, the AFDD thought the proposal for the *Mesa de Dialogo* would be abandoned. Given the support they usually got from the Socialist Party in Congress, and that Lagos was the first socialist president elected after Allende, they had high hopes that their demands would be addressed by the new administration. Early in Lagos's mandate the AFDD met with the new government's ministers and requested the suspension of the initiative. On March 20th they made a legal presentation to the Court of Appeals against the project since it limited the role of investigation and sanctioning proper of the civilian courts. However, their efforts failed, and Lagos decided to continue Frei's plan and to launch the *Mesa*. After months of deliberations the Mesa reached an agreement in which the armed forces committed to try their best to obtain information about the whereabouts of the bodies of the disappeared. Those who would come forward with information would be protected and their identity kept anonymous (Diego Portales 2003). Catholic priests, protestant pastors and Jewish rabbis were assigned to receive information about the disappeared under the promise of strict confidentiality. On January 2001 they all handed in the information gathered to President Lagos, who passed it on to the Supreme Court to name special judges for these cases.

The main and only achievement of this initiative was that for the first time the Armed Forces officially acknowledged they had been part of human rights abuses during the Pinochet dictatorship. However, the achievements for the human rights cause ended here. When the *Mesa's* report was made public, the AFDD confirmed it had taken the right

decision in not participating in the Mesa. The information on the disappeared offered by the armed forces referred only to 180 of the approximately 4,000 disappeared. To make matters worse, it stated that of those 180, 130 had been “thrown into the sea”, making the recovery of their bodies impossible. The only real information offered was that of three places –an old mine in *Cuesta Barriga*, a former office of a salt industry (*Oficina Salitrera Ramírez*) and the Army’s fortress *Fuerte Arteaga* - where approximately 20 bodies could be found. Some information was found to be inconsistent with the data the human rights movement had been gathering since the days of the dictatorship. There were some obvious cases of careless reporting in which the date of death given by the military was prior to the date of disappearance.²¹⁵ The human rights movement also found suspicious that the information gathered was almost all related to the most emblematic cases such as the relatives of the AFDD’s and Communist Party’s leaders and of renowned human rights lawyers (Vicaría 20001 I). They thought this was a strategy to prove the disappeared were dead so as to make it possible for the judges to apply the amnesty law (Diego Portales 2003).²¹⁶ The AFDD summarized their reasons for the rejection of the report in their monthly bulletin in this way:

“El informe es global y no individualiza la responsabilidad de cada una de las ramas de las FFAA y tampoco de los diversos organismos de seguridad. Asimismo, quedan también en el silencio los nombres – tan conocidos para nosotros- de los culpables de la detención, de la tortura y de la muerte de nuestros seres

²¹⁵ Author’s interview with Juan Carlos Vega from CODEPU, Santiago de Chile, on September 22nd, 2008

²¹⁶ Human rights lawyers had claimed from the beginning that since no body had been found on most cases, the crime of kidnapping was ongoing, and thus the amnesty law (which applied only to crimes committed only from 1973 until 1978) could not be applied to these cases. This led to the paradoxical situation that defendants would claim they murdered their victims, not just kidnapped them, in order for their crime to be subject to the amnesty law.

queridos. Por eso calificamos este informe de encubridor de las responsabilidades de las FFAA y de asociaciones ilícitas como la DINA y CNI. En cuanto a la calidad de la información, su insuficiencia se manifiesta en la falta de antecedentes de cómo fueron asesinados nuestros familiares.”²¹⁷

However, they trusted the little information they got in the hope of finally finding the bodies of their relatives. Their trust did not last long. Only few months later once the excavations in the places identified by the armed forces began, many of the data given by them was found to be incorrect. The bodies the armed forces said were there were not, and the few bodies that were found belonged to other victims that had been said to have been thrown into the sea.²¹⁸ To express their criticisms of the outcomes of the *Mesa de Dialogo* in 2002 the AFDD made a public declaration entitled “*A un año de la coronación de la farsa*” (One year after the coronation of the farce) in which they state that “*el Informe sólo nos ha traído más dolor, más incertidumbre y más indignación.*”²¹⁹

One collateral effect favorable to the cause of human rights was that the Mesa handed in its report to the courts who in time appointed Visiting Judges to hear those cases. The cases that were heard by these judges moved faster than the others (Collins 2005).

²¹⁷ “The report is global and does not individualize the responsibility of each of the branches of the armed forces, nor of the rest of the security enforcement bodies. In addition, there is silence regarding the names –well known among us- of those guilty of the detention, torture and murder of our loved ones. This is why we believe that this report is covering up the responsibilities of the Armed Forces and the illicit associations such as the DINA and CNI. In terms of the quality of the information, its insufficiency is clear in the lack of information on how our relatives were murdered” Boletín Informativo AFDD, January 2001, year 2001, Number 84.

²¹⁸ To make matters worse, on September 2002 a journalistic investigation from the newspaper La Nación found out that the wife of one of the generals in charge of receiving information from the armed forces belonged to the *Comando Conjunto*, a group responsible for many disappearances that had recently regrouped to obstruct the human rights trials. General Patricio Campos was forced to resign. Boletín informativo AFDD September 2002, Vol. 9, No. 104.

²¹⁹ The report has brought us more pain, more uncertainty and more anger. See Informe de Derechos Humanos de la Vicaría, 2002, 1st semestre, page 4.

3.3.2.3. *National Commission on Political Imprisonment and Torture*

One of the proposals included in Lagos's human rights program was the creation of a truth commission for the crimes of political imprisonment and torture.²²⁰ These crimes had been excluded from the initial Truth and Reconciliation Committee which focused only on the crimes of disappearance. Although the focus of this chapter is on the AFDD's demands and this commission was addressing other crimes not related to this organization, I believe it useful to briefly mention this government initiative which was part of the truth policies of the Lagos administration.

Like the Rettig Commission, the National Commission on Political Imprisonment and Torture had also been formed in response to the demands of the human rights movement. Many human rights organizations had created the *Comisión Ética Contra la Tortura* (Ethical Commission Against Torture)²²¹ that launched a campaign demanding the government create a truth commission to deal with this particular crime. AFDD was not part of this group, but supported their efforts. The Lagos government thus agreed to the creation of such commission. Its importance lies not only to the fact that this report officially acknowledged that imprisonment and tortured were much more widespread than previously believed, but also that after the publication of the report the Armed Forces admitted a mea culpa for their role in the repression apparatus for the first time.

²²⁰ Supreme Decree N° 1040. The Commission was headed by Father Sergio Valech Aldunate and the vice president was María Luisa Sepúlveda. Other members were: Miguel Luis Amunátegui, Luciano Fouillioux, José Antonio Gómez, Elizabeth Lira, Lucas Sierra y Alvaro Varela.

²²¹ The *Comisión Ética Contra la Tortura* was formed by SERPAJ, CODEPU, Instituto Latinoamericano de Salud Mental (ILAS), Centro de Investigación del Tratamiento del Stress (CINTRAS), Sección chilena de Amnistía Internacional, Corporación Parque por la Paz Villa Grimaldi, Agrupación de ex presos políticos, profesionales por los derechos humanos, comunidades de base de Villa Francia, Revista Reflexión y Liberación, Movimiento Somos Iglesia.

The goal of this commission was to write a detailed report on the crimes of political imprisonment and torture, and suggest economic reparations for the victims. The final report included the names of 27,255 people who were acknowledged as victims of torture, and identified 1,132 places of illegal detention and torture around the country (Diego Portales 2005). The Commission recommended economic reparations to all the victims regardless of the length of time they were kept in prison. Only days after the report was made public Congress passed a government law (No 19,226) implementing some the Commission's recommendations. The most controversial article of this law was the decision to keep the information about those responsible for the torture secret for 50 years.²²²

3.3.2.4 Recent truth initiatives

After the Commission on Political Imprisonment and Torture finished its work, the AFDD began demanding the creation of a new commission or the extension of the Valech commission to hear the testimonies of all those who have not been able to do so until the present (Portales 2009, 23). In response to this demand President Bachelet announced the creation of the third truth commission with the goal of receiving new denunciations and offering economic reparations to the newly identified victims. The General Secretary to the Presidency José Antonio Viera Gallo stated that this decision was part of the commitment the government made to the human rights movement.²²³

On August 2007 the government released a report identifying 1,132 buildings that were used to detain, torture and execute those who opposed the Pinochet regime. Five

²²² The National Association of Former Political Prisoners has denounced the state of Chile in the Interamerican Commission of Human Rights because of this clause.

²²³ See *Página 12*, "Bachelet creara un ente de Derechos Humanos", August 24th, 2007.

hundred of those were military quarters and police stations. This project was initiated under the Lagos administration and completed under President Bachelet.²²⁴

3.3.3. *Democratization of the judicial branch*

The democratization of the judicial branch has been a main demand of the AFDD since the transition (AFDD 1990 and 1991). From early on under Pinochet's dictatorship the human rights movement had a strong legal strategy resorting to the courts to ask for the fate of their relatives. However, the judiciary showed no will to respond to the movement's actions. Only 10 of the 8,900 writs of *habeas corpus* they presented between 1973 and 1990 were accepted by the courts (Diego Portales 2003: 144). This made it clear that the courts were being complicit with Pinochet's repressive policies, and thus, when the democratic transition began, the movement demanded the removal of all those judges linked to the dictatorship. This was of course an almost impossible task given the widespread collaboration of judges in blocking judicial proceedings pertaining to the disappeared. However, the movement saw this as an essential step to ensure justice for human rights abuses (AFDD 1990). From early on in 1990 they demanded the resignation of the Supreme Court judges (AFDD 1990) given their extensive collaboration with Pinochet's regime which became even clearer after the tribunal ruled in favor of the Amnesty Law.

The Aylwin government was sympathetic to these demands. The program of the *Concertación's* first administration promised to "guarantee the authentic independence of the judicial power, providing it with broad and sufficient powers to make it into a true guarantor of human rights and public liberties" (Barahona de Brito 1997: 174). However, the government and the human rights organizations differed over how to achieve this.

²²⁴ See *Página 12*, "El mapa de la represión de Pinochet", August 2nd, 2007.

The AFDD wanted the resignation of all judges involved in covering up the dictatorship's deeds (AFDD 1991), while Aylwin's judicial reform was limited to the creation of a National Council of Justice, an Ombudsman, and the appointment of new members to the Supreme Court (Barahona de Brito 1997: 175). However, even these limited reforms were opposed by both right-wing parties and the Supreme Court itself.

The reform of the Supreme Court had to wait until President Frei was in power. While his judicial reform was motivated by the need for a modernized judiciary for economic reasons, these changes paved the way to the removal of most of the members associated with Pinochet. It was this turnover that explains why from 1998 onwards there were some rulings favorable to the demands of the human rights movement.

There was clearly some similarity in the demands for the democratization of the judiciary within the human rights movement and the Aylwin's government platform. The movement and the government shared the goal of ensuring the guarantee of human rights. Their agreement on this issue is at least partly explained by the fact that representatives of the movement were meeting on a regular basis with the *Concertación* at the time it was drafting its platform, which ensured that the issue of human rights would be included in the coalition's program of government. However, as it was described in previous sections, once the *Concertación* took power the movement became less influential in many areas of government policy, including the democratization of the judiciary.

Under Frei, the Supreme Court reform that resulted in benefits for the movement did take place. However, given the lack of access the human rights movement had to

President Frei, it is not possible to establish a strong connection between the movement's demands in this area and the judicial reform launched by his administration.

3.3.4. Ratification of International Human Rights Treaties

The AFDD has since the beginning of the democratic transition demanded the ratification of international human rights treaties as a path towards accountability for the abuses committed by the dictatorship. In their attempt to avoid the application of the Amnesty Law human rights lawyers have from the beginning of the trials invoked international human rights treaties arguing they overrule domestic legislation. However, at the time of the democratic transition Chile was not a party to many of the main human rights conventions. Thus, it was natural for the human rights movement to make this one of their main demands.

After assuming power President Aylwin ratified the American Convention on Human Rights in 1990. The AFDD was present in Congress during the debate (AFDD 1990). However, the government made an explicit declaration stating that this Convention would be applied to events after March of 1990, leaving the abuses committed during the dictatorship outside of its coverage.²²⁵ In spite of this initial commitment to international human rights law, most treaties had to wait until the Bachelet administration took power with a majority in both chambers since the right-wing legislators in the Senate blocked the ratification of all treaties that would have limited Chile's judicial sovereignty.

In 1994 Chile signed the Interamerican Convention on Forced Disappearance of Persons. In 1998 the AFDD made a special visit to the human rights commission in the

²²⁵ See Chile's reservations at the time of becoming part of the Convention at <http://www.cidh.oas.org/Basicos/English/Basic4.Amer.Conv.Ratif.htm>

Senate to demand its ratification.²²⁶ Finally, on July 31st 2003 the Senate ratified the convention. However, the Constitutional Tribunal rejected Congress' ratification based on the fact that a measure of this kind required a supermajority of four-sevenths of the Congress, not a simple majority). In November 2007 the lower Chamber voted on the treaty but rejected it (Portales 2009). As of December 2009 Chile had not yet ratified this convention.

In May 2006 the AFDD handed President Bachelet a document that emphasized the need to ratify all the human rights instruments to which Chile was still not a signatory.²²⁷ It was only in 2009 (the last year of the Bachelet administration) that the government assigned urgency to the bills in Congress related to international treaties of human rights, and succeeded in passing them. Chile ratified the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity, and the International Criminal Court in July and August 2009 respectively. In December 2009, Congress ratified the United Nations Convention on Forced Disappearance.

3.3.5. Creation of a Human Rights Institute

In 2004 Ricardo Lagos announced his intention to create a human rights institute, and in June 2005, introduced the bill in Congress to do so. However, the law was not passed until December 10th, 2009 due to many controversies associated with the mission and powers of the institute. In the first stages of the bill the AFDD, working together with the Human Rights Commission and the Commission on Constitution Legislation and Justice of the lower chamber, was very involved in the design of the institute. On May 2006 the

²²⁶ Boletín Informativo AFDD July 1998 year 5 Number 54

²²⁷ The demands included the ratification of Interamerican Convention on Forced Disappearance, the Treaty of Rome, and the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity.

AFDD handed President Bachelet its proposal for the mission and functions of the human rights institute. However, when the bill was negotiated in Congress, the bill was amended such that the AFDD rejected the final version of the law which was passed in 2009.

AFDD President Lorena Pizarro stated that the institute “*no cumple con todos los reparos que hizo la ONU a esta iniciativa legislativa y no cumple con todos los reparos que nosotros teníamos.*”²²⁸ The AFDD’s main objection was that the institute does not have the authority to be a complainant in cases of abuse that predate its creation. In addition, it sees the institute as lacking autonomy from the government and criticizes the exclusion of the crime of torture from the institute’s scope. For these reasons the AFDD decided not to participate in the official act to inaugurate the Institute.²²⁹

3.4. Systematizing State Response

As was done with the case of Argentina, I coded the state response to the Chilean human rights movement using the five dimensions defined in Chapter 1: (1) access, (2) agenda setting, (3) government policy, (4) policy output; and (5) institutional change (refer back to Table 1.1.).

The first dimension of state response is *access* and it is measured in two different ways: first by the number of times the AFDD met with the president, and second, by the number of incidents of repression the group suffered under each administration. Unlike Argentina in which there is an inverse relationship between the number of times the

²²⁸ The Institute “does not address all the issues raised by the UN about this legislative initiative, and does not address all the issues raised by us.” See “Presidenta de AFDD critica fundamentos de Derechos Humanos” viewed on December 12, 2009 at <http://www.emol.com/noticias/nacional/detalle/detallenoticias.asp?idnoticia=386336>

²²⁹ See *Pagina 12*, “Bachelet crea instituto de derechos humanos” November 25th, 2009.

movement met with the President and the number of repression incidents they suffered, in Chile even under administrations that were quite accessible to the AFDD, the movement was equally repressed. The commemorations of the anniversary of the coup d'état every September 11 have been until this very day quite violent. On six of these occasions there were deaths as a result of police repression, and there was only one year (1991) in which no one was wounded. The AFDD as part of the National Assembly for Democracy and Social Justice, the organizer of these demonstrations, has suffered this repression. Table 4.3 shows the number of deaths, wounded and imprisoned on each of these anniversaries.

The AFDD met three times with President Aylwin, the first time early in his mandate to present him with their proposal for a truth commission (AFDD 1990). The second one took place on November of 1990, when the AFDD demanded that the government ratify international human rights treaties; democratize the judiciary; annul the amnesty law; democratize the Armed Forces; dismantle the repressive apparatus; require the military to provide information about the disappeared; and award economic reparations to victims of state repression and their families (AFDD 1990). The final meeting in July 1991 focused mainly on the AFDD's proposal for reparations (AFDD 1991). Even when very few of the demands presented in their meetings were addressed (mainly the truth commission at the time), Aylwin was generally receptive to the AFDD's proposals. However, there were seven incidents of repression, two of which targeted AFDD members while demonstrating and five were aimed at the crowds commemorating the anniversary of the coup d'état in which the AFDD was present.

TABLE 3.2
STATE RESPONSE TO HUMAN RIGHTS MOVEMENTS
IN CHILE. 1990-2010

Dependent Variable. State Response to Chilean Human Rights Movement				
Dimensions	Aylwin 1990-94	Frei 1994-2000	Lagos 2000-06	Bachelet 2006-10
1.1. Access: No. of meetings with the President	3	1	7	3
1.2. Access. No. of incidents of repression*	7	9	5	6
2. 1. Agenda Setting: Inclusion of hr issues in party's platform.	Annulment of amnesty law in <i>Concertación's</i> program.	Annulment of amnesty law in <i>Concertación's</i> program.	Hr is in program but emphasis is on truth. No reference to amnesty law.	Hr in program but no reference to amnesty law. Creation of a HR program and a National Archive of Memory.
2.2. Agenda Setting: No. of bills related to hr introduced in Congress**	Pro HR: 1. Against: 1	Pro HR: 5. Against HR: 5	Pro HR: 11 Against HR: 5	Pro HR: 8. Against HR: 1
3-Government Policy: pro or against human rights***	Pro HR: Rettig Commission. <i>Corporación Nacional de Reparación y Reconciliación.</i> Against HR: Supreme Court ratifies Amnesty Law.	Pro HR: Judicial Reform. Supreme Court rules disappearance as a permanent crime. (<i>Mesa de Dialogo</i>)	Pro HR: Valech Commission. (<i>Mesa de Dialogo</i>)	Pro HR: HR treaties ratified. National day of the disappeared. (Creation of Human Rights Institute)
4-Policy Output: No. of judicial convictions	3	35	115	260
5-Institutional Change: creation of hr government institutions		HR Program within the Ministry of Interior to continue <i>Corporación's</i> job.		(Creation of a HR Institute.)

*These are incidents in which members of the human rights groups are particularly targeted and arrested.

**Those coded are only the bills strictly related to the demands of the human rights movement.

***The policies that are in parentheses refer to those that initially could be seen as favoring the human rights movement's demands, but given that their results were highly unsatisfactory they have been rejected by the movement.

Under the Frei administration the AFDD was ignored and their continuous demands for meeting with him were rejected. The only time they met with President Frei was after organizing a sit-in across from the government palace and refusing to leave until they got an interview. They finally did meet with President Frei on January 1999. However, the president treated them with indifference and committed to nothing.²³⁰ The level of repression increased somewhat during his administration; in all, there were nine incidents, three of which were directed against AFDD members, and the other six took place during the commemoration of the September 11th anniversary. During Frei's mandate AFDD president Viviana Díaz received death threats, and CODEPU's offices were ransacked.

President Lagos was much more receptive to the AFDD, meeting with them seven times during his mandate. After Frei's indifference, the AFDD welcomed Lagos's attitude calling it "*un signo esperanzador*" (a sign of hope).²³¹ However, his support for the *Mesa de Diálogo* and his policy towards Pinochet's arrest in London demoralized the AFDD as the years passed. In terms of repression, in spite of the open communication channel with the president, there were five incidents. However, this time, none of them targeted the AFDD directly. All of them took place on occasion of the September 11th demonstrations.

²³⁰ Author's interview with Viviana Díaz, AFDD, Santiago de Chile, September 24th 2008.

²³¹ Boletín Informativo AFDD, January 2000, year 7, number 72.

President Bachelet was considered by the AFDD to be the president that gave them the most access. Not only did she meet six times with them, but on one of these occasions, on May 2006, Bachelet visited the AFDD offices for a working meeting. The

TABLE 3.3
INCIDENTS OF REPRESSION DURING THE
SEPTEMBER 11 COMMEMORATIONS OF THE 1973 COUP D'ETAT
1990-2006

Year	Deaths	Wounded	Detained
1990	0	13	146
1991	0	0	15
1992	0	3	1
1993	2	33	215
1994	0	3	171
1995	1	4	169
1996	0	38	224
1997	0	17	327
1998	2	77	327
1999	1	30	23
2000	0	10	201
2001	1	5	257
2002	0	14	505
2003	0	28	396
2004	0	37	205
2005	1	8	49
2006	0	81	456

Source: El Mercurio.

AFDD took advantage of this occasion to present a document with 22 points to be addressed, among them were the acceleration of the creation of the Human Rights Institute, the characterization of the crime of forced disappearance as a crime against humanity, the ratification of human rights treaties, and limiting the jurisdiction of the

military courts.²³² President Bachelet was also the first president to participate in many of the acts to honor the victims of the dictatorship organized by the human rights movement. However, repression against the movement did not stop. There were six incidents, three of them targeting the AFDD directly, and the other three related to September 11th demonstrations. On September 10th 2007, leading members of the AFDD Viviana Díaz and Mireya Garcia were denied access to the statue of Salvador Allende across from the Government Palace and were detained with other 15 members of their organization.²³³ The justification for this arrest was that the government had not granted permission to the demonstrators to file by the Palace.

The second dimension of state response, *agenda setting*, is measured first by taking into account whether or not the issue of human rights was mentioned in the platforms of the main political alliances and parties (*Concertación*, UDI and RN), and second, by counting the number of bills that were introduced in Congress (regardless of whether or not they were passed) that related to the issue of justice for past human rights abuses. This measure takes into account whether the bills would have advanced the movement's cause or, to the contrary, if they would have represented a setback.

The issue of human rights was present in the platform of the presidential candidates of the *Concertación* in every presidential election. However, the specific content varied. Aylwin and Frei's platform contained an explicit commitment to annul the amnesty law, whereas Lagos's and Bachelet's platforms did not. This is the opposite of what would be expected since the Socialist party (to which Lagos and Bachelet belong) has been far more committed to the cause of human rights and linked with the human rights

²³² See *La Nación de Chile*, May 25th 2006.

²³³ See *La Nación de Chile*, September 10th 2007.

movement than the Christian Democratic Party (to which Aylwin and Frei belong). This puzzle can be explained by the fact that the human rights movement played a more important role during the transition to democracy than it did after the *Concertación* took power. From 1988 onwards the meetings between the movement and the political alliance were frequent and thus the movements' demands could not have been ignored in their platform (Barahona de Brito 1997: 112). The issue of human rights was so relevant at the time that even the right wing candidate Hernán Büchi included it in his platform. His position was that the 1978 amnesty law should be respected and called upon the courts to resolve all pending cases (Barahona de Brito 1997: 109). Frei's platform in 1993 kept the commitment to annul the amnesty law intact (Diego Portales 2003), although no effort was made to fulfill this promise. Lagos's platform in 1999 excluded this commitment and the only reference to human rights issues was related to the issue of truth, not justice. Bachelet's platform in 2005 maintained the Lagos perspective. The human rights issue highlighted in her platform was linked to the issues of truth and memory, and involved the creation of a human rights program and of the National Archive of Memory. On 2003 the right-wing UDI presented its human rights proposal to President Lagos; it accepted economic reparations but asked for a limit on the human rights trials, to stop the "fiction" of considering disappearance as a permanent crime, and proposed to build a memorial for all the victims of political violence.²³⁴

The second way of measuring the place of human rights issues on the political agenda was to look at the number of bills introduced in Congress per administration. Those coded in this category are bills within the human rights policy area strictly related to the

²³⁴ See "*La Paz Ahora*". Viewed on November 3rd 2009 at <http://www.udi.cl/sitio/biblioteca-multimedia/documentos/>

demands of the human rights movement. Most of the bills mentioned here related to the application of the amnesty law. Those in favor of the human rights movement tried to annul it, limit its application, or call the courts to interpret it in a way so as not to prevent the investigation of the cases. Those opposed to the human rights movement's demands attempted to extend the time period to which the amnesty law applied, suggested ways of limiting the judicial proceedings, and/or proposed presidential pardons for those already convicted. The number of bills related to the issue of justice for the human rights abuses increased throughout the years, from only one introduced in favor of the movement's demands during the Aylwin administration to five under Frei, eleven under Lagos, and eight under Bachelet. Most of the human rights bills that were passed by Congress were introduced by the sitting president at the time. All the initiatives from legislators of the *Concertación* sympathetic to the human rights movement's demands were most often not even discussed in plenary sessions, and when they were, they failed to pass. However, this is true also of all the initiatives against the movement's demands, none of which was approved either. It seems that the human rights movement was able to reject initiatives that would extend impunity, but has had difficulty advancing justice through the legislative branch.

The third dimension, *government policy*, deals with whether administrations advanced the movements' demands for justice or stalled them. This particular dimension has been analyzed in depth in the previous section.

The fourth dimension of state response is that of *policy output*. Since the main demand posed by the human rights movement analyzed here is that of justice for past

abuses, the policy output has been measured by the absolute number of convictions of abusers.

The number of convictions Chile has been able to achieve despite the 1978 amnesty law is quite impressive. By the end of 2008 there were 260 convictions out of 711 accused (Diego Portales 2009). Unlike in Argentina, where the number of convictions went down in the 1990s to only begin growing after 2003, in Chile the increase in convictions has been linear, although there were periods in which cases progressed more than others (see Figure 3.1).



Figure 3.1. Number of convictions for human rights abuses in Chile. 1994-2008.

Before 1997 the amnesty law was applied to all cases that fell within the specified dates (1973-78), and thus the only trials that were allowed to continue were those in which the alleged crimes had taken place outside this time frame. On February 1991, to prevent these cases from moving forward, the right drafted a bill called "*Propuesta por la Paz*" (Proposal for Peace) in the Senate which asked for the extension of the 1978 amnesty law and for the names of those responsible for the human rights abuses not to be published for 25 years. The justification behind this bill was that 'there were victims from

all sectors and that nobody was free of responsibility' (Barahona de Brito 1997, 159). However the bill failed to pass in Congress and the post-1978 cases wound their way through the judicial system. Among the most notable were the case of the “*degollados*,” three communist party members found with their throats slashed in March of 1985,²³⁵ and the murder of the union leader Tucapel Jimenez in 1982. One additional case escaped the protection of the amnesty law even though it was committed in 1976: the murder of Orlando Letelier, Minister of Foreign Affairs, Defense and Interior in Allende's government, who was killed by a car bomb in Sheridan Circle in Washington D.C. in 1976. Aylwin made a personal petition to the Supreme Court for the investigation to proceed in this case, a petition that was granted because the amnesty law explicitly excluded those responsible for Letelier's assassination due to pressure from the US government. In addition, the *Cumplido* Laws²³⁶ stated that crimes which affected interstate relations should be subject to civilian not military jurisdiction. The defendants were found guilty in November 1993. By the end of the Aylwin administration three people had been convicted of human rights abuses, although all of them were still free²³⁷ (Barahona de Brito 1997, 185). By June 1993 200 cases were being investigated by the

²³⁵ The three Communist party members were Santiago Nattino, Manuel Guerrero, and José Manuel Parada.

²³⁶ These are a group of bills introduced to Congress by President Aylwin in which he proposed changes to the laws on terrorism, the death penalty, and the penal code. They were called *Cumplido* after Aylwin's Ministry of Justice at the time, Francisco Cumplido.

²³⁷ The first conviction was in January 1991 against Army Captain Pedro Fernandez Dittus. He was convicted to 300 days in prison for the case of two young people burnt by a military patrol in 1986. He was found guilty not of the assault but of failing to get medical attention for the victims. The other two convictions were that of DINA Chief Manuel Contreras and former DINA operations chief Pedro Espinoza for the murder of Letelier. However, the case continued until in 1995 the Supreme Court confirmed the sentences. However, even then, Contreras refused to abide by the sentence and it took a while for the government to enforce it and put him in jail. An agreement was finally reached and a special prison was built for the two convicted.

courts (Barahona de Brito 1997, 153), which was quite an impressive result for the human rights movement considering that former dictatorship General Pinochet was still the Army's Commander in Chief.

Under the Frei administration the judicial reform that among other things changed the constitution of the Supreme Court enabled human rights cases to proceed with fewer obstacles. The Court's ruling in favor of the application of international law and the characterization of the disappearance as a permanent crime opened the way for trials not to be automatically closed by the application of the amnesty law. The number of convictions reached 35 by the end of his mandate, although some military and intelligence officers refused to comply with these sentences. On May 1994, sixteen former police agents were convicted for the *degollados* case; one of them was General Stange, chief of the *Carabineros* (the fourth branch of the armed services) at the time. President Frei requested Stange's resignation but he refused. Later the Supreme Court ruled that Stange could not be prosecuted (Barahona de Brito 1997: 185). The other act of disobedience occurred in the Letelier case. In May 1995 Manuel Contreras, former head of the DINA, was found guilty of murder and sentenced to seven years in prison. Contreras refused to comply and it was only after a long negotiation between the military and the government that an agreement was reached in which he would accept the verdict but would be held in a prison specially built for him.

The number of convictions increased as more and more judges began to apply international law and accept the notion of disappearance as a permanent crime. However, the results remained mixed, and by the year 2000, 170 court cases, one-sixth of the total, were closed by the application of the amnesty law (Barahona de Brito 2003).

In 2004 300 cases of disappearances and 450 of executions were under investigation (Collins 2005). Convictions increased, reaching 115 by the end of Lagos's term in 2006. The designation of special judges with exclusive or partial responsibility for human rights cases sped up these processes, which helps to explain the increase. This trend continued under President Bachelet. After the IHRC ruling against the amnesty law, most courts stopped its application. However, they found other ways of preventing convictions such as the application of the statute of limitation and the reduction of sentences. Whereas by the end of 2008 the number of accused reached 711 and convictions reached 260, only 51 of those were in jail at the time (Diego Portales 2009).

In the case of Argentina, this dimension – policy output- was also measured by the number of military officers whose nominations were questioned by the human rights movement who were subsequently promoted to higher office by the Senate. As in Argentina, the human rights movement in Chile questioned the promotion of those officers related to the military dictatorship. CODEPU in particular has been in charge of this process.²³⁸ However, there are not enough data available about this process and the way each government reacted so as to code it yearly as I was able to do in the case of Argentina. A qualitative analysis can be offered instead for this indicator.

On December 19th 1990, Aylwin vetoed the promotion of two army generals, one a former DINA collaborator. But it was not until Frei came to power that this process was institutionalized. On November 1997 Frei vetoed the promotion of Brigadier Jaime Lepe because of his links to the assassination of the Spanish diplomat Carmelo Soria. This case created new criteria for military promotions in which the appointee could not be involved

²³⁸ Author's interview with Vega, CODEPU, Santiago de Chile, date.

in any public incidents that negatively affected his image. However, in 2002 the AFDD found out that Lepe has been re-hired by the army, together with another human rights violator, Miguel Krasnoff Marchenko.²³⁹ In addition, as late as 2006, it was discovered that there were still some military officers indicted for human rights abuses on the Army's payroll. On November 2009, President Bachelet appointed a highly controversial officer as Chief of the Army, General Juan Fuentealba, suspected of human rights abuses. AFDD President, Lorena Pizarro stated: "*Es un insulto, es una vergüenza y parece que al Ejecutivo no le importa. Lo que exigimos es que se ponga al mando del Ejército a quien no tenga la mínima vinculación con los crímenes de la dictadura.*"²⁴⁰

Finally, the last dimension of state response refers to the *creation of government institutions* to address the human rights movement's demands. On December 1996, the *Corporación Nacional de Reparación y Reconciliación* (National Corporation of Reparation and Reconciliation) finished its mandate. The following year the Frei administration created a Human Rights Program within the Ministry of Interior²⁴¹ to continue the job started by this institution: to provide legal assistance to relatives of the victims and to search for the bodies of the disappeared. However, the AFDD criticized this program on two grounds. First, the program could not be a complainant in human rights cases; its purview was limited only to providing legal assistance. Second, the crime of torture was excluded from their mission.

²³⁹ Boletín Informativo AFDD, April 2002, Vol. 9, No. 99.

²⁴⁰ "This is an insult, an embarrassment, and it seems that the Executive doesn't care. What we demand is that the Chief of the Army has no connection to crimes committed during the dictatorship". See *Clarín*, "Bachelet designa a un polémico jefe del ejército" November 11th, 2009.

²⁴¹ Programa Continuación Ley 19,123.

After a lengthy congressional debate, the Bachelet administration created the Human Rights Institute demanded by the human rights movement (see details in previous section). However, because this new institution did not do away with the two limitations of the Ministry of the Interior's program, the AFDD rejected the creation of this institute in its final form. The movement failed to make its imprint on this institution.

3.5. Conclusions for Chile's case

The Chilean human rights movement, in particular the AFDD, has been only partially successful in impacting human rights policies in this country. Although the human rights movement was one of the strongest of its kind of the three cases during the dictatorship, once democracy came to existence, the movement increasingly weakened. Many factors have been suggested for this occurrence: the closing of the Vicaría by the Catholic Church, the decrease of financial support from abroad, and the fact that many human rights activists joined the government and abandoned their role in the movement (See Chapter 5 for more details). The few times the AFDD had a clear impact on human rights policy was always by stalling government proposals. Thus, their successes have been mostly reactions to government's policies rather than government responses to their particular demands. Examples of these successes are the failure of the Aylwin's proposal to expedite trials, the Frei-Otero agreement, and Lagos's bill to encourage confessions through the reduction of penalties. The alliance with Socialist legislators proved to be key to defeating these proposals. On the other hand, whenever the movement articulated a particular demand –such as the repeal of the amnesty law- it received no response from any of the governments of the *Concertación*. Even when President Bachelet had a

majority in Congress at the beginning of her mandate, the government chose not to introduce a bill to do so.

However, the truth is that Chile is of the three countries the one that registered the most convictions of human rights abusers. With a very slow start given the trend within the judiciary to apply the amnesty law automatically, the year 1998 marked a change in this behavior and steadily more cases have been allowed to proceed and more convictions have been handed down for those responsible for the abuses. This high number of convictions has been possible even with the amnesty law still in place and unchallenged. Thus, it is clear that, as Collins shows in her 2005 work, accountability in the cases of human rights abuses was achieved to a greater degree through the judiciary than through political means. After Aylwin's failed attempts to legislate on the issue, his successors from the *Concertación* preferred to let the courts deal with it. One of the factors that accounts for this choice has been the extensive presence of individuals linked to the Pinochet regime in the Senate which blocked every initiative to further human rights policies (See chapter 5).

To summarize, what has been AFDD's role in achieving the large number of convictions, if any? On the one hand, during most of the period analyzed here (from 1990 until 2009) human rights organizations were not allowed legally to be the complainants of cases, since only victims or relatives of victims could play this role. Thus, the AFDD as such was not behind any of the cases but its members individually were. However, the organization played a key role in gathering and preserving relevant information and documents for the cases and lending the emotional support that was indispensable to go through the lengthy judicial proceedings. Without the persistence of the relatives in a

judicial strategy from the times of the dictatorship until this very day, the cases would have been closed by now. In this sense, their efforts were necessary for the trials and convictions to happen.

CHAPTER 4

THE IMPACT OF THE HUMAN RIGHTS MOVEMENT ON STATE POLICY IN URUGUAY.

4.1. Introduction

The Uruguayan human rights movement emerged later than in the cases of Argentina and Chile (Barahona De Brito 1997: 83). While the coup d'état occurred in 1973, it was not until the late 70s and early 80s that organizations opposed to state repression and in 1981 that the first group in defense of human rights emerged. *Servicio de Paz y Justicia* (SERPAJ) was a sequel of the same organization founded in Argentina in 1974 and was created with the goal of providing assistance and protection of victims of repression. In 1983 Luis Perez Aguirre, the founder of SERPAJ, launched the National Commission for Human Rights to support this institution's activities. In 1984 the Institute for Legal and Social Studies of Uruguay (IELSUR) was created with the goal of offering professional and legal assistance to victims of repression.

Victim's organizations took even longer to emerge and they did so within the social space provided by SERPAJ (Amarillo 1987).²⁴² In 1983 *Madres y Familiares de Detenidos Desaparecidos* (Mothers and Relatives of the Detained and Disappeared) was created. The reasons for this delay were many. First, beginning in 1968 Uruguay was subject to security measures that increased the number of political prisoners. Relatives recall they were "used to" not hearing from their family members for a while until the

²⁴² In 1979 a victims' organization emerged but it was related to the abuses committed by the Argentine regime to Uruguayans in exile. The group's name was *Madres de Uruguayos Desaparecidos en Argentina* (Mothers of Uruguayans Disappeared in Argentina).

authorities would release information on their place of detention (Bucheli et al 2005: 16). Thus the notion of their loved ones being “disappeared” took a while to emerge. In the beginning the search for their missing relatives was an individual one and many of them emphasized the differences between their case and the others. The diverse political allegiances between the victims²⁴³ and the fact that many Uruguayan citizens disappeared in neighboring countries increased the perception of difference and prevented the acknowledgment of their commonalities to launch a common struggle (Bucheli et al 2005: 18). De Brito hypothesizes that the weakness and late development of the human rights movement might also be related to the regime’s successful elimination of any space of opposition, to the lack of support of autonomous institutions such as the Catholic Church, and to the lack of international attention in comparison with a case like Chile (Barahona De Brito 1997: 86-87). Finally, the much more limited reach of the use of the disappearance as a repression strategy in this country compared to the other two cases – estimated to be 36/40 cases- might explain the delay in the creation of these organizations.

As in the neighboring countries, all these different support and victims’ organizations shared the same basic goals: to discover the truth about what had happened and to prosecute those responsible for the human rights abuses in civilian courts (Amarillo 1987). However, unlike the case of Argentina and similar to that of Chile, once the democratic transition took place in 1985, the human rights movement lost power. SERPAJ, which had been so active in its opposition to the dictatorship, widened its efforts to defend all basic human rights and did not restrict itself to demanding

²⁴³ The main political fights were between the communists and sectors of the radical left around the responsibilities and reasons for their defeat in 1973.

accountability for past abuses. It chose to focus in particular on the area of education for human rights. Of the victims' organizations, the only one that remained active was *Madres y Familiares*, which put its members at the forefront of the struggle for truth and justice (Amarillo 1987). Given the leading role this human rights organization played in this policy area during democratic times, and the similarities it shares with the organizations studied in Argentina and Chile, *Madres y Familiares* is the organization that this dissertation follows closely in their interactions with the Uruguayan state.

Following the organization of Chapters 2 and 3, the first section of this Chapter offers a descriptive narrative of the history of *Madres y Familiares* and its interaction with the governments in power since the democratic transition until 2010. It is organized around the demands the human rights movement posed and the response they got from the different administrations. The second section systematizes this narrative coding state response to the movements' demands following the five dimensions discussed in Chapter 1: 1) access, 2) agenda setting, 3) government policy, 4) policy output; and 5) institutional change (see Table 1.1).

The analysis shows the Uruguayan human rights movement has been the weakest of the three cases. In the absence of a strong movement the Uruguayan governments were able to ignore the issue of accountability for human rights abuses for 15 years. It was not until the movement began increasing its strength in the mid 1990s that governments began paying attention to these issues. The coming to power of a sympathetic leftist administration in 2005 gave the movement an interlocutor to work with and begin addressing its demands for justice.

4.2. *Madres y Familiares de Detenidos Desaparecidos*: Origins and Main Demands

Madres y Familiares was created in 1983 when three groups of victims of repression merged: the relatives of those disappeared in Argentina (who had been organized since 1979), the relatives of those disappeared in Uruguay, and those citizens that as the dictatorship was coming to an end were returning from exile who had belonged to organizations abroad that denounced repression in Uruguay.²⁴⁴

As opposed to the Argentinean organizations of relatives of the disappeared, *Madres y Familiares* always preserved a very loose structure. The organization lacks *personería jurídica*. From the beginning decisions were made in plenary sessions by consensus and majority vote only when necessary. This procedure prevented the same fragmentation and division over the definition of the organization's strategy that was experienced by similar organizations in the neighboring countries (Bucheli et al. 2005). But on the negative side, it reduced efficiency in their decision making and made the group less cohesive.

Although members of *Madres y Familiares* have stated again and again that they are a non partisan organization,²⁴⁵ and politics is supposed to be left outside of the plenary sessions, in practice this has been difficult to accomplish since many members are active in different political parties. The central role political parties have played in the transition and in Uruguay politics in general made it difficult for any movement to be completely apolitical.²⁴⁶ The sections below will describe many instances in which partisan politics interfered with the organization's strategy and decisions.

²⁴⁴ In 1978 in Paris Uruguayan exiles create the *Agrupación de Familiares de Uruguayos Desaparecidos* (Association of Relatives of Uruguayans that have disappeared, AFUDE)

²⁴⁵ Interview with four mothers of *Madres y Familiares*, Montevideo, September 15th 2008.

²⁴⁶ Interview with Marisa Ruiz, president of Amnesty International Uruguay, Montevideo, September 2nd 2008.

4.3. Human Rights Movement Demands

Madres y Familiares' main demands do not depart from those embraced by their counterparts in Chile and Argentina: truth and justice (Bucheli et al. 2005, 46; Amarillo 1987). However, unlike the other two movements, the one in Uruguay did not emphasize both demands equally over the years. Truth has been a constant demand of their struggle but the same cannot be said about justice. As it will be described in the following sections, faced with the 1986 *Ley de Caducidad* that prevented the prosecution of those responsible for the abuses, the movement chose to focus on their demand for truth for many years. This departs from the case of Chile in which the movement, faced with Pinochet's amnesty law, tried to look for legal loopholes to make their demand of justice a reality, and also from Argentina, where after the 1990-91 presidential pardons the movement pressed for the cases of abducted children, which could advance in the judiciary, and never stopped demanding the nullification of the pardons and the impunity laws passed by the Alfonsín administration.

In Uruguay in the years between 1989 (the year of the referendum that ratified the *Ley de Caducidad*) and 2004 (the year in which the first leftist government came to power), the demand of truth took center stage and that of justice, although not completely abandoned, was left to the side for a while.²⁴⁷ The original demands of truth and justice were summarized by *Madres y Familiares* into five questions which became one of their main slogans: how did it happen, when, where, why, and who did it? After the defeat in

²⁴⁷ See annual human rights reports from SERPAJ.

the referendum, the emphasis on truth and not on justice is evidenced by the fact that the movement dropped the “who” question from their slogan (Bucheli et al. 2005).

TABLE 4.1
HUMAN RIGHTS MOVEMENT DEMANDS AND STATE RESPONSE
IN URUGUAY
1985-2010

	Sanguinetti 1985-90	Lacalle 1990-95	Sanguinetti 1995-00	Battle 2000-05	Vázquez 2005-10
1- Judicial accountability	Against HR: <i>Ley de Caducidad</i> . 1989 Referendum	All cases are ruled as included in the <i>Ley de Caducidad</i> .	All cases are ruled as included in the <i>Ley de Caducidad</i> .	All cases are ruled as included in the <i>Ley de Caducidad</i> .	Cases excluded from <i>Ley de Caducidad</i> . First trials and convictions. Supreme Court rule against <i>Ley de Caducidad</i> .
2- Truth commission	Parliamentary Commission	No policy.	No policy.	Peace Commission	Implementation of art. 4 of <i>Ley de Caducidad</i> to allow for investigation.

Given the widespread use of political imprisonment as a repression tactic in Uruguay, as in Chile, the Uruguayan group also demanded a general amnesty for all political prisoners. However, following the focus on the demands of truth and justice already laid out in the previous chapters, this will not be part of the analysis of this case.

4.3.1. Demanding truth and justice for human rights abuses

4.3.1.1 The beginnings of the struggle

In 1983 social protest and opposition against the dictatorship increased and it began to become clear the regime was coming to an end. The human rights organizations, which were part of this process, began to demand the inclusion of their claims in the program of the democratic transition; truth and justice for the abuses was one of them. Unions (*Plenario Intersindical de Trabajadores*, PIT) and student groups (*Asociación Social y Cultural de Estudiantes de la Enseñanza Pública*, ASCEEP) created human rights commissions to support the human rights movement's demands. By 1984 the "civil society phase" of the transition was over and political parties assumed control of the process. In this context, the human rights movement found it much harder to gain support for their demands from political parties. *Madres y Familiares* constantly tried to gain access to these political leaders. In 1983 they were received by some members of the *Partido Blanco*, and by Enrique Tarigo of the *Partido Colorado*. But the Colorado leader Julio Sanguinetti, who would later become the first democratic president, ignored the requests for a meeting, an attitude he would maintain throughout both of his presidential terms (1985-90 and 1995-2000). The links between the human rights movement and political leaders were short-lived and generated no commitment to their demands (Barahona de Brito 1997: 89).

The transition to democracy was agreed to among the military, the *Partido Colorado*, and a branch of the *Frente Amplio* in what was called the *Club Naval Pact*.²⁴⁸ The issue of human rights was initially ignored since all parties were committed to a positive resolution and thought the introduction of this topic would create unnecessary obstacles.

²⁴⁸ The White Party was excluded from the negotiations since their leader Ferreira Aldunate was imprisoned as soon as he returned from exile. For more details about the negotiations see De Brito 1997, 72-78.

However, the hard-line sectors of the armed forces began to demand guarantees for their officers. Faced with this demand but conscious that the proposal for amnesty for past abuses would have led to the exit of the *Frente Amplio* from the negotiations, Sanguinetti managed to convince military negotiator General Medina not to raise the issue (Barahona De Brito 1997). Most scholars believe that there was a secret agreement between Sanguinetti and Medina in which the future president committed to protect the military in exchange for the issue not being openly discussed (Barahona De Brito 1997, Amarillo 1987). General Medina's declarations reassuring military officers there was nothing to worry about in spite of no formal guarantees seemed to confirm this hypothesis (Barahona De Brito 1997: 78).

In 1984 political parties created the *Concertación Nacional Programática* (National Programmatic Coordination, CONAPRO) to debate the key policy areas relevant for the transition process. SERPAJ was the only organization from the human rights movement that participated and called for a serious discussion of the issue of human rights (Bucheli et. al 2005, Barahona de Brito 1997: 80). The negotiating parties reached a loose agreement. The general amnesty for political prisoners, demanded by the human rights movement, was rejected by the *Partido Colorado* Party. In the end, they agreed that the accusations of murder by the military justice would be dealt with by civilian courts, and that each year in prison would be counted as three.²⁴⁹ The demand to punish those responsible for the human rights abuses was included, but the statement was very general and did not specify either how this would be accomplished or the scope of the measures (Amarillo 1986).

²⁴⁹ Interview with Efraín Olivera, founding member of SERPAJ, in Montevideo, September 3rd, 2008.

Consistent with CONAPRO's program in 1985, the Sanguinetti administration passed a Pacification Law freeing all political prisoners and allowing those in exile to return home to Uruguay. In addition, this law explicitly exempted military and police forces responsible for the mistreatment of prisoners and the disappeared from the amnesty. This was considered the human rights movement's first success (Del Huerto Amarillo 1986). Unfortunately for them, it did not last long. In spite of his electoral promises and the letter of this law, very soon after assuming power Sanguinetti began to speak of the need for "*dar vuelta la página y mirar hacia adelante*" (Bucheli et al 2005: 56).²⁵⁰ His campaign speeches in which he stated "*los militares que hubieran incurrido en violaciones de derechos humanos durante el gobierno de facto serán juzgados por la justicia ordinaria*" would be forgotten.²⁵¹ For the demand of justice to be addressed at all the movement would have to wait until the leftist alliance *Frente Amplio* would take power in 2005.

4.3.1.2. *Truth through a Parliamentary Commission. Unsatisfactory Results*

Following the example of Argentina, the human rights movement advocated for the creation of a parliamentary commission to investigate human rights violations and gather information to be sent to the courts (Barahona De Brito 1997: 94). On April 23rd, 1985 the lower chamber created a Commission for the Investigation of the Disappeared (*Comisión Investigadora sobre la situación de Personas Desaparecidas y Hechos que la*

²⁵⁰ "Turn the page and look ahead."

²⁵¹ "The military officers who have committed human rights abuses during the de facto government will be tried by civilian courts." Speech delivered on February 1985, quoted in Madres y Familiares 1990:23.

motivaron).²⁵² This Commission was divided in two sections: one was in charge of analyzing the cases of 164 Uruguayans disappeared in Chile, Argentina, Paraguay and Uruguay, while the other focused on the murders of legislators Zelmar Michelini and Hector Gutierrez Ruiz committed in Buenos Aires on May 20th 1976. As the work of these commissions was progressing very slowly, during the months of June and July *Madres y Familiares* organized a petition drive to demand Congress give legislators the necessary mandate to carry out an effective investigation (Bucheli et al. 2005, 57). The human rights movement campaign failed and the commission ended up lacking the right to enter military facilities and to subpoena those signaled as responsible for the abuses. This was so in part because the Executive branch had threatened to veto the commission if its mandate extended to either of these powers (Madres y Familiares 1990). On the positive side the commission stated that the crime of disappearance was a crime against humanity and held 61 members of the Uruguayan armed forces and three foreigners responsible for the abuses. However, unlike the work of similar commissions in Argentina and Uruguay, this one did not produce a “national truth.” Its findings were not acknowledged by the government and drew no reactions or statements from the armed forces (Barahona De Brito 1997).

From the perspective of *Madres y Familiares*, the investigative commission had not been able to actually “investigate” and had limited itself to collecting the statements of the relatives and witnesses to the crimes. In addition, its final report stated there was not

²⁵² The commission was formed by Mario Canton, Victor Cortazzo, Francisco Forteza, Hugo Granucci, Oscar Lopez Balestra, Nelson Lorenzo Rovira, Eden Melo Santa Marina, Elias Porras Larralde, Victor Vaillant, Alfredo Zaffaroni and Edison Zunini.

strong enough evidence of institutional responsibility for the abuses. The movement denounced that this was included at the last minute due to political pressures.²⁵³

Given the lack of an official report acknowledging the existence of state repression during the dictatorial regime, the human rights movement assumed the task on its own. After three years of intensive work, on March 9th 1989 SERPAJ released a “*Nunca Mas*” report (Never Again). Unfortunately, its release was overshadowed by the failure in the referendum to overturn the *Ley de Caducidad* (Barahona de Brito 1997).

4.3.1.3. *The Ley de Caducidad*

Throughout 1985 *Madres y Familiares* filed judicial petitions for the disappearance of their relatives both in Uruguay and Argentina. By December 1986, 734 cases were being investigated (Barahona De Brito 1997: 126). The Supreme Military Tribunal requested jurisdiction over these cases, but the courts disallowed these orders and proceeded to subpoena Colonel Lieutenant José Gavazzo and Major Manuel Cordero. When they refused to appear in court, the judge ordered their detention. In response, military justice intervened and appealed the measure to the Supreme Court, which on November 24th 1986 supported the lower courts’ rulings against the military officers. In this fight between civilian and military courts the Sanguinetti administration took the side of the military (Madres y Familiares 1990). In 1986 it became public that the Ministry of Defense had sent information compiled by the Congressional commission to the military instead of the civilian courts (Gillespie 1991). Sanguinetti’s support of military officers accused of human rights abuses was clear. While he dismissed generals who questioned

²⁵³ See Madres y Familiares 1987. Informe Evaluación de la situación de derechos humanos en Uruguay, octubre 1984 a junio 1987. Consulted in Archivo Madres y Familiares, Montevideo, Uruguay.

his authority in other areas, he ignored and even accepted military contestation on human rights policy. Military promotions were not affected at all by accusations of past abuses.

The judicial conflict was quickly politicized and the issue of accountability for human rights abuses began to be debated in congress. In 1986 the first of many bills introduced to resolve this crisis was sponsored by legislators from the *Partido Blanco* and the *Frente Amplio*. The bill agreed it was necessary to prosecute those responsible for the abuses, but limited the prosecutions to those cases presented to date. The human rights movement and most of the *Frente Amplio* rejected the proposal and it was therefore not even debated in Congress. The movement opposed any limits on the judicial proceedings. Later some members would regret their intransigence since this was the best bill introduced at that time (Bucheli et al. 2005: 59).

The Sanguinetti administration introduced a bill establishing amnesty for police and military officers responsible for abuses during the dictatorship, but it was rejected in the Senate by the Blancos and the *Frente Amplio*. Finally, in an attempt to mediate the conflict the Blancos introduced their own bill that would have allowed cases to be prosecuted that began prior to September 22nd of that year (1986). The bill failed because it was rejected by both the *Partido Colorado* in favor of amnesty and the *Frente Amplio* in favor of justice in all cases.

In this context, the human rights movement mobilized to oppose the government's intention to apply a general amnesty. During 1986 it organized a National Assembly for Truth and Justice, a fast against impunity, and numerous demonstrations. However, these events did not receive appropriate coverage by the media and thus were ignored by the government (Barahona De Brito 1997). On December 2nd *Madres y Familiares* presented

an open letter to President Sanguinetti expressing their demands given his refusal to meet with them (Bucheli et al. 2005: 60).

On December 19th, it became public that the Commander in Chief of the Army was retaining subpoenas for military officers and not handing them in to those to whom they were intended. Meanwhile the government interrupted the congressional summer recess and introduced a new amnesty bill to prevent a conflict with the armed forces. Two days later the Blancos Party presented their own bill entitled “*Caducidad de la Pretension Punitiva del Estado*” (Expiration of the right to punish by the state). The *Partido Colorado* immediately supported this bill. The idea behind the notion of “*caducidad*” (expiration) was that the state acknowledged the crimes, but decided to forego sentencing and incarceration for those responsible. Those who opposed the bill were the *Frente Amplio*, the *Unión Cívica* and a branch of the *Partido Colorado* (*Movimiento de Reafirmación Batllista*). The bill passed with 22 votes in favor and 9 against in the Senate, and 59 in favor and 37 against in the lower chamber. It denied the right to prosecute those responsible and in effect closed off all judicial avenues of action. Article 4, however, did give the Executive branch the power to investigate the fate of the disappeared. The government’s justification for supporting this bill was that it was unjust to give amnesty to political prisoners while prosecuting military forces.²⁵⁴ It also argued for the need to prevent a military uprising, a threat that Sanguinetti later acknowledged was “a rhetorical artifice” (Barahona De Brito 1997: 150).

²⁵⁴ See Sanguinetti’s statements cited in Gillespie 1991: 219.

Madres y Familiares was outside Congress waiting for the result of the debate and its members were brutally repressed.²⁵⁵ After learning the unfavorable result, they stated that the legislators had betrayed their electorate since no party had argued in favor of the amnesty in their electoral campaigns (Madres y Familiares 1990: 10). Other organizations such as the Lawyers Association of Uruguay, the workers' unions (PIT CNT), and the Council of the *Universidad de la República* joined the human rights movement in condemning the law.²⁵⁶ However, ignoring the human rights movements' complaints, on May 2nd 1988 the Supreme Court confirmed that the law was constitutional.

4.3.1.3. The 1989 Referendum

Immediately after the *Ley de Caducidad* was passed by Congress, *Madres y Familiares* announced their goal to call a national referendum to repeal the law.²⁵⁷ According to article 79 of the Uruguayan Constitution 25 percent of the electorate could petition for a referendum, which translated at the time into the need to gather 554,873 signatures. In order to broaden their reach to other segments of society, the group created a wider committee that included other organizations to be in charge of collecting signatures. This committee was led by Maria Ester Gatti (a grandmother of a disappeared child), Matilde Rodriguez (the widow of Hector Gutierrez Ruiz) and Elisa Dellepiane (the widow of Zelmar Michelini). It was also comprised by such well-known intellectuals and artists as Eduardo Galeano, Mario Benedetti and China Zorrilla, and other members of human rights and religious organizations (Madres y Familiares 1990).

²⁵⁵ Interview with four mothers of *Madres y Familiares*, Montevideo, September 15th 2008.

²⁵⁶ See these organization's statements in Madres y Familiares 1990.

²⁵⁷ Interview with four mothers of *Madres y Familiares*, Montevideo, September 15th 2008.

From the beginning there were some tensions between *Madres y Familiares* and the newly created committee over assigning tasks and defining strategies. In particular the main slogan for the campaign was widely debated. *Madres y Familiares* favored “*Por Verdad y Justicia*” (For truth and justice), while the Committee finally decided to pitch a broader appeal with slogans such as “*Todos somos iguales ante la ley*” (We are all equal before the law) and “*Firmo para que el pueblo decida*” (I sign so that the people can decide) (Bucheli et al. 2005: 67).

Sanguinetti and the armed forces organized a strong campaign against the referendum characterizing the whole initiative as “subversive,” vengeful and full of hatred (Barahona De Brito 1997, 148). The Ministry of Defense called those associated with the referendum campaign “*enfermos mentales*” (mentally ill) (Madres y Familiares 1990: 67). The President also failed to sanction the military for interfering in political matters and actually used the threat of a military rebellion to discourage them from signing the petition.

On December 17th, 1987, the committee stopped collecting signatures, and proceeded to hand in the 634,702 signatures to the Electoral Court (SERPAJ 1988). The process of checking every signature and counting and validating them took one long year and *Madres y Familiares* denounced many instances in which the veracity of valid signatures was questioned (Madres y Familiares 1990).²⁵⁸ Only on December 19th 1988 did the Court state that the campaign had reached the 25 percent threshold of required signatures. A plebiscite was scheduled for April 16th 1989. The Committee began then the last phase of their task: the campaign for a positive vote to repeal the amnesty law. So as to avoid

²⁵⁸ For more information on this see SERPAJ 1988.

confusions about what voting “yes” or “no” actually meant, the Court established ballots of two colors: green was for the repeal, yellow for the maintenance of the law. Media coverage of both campaigns was unequal²⁵⁹ and TV channels, under pressure from the government, refused to show an ad in which one of the mothers, Sara Mendez, asked about her child who was abducted when he was 20 days old (Madres y Familiares 1990).

On the assigned date, 85% of those eligible to vote turned out: 42% of them voted green, while 55% voted yellow. Uruguayans had confirmed the *Ley de Caducidad*. The human rights movement had lost this battle. The movement interpreted the adverse outcome as the result of the fear spread among Uruguayan society after years of censorship, black lists, and political firings. In addition, they argued that a false equivalence had been established between the law that freed the political prisoners and the *Ley de caducidad*. Finally, they thought that voters might have been influenced to vote against the repeal of the law by the way the government framed the yellow vote -- as a “vote for peace” (Madres y Familiares 1990: 77).

The defeat had a deep impact within *Madres y Familiares*. Many felt that there was nothing else that could be done and that their demands would never be addressed. Discouraged, they stopped participating and the group was reduced to four members attending the weekly meetings. Some of the Madres described themselves during those years as “*los tres mosqueteros más una*.”²⁶⁰ In 1992 they even stopped organizing their

²⁵⁹ On March 1989 the pro-yellow vote had 3 hours and 5 seconds to show their ads, while the pro-green vote had only 48 minutes and 21 seconds. On April 1989 the yellow vote had 5 hours, 8 minutes, and 43 seconds of exposure, while the green vote had only 1 hour, 32 minutes and 45 seconds. See Madres y Familiares 1990, 68)

²⁶⁰ “The three musketeers plus one.” Interview with four mothers of Madres y Familiares, Montevideo, September 15th 2008.

weekly Friday demonstrations in Plaza Libertad that had been held uninterrupted since 1984.²⁶¹

The defeat and near demise of *Madres y Familiares* had significant consequences. The issue of human rights was left off the political agenda for the following five years (Bucheli et al. 2005). President Lacalle (1990-95) had no human rights policy during his administration. When somebody would point this out to him he would justify his lack of a policy on the grounds that nobody had asked him for anything.²⁶² Given the inactivity of the human rights movement at the time, this was actually the case. In 1992 the Interamerican Commission on Human Rights (CIDH) ruled that the *Ley de Caducidad* was incompatible with the American Declaration of Human Rights, recommending the Uruguayan government address this issue and provide reparations for the past abuses (SERPAJ 1992). President Lacalle chose to ignore the court's request.

There was however one instance of interaction between the movement and his government. During his administration extra judicial agreements were signed between some relatives of the disappeared and the Minister of Defense. The relatives agreed to close their judicial complaints in exchange for economic reparations. However, this was done on a case-by-case basis. *Madres y Familiares* as an organization never supported these agreements, but they did not condemn them either. It was a controversial issue that generated a tense environment at the time within the group.²⁶³ Avoiding any reference to

²⁶¹ See Madres y Familiares. 1993. Informe anual Febrero 1993. Consulted in Archivo de Madres y Familiares, Montevideo, Uruguay.

²⁶² Interview with Jaime Yaffe, Universidad de la República, Montevideo, September 2nd 2008.

²⁶³ Interview with Jaime Yaffe, Universidad de la República, Montevideo, September 2nd 2008. See also Madres y Familiares. Acts of Plenary Sessions, November 26th 1990. Consulted in Archivo Madres y Familiares, Montevideo, Uruguay.

these tensions, in their 1993 Annual Report, they thanked those relatives who donated the money they received from the government for the launching of the “*Proyecto Memoria*” (Memory Project).²⁶⁴

The main activity organized by the human rights movement as a whole (*Madres y Familiares*, IELSUR and SERPAJ) during this time was the *Tribunal Permanente de los Pueblos* (Permanent Tribunal of the Peoples), held in April 1990.²⁶⁵ In the tradition of the Russell Tribunals,²⁶⁶ a tribunal was organized in Uruguay with the goal of analyzing the crimes committed by the dictatorship, the amnesty law, the referendum and the consequences of its failure. A document was published with the discussions and results of the forum, but it had no direct impact on the human rights policy at the time.

4.3.2. The demand for Truth takes center stage.

4.3.2.1. Restoring human rights in the public sphere

How did the issue of human rights regain public relevance after the defeat in the referendum? Most of the people I interviewed in Uruguay responded to this question by signaling three events that the human rights movement was able to capitalize upon to reinsert their demands in the public sphere.²⁶⁷ The first was the confessions of former Argentine Captain Scilingo in March 1995 before Spanish judge Baltasar Garzon

²⁶⁴ See *Madres y Familiares*. 1993. Informe anual Febrero 1993. Consulted in Archivo *Madres y Familiares*, Montevideo, Uruguay.

²⁶⁵ See document “*Tribunal Permanente de los Pueblos. Sesión Uruguay, Abril 1990*”

²⁶⁶ Based on the tradition of Nuremberg and Tokyo trials in 1966 Bertrand Russell organized in London an International Tribunal for the crimes perpetrated in the Vietnam war. In the 1970s, Italian Senator Lelio Basso held a similar tribunal in Rome for the crimes committed by the Latin American dictatorships. This event was followed by the creation of a permanent organization for these experiences. This was the origin of the *Tribunal Permanente de los Pueblos* (Permanent Tribunal of the People). Since then, this tribunal has been held in countries such as Argentina, Eritrea, Philippines, Afghanistan, El Salvador, East Timor, Zaire, Guatemala, Armenia, and Nicaragua.

²⁶⁷ Interview with Jaime Yaffe from Universidad de la República, with members of *Madres y Familiares*, members of SERPAJ.

acknowledging the “flights of death.” Given the geographic, historical, and cultural proximity between Argentina and Uruguay, and given the fact that Uruguay is a much smaller country and Uruguayans have direct access to all media sources from Argentina, the news about these confessions spread quickly. In addition, the collaboration of both countries’ military regimes in the repression of their citizens, and the fact that close to 122 Uruguayans disappeared in Argentina, ensured that any human rights development in Argentina would have immediate repercussions in Uruguay. Other international events cited as triggers of the issue of human rights were Argentine General Balza’s declarations acknowledging the mistakes of the army in 1995 and the imprisonment of General Pinochet in the United Kingdom in 1998. Second, at the national level, in 1996 former Captain Jorge Troccoli acknowledged in an open letter that the armed forces had participated in the disappearance of people. He later made similar statements in a book. These declarations were rejected by the rest of the military forces, and ignored by the Colorado government of the time (Bucheli et al 2005: 81). *Madres y Familiares* did not appreciate these statements as well, but for different reasons. They criticized the view of the military dictatorship as that of an open war between two “combatant” sides, and the lack of regret displayed by the participants for the use of torture. In addition, unlike Scilingo’s declarations in Argentina, Troccoli’s provided no information about the fate of the disappeared (Bucheli et al 2005: 81). In spite of the lack of new information about their relatives, these statements were used by the movement to gain access to the media and reinsert their demands in the public debate.

Finally, the organization of the May 20th “*Marcha del silencio*” in 1996 (Marches of Silence) in commemoration of the twentieth anniversary of the 1976 assassinations of

Uruguayan legislators Gutierrez Ruiz and Zelmar Michelini in Buenos Aires, re-grouped the human rights movement and slowly increased the participation of more and more relatives in *Madres y Familiares*' plenary sessions. This demonstration had a large impact on the society as a whole since it was the largest of its kind in many years.²⁶⁸

The idea for this demonstration originated among politicians from one of the political parties that constitute the *Frente Amplio: Nuevo Espacio* (New Space). Legislators Rafael and Felipe Michelini, sons of Zelmar Michelini, asked *Madres y Familiares* to help organize the march, an invitation the group accepted.

In this context of renewed activism and constraints imposed by the legal framework ratified by the citizenry, two positions became apparent within the human rights movement: (1) to work within the law and demand the implementation of Article 4 of the *Ley de Caducidad* which called for the investigation of the fate of the disappeared; and (2) to reject the law altogether and demand its repeal. This division was also clear within the political parties, in particular within the *Frente Amplio*, as will be described in later sections. During the first years of the re-mobilization period those in favor of working within the legal framework won and thus truth became the main demand of the movement. Justice was not completely abandoned, but taking into account the unfavorable conditions at the time, it was left to the side for a while. In an interview with the Uruguayan newspaper *El País*, Javier Miranda from *Madres y Familiares* acknowledged that there was no clear policy with respect to the trials and that this was not the main goal at the time.²⁶⁹ The *Marcha del Silencio*'s main demand was actually the

²⁶⁸ Interview with Jaime Yaffé, Universidad de la República, Montevideo, September 2nd 2008.

²⁶⁹ See newspaper *El País*, author's interview with Javier Miranda and Eduardo Piroto from *Madres y Familiares*, July 31st, 2001. Consulted in Archivos Madres y Familiares, Montevideo, Uruguay.

fulfillment of Article 4, not criminal prosecution. The march became an annual event and has been held every year until this very day (See Chapter 5). Interestingly, slogans have differed each year. Until 2004 the main demand revolved around truth: “*Verdad, Memoria y Nunca Mas*” (Truth Memory and Never Again). However in the 2004 demonstration the word Justice reappeared.²⁷⁰ The more favorable political context for the movement created by the electoral win of the leftist *Frente Amplio* explains this shift (See Chapter 5).

Re-energized by the success of the *marcha del silencio*, in 1997 *Madres y Familiares* presented a petition to President Julio Maria Sanguinetti, who had reassumed the presidency for a second term in 1995 (SERPAJ 1997). Using the provisions in Articles 30 and 318 of the Constitution, their goal was to demand the fulfillment of Article 4 of the *Ley de Caducidad*. In addition they gathered 50,000 signatures in support of their petition.²⁷¹ President Sanguinetti rejected the request and thus *Madres y Familiares* moved to file a judicial presentation in the administrative courts.²⁷² They knew the government was going to move in this direction, but the goal was to reinstall the issue of human rights on the agenda of the administration by forcing it to make a statement on this topic (Bucheli et al 2005). However, this was all they attained from Sanguinetti’s second government (1995-2000) who continued to ignore the human rights movement as he did in his first administration (1985-90).

²⁷⁰ See Annual Reports from SERPAJ Uruguay.

²⁷¹ See *Madres y Familiares*. 2000. Informe 2000. Consulted in Archivo *Madres y Familiares*, Montevideo, Uruguay.

²⁷² See *Madres y Familiares*. 1997. Informe 1997. Consulted in Archivo *Madres y Familiares*, Montevideo, Uruguay.

As a result of the human rights issue once again being in the public debate, many proposals of mediation emerged from sectors as diverse as the Catholic Church, a former Tupamaro member, and SERPAJ.²⁷³ Madres y Familiares accepted the initiatives of the Church and that of SERPAJ, but the armed forces and the government rejected all of them, closing the possibilities of any mediation forum (SERPAJ 1997 and 1998).

4.3.2.1. The Demand for Truth is Finally Heard. Comisión para la Paz.

In the 1999 presidential elections the Colorado Party won again, but the elected president would depart from Sanguinetti's human rights policies. On March 1st, 2000 Jorge Batlle took power and in his inaugural speech he hinted at this change by acknowledging the need to create a new state of mind in the country to finally achieve peace with the issue of the disappeared. In addition, he made a point of greeting the group of *Madres y Familiares* holding the pictures of their lost relatives during the inaugural parade through the streets of Montevideo.

That same day of the presidential inauguration *Madres y Familiares* sent a letter to the president demanding the need for 1) the state to acknowledge the disappearance of Uruguayans during the dictatorship, 2) the truth to answer the questions when, where, how and why,²⁷⁴ 3) information about all the cases regardless of where the disappearance had taken place, 4) consideration of the cases of the disappearance of children, 5) a

²⁷³ There were four mediation initiatives. The first one, in April 1997, was proposed by Bishop Galimberti with the goal of finding out the location of the bodies of the disappeared. The second one, in March 1998, was suggested by a former Tupamaro Mauricio Rosencof. Later SERPAJ's founder Luis Perez Aguirre offered his personal mediation. Finally, a legislator from the Frente Amplio, Victor Semproni, made a similar offer to that of Rosencof. See a discussion of these proposals in the notes from the conference "*Una contribución al dialogo por los derechos humanos y la verdad*" organized by Madres y Familiares and the US National Council of Churches on December 1998 in Montevideo, Uruguay.

²⁷⁴ Notice here the elimination of the "who" question in line with their new focus on truth rather than justice.

serious and exhaustive investigation by a group of independent, qualified and impartial people, and 6) an investigation in agreement with their organization (Bucheli et al 2005: 90).²⁷⁵ Surprisingly, President Batlle agreed to meet with them. This would be the first time a Uruguayan President would receive the group after 15 years of democratic governments.

On April 13th, 2000 the meeting took place. The discussion revolved around the initial steps to create an investigatory commission and the case of the disappearance of Sara Mendez's child.²⁷⁶ Batlle talked for most of the time and committed his government to finding out the fate of the disappeared. Since the re-insertion of this issue on the political agenda in the late 1990s, there had been proposals for the creation of a truth commission but in line with his non existent human rights policy, the Sanguinetti government rejected them.

The second meeting with President Batlle, on June 5th of that same year, was harder since the president and the movement disagreed on the mission and design of the investigatory commission. *Madres y Familiares* insisted on an exhaustive investigation of all the cases of disappearance within Uruguay and abroad. The president, on the other hand, emphasized the need for reconciliation and peace, rejected even including the word "investigation" in the commission's mandate, and wanted to limit its scope to the cases that took place within Uruguay (Bucheli et al. 2005). In spite of these differences and after long discussions, given that this was the first government that was acknowledging

²⁷⁵ See also Madres y Familiares. 2000. Informe 2000. Consulted in Archivo Madres y Familiares, Montevideo, Uruguay.

²⁷⁶ Sara Mendez had been looking for her son who was abducted when she was kidnapped by the military regime in Buenos Aires in 1976. Her son was 21 days old at the time. She requested that President Batlle order a DNA test on a boy she suspected to be her son. The president agreed but the boy was not her son. She finally found him in 2002.

them and willing to address their demands, *Madres y Familiares* decided to take part in the commission and named Father Luis Perez Aguirre (founder of SERPAJ) as their representative.²⁷⁷

On August 9th, 2000 President Batlle created the *Comisión para la Paz* (Peace Commission) with the mission to “receive, analyze, classify, and gather information” about forced disappearances that took place during the authoritarian regime (Bucheli et al. 2005: 92).²⁷⁸ It left out the word “investigate,” ignoring the movement’s request. The commission was comprised, as in Chile and Argentina, of notables representing different sectors of society: Monsignor Nicolas Cotugno from the Catholic Church, José D’Elia from the worker unions (PIT-CNT), Gonzalo Fernández from the *Frente Amplio*, Carlos Ramela from the Presidency, Claudio Williman from the Blanco Party, and Luis Perez Aguirre from *Madres y Familiares*.²⁷⁹

On October 30th 2002 the Commission presented a preliminary report to the Presidency confirming the cases of 81 Uruguayans (26 in the country and 55 in Argentina) that had been kidnapped, tortured and murdered in detention centers between 1971 and 1981.²⁸⁰ The fact that the report stated that this work had fulfilled what was required by Article 4 of the *Ley de Caducidad* was rejected by *Madres y Familiares* (Bucheli et al. 2005: 94). On April 10th 2003 the final report was presented and this reference to Article 4 had been eliminated in response to the movement’s complaint.

²⁷⁷ Their decision to participate was rejected by *Nuevo Espacio*, PVP (*Partido por la Victoria del Pueblo*) and the unions (PIT CNT) who tried to convince *Madres y Familiares* to stay out of the Peace Commission.

²⁷⁸ Res No 858/2000

²⁷⁹ In 2001 Luis Perez Aguirre died and was replaced by another member of SERPAJ, Jorge Osorio.

²⁸⁰ See La República, “Según Ramela, el Poder Ejecutivo asumirá la “responsabilidad” por estos casos”, October 21st, 2003. Viewed on August 30th 2008, at www.la Republica.com.uy

However, when President Batlle wrote the decree 4487/2003 to confirm the conclusions of the Peace Commission he included this reference. *Madres y Familiares* publicly stated their rejection on the grounds that since the commission had no mandate to investigate, there was no way this work could have addressed what was required by Article 4. The organization acknowledged the importance of the truth commission and the government's assumption of responsibility for the disappearances for the first time in 15 years.²⁸¹ However, in terms of truth and information about the bodies of the disappeared, the outcome was highly unsatisfactory.²⁸² In 2005, once the Batlle administration was over, Secretary to the Presidency of Tabaré Vázquez, Gonzalo Fernández, stated that Batlle was responsible for prohibiting the military chiefs from speaking before the Peace Commission to give information on the location of bodies.²⁸³

Apart from the truth commission, the Batlle administration did not move forward on the human rights agenda. In 2003 *Madres y Familiares* wrote a letter to the president complaining about some of the government's attitudes towards these issues. In particular, they rejected Batlle's statements that the search for the bodies of the disappeared was banned by the *Ley de Caducidad* and condemned his inactivity in relation to the hiding of witnesses called by the courts in military buildings.²⁸⁴ Another complaint against Batlle

²⁸¹ See Comunicado de Madres y Familiares de Uruguayos Detenidos Desaparecidos ante el Informe Final de la Comisión para la paz, April 10th, 2003, in SERPAJ 2003.

²⁸² Interview with four mothers of *Madres y Familiares*, Montevideo, September 15th 2008.

²⁸³ See La República, "*Batlle prohibió a mandos militares declarar ante Comisión para la Paz*", August 26th 2005. Viewed at www.larepublica.com.uy on August 26th, 2008

²⁸⁴ See letter to President Batlle, December 8th 2003. Consulted in Archivo de Madres y Familiares, Montevideo, Uruguay.

was his refusal to comply with Argentina's request for information in the case of eight Uruguayan military officers accused of human rights abuses in both countries.²⁸⁵

4.3.3. *Hope, some victories and disillusionment*

The 2004 presidential election was an important milestone in Uruguay's political history since it was the first time that the strong bipartidism was broken and a coalition of leftist parties won power. Tabaré Vázquez from the *Frente Amplio* was elected president with 51.7% of the votes. This victory brought hope to the human rights movement since this coalition had opposed the *Ley de Caducidad* and many of its politicians had been themselves victims of the dictatorship. In addition, the movement had excellent relations with Vázquez in the past. At least since the year 2000 he had attended all the annual demonstrations on May 20th.²⁸⁶ When Vázquez was elected, Javier Miranda from *Madres y Familiares* stated “*buena parte de los desaparecidos murió por haber defendido las mismas ideas fundadoras de quienes el 1 de marzo van a asumir el gobierno, muchos de ellos son compañeros de los que van a conducir el país y se lo vamos a cobrar.*”²⁸⁷

Some of the mothers from *Madres y Familiares* recall that at the beginning of his mandate Vázquez told them “*voy a llegar hasta donde ustedes lleguen*” (I will get up to where you will get). When I interviewed them in September 2008, more than three years into Vázquez's mandate, the mothers told me “*pero ahora se quedó bastante atras,*

²⁸⁵ See *La República*, “Dolor de Familiares ante actitud de Batlle. Anunciaron que estan “en condiciones” de brindar informe pedido desde Argentina,” September 21st, 2000. Viewed on www.la Republica.com.uy on August 30, 2008.

²⁸⁶ See *La República*, which in their recollection of the Marcha del Silencio every year since the year 2000 they mention the presence of Tabaré Vázquez. Viewed at www.la Republica.com.uy on August 31st, 2008.

²⁸⁷ “Most of the disappeared died because of their defense of the same founding ideas that those that are going to take power on March 1st have, many of them are “*compañeros*” (mates) of those that are going to be running the country,” See *La República*, December 11, 2004.

vamos a tener que recordarle que corra un poquito mas” (but now he stayed quite behind, we will have to remind him to run a little bit more).²⁸⁸ Some of President Vázquez’s policies were well received by the movement, such as the implementation of Article 4 of the *Ley de Caducidad* to allow for the investigation of the truth in the cases of the disappeared -a demand voiced in every *Marcha del Silencio* since their beginnings in the year 1996- and the exclusion of many judicial cases from the reach of this law so that trials could go forward. However, other measures lacked support among the movement, like the bill to give equal economic reparations to both the families of the disappeared and those of the military and police officers that died during service;²⁸⁹ or the establishment of the “*día del nunca mas*” (day of never again) when the movement believed there was still too much to be done in terms of truth and justice to begin working towards reconciliation. However, even though the movement disagreed with some policies, the Vázquez administration has been by far the most responsive to the human rights movements’ demands of all of the democratic governments since the transition. The first human rights trials in the history of the country took place under his government and on March 29th 2009 Uruguay witnessed the first conviction for past abuses when six military officers and two policemen were sentenced to 25 and 20 years for 28 murders.

4.3.3.1. *Where are the disappeared? Military reports and few results.*

As soon as he took power President Vázquez stated that he would order the excavation of military quarters to find the bodies of the disappeared. This was a very

²⁸⁸ Interview with four mothers of Madres y Familiares, Montevideo, September 15th 2008.

²⁸⁹ See La República, “*La activista de DDHH rechazó que se equipare la situación de los desaparecidos con la de policías y militares*”, 2 abril 2007. Viewed at www.laRepública.com.uy on August 31st, 2008.

important step since until that time the armed forces buildings were treated “as foreign territory” in which the government could not step foot.²⁹⁰

In August 2005 responding to the government’s request for information, the Air Force presented their report to President Vázquez. The report acknowledged for the first time the existence of two clandestine flights to transport Uruguayan political prisoners from Argentina to Uruguay. However, the military stated that this was done for the purpose of interrogation only, denying any responsibility for the fate of these prisoners, most of which are still disappeared. They did acknowledge their involvement in the murder of two prisoners affiliated with the Communist Party and identified the place of their burials outside Montevideo.²⁹¹ The Army also presented their report to the President and laid all responsibility for the disappeared on their Office of Coordination for Anti-Subversive Operations (*Oficina Coordinadora de Operaciones Anti-subversivas*, OCOA), which they stated worked with a great deal of autonomy.²⁹² They also mentioned that all the disappeared had been buried in the 14th Batallion in Toledo, including that of Maria Claudia Garcia Irureta, writer Juan Gelman’s daughter in law. In September of that same year the Navy presented their report. In it, the Navy acknowledged a connection with the Argentine Navy School (ESMA) but one that was limited to the exchange of information. They only assumed responsibility for the capture

²⁹⁰ Interview with Jaime Yaffé, Universidad de la República, Montevideo, September 2nd, 2008.

²⁹¹ See *Página 12*, “Vuelos Clandestinos con Prisioneros” August 11, 2005. Viewed at www.Página12.com.ar on September 25th, 2008.

²⁹² See *La República*, “Se confirmó que la patota de OCOA mintió al Ejército, pero la búsqueda no se interrumpe” May 3rd, 2006. Viewed at www.la República.com.uy on August 31st, 2008.

and transfer of Argentine activist Oscar de Gregorio to Argentina.²⁹³ In September 2006 the Army gave an “oral report” to President Vázquez committing to promptly hand in a written version, in which they acknowledged the murder of at least 20 political prisoners that had been brought from Argentina in the “second flight of death” in October 1976. However, the Army provided no information about the identities of those who had been killed and where they were buried.²⁹⁴ The relations between the president and the Army chief Carlos Diaz became tense due to the military lack of collaboration on this issue and Diaz’s secret meetings with the opposition. In October 2006, in an attempt to exert civilian authority over the military, Vázquez dismissed him.

President Vázquez presented the reports to *Madres y Familiares*. After many months of excavations in the sites signaled by the military, one year after the first military report, only two bodies were found, proving the reports false. No body was found in the 14th Battalion, identified by the Army as the place where they buried all the disappeared. *Madres y Familiares* denounced the military lies stating that: “*Se le mintió al Presidente de la República y a toda la sociedad. Y la mentira es institucional, pues los informes entregados al Presidente de la República eran oficiales y respondían a una decisión institucional del Poder Ejecutivo y de las Fuerzas Armadas.*”²⁹⁵ *Madres y Familiares* also assigned responsibility to the President, charging that he allowed the military to lie

²⁹³ See *Página 12*, “La Marina Uruguaya y la ESMA” November 29th 2005. Viewed at www.pagina12.com.ar on September 25th, 2008.

²⁹⁴ See *Página 12*, “El Ejército admitió que hubo vuelos de la muerte”, September 7th 2006. Viewed at www.pagina12.com.ar on August 31st, 2008.

²⁹⁵ The military lied to the President of the Republic and to the society as a whole. And this is an institutional lie since the reports presented to the President were official and responded to an institutional decision from the Executive Branch and the Armed Forces. See *La República*, “Evaluación de las investigaciones sobre desaparecidos a un año de los informes de las FFAA”, May 3rd, 2006. Viewed at www.larepublica.com.uy on August 26th, 2008.

to him by not acting strongly enough with them after the truth came out.²⁹⁶ The government was deeply embarrassed by the mis-information the military gave in relation to the body of writer Juan Gelman's daughter-in-law. When the military signaled the place to the president, he publicly announced they knew where the body was. Given the stature of Gelman as a well-known writer, the news caught the attention of national and international media. However, the information was wrong and no body was found. This was a big misstep by the government in his human rights policies.

In the search for the truth, another measure the Vázquez administration put in place was the investigation of the period of the military dictatorship as a whole. Historians from the *Universidad de la República* were given this task and the end result were three volumes of 1,500 pages. The report gives an account of 116 political murders and the existence of 5,925 political prisoners.²⁹⁷ Notwithstanding the government's commitment to a policy of truth, the academics in charge of the investigation had access only to 5% of the existing archives in Uruguay. In particular they were allowed no access to the Ministry of Defense archives (SERPAJ 2007).

4.3.3.2. The return of the demand for justice? The Campaign to declare null the Ley de Caducidad.

As was mentioned before, the demand for justice for the human rights abuses committed during the dictatorship took center stage again in 2004. The reasons behind this change are many. First of all, the Batlle administration had addressed (albeit partially) the demand for truth and thus, it was time for the movement to move on and

²⁹⁶ Interview with four mothers of Madres y Familiares, Montevideo, September 15th 2008.

²⁹⁷ See *Página 12*, "En Uruguay presentan una investigación sobre la dictadura" March 24th 2009. Viewed at www.pagina12.com.ar on March 24th 2009.

demand more. Second, beginning in 1996 the human rights movement became increasingly stronger, gaining enough confidence to press ahead with more radical demands. Finally, the coming to power of a leftist government whose politicians had supported them for so long gave them the final push to bring justice back into the equation. Since that year the *Marcha del Silencio* on May 20th had the word “justice” as one of their main slogans. In 2004 the call was for “*Verdad, Memoria, Justicia y Nunca Mas*” (Truth, Memory, Justice and Never Again), and in 2005 “*Para el pasado verdad, en el presente justicia y por siempre memoria y nunca mas*” (Truth for the past, justice for the present and memory forever and never again).²⁹⁸

The demand for justice was expressed at the time by the desire to annul the *Ley de Caducidad* which the movement considered unconstitutional and immoral. Initially the movement did not have the government’s support for this claim. The issue had been debated in the *Frente Amplio*’s Congress of December 2003 when the electoral platform for the 2004 presidential elections was being drawn up. The PVP (Party for the Victory of the People), which had the largest number of disappeared in Argentina among its ranks, presented a motion to include the annulment of the *Ley de Caducidad* in the platform. But they lost. Other parties such as the Socialists (Tabaré Vázquez’s party) and the MPP (Movement of Popular Participation)²⁹⁹ voted against the motion for strategic reasons -- they believed including it in the coalition’s platform was not a good electoral strategy. The party aspired to be the first leftist government in Uruguay and had no relationship

²⁹⁸ See the reports on the demonstration on la República, May 21st, 2004 and 2005. Viewed on August 27th, 2008 at www.la Republica.com.uy

²⁹⁹ The MPP is the name that the *Movimiento de Liberación Nacional* o Tupamaros took after the democratic transition.

with the armed forces, which until that very year referred to it as the enemy they had fought against. The non-inclusion of this demand in their platform was a calculation to defuse a tense relationship with the armed forces.³⁰⁰

Once in power, in line with his party's position, President Vázquez worked to advance the issue of human rights but within the legal framework at the time. He thus applied the *Ley de Caducidad* as a way of favoring the investigation of the cases of the disappeared. The first cases he excluded from the scope of the law were the murder of legislators Zelmar Michelini and Gutierrez Ruiz; he justified his decision on the basis that both events had happened outside Uruguay. A second renowned case that was ruled as being outside the scope of the law was the case of the disappearance of Maria Claudia Garcia Irureta and the abduction of her child Macarena Gelman (daughter in law and grand-daughter of writer Juan Gelman respectively) because there was no apparent political motivation behind it.³⁰¹ Fourteen other cases were placed outside the law and more trials were thus opened and allowed to proceed.³⁰² Until the Vázquez administration, all the previous governments had ruled that all cases were within the scope of this law and precluded any investigation.

In line with its position to work within the legal framework, in December 2005 the *Frente Amplio* presented a bill in Congress to interpret the *Ley de Caducidad*. The bill

³⁰⁰Interview with Jaime Yaffé, Universidad de la República, Montevideo, September 2nd, 2008.

³⁰¹ See *Página 12*, “La Defensa Militar con Cara de Angel. El ejercito Uruguayo asume el apoyo legal de sus miembros”, July 19th, 2005. Viewed at www.Página12.com.ar on September 25th 2008.

³⁰² On May 2th 2006 the President excluded the case of the disappearance of Adalberto Sosa in 1976 in Buenos Aires; on June 2006 the case of the disappearance of Hugo Santos and Horacio Ramos; on May 14th 2007 the case of the 1976 clandestine flight that transported political prisoners from Argentina to Uruguay; on August 2007 the case of the disappearance of Nelson Rodolfo Santana Scotto and Gustavo Edison Izurralde in Paraguay; and on November 13th 2007 the case of the murder of communist party activist Nuble Donato Yic. Other cases included that of the murder of Nibia Sabalsagaray, the Soca murders, and the 1978 flight transporting prisoners from Argentina. See more information in the annual human rights reports by SERPAJ Uruguay.

proposed excluding some crimes from the reach of the law such as those of an economic nature, those committed by top civilian, military, and police officers, the abduction of minors, and those that occurred outside the country or that continued happening after 1985.³⁰³ This was actually the criteria that President Vázquez was de facto using to decide on which cases the law applied.

Against the backdrop of the government's decision to work within the Ley de Caducidad, the demand to declare it null grew within the human rights movement.³⁰⁴ In December 2006 a group of human rights activists created the *Coordinadora Nacional por la Anulación de la Ley de Caducidad* (National Coordination for the Annulment of the *Ley de Caducidad*). Politicians from some of the parties within the *Frente Amplio* that had been always more outspoken about the issue of human rights such as *Nuevo Espacio*, the Communist Party and the PVP also took part in it.³⁰⁵ The group started as a space to discuss whether the best way to achieve the law's annulment would be through a new law in Congress, the Supreme Court, or a new referendum. Initially the idea of working through Congress was preferred. However, when it became clear that not even the *Frente Amplio* legislators were willing to annul the law, the group changed gears and decided to

³⁰³ This last condition refers to the crimes of disappearance. Chilean human rights lawyers have argued that the crime of disappearance is a "permanent crime" because as long as there is no information and no body, it is still committed until this very day. It seems that Uruguayan legislators were taking this notion from Chilean jurisprudence.

³⁰⁴ See *La República*, "Debate en ciernes: interpretativo de la Ley de Caducidad o su derogación" March 1st, 2006. Viewed at www.la Republica.com.uy on August 30th 2008.

³⁰⁵ This organization was made up of human rights organizations (SERPAJ, Amnesty International, CRY SOL, SERSOC), social organizations (PIT CNT, FUV CAM, FEUU), and political parties (Nuevo Espacio, Communist Party, Movimiento Claveles Rojos within Espacio 609, PVP, Frente Izquierda de Liberación).

call for a new referendum. In September 2007 they began the campaign to gather the required signatures (25% of the registry).³⁰⁶

Madres y Familiares have had an unexpected position towards this campaign. Many of their members had signed on individually, but as an institution they decided not to endorse it. When asked about the group's position, some of the mothers replied that if the signatures were collected and there was a referendum they would of course vote for the annulment of the *Ley de caducidad* which they described to me as immoral. However, they stated they do not want to be part of the process of collecting of signatures.

Recalling the 1989 referendum campaign they said: “*ya lo hicimos la otra vez y sabemos lo que es, lo que es perder*” (we did it the other time and we know what it is, we know what it is to lose).³⁰⁷ In other words, they feared the campaign could lose again.

However, some academics and other human rights activists believe that the group is thankful for how much the government has done for them and since the issue divides the *Frente Amplio* they prefer not to create additional problems for the Vázquez administration.³⁰⁸ This interpretation shows how much Uruguayan political parties dominate the political sphere and even penetrate the world of social movements, an issue that will be analyzed in more detail in the comparative section.

³⁰⁶ Interview with a member of the Commission on Human Rights from the PIC CNT, Montevideo, September 4th, 2008.

³⁰⁷ Interview with four mothers of *Madres y Familiares*, Montevideo, September 15th 2008.

³⁰⁸ Interview with Jaime Yaffe, Universidad de la República, Montevideo, September 2nd, 2008. Interview with Rafael Sanseviero, Montevideo, September 16th, 2008. Interview with a member of the Commission on Human Rights of PIT CNT, Montevideo, September 4, 2008.

The launching of the campaign by the human rights organizations forced the *Frente Amplio* to discuss the annulment of the law again within their cadres in May 2007.³⁰⁹ On April 2008 they decided, against President Vázquez's wishes, to campaign together with the human rights movements for the annulment of the *Ley de Caducidad*.³¹⁰ One year later, on April 2009, Vázquez surprised the campaign organizers with his decision to declare the *Ley de Caducidad* unconstitutional. In the context of the judicial investigation of the death of communist activist Nibia Sabalsagaray in 1974 in a military unit, the district attorney declared the law unconstitutional and the president was required to rule on this matter. After having defending his will to work for human rights within the existing legal framework, he finally changed his mind and ruled against the law.³¹¹ This ruling was followed by a similar pronouncement by Congress the following week.³¹² These rulings are not retrospective and thus do not nullify the law. However, both of them were strong symbolic measures that gave support to the movement's campaign to actually annul the law so that it cannot be applied to any of the past abuses during the military dictatorship.

³⁰⁹ See *Página 12*, "El debate que mas abre al Frente" May 29th 2007. Viewed at www.pagina12.com.ar on May 26, 2007.

³¹⁰ See *Clarín*, "Contra Tabaré, el Frente hará campaña para derogar la amnistía" April 7th, 2008. Viewed at www.clarin.com.ar on April 7th, 2008. The annulment of the law was sponsored by Nuevo Espacio, the Communist Party, PVP, Partido Obrero Revolucionario (POR), Movimiento 20 de Mayo and Corriente de Izquierda. Against this motion were Vázquez's Socialist Party, Asamblea Uruguay, MPP, Alianza Progresista and Vertiente Artiguista.

³¹¹ See *Clarín*, "Tabaré embiste contra la ley de caducidad" February 18th, 2009. Viewed at www.clarin.com.ar on February 18th 2009.

³¹² See *Clarín* "Declaran ilegítima la amnistía en Uruguay" February 26th, 2009. Viewed at www.clarin.com.ar on February 26th 2009. The declaration against the amnesty law was passed by 69 votes of the 71 legislators who were present (out of a total of 130) after a six-hour debate.

Meanwhile, the collection of signatures for the referendum continued and by the end of March of 2009, one month before the deadline established by the Electoral Court, the organizers had reached the goal of 250,000. In April President Vázquez finally gave his support to the campaign: “*Considero a esta ley absolutamente inconstitucional y espero fervientemente, como ciudadano uruguayo, que el pueblo la anule*” (I consider this law to be completely unconstitutional and I ardently hope, as a Uruguayan citizen, that the people will annul it).³¹³ Gradually winning over first the reluctant parties within the *Frente Amplio* and finally the President was a clear victory for the campaign.

On October 19th, 2009, six days before the presidential elections and the referendum would take place, the Supreme Court ruled by a four to one vote that the *Ley de Caducidad* was unconstitutional.³¹⁴ Although according to Uruguayan law Supreme Court rulings are valid only for the case to which they refer, given this decision more and more cases can be expected to come before the high court with similar results. However, the Court’s ruling, which the human rights movement thought would help the campaign for the nullification of the law, was not enough to ensure their victory. On October 25th, while electing as president a former guerrilla member, *Frente Amplio*’s candidate José Mujica, the Uruguayans decided once again to confirm the *Ley de Caducidad*. The Campaign needed 50% plus 1 vote to achieve the annulment but only reached 47% of the vote.

Although the referendum was lost again in 2009, the context differed from that of 1989. In 1989 the movement had almost disappeared after the defeat in the referendum

³¹³ See *Clarín*, “Tabaré apoya la derogación de la ley de amnistía” April 24th 2009. Viewed at www.clarin.com.ar on April 24th 2009.

³¹⁴ See *Clarín*, “Uruguay: a seis días de las elecciones declaran inconstitucional la amnistía a militares,” October 19th, 2009. Viewed at www.clarin.com.ar on October 19th 2009.

and a new administration that did not embrace a human rights agenda was poised to assume power. In 2009 the movement experienced a new defeat, but trials were underway and ten people had already been convicted for human rights abuses including former dictator Gregorio Alvarez. In addition, a new *Frente Amplio* president was elected who was not only a former guerrilla member that fought the military dictatorship but who had supported their human rights demands and even personally signed the petition for the referendum. Today the movement feels strong and in a very different place than that of 1989.

4.3.3.3. Improving human rights trials.

President Vázquez took other measures to improve judicial proceedings and strengthen the search for the truth in court. In February 2008 the government eliminated the defense of “military secrecy” on issues related to the violations of human rights during the military dictatorship, preventing the officers from using this argument to refrain from testifying before the judge.³¹⁵ In addition, on August 8th of that same year, the notion of “due obedience” was eliminated from the law that ruled the behavior of the Uruguayan police.³¹⁶

4.4. Systematizing State Response

As with the cases of Argentina and Chile, I coded the state response to the Uruguayan human rights movement using the five dimensions defined in Chapter 1: (1) access, (2)

³¹⁵ See *Clarín*, “En Uruguay ya no corre la defensa del pasado por secreto militar”, February 17th 2008. Viewed at www.clarin.com.ar on February 17th 2008.

³¹⁶ See *Clarín*, “Uruguay eliminó el concepto de obediencia debida”, August 8th 2008. Viewed at www.clarin.com.ar on August 8th 2008.

agenda setting, (3) government policy, (4) policy output; and (5) institutional change (see Table 1.1).

The first dimension of state response is *access* and it is measured in two different ways: first by the number of times *Madres y Familiares* met with the president, and second, by the number of incidents of repression the group suffered under each administration. Of the three cases Uruguay has been the one in which the movement had the least access throughout the different democratic governments. Since 1985, the year of the transition, only in the year 2000 did the movement get to meet with the president. Three administrations (Sanguinetti 1985-90, Lacalle 1990-95, and Sanguinetti 1995-2000) completely ignored the constant requests for interviews. President Batlle (2000-05) was the first to accept having a meeting with *Madres y Familiares*.³¹⁷ There are records of two visits of the group with him, both at the beginning of his term with the goal of discussing the shape the Peace Commission would take. But in my interview with the *Madres* they recall meeting with him three or four times.³¹⁸ It would be expected that President Vázquez (2005-10), as the first elected president from the Frente Amplio who had met with the group numerous times before, would have met with them at least once. Yet I found no records of any visit with him. When I asked the mothers about it they told me that each time they requested a meeting they were referred to the Secretary of the Presidency, Gonzalo Fernández, with whom they met several times in particular to talk about the search of the bodies. President Vázquez's good will towards the group was clear when in the inauguration parade he made a point to stop and greet and hug the

³¹⁷ See *La República*, "Familiares reciben con optimismo cambio de postura presidencial" March 29th 2000. Viewed at www.la Republica.com.uy on August 31st, 2008.

³¹⁸ Interview with four mothers of *Madres y Familiares*, Montevideo, September 15th 2008.

mothers.³¹⁹ However, once in power he chose not to handle the relationship with *Madres y Familiares* personally. He did meet with another human rights organization, SERPAJ on two occasions in which the demands of truth and justice were discussed (SERPAJ 2006). This is a surprising finding given that SERPAJ has been much more critical of Vázquez's human rights policies than *Madres y Familiares*.

In contrast to Argentina and Chile, Uruguay had only one episode of repression. This occurred in 1986 under the first Sanguinetti administration when the movement had convened outside Congress to wait for the outcome of the debates on the *Ley de Caducidad* (Bucheli et al 2005: 62).

The second dimension of state response is *agenda setting* and it is measured first by taking into account if the issue of human rights was included in the platforms of the main political alliances and parties (the Colorado Party, the Blanco Party and the *Frente Amplio*), and second, by counting the number of bills that were introduced in Congress (whether or not they were passed) that relate to the issue of justice for past human rights abuses. This measure takes into account whether the bills would have advanced the movement's cause or to the contrary set it back.

³¹⁹ See *La República*, "Rompió el protocolo, caminó por la calle y se estrechó en cálidos abrazos" March 2nd, 2005. Viewed at www.larepublica.com.uy on August 31st, 2008.

TABLE 4.2

STATE RESPONSE TO HUMAN RIGHTS MOVEMENTS

IN URUGUAY

1985-2010

Dimensions	Sanguinetti 85-90	Lacalle 90-95	Sanguinetti 95-00	Batlle 00-05	Vázquez 05-10
1.1. Access. No of meetings with the President	0	0	0	2	2 meetings with SERPAJ, but none with Madres y Familiares.
1.2. Access. No of incidents of repression*	1	0	0	0	0
2. 1. Agenda Setting. Inclusion of human rights issues in party's platform.	Only in Frente Amplio's platform.	Only in Frente Amplio's platform.	Only in Frente Amplio's platform.	Only in Frente Amplio's platform.	Only in Frente Amplio's platform but it does not include the annulment of <i>Ley de Caducidad</i> until 2008.
2.2. Agenda Setting. No of bills related to human rights introduced in Congress**	Pro HR: 11 Against HR: 6	Pro HR: 2	Pro HR: 1	Pro HR: 5. Against: 1	Pro HR: 8. Against HR: 1
3-Government Policy pro or against human rights	Pro HR: Parliamentary investigation commission. Against HR: <i>Ley de Caducidad</i> and national referendum confirming it.	no specific policies	no specific policies	Pro HR: Peace Commission	Pro HR: Exclusion of 14 cases from <i>Ley de Caducidad</i> , Congress votes for the derogation of this law. President declares it unconstitutional. Bill on economic reparations.

TABLE 4.2 (CONTINUED)

Dimensions	Sanguinetti 85-90	Lacalle 90-95	Sanguinetti 95-00	Batlle 00-05	Vázquez 05-10
4-Policy Output. No. of judicial convictions.	0	0	0	0	10 by the end of 2009.
5-Institutional Change: creation of hr government institutions				<i>Peace Commission. Secretaria de Seguimiento</i>	<i>Secretaria de Seguimiento.</i>

* These are incidents in which members of the human rights groups are particularly targeted and arrested.

** Those coded are only the bills strictly related to the demands of the Human Rights movement.

Unlike in Argentina and Chile, the issue of truth and justice for human rights abuses was not as prominent in the Uruguayan transition. CONAPRO, the 1984 assembly created by the political parties to set the agenda for the process of democratization, included the demand for amnesty for the political prisoners and for punishment of those responsible for human rights abuses. However, these statements were very general and did not mention specific policies through which this should be achieved (Amarillo 1986). Moreover, as soon as the first democratic government took power, CONAPRO collapsed (Barahona De Brito 1997).

CONAPRO's statements had such little impact that even when all parties agreed to include the issues of truth and justice in the transition's agenda, neither the Colorados nor the Blancos included them in their electoral platforms (Barahona De Brito 1997). The *Frente Amplio* did mention explicitly the need to know the fate of the disappeared, but also did not detail any specific policies to achieve truth and justice. Given the extensive use of political imprisonment by the military, the priority in the area of human rights at the time of the transition was the call for amnesty for all political prisoners, an item which was included in all parties' platforms at the expense of that of truth and justice.

After the defeat in the April 1989 referendum to repeal the *Ley de Caducidad*, the issue of human rights lost its place on the political agenda. In the presidential elections of November of that year the issue was not to be found in the platforms of any political party except for that of the *Frente Amplio*. However, even when the issue of truth and justice was included in this party's platform, no specific policies were proposed or discussed to address these demands, putting in doubt just how strong the party's commitment was to these policies at the time. It was only with the revitalization the human rights movement after 1996 that the issue increasingly began to appear in the *Frente Amplio*'s agenda. Among the political parties, it was the *Nuevo Espacio* (part of the *Frente Amplio*) that joined the human rights movement to champion the issue. In the 1994 presidential elections this was the only party that made human rights policies one of its priorities (Bucheli et al. 2005: 82).

In the 2004 elections, the Frente Amplio included once again the issue of human rights in its platform. A discussion took place within the coalition among those who wanted to include the nullification of the *Ley de Caducidad* and those who prefer to work within the legal framework. Based on what was best for the electoral strategy the party's congress ruled in favor of the second position. Thus, even though the *Frente Amplio* included many politicians with a deep commitment to the human rights movement, the party's support did not go as far as fighting for the annulment of the law. Once in power, the Vázquez administration adhered to the policy of working within the *Ley de Caducidad* that had been agreed upon within the party's structures.

The second way of measuring if human rights issues were on the political agenda is to look at the number of bills introduced in Congress per administration. Those coded in this

category are bills within the human rights policy area strictly related to the demands of truth and justice. The most active period in this respect was the first democratic government of Julio Maria Sanguinetti, when 17 bills related to the issue of human rights were introduced; of these 11 were in favor of the demands of the movement, and 6 against. Seven out of the 17 bills proposed granting amnesty to political prisoners, a clear demand of the movement at the time. Eight of 17 dealt with the issue of amnesty for human rights abuses committed by military and police officers. Of these eight, six opposed the movement's demands and proposed different ways of ensuring those responsible for the crimes would not be prosecuted. These were introduced at the peak of the debate which resulted in the passing of the *Ley de Caducidad* in December 1986. Only two of eight proposed measures that would advance the demand for justice. One was a bill presented by legislators from the *Frente Amplio* that would force military officers to appear in court and strip them of their rank if they did not obey court orders (Barahona De Brito 1997). The other was a bill presented after the *Ley de Caducidad* was passed that would have declared the law unconstitutional and hence established the need to annul it.

During the Lacalle and second Sanguinetti administrations it was clear that the demands of the human rights movement were not on the agenda. Between 1990 and 1995 only two bills were introduced in Congress related to these issues. Between 1995 and the year 2000 there was only one. As was described in the previous section, these were the years in which, after the defeat in the 1989 referendum, the human rights movement almost disappeared. It was not until 1996 with the yearly demonstrations on May 20th that the movement began to re-organize, gradually putting the issue of human rights back on

the agenda. During the Batlle administration the number of bills related to human rights issues increased to six. Finally, under President Vázquez the topic was still present on the agenda, with nine bills in total introduced during this period.

The third dimension, *government policy*, deals with whether administrations advanced the movements' demands for justice or stalled them. This particular dimension has been analyzed in depth in the previous section.

The fourth dimension, *policy output*, is measured by the number of judicial convictions that were obtained during each administration. For most part of the democratic governments since the 1985 transition Uruguay has been characterized by a lack of judicial accountability for human rights abuses committed during the dictatorial regime. As was described in previous sections, the 1986 *Ley de Caducidad* prevented the investigation and punishment of those responsible. The law gave the President the authority to decide whether the cases fell under its scope or not. Until Tabaré Vázquez came to power in 2005, all Uruguayan presidents ruled that the law applied to all the human rights cases. The only progress made before Vázquez became president was in the case of the abduction and disappearance of Elena Quinteros in which the courts hearing the case decided not to request authorization from the executive power to investigate. As a result, in 2002 the former Minister of Foreign Relations of the dictatorial regime, Juan Carlos Blanco, was indicted and imprisoned for human rights abuses (SERPAJ 2002: 85).

However, it was President Vazquez's interpretation of the *Ley de Caducidad* which actually allowed the investigation and prosecution of many cases of disappearances for the first time in Uruguay. During his term he excluded fourteen cases from the scope of the amnesty law involving the disappearance of 57 Uruguayans. The main justification

for the exclusion of these cases was that the crimes were committed outside the country (mostly in Argentina), and/or that the accused were civil or military commanders, in which cases the responsibility for the abuses was considered not to have expired. The judicial investigation of these cases resulted in the first convictions for human rights abuses in Uruguayan history. On March 29th, 2009 seven military and police officers were sentenced to 25 and 20 years for the abduction of PVP members in Buenos Aires in 1976 and their transportation to Uruguay on what was known as “the second death flight.” As of the beginning of 2010, three other officers have been convicted, bringing the total number of convictions to ten.

A second way of measuring policy output that was used in the Argentinean case is the number of military officers whose nominations were questioned by the human rights movement who were subsequently promoted to higher office by the Senate. Unfortunately, this information is not available for every year for the case of Uruguay. A qualitative analysis can be offered instead for this indicator.

In Uruguay the task of questioning the military officers was assumed more centrally by SERPAJ, although *Madres y Familiares* always supported these decisions. The earliest information found about this practice was for 1989, the year in which SERPAJ denounced that 20% (11 out of 54) of the officers selected by the Executive for promotion had been accused of human rights abuses (SERPAJ 1989). In line with the human rights policies of President Sanguinetti, the Senate decided to ignore the human rights movement’s claims and promoted all the military officers proposed by the Executive. In 1990, under President Lacalle, the movement raised concerns about the promotion of six officers and the Senate again chose to ignore their statements. In 2000

under President Batlle, the Senate voted in favor of the promotion of two officers questioned by SERPAJ. The *Frente Amplio* was the only party to vote against it (SERPAJ 2001), as well as the only party that had a practice of consulting with SERPAJ and the Human Rights Commission of the union PIT CNT as soon as the Executive branch submitted its list of candidates for promotion to be sure that the suggested names had no involvement in human rights abuses.³²⁰

Finally, the last dimension of state response refers to the *creation of government institutions* to address the human rights movement's demands. Ever since the creation of the Peace Commission in the year 2000, *Madres y Familiares* had demanded the establishment of a permanent institution that would continue the tasks assigned to the special commission once its mandate ended (Bucheli et al. 2005: 99).³²¹ The final report of the Peace Commission included the need to create an institution of this kind, and in 2003 President Batlle created what was called the “*Secretaría de Seguimiento*” (follow up secretariat).³²²

Before taking power Tabaré Vázquez met with *Madres y Familiares* and one of their explicit demands was the creation of a human rights secretariat following the example of Argentina.³²³ Vázquez announced his intention to create such an institution in January 2005, but he did not follow through on his promise. Nonetheless, under his administration

³²⁰ Interview with Julián González, Universidad de la República, Montevideo, September 3rd, 2008.

³²¹ See *La República*, interview with *Madres y Familiares*, May 22nd, 2001. Viewed at www.la-republica.com.uy on August 30th, 2008.

³²² See *La República*, “Batlle creo la Secretaría de Seguimiento”, April 12th, 2003. Viewed at www.la-republica.com.uy on January 10th, 2010.

³²³ See Brecha, “La Secretaría de Derechos Humanos en gestación”, January 7th, 2005. Viewed at <http://www.rodolfovalsh.org/spip.php?article290> on January 10th, 2010.

Madres y Familiares was assigned an important role in the *Secretaría de Seguimiento*. In December 2006 after the failed search for the bodies of the disappeared based on the Armed Forces report, President Vázquez signed a resolution to give Javier Miranda, a well known member of *Madres y Familiares*, the responsibility for this organism.³²⁴

Since December 2006 there has been a bill in Congress proposing the creation of a National Institute for Human Rights. However, this institute would have no jurisdiction over the investigation of past abuses.³²⁵

4.5. Conclusions for Uruguay's case

The Uruguayan human rights movement as a late developer and the weakest of all three cases analyzed here has shown an incredible spirit of resistance. After more than 25 years of struggle and after going through phases in which the movement almost dissolved, it is possible to see their impact growing since the year 2000 until this very day. The coming to power in 2005 of a sympathetic government in the hands of the *Frente Amplio* gave the human rights movement an interlocutor to work with and advance the demands that had been stalled for years by previous administrations.

The human rights movement had no impact on state policy until the year 2000. During the first 15 years of democratic governments the first three administrations completely ignored the movement and their demands. The only access they had to the government was through the *Frente Amplio*'s legislators. Both the Executive branch and the Supreme Court repeatedly governed and ruled against the movement's demands. The

³²⁴ See *La República*, "Texto de la resolución" December 27th, 2006. Viewed at www.larepublica.com.uy on January 10th, 2010.

³²⁵ See *La República*, "Incierto futuro de la Secretaría de Seguimiento de la COMIPAZ", January 17th, 2010. Viewed on www.larepublica.com.uy on January 30th, 2010.

campaign for the 1989 referendum showed a movement that after being ignored by the government, searched for direct support from the people, a unique experience not repeated in the other two countries studied here. This however resulted in a new defeat. Uruguayan society confirmed the amnesty law and in the process made it even stronger and conferred more legitimacy upon it than it had before. In spite of the negative outcome, the movement considered the campaign a learning experience that would be key for future endeavors. Notwithstanding the gains in terms of movement organization and mobilization, the impact on state policy was nil.

The first instance of impact on state policy is represented by the creation of the Peace Commission by President Batlle in the year 2000. This had been a demand of the movement in their search for the truth of what had happened to their relatives. *Madres y Familiares* assigned a representative to this commission, ensuring their influence in their work. The meetings held with President Batlle to discuss the shape of this institution also gave the movement an instance to express their specific demands with respect to this issue. The Commission ended up disappointing the movement. The lack of a mandate to “investigate” showed that Batlle was addressing the movement’s demands but in a way that it would not create tension within the armed forces. Politicians from the *Nuevo Espacio* and union leaders from PIT CNT tried to convince *Madres y Familiares* not to participate in the truth commission under these circumstances. However, the organization thought that they could not ignore the government’s call after 15 years of indifference and decided to take part in it. The Uruguayan movement has proven to be more compromising and less intransigent than their Argentinean and Chilean counterparts.

The close relationship with some of the parties that belonged to the *Frente Amplio* represented an important access channel for the human rights movement, but many times this connection backfired. Uruguay's strong party system left less room for the social movement's independence characteristic of the case of Argentina. The human rights movement in Uruguay was many times caught up in political struggles within the *Frente Amplio* that prevented the movement from taking a strong position against the government. This was the case of the campaign to annul the *Ley de Caducidad* which was not joined by *Madres y Familiares* so as not to create additional problems for President Vázquez within his party.

However, in other areas, the close relationship with the *Frente Amplio* paid off. It was under this party's administration that the movement got their demand of justice addressed for the first time. The campaign to nullify the *Ley de Caducidad* also reveals the movement's growing influence. The campaign's growth led the *Frente Amplio* to rethink its initial position of working within the legal framework and to later support the annulment of the law. The same can be said of President Vázquez's initial reluctance to support the campaign, and how towards the end his position changed. The fact that Vázquez's decision was later followed by a similar ruling by Congress and the Supreme Court revealed the impact the campaign had had. Despite the fact that this support did not influence the referendum's outcome, it is nonetheless indicative of the movement's impact on governmental decisions.

CHAPTER 5

CONDITIONS FOR HUMAN RIGHTS MOVEMENTS' SUCCESS

This dissertation argues that for a social movement to have its demands addressed by state policy, two main things are required. First, the movement has to be strong in terms of its power to attract supporters, since it is mainly responsible for placing the issue on the political agenda. If there is no social movement organized around these issues, the chances of these issues entering the agenda -- a prerequisite for achieving an impact on state policy -- are very slim.

However, not every government will react to a social movement in the same way, regardless of how strong the movement might be. Strength alone cannot take the movement all the way. Thus, the movement needs political allies in power for the issues to move forward: for bills, once introduced, to be debated and passed in Congress, for government programs to be implemented, and for institutions to be created that address the movements' demands. A movement's potential allies are determined by the ideology and the position towards the movement's demands of those in power. However, it is a movement's choice whether to work with the potential allies in power or not towards the advancement of its demands.

Finally, a third variable is added to explain why not all of those politicians ideologically close to the movement will respond to its demands in the same way.

Political and strategic considerations play a role here. The weaker the president is when assuming power and in particular the greater the need for support from leftist constituencies, the more the government will try to advance the main demands of these social movements.

Chapter 2, 3 and 4 identified the moments in which the human rights movements in Argentina, Chile and Uruguay were influential in defining state policy. The goal of this chapter is to apply the theoretical model and compare across cases.

5.1. Movement Strength

Non “bread and butter” issues such as that of justice for human rights abuses seem to have no weight in people’s decision at the time of voting as seen in the public opinion polls reported in Chapter 10. It follows that in the absence of a social movement that defines the issue, organizes around it and demands government attention, politicians see no electoral value in addressing these issues. This reasoning lays the ground for the first hypothesis:

A strong social movement is a necessary condition for issues that affect a minority of the population to be introduced onto the political agenda.

The stronger the movement, the greater the likelihood it will have an impact on state policy.

As was described in the introductory chapter, movement strength is measured in two different ways. The first is to draw from academic sources and their characterization of the movement’s strength in each country over the years. A second measure of movement strength will be provided by a movement’s power to convene, meaning the amount of

people they are (or were) able to gather in their main annual demonstrations. The data for this was gathered both from national newspapers and movements' own estimates, when available. When big differences exist between newspaper and movements' reports, both measures would be provided. The limitations of these measurements are two: 1) in some cases numbers are not available for all years, and 2) the source is not the same for each of these countries. However, the focus here is on the trends rather than on the numbers per se.

While the academic opinions on the strength of each movement provide a general assessment of the human rights movement as a whole, the power to convene is a more specific measure since it traces the strength of the particular human rights organization under study in each country -the *Madres* in Argentina, the AFDD in Chile and *Madres y Familiares* in Uruguay- throughout the years.

5.1.2. Movement Strength according to academic sources

In her 1994 study of the Argentinean human rights movement Allyson Brysk states that “a human rights movement can be characterized as strong or weak depending on some combination of the numbers of people involved, persistence of protest, use of multiple channels of dissidence, broad social base, symbolic power, degree of human rights focus and general social legitimacy” (1994:168). These are indicators that have been taken into consideration by different academics when describing the strength of the human rights movement in the countries under study. While I not necessarily agree with the use of some of these indicators, it is interesting to see if by measuring movement strength through them they arrive at similar conclusions than this study's use of the power to convene.

There is a wide consensus among academics that during the military dictatorship and at the time of the democratic transition, the strongest human rights movement was the Chilean one (Loveman 1998; Barahona de Brito 1997 and 2001). In making this assessment academics point to the movement's deeper links with the parties of the *Concertación*, legal associations, the Catholic Church and international NGOs (Barahona de Brito 2001), elements which were not present in the other two cases. Both the Argentinean and Uruguayan movement lacked the support of the Catholic Church, and they developed independently from political parties (Loveman 1998). In addition, Chile received more international attention and financial assistance than the other two countries, especially Uruguay. The fact that Chile was in the international spotlight before the 1973 military coup due to the democratically elected socialist government of Allende's accorded the movement a larger international audience from the very beginning.

In spite of lacking links to other organizations which were key for the Chilean movement, Argentina is nonetheless usually cited as having a strong human rights movement (Brysk 1993; Barahona de Brito 2003; Bonner 2007). It is possible that the strong symbolic power and the innovative repertoires of contention introduced by the *Madres de Plaza de Mayo* (Gorini 2008; Sikkink 2008), might have compensated for the lack of alliances with political parties, unions and the Catholic Church. In his study on the history of the *Madres* Gorini emphasizes that their strength was not based on the number of people that supported them but on their ethical orientation that defended life, demanded justice and rejected all kinds of violence (Gorini 2008: 49). While the other groups of relatives of the disappeared in Chile, Uruguay and Argentina shared this ethical

stand, the use of the image of motherhood in their struggle for their children's lives had given this group a particular relevance both national and internationally that was lacking among the other groups of relatives of the victims. Bonner for example states that the symbolic power the *Madres* gained from the use of their traditional gender roles is the reason behind their resilience and survival as a human rights organization throughout the years (Bonner 2007).

While the Chilean human rights movement lost strength after the democratic transition, the Argentinean movement was able to sustain its relevance and activism with overall even strength over the years (Bonner 2007). In Chile, after the transition, the Catholic Church closed the *Vicaría de la Solidaridad*, an institution which had played a central role in protecting the movement during the military dictatorship. International financial support also dissipated after 1989. The closer links between the Chilean human rights movement and the political parties of the *Concertación*, which ensured the presence of the issue of human rights in the transition's agenda, became in time detrimental to the survival of the movement. Once the first democratic government was in place, many within the movement decided that the time had come to work within the government and they joined the Aylwin administration. This was not the case in Argentina. Since the links of the movement with the main political parties were weak or nonexistent, the movement, particularly the *Madres*, remained autonomous and much less cooperative with the democratic governments. Its independence, in time, enabled the movement to not only survive but to retain its strength after democratization.

Scholars agree that the Uruguayan human rights movement is the weakest of the three cases (Barahona de Brito 1997 and 2001; Skaar 2007; Roniger 1997). The movement

only emerged between 1981 and 1983, relatively late considering the coup d'état occurred in 1973. Characteristic of Uruguay's "partidocratic" political culture (Gonzalez 1997), most of the opposition to the military regime was carried out by political parties and not by human rights organizations (Barahona de Brito 1997). Barahona de Brito attributes the late development of the movement to three factors: 1) the elimination of any space for opposition by the regime and the strict censorship imposed on the media, 2) the absence of support from autonomous institutions such as the Catholic Church, and 3) the lack of international attention (Barahona de Brito 1997: 86-87). On top of this late and rocky start, the movement was weakened even more after the democratic transition due to the lack of strong links to the main political parties (Barahona de Brito 2001). This fact, which was a strength in the Argentinean case, became a hazard for the Uruguayan movement given the central role political parties have in the political system.

While many of the scholars cited above include the links with political parties as an indicator of movement strength, I prefer not to conflate both concepts and define them separately. The first reason being that the Argentinean human rights movement proved to be fairly strong while lacking those links. Secondly, this study shows that politicians only support the demands of social movements that are already strong. No weak movement received political support in the cases studied here. Movement's strength is the first step towards having their demands addressed, an initial condition which only if followed by the second one –political allies- will result in actual impact on state policy.

5.1.3. The Power to convene

One of the standard ways of measuring the strength of a movement is to look at the persistence of protest during the period of interest (Burstein and Freudenburg 1978;

Giugni 2004). The *Observatorio Social de America Latina* (OSAL) provides annual chronologies of protests for most Latin American countries based on the analysis of national newspaper beginning in the year 2000. Although the movements analyzed were active many years earlier, this database offers a first insight into the human rights movements' activities and a shortcut to the otherwise endless browsing of daily newspapers over almost 30 years for each of the countries under study.

TABLE 5.1
NUMBER OF HUMAN RIGHTS PROTESTS
FOR TRUTH AND JUSTICE
IN ARGENTINA, CHILE AND URUGUAY
2000-2007

	Argentina	Chile	Uruguay
2000	2	8	1
2001	1	2	1
2002	2	2	2
2003	3	3	2
2004	3	1	1
2005	2	1	1
2006	12	2	1
2007	4	3	2

Source: Author based on OSAL chronologies.

Table 5.1 shows the number of protests organized by the human rights organizations to demand truth and justice³²⁶ under study in this project in each of the countries. The table shows how with the exception of a couple of years (2000 for Chile and 2006 for

³²⁶ Protests for truth and justice in which the human rights organizations studied here (Madres de Plaza de Mayo, AFDD and Madres y Familiares) did not participate were not included. The coding also excludes protests organized by these organizations but which main demands were others than that of truth and justice, such as opposition to economic policies or international wars.

Argentina), the human rights movements in each country held between one and three demonstrations a year. These two cases in which the number of protests increased dramatically were related to particular events which put the issue of past human rights abuses at the forefront of these countries' agenda. In the case of Chile, it was the return of General Pinochet to Chile after his detention in the United Kingdom that increased the level of mobilization of the human rights movement. In the year 2000, six of the eight protests were related to the “*desafuero*” and prosecution of Pinochet in Chile. For the case of Argentina, the drastic increase of protests in 2006 was related to the disappearance that September of Julio Lopez, a former detainee during the military dictatorship who had managed to survive and was a witness in the trial of one of the key figures of the repression, Miguel Etchecolatz.³²⁷

From the details of these protests it is clear that there are some recurrent protests that occur every year in the same date in each of these countries. For Argentina those were March 24th, which marks the anniversary of the 1976 coup d'état, and the first week of December during which the *Madres* organize a 24 hour- demonstration called “*Marcha de la Resistencia*” (March of Resistance). In Chile, the main annual demonstration is that held on September 11th, the anniversary of the 1973 coup. In Uruguay the main activity takes place every year on May 20th, which marks the date of the assassination of legislators Zelmar Michelini and Hector Gutierrez Ruiz in Buenos Aires in 1976. This demonstration is called “*Marcha del Silencio*” (March of Silence) for the complete silence in which the march is carried out.

³²⁷ Miguel Etchecolatz was a senior police officer in the Province of Buenos Aires during the military dictatorship. He was sentenced to life imprisonment in 2006 for homicide, kidnapping and torture.

Given this pattern of holding annual demonstrations, tracing the number of protests organized by each movement every year does not show enough variation to allow an analysis of their strength throughout the years. This is the reason why I have chosen to measure movement strength based on their “power to convene,” by which I mean the number of participants the movement manages to attract to its main annual demonstrations. The information on the attendance of these events was collected from both estimates provided by the movements themselves where available and newspaper articles to compensate for possible bias in self-reporting by the movements. In the case of Argentina I consulted the newspapers *Clarín* and *Página 12*. In the case of Uruguay, I read reports from the newspaper *La República*, and in Chile, the newspaper *El Mercurio*. My choice of newspapers was based on availability and on which ones reported more information on the events of interest. The following sections provide the measurement of this concept.

5.1.4. Argentina: Madres de Plaza de Mayo and its Power to Convene

Figure 5.1 shows the number of people that attended the March of Resistance from 1983 until 2007. There is some missing data due to the fact that this information was not included in the *Madres*’ reports of this event in those particular years. Also, I acknowledge that given that this is information given by the movement itself, it may be subject to inflation. In an attempt to correct for this, I traced the numbers of attendants to this same event as reported in the newspaper *Clarín*. Unfortunately, they have also not been consistent in their reporting and this information was available only for eleven of the 24 years researched here, making it hard to compare and see if attendance was over-reported by the movement in each particular year. However, even when the movement

may inflate the numbers of attendants, what is more relevant here is not how many people attended, but the trends of increasing and decreasing mobilization. It is clear from this graph that the 1980s and the beginning of the 21st century show a large power of convocation by the *Madres de Plaza de Mayo*, while the 1990s are a period of decreased attendance.

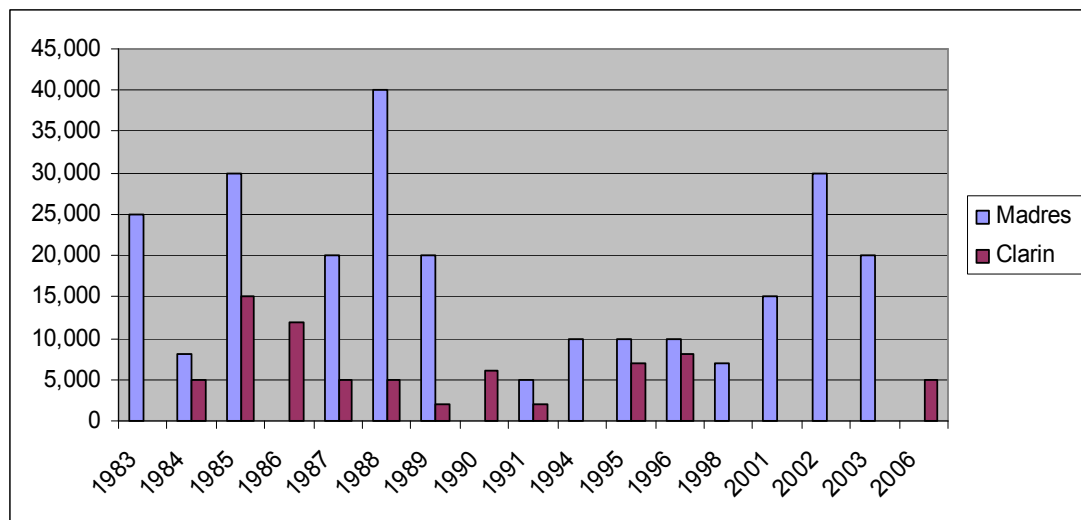


Figure 5.1: Attendance at the March of Resistance according to *Clarín* and *Madres de Plaza de Mayo*. 1983-2006.
Sources: by author based on data from newspaper Clarín and reports from Madres de Plaza de Mayo

Figure 5.2 reports the attendance at March 24th demonstrations as reported by newspaper *Página 12*. While there are still some years with missing data, we can see the increase of attendance in the first years of the 21st century, coinciding with a trend of general mobilization that began in the late 1990s and led to the December 2001 uprising in Argentina. However, by the year 2006, this cycle of mobilization has come to an end, and the March 24th demonstration seems to convoke as many people as in the peak of the

cycle in 2001. The reason behind this spike may be that 2006 was the 30th anniversary of the 1976 coup d'état.

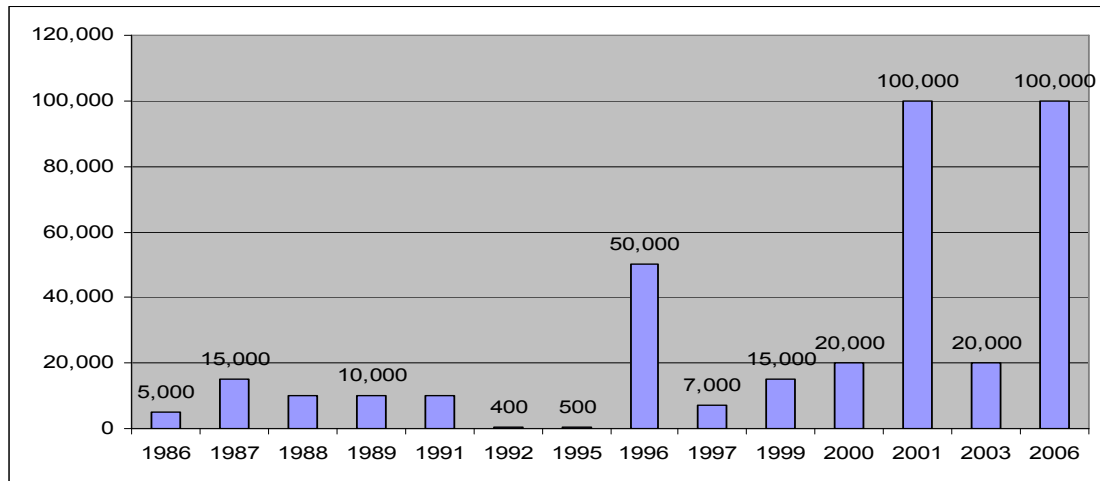


Figure 5.2: Attendance at March 24th demonstrations according to *Página 12*. 1986-2006.

Source: by author based on newspaper data from Página 12.

Measuring the number of people that attended the March of Resistance is harder than in other cases, which may explain the discrepancy in numbers between *Clarín* and *Madres*. The March of Resistance takes place over the course of 24 hours, which makes it difficult to estimate accurately the number of people that participate in the demonstration. Estimates are usually reported based on the number of people that participated at the conclusion of the march, but this leaves out those who took part in it at other times during the day. This challenge notwithstanding, this demonstration is included because the *Madres de Plaza de Mayo* are its main organizers. In the other demonstration reported, that of the anniversary of the coup d'état, different human rights organizations take part in the organization and it is not uncommon to have different and even competing

activities organized throughout the day by each of them. This also explains the larger number of people that participate in the event.

Both figures show that the human rights movement's power to convene was stronger at those times when the government was being more responsive to its demands (as seen in Part I). This finding can be interpreted in two ways. One is that the more people supported the human rights movements' demands, the more responsive the government was. However, a second interpretation may be that the causal direction is the reverse and that the attention given by the government to these issues revitalized the movement and thus contributed to a larger level of mobilization during those years. Based on the analysis of Part I of this dissertation, the detailed description of events in Argentina provides evidence for the first interpretation. First, the human rights movement in Argentina was already strong during the military dictatorship and thus its strength precedes any policy of the Alfonsín administration. In addition, after the democratic transition the government only partially addressed some of the movement's demands. It is clear that the movement, and in particular the *Madres*, were not happy about the government's response and thus its demonstrations were initiated to demand more and denounce what its members viewed as a betrayal of the government's campaign promises. Similarly, the second peak of participation began in 2001 and well before President Kirchner's policies favorable to the human rights movement, which began only after he took power in 2003. This peak is better understood as embedded in the wave of increased mobilization which rocked the country in 2001.

5.1.5. Chile: The AFDD and its Power to Convene

Figure 5.3 shows the attendance at the September 11th demonstrations in Chile on the occasion of the anniversary of the 1973 coup d'état, as reported by newspaper *El Mercurio*. This demonstration was organized by the *Asamblea Nacional por la Democracia y la Justicia Social* of which the AFDD is a part. When comparing these numbers with those of the Argentinean human rights movement, the first thing that stands out is the much smaller number of people the Chilean movement was able to convene, at

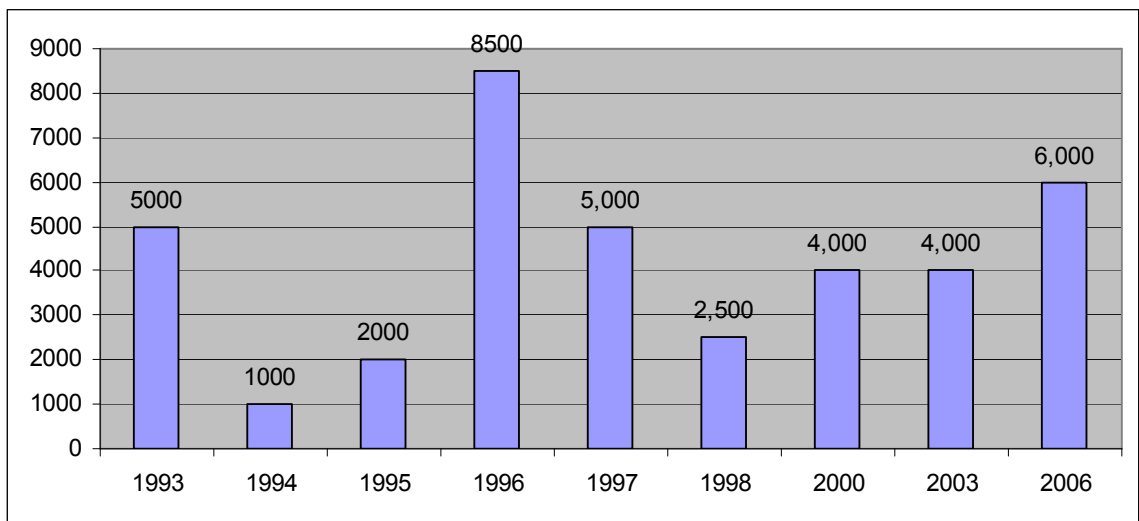


Figure 5.3. Attendance at the September 11th demonstrations in Chile according to *El Mercurio*. 1993-2006.

Source: by author based on reports in *El Mercurio*.

its high point, in 1996, 8,500, compared to the 100,000 people mobilized on the anniversary of the coup in Argentina in 2001 and 2006. Although *El Mercurio* is a conservative newspaper and thus may have underreported the number, the AFDD did not keep track of attendance at their marches and thus this is the only source available by which to measure this variable. Whereas the number participating fluctuated widely in Argentina from 400 and 500 people in 1992 and 1993 respectively, to 100,000 in 2001

and 2006, in Chile the numbers were steadier over the years, ranging from 1,000 in 1994 to 8,500 in 1996.

5.1.6. Uruguay: *Madres y Familiares and the Power to Convene*

Figure 5.4. shows the number of people that attended the May 20th *Marcha del Silencio* in Uruguay from 1996 until 2009 based on reports by SERPAJ (1996-1999) and the newspaper *La República* (2000-2009). This newspaper has a left-wing orientation and characteristically has given a great deal of attention to the issue of human rights in the country.

Reporting on the *Marcha del silencio* began in 1996, the first year of its organization, which coincided with the 20th anniversary of the assassination of Michelini and Gutierrez Ruiz. Before this date the human rights movement did not stage an annual demonstration, a fact that supports the opinion of scholars describing the Uruguayan movement as the weakest of the three. Nonetheless, in Uruguay the movement found a way through the organization of this demonstration to revitalize its struggle at a time when the government was completely ignoring its demands. Unlike the case of Argentina in which there may be an initial ambiguity about which was the independent variable –the movement’s mobilization or the government responsiveness- in Uruguay it is clear that the movement’s activation came first. It was not until the year 2000 and the ascension to power of President Batlle that the movement was received by the government and only in 2004 with President Vazquez that the broader demands for truth and justice would be addressed in more depth.

Participation rates were more constant in Uruguay than in Argentina, but they fluctuated more than in Chile; they rose from 20,000 in 2008 to 100,000 in 2009, a really

large number given that the country's population at the time was only 3.5 million.

Participation increased gradually except for the years 2003 and 2008 in which attendance fell.

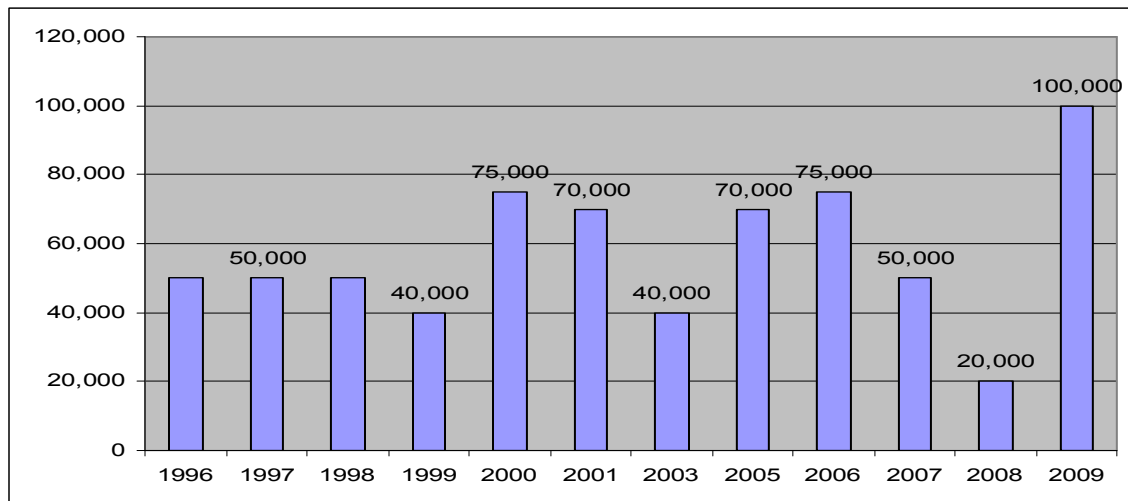


Figure 5.4. Attendance at the *Marcha del Silencio* in Uruguay according to SERPAJ and La Republica.1996-2009.

Source: by author based on information from SERPAJ (1996-1999) and La Republica (2000-2009)

5.1.7. Conclusion

The measure of the “power to convene” of each movement is consistent with the analysis of the human rights movements’ strength offered by other scholars, even when using different indicators. During democratic times Argentina has had the strongest movement with the largest number of people in attendance at its demonstrations, although with significant ups and downs. After a strong start, the movement’s attraction decreased considerably during the 1990s. However, the movement managed to survive, remain active, and revitalize its support towards the beginning of the 21st century. The persistence of the human rights movement over the years with high levels of support clearly shows the strength of this movement.

In Chile the data of the power to convene correspond to what academics have highlighted in terms of the weakening of the movement once the democratic transition took place. In the case of Uruguay, the scholarly consensus as of the mid to late 1990s, based on the utter absence of annual demonstrations sponsored by the human rights movement before 1996, was that Uruguay had the weakest movement of the three cases. Subsequently, the revitalization of the movement has gone largely unnoticed. This is where the measure of strength based on attendance at the *Marchas del Silencio* becomes useful. The data show a movement which grew in strength in the midst of very unfavorable circumstances: a government that ignored its demands and an amnesty law affirmed by the Uruguayan people in the 1989 referendum.

5.2. Political Allies

A strong social movement is a necessary but not a sufficient condition for a movement to have an impact on state policy. A social movement also needs political allies in power to press its demands within the political system. While the existence of a movement is critical for the second dimension of state response –placing the issue in the political agenda- the presence of political allies is necessary for the following dimensions: for bills to be introduced, for laws to be passed, for programs to be implemented, and for government agencies to be created.

Faced with a strong social movement, some governments are more receptive than others towards its demands. What, then, explains why some governments are more likely to respond to these social movements than others? What characteristics should politicians have in order to be considered potential movement allies? My first hypothesis is:

H1. *Leftist governments are more likely to respond to human rights movements' demands than right-wing ones.*

Ideology is a general predictor of government responsiveness to social movements, but it is not one without problems. The party system in Chile and Uruguay can be easily described in ideological terms since their parties are programmatic. There is a general consensus among scholars around where to situate each of the parties in the two countries on the ideological spectrum (Scully 1997). However, Argentinean political parties do not easily lend themselves to a classification in terms of left and right (Moreira 2007). To address this problem, while Chilean and Uruguayan governments are coded based on their party affiliation, Argentinean governments are coded as left or right based on the economic policies implemented by each administration, and not according to the political party that was in power. The use of this indicator is based on the need to measure ideology independently from the issues demanded by the social movement.

To complement this measure I also coded each politician (president, ministers and all legislators) based on their relationship to the military dictatorship in the following categories:

- 1) Victims of the military dictatorship: defined as having personally been imprisoned, kidnapped, tortured, or exiled, or having had a close relative (children, parents or siblings) suffered the abuses listed above, killed, or disappeared;
- 2) Human rights advocates: defined as having been active in human rights organizations during the dictatorship and/or during democratic times. It applies also to those who defended political prisoners during those years;
- 3) Guerrilla members: defined as having participated in guerrilla groups before and during the military dictatorship. These groups are: *Montoneros*³²⁸ and

³²⁸ The *Montoneros* was a left-wing guerrilla group within the Peronist Party during the 1960s and 70s.

*Ejercito Revolucionario del Pueblo (ERP)*³²⁹ in Argentina, *Frente Patriótico Manuel Rodríguez (FPMR)*³³⁰ and *Movimiento de Izquierda Revolucionaria (MIR)*³³¹ in Chile, and the *Tupamaros*³³² in Uruguay.

4) Collaborators with the dictatorship: defined as having held one of the following positions during the military dictatorship:

--a position in the executive branch at the national (military junta and ministries), provincial (governors), and local levels (mayors).

--those who served as ministers, secretaries, undersecretaries and their advisers in the national ministries (those occupying the position of Director and below were considered to be technical and not political appointments).

--Members of the Supreme Court during the dictatorship and/or federal judges appointed by the military.

--Ambassadors appointed by the military dictatorship and/or those representing Argentina to major powers or border countries considered key for the country's foreign policy.

--Children and spouses of the dictators, whom I assume will have a predisposition to legislate against the prosecution of human rights abuses.

The coding of politicians based on these categories laid the groundwork for my second hypothesis:

H2a. Politicians that were victims, human rights activists, or guerrilla members during the military dictatorship are prone to sympathize with the human rights movements' demands and become their allies.

³²⁹ The People's Revolutionary Army was created in 1969 as the military branch of the Communist Party in Argentina.

³³⁰ The Manuel Rodriguez Patriotic Front was created in 1983 by the Communist Party as an armed resistance against the Pinochet regime.

³³¹ The Revolutionary Left Movement was a Marxist-Leninist political party created in 1965 by student organizations with strong support among trade unions and urban lower classes which took up arms during the 1970s.

³³² *Tupamaros* was a leftist urban guerrilla group during the 1960s and 70s.

H2b. Those that held a position of power during the dictatorship and their close families are expected to oppose this movement and try to stall their demands.

5.2.1. Ideology and Allies

Of the three countries, Chile offers the easiest ideological classification of its administrations given the programmatic character of its political parties (Scully 1997). Presidents Aylwin and Frei both were affiliated with the Christian Democratic Party, which is situated at the center-left of the ideological spectrum. Presidents Lagos and Bachelet both belonged to the Socialist Party, which is on the left.

The case of Uruguay is a little bit more complex but it is still possible to code parties in terms of ideology. While the National (Blanco) and Colorado Parties were traditionally multiclass, “catch all” parties lacking a programmatic character (Gonzalez 1997; Moreira 2006), both have veered towards the right since the emergence and consolidation of the leftist *Frente Amplio* (Moreira 2006). They also share the same constituencies (Llamazares and Sandell 2001) and this is why Table 5.2 situates them currently in the center right of the spectrum.

Argentina represents the hardest case to code since it lacks programmatic parties. Both the Peronist and the Radical party are “catch all” parties since they both include among their main leaders politicians that identify with left and right wing positions and have highly heterogeneous constituencies. For this reason, as I explained above, I coded the administrations based on the economic policies implemented by each president and not on their party affiliation to ensure a measure of ideology that is independent from the issues raised by the social movement. The first democratic government of Raul Alfonsín

(1983-89) was coded as a center-left government. Alfonsín began his term with a heterodox economic program which attempted to stimulate the domestic market and national industries, and raise salaries. However, when faced with recurrent economic crises his government veered towards the right and advanced more orthodox measures as adjustment programs and the privatization of some state assets. President Menem (1989-99) assumed power and implemented one of the fastest and deepest structural reform programs in the developing world (Levitsky 2003; Auyero 2002) that followed strictly the recipes of the Washington Consensus. It was therefore coded here as a right-wing

TABLE 5.2
IDEOLOGY OF THE DEMOCRATIC GOVERNMENTS
IN ARGENTINA, CHILE AND URUGUAY
1983-2007 *

	Left	Center Left	Center Right	Right
Argentina	Kirchner (PJ 2003-07)	Alfonsín (UCR 1983-89)		Menem (PJ 1989-99) De la Rúa (UCR 1999-01)
Chile	Lagos (PS 2000-06) Bachelet (PS 2006-10)	Aylwin (DC 1990-94) Frei (DC 1995-00)		
Uruguay	Vazquez (FA 2004-10)		Sanguinetti (PC 1985-90 1995-2000) Lacalle (PB 1990-95) Batlle (PC 2000-05)	

*Argentina: UCR (Radical Civic Union); PJ (Justicialist Party/Peronism); Chile: PS (Socialist Party); DC (Christian Democratic Party); Uruguay: PC (Partido Colorado); PN (Partido Blanco/ National Party); FA (Frente Amplio/Broad Front).

government based on the deep neoliberal character of its economic policies. President De la Rúa (1999-01) rose to the presidency as the result of an alliance between his radical party (UCR) and the newly formed leftist party FREPASO. Despite this alliance, his administration was coded here as a right-wing government because during his term in office the economic policies of the Menem era were continued and deepened. In addition, Vice-president Carlos Alvarez who was affiliated with FREPASO, resigned after less than one year in office due to a corruption scandal in the Senate covered up by the President. Finally President Kirchner (2003-07), although from the same Party as Carlos Menem, pursued a heterodox economic policy based on supporting the national market and remaining national industries, re-nationalizing some of the companies privatized in the previous decade, and strong state intervention in the economy.

5.2.2. The Power of the President

The three countries under study have a presidential system and as such the institution of the presidency plays a key role in laying the basis for government policies (Shugart and Haggard 2001). There are two sources of presidential powers: constitutional and partisan powers. Constitutional powers include the ability to veto bills, issue decree laws and the right of exclusive introduction of legislative proposals in certain policy areas. Partisan powers refer to the control the president has over their own party when they hold the majority of seats in congress. The interaction between these powers determines the power of the president (Mainwaring and Shugart 1997).

Argentina and Chile have been ranked at the top within the Latin American countries in terms of presidential constitutional powers because of their presidents' strong veto and

decree powers (Mainwaring and Shugart 1997; Shugart and Haggard 2001).³³³ In both rankings Uruguay lies in the middle given that presidents have no decree powers.

In terms of partisan powers, Argentine presidents are stronger than those in Chile and Uruguay given that political parties are weaker and usually line up behind the elected president. The majority party leadership in both chambers of Congress is most of the times “a faithful servant of the president” (Jones and Hwang 2005).

Disregarding the differences of degree, presidents in the three cases are powerful actors; all have strong veto power which requires congressional supermajorities to be overridden. Their positions towards human rights movements and their demands are thus of critical importance for analyzing government responses.

Various scholars have highlighted the decisive role that the commitment to human rights (or the lack of one) from the president has on a government’s human rights policy (Pion Berlin 1993; Barahona de Brito 1997). Following from this claim, having a president who was a victim, a human rights advocate, and/or a guerrilla member would increase the availability of allies to the movement. Having one who collaborated with the military dictatorship will, to the contrary, close most doors for the human rights movement. Table 5.3 shows the coding of the three countries’ presidents.

The first thing that stands out in Table 5.3 is the fact that none of the three countries had an elected president that had held a position of power during the military dictatorship. In fact, many of them have been victims of these authoritarian regimes. In the case of Argentina, two presidents were coded as victims. President Carlos Menem,

³³³ Mainwaring and Shugart (1997) rank Chile even higher than Argentina because the president not only has strong veto and decree powers but also has the right to exclusive introduction of legislation in certain policy areas. However, Shugart and Haggard (2001) rank Argentina higher because it is one of the few countries in which presidential decrees take effect immediately.

TABLE 5.3
ROLES OF PRESIDENTS DURING THE MILITARY DICTATORSHIP
IN ARGENTINA, CHILE AND URUGUAY
1983-2007

	Victims	HR advocate	Guerrilla	Collaborator	No particular relationship
Argentina	Menem (1989-99) Kirchner (2003-07)	Alfonsín (1983-89) Menem (1989-99) Duhalde (2002-03)			De la Rúa (1999-01)
Chile	Frei (1995- 2000) Lagos (2000-06) Bachelet (2006-10)				Aylwin (1990-95)
Uruguay	Lacalle (1990-95) Batlle (2000-05)				Sanguinetti (1985-90 1995- 00) Vazquez (2005-10)

governor of the province of La Rioja at the time of the 1976 coup d'état, was imprisoned by the military regime for five years (1976-1981), the last three under house arrest. When he was released in 1981, he joined the *Asamblea Permanente por los Derechos Humanos* (APDH, Permanent Assembly for Human Rights), a human rights organization founded in 1975 as a response to increased levels of violence and human rights violations at the time. Solely based on the criterion of imprisonment, Menem is clearly a victim. However, the terms of his incarceration were easy when compared to the rampage torture taking

place in the detention centers, and he also established ties with military and police officers during this time.³³⁴ This information is key to understanding his conciliatory policies towards the military and his failure to respond to the human rights movement's demands when he came to power in 1989.

The other Argentine president that was a victim of the military dictatorship was Nestor Kirchner. Before the military dictatorship he was a law student active in the youth branch of the Peronist party (*Juventud Peronista*, JP). During the military dictatorship he was imprisoned twice for short periods of time, but the reasons behind these detentions and his subsequent releases are unknown. After the coup d'état he left the city of La Plata where he was studying to return to his home province of Santa Cruz, where he began working as a lawyer and abandoned political activism.

Three Argentine presidents have been coded as human rights advocates. Carlos Menem was placed in this category for his membership in the APDH. Although after pardoning the military commanders in the early 1990s he was expelled from this institution. The first democratically elected president, Raul Alfonsín, was a founding member of APDH. In addition, during the military dictatorship Alfonsín worked as a pro bono lawyer defending those opposing the regime and presenting *habeas corpus* on behalf of the disappeared. He also travelled to other Latin American countries, the USA,

³³⁴ According to a story on Menem's experience as a prisoner during the military regime reported in Clarín on June 8th, 2001, the detention conditions in the Madgalena prison, where Menem was held, were light. For instance, on Sundays the prisoners enjoyed Argentine barbecue with red wine. Once Menem was released and placed under house arrest, and forced to live outside his home province (La Rioja), he chose the city of Mar del Plata, on the coast of the Province of Buenos Aires. There he typically went to the restaurant El Viejo Pop where he made friends with Admiral Eduardo Massera (a member of the military junta between 1976 and 1978), who wanted to be a presidential candidate supported by the Peronist party. Because of his excessive public life, the military forced Menem to move to another city. This time he chose Tandil in the center of the Province of Buenos Aires. There he had to report daily to the local chief of police. Hugo Zamora. Menem and Zamora became close friends and once the democratic transition took place and Menem was elected governor of La Rioja, he appointed Zamora as chief of police of his province. Retrieved on September 4th, 2008 at <http://edant.Clarín.com/diario/2001/06/08/p-02101.htm>

USSR and Europe denouncing the violations of human rights taking place in Argentina. Eduardo Duhalde, a Peronist mayor of Lomas de Zamora (a city on the outskirts of Buenos Aires) in 1976, was expelled from office when the coup d'état took place. He then returned to his law practice defending Peronists persecuted by the regime.

In Chile, three out of four presidents of the *Concertación* were victims of the Pinochet regime. Eduardo Frei has been coded as a victim of the dictatorship because in 2009 a judicial investigation confirmed that his father, Eduardo Frei Montalva, a former president of Chile (1964-70), was administered low doses of thallium and mustard gas while he was hospitalized at the Santa María Clinic in Santiago where he died in 1982. Nonetheless, the younger Frei's position towards the Pinochet regime is ambiguous. Initially, he met with General Pinochet after the 1973 coup d'état to express his support for the new regime, but by the end of the regime took part in the campaign against Pinochet for the 1988 plebiscite. The coding of the other two victims of the Pinochet regime is less controversial. Ricardo Lagos (2000-06), a member of the Socialist Party who was appointed ambassador to the USSR in 1972 by President Salvador Allende (1970-73), left the country immediately after the 1973 coup d'état and lived in exile in the US until 1978. Back in the country, in September 1986, Lagos was accused of being linked to a failed assassination attempt against General Pinochet and detained. In 1987 he became the leader of the opposition in the campaign for the 1988 plebiscite against Pinochet. Finally, Michelle Bachelet (2006-10) is the Chilean president who suffered the most due to the military regime. After the 1973 coup, her father, Alberto Bachelet, an Air Force General and member of Allende's Socialist Party, was detained and died in prison. Bachelet herself was imprisoned in 1975 together with her mother and locked up in the

detention center Villa Grimaldi, where they were interrogated and tortured. After being released, they left Chile in 1975 to return in 1979.

In the case of Uruguay, two presidents were victims of the military dictatorship. Luis Lacalle (1990-95) was a legislator for the *Partido Blanco* at the time of the 1973 coup d'état, which landed him in prison together with other Blanco political leaders. Jorge Batlle (2000-05), a leader of the *Partido Colorado* at the time of the coup, was politically banned and detained on more than one opportunity once the military took power. President Sanguinetti, who ignored the human rights movement during his two terms in office, belongs to the *Partido Colorado* and was the Minister of Education and Culture during the presidency of Juan Maria Bordaberry (1972-76), also a Colorado politician, who was responsible for installing the authoritarian regime in 1973. While Sanguinetti did not occupy an official position after 1973 and thus cannot be classified as a collaborator, his closeness to this faction of his party may explain at least in part his tepid response to the human rights movement once he was president.

Table 5.4 cross tabulates ideology and relation to the military dictatorship, and highlights in grey presidents that have been responsive (albeit it to different degrees) to the human rights movement, to test the predictive power of each indicator. The evidence shows that ideology is a better predictor of government response to the human rights movement than the position a president played during the military dictatorship. As can be seen from this coding scheme, having been a victim of the military dictatorship or a human rights advocate does not guarantee a commitment to human rights once a president came to office. The clear example of this is Argentine president Carlos Menem who, even though he was held in prison for five years, in power pardoned the military

commanders convicted by the Alfonsín administration and many others whose trials were still pending at the time.

TABLE 5.4
IDEOLOGY AND RELATION TO THE MILITARY DICTATORSHIP
OF THE PRESIDENTS OF ARGENTINA, CHILE AND URUGUAY
1983-2007*

	Left	Center Left	Center Right	Right
Victims	Kirchner (2003-07) Lagos (2000-06) Bachelet (2006-10)	Frei (1995-00)	Lacalle (1990-95) Batlle (2000-05)	Menem (1989-99)
HR advocates		Alfonsín (1983-89)		
Guerrilla				
Collaborators				
No particular relationship	Vazquez (2004-10)	Aylwin (1990-95)	Sanquinetti (1985-90 1995-00)	De la Rúa (1999-01)

* The squares in grey show those presidents who have been receptive to human rights movements' demands.

Except for Chilean President Frei, all presidents that were coded in the center-left and left categories are highlighted in grey whether or not they had been victims of or human rights advocates during the military dictatorship. The other exception is Uruguayan president Jorge Batlle, who despite being situated on the center right was the first president to meet with the human rights movement and to advocate the first truth policies in the country (his responses were nevertheless deemed insufficient by the movement).

The qualitative analysis of the Uruguayan case presented in Chapter 3 attributes Batlle's policies not to the fact that he has been a victim of the military dictatorship but rather to the weakness of his presidency, a variable that will be introduced later in this chapter.

5.2.3. Movement Allies at the Ministerial and Congressional Level.

Although the relationship to the military dictatorship proved not to be an accurate predictor of President's attitude towards the human rights movement, this variable is a good predictor of the attitudes of legislators and ministers, as will be shown in this section. Ministers and members of Congress in the three countries from 1983 until 2007 have been coded in terms of whether they were victims, human rights advocates, guerrilla members or collaborators with the military regime. The results of this coding scheme are presented in a series of graphs showing the percentage of each of these groups present in each administration over time.

5.2.3.1. Argentina

Figure 5.5 presents the percentage of ministers that were victims, human rights advocates or collaborators with the Argentine military. No guerrilla members occupied ministerial positions at any point in time. The figure shows a clear increase over time in the number of victims assuming positions of power. Whereas only 10 percent of ministerial-rank positions were held by victims during the first four post-transition administrations, close to 20 percent were during the administration of Nestor Kirchner (2003-07), the one that gave the strongest support to the human rights movement. In addition, the number of collaborators rose from 0 during the Alfonsín administration to 6 percent and later 10 percent during Menem's two terms in office, when two key cabinet positions were filled by collaborators: Domingo Cavallo, Menem's Minister of the

Economy from 1991 until 1996, had been Undersecretary in the Ministry of the Interior and President of the Central Bank in 1982 during the military dictatorship, and Oscar Camilion, Menem's Minister of Defense between 1993 and 1996, had been Ambassador to Brazil (1976-81) and later Minister of Foreign Affairs (1981) during the military regime. Menem, of course, enacted policies that ran counter to the demands of the human rights movement, especially relative to Alfonsín. During the Duhalde and Kirchner administrations, the latter being the most responsive administration to the human rights movement, the number of collaborators dropped again to 0. Thus, the relation the ministers had with the military dictatorship is a good predictor of government human rights policies.

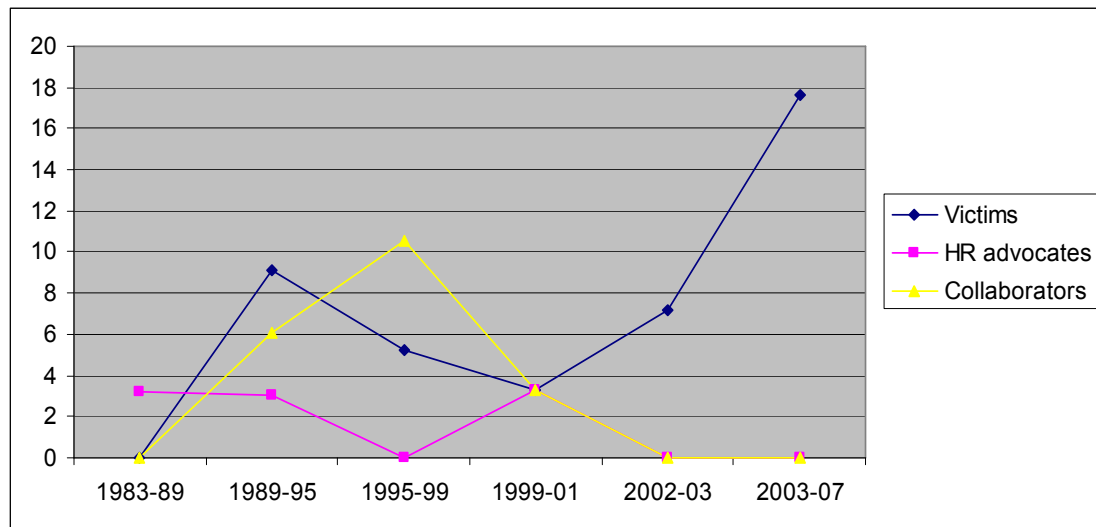


Figure 5.5. Government ministers and their role during the military dictatorship as victims, human rights advocates or collaborators in Argentina. 1983-2007.³³⁵

³³⁵ The percentage of ministers is calculated based on the total number of ministers appointed by each administration, and is thus not weighted by the amount of time they served in office.

While positions held during the military dictatorship by members of the cabinet predict government policies at the ministerial level, it does not do the same for members of the Argentine Senate. Figure 5.6 shows the percentage of senators classified in each of the categories. Since the Senate partially turns over every two years, and the terms in office of Senators do not coincide perfectly with the president's term in office as they do in Uruguay, I mark time in decades rather than strictly follow the presidential mandates. Practically, this demarcation has little effect since the first two decades (1983-90) and (1990-2000) nearly coincide exactly with the first three administrations: Alfonsín (1983-89) and Menem (1989-95 1995-99).

Upon review of the evidence, a first surprising fact is that there were more victims (15 percent) in the Senate during both of Menem's administrations than at any other time, though the rate diminished by only three percentage points under Duhalde and Kirchner (12 percent). This 15 percent is composed of 12 senators: 10 Peronists (although one of them, José Octavio Bordón, left the party in 1994 to join the leftist Frepaso), one from *Frepaso*, and one from the provincial party *Movimiento Popular Neuquino*. The Peronist party suffered more persecution during the military dictatorship than the Radicals, and thus a largest number of its members were victims. However, as Levitsky states in his analysis of Peronism (2003:26), the weakly institutionalized nature of this party allowed for Peronist presidents to set the tone for government policies which the rest of the party politicians were had to follow if they wanted to hold onto office. Thus, Menem's decision to trade military pardons for the obedience of the armed forces enjoyed the support of most members of his party, whether they had been victims of the dictatorship or not. Those who opposed this decision – known as *Grupo de los Ocho* (Group of the 8) - left

the party in 1990 because of their opposition to the pardons as well as to Menem's economic policies.³³⁶

In comparison with the other cases and in particular with Chile (see the following sections) the percentage of collaborators that held seats in the Senate has been small over the course of all the democratic administrations. At its peak during the Menem era, collaborators represented only 4% of the Senate. After 2000 the percentage of collaborators dropped to zero, coinciding with the Duhalde and Kirchner administrations, the latter being a period of key advances for the human rights movement.

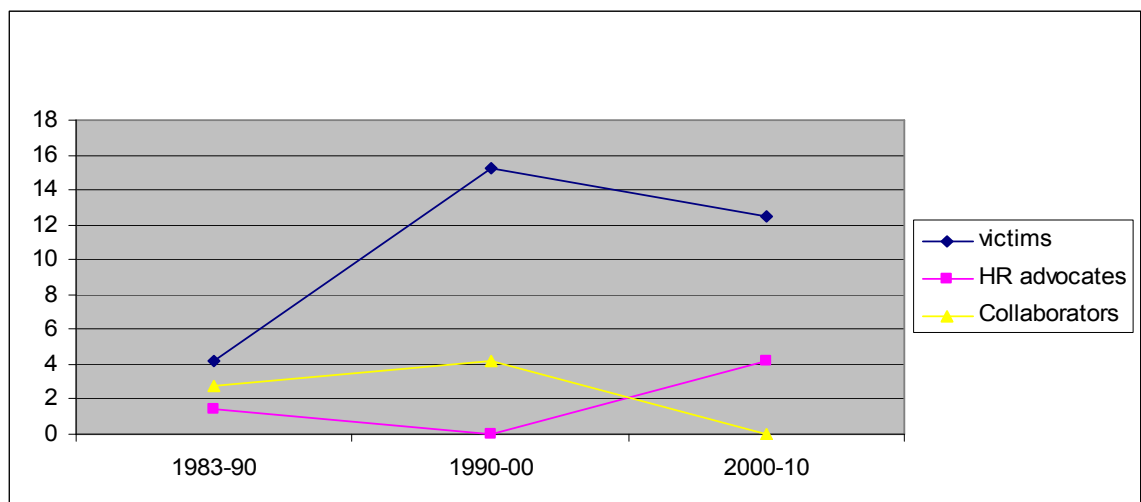


Figure 5.6. Argentina. Senators in office and their role in the military dictatorship as victims, human rights advocates or “collaborators”. 1983-2010.³³⁷

It seems that in a strong presidential system such as that of Argentina, and in particular when the Peronist party is in power, the policies decided by the presidency and

³³⁶ The Grupo de los Ocho was formed by [Germán Abdala](#), [Darío Alessandro](#), [Juan Pablo Cafiero](#), [Luis Brunati](#), [Franco Caviglia](#), [José Ramos](#), [Moisés Fontela](#) and [Carlos "Chacho" Álvarez](#). Later they will come together in the leftist political party FREPASO.

³³⁷ The percentages of Senators are calculated based on the total number of legislators elected to the chamber each year (which fluctuates if it's an electoral year or not) and not on the fixed number established by the constitution.

his appointed ministers are the ones that prevail in the field of human rights. The composition of the Senate in terms of their relationship to the military dictatorship does not have much influence in state policy.

5.2.3.2. Uruguay

In Uruguay the entire Congress turns over on the same electoral calendar as the Presidential elections. Thus, in this case it is possible to present graphs showing the percentages of each of the coding categories (victims, guerrillas, collaborators) at both the ministerial and congressional level corresponding to presidential administrations. The number of human rights advocates is not reported since it is very insignificant at the three levels.

Figure 5.7 shows the percentage of victims of the military dictatorship both at the ministerial level and in Congress. As in the case of Argentina we see an exponential increase in the percentage of victims appointed to ministerial positions by the last administration in power (Kirchner [2003-07] in Argentina and Vazquez [2005-10] in Uruguay) both of which displayed the most favorable human rights policies in the history of each of their respective countries. The jump in the percentage of ministers that had been victims of the dictatorship in Uruguay from fewer than 5% under the Batlle administration (2000-05) to 35% under Vazquez is palpable. Again, as in the case of Argentina, this trend is not mirrored at the congressional level. In the lower chamber the number of victims remained fairly stable – ranging from 5 to 10 percent - during the different administrations irrespective of their extremely different human rights policies. While the highest rate, 10%, was achieved during the Vazquez administration, the difference is not significant when compared with the periods of the previous

administrations and as such is not a strong predictor of a government's human rights policies. The relationship between the number of victims in the Senate and government policy is even weaker. While there is a trend beginning with Lacalle's administration (1990-95) of a gradual increase in the number of victims (14% under Lacalle, 20% under Sanguinetti, and close to 25% under Batlle) coinciding with the issue of human rights gaining more prominence, the subsequent decrease under the Vazquez administration shows that there is in fact no direct correlation between the percentage of victims and a government's human rights policies.

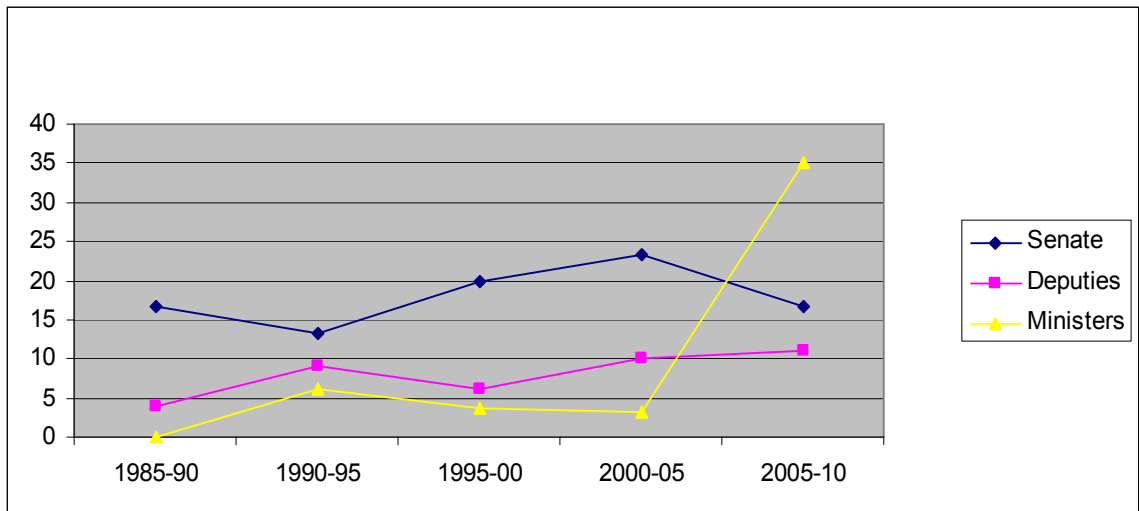


Figure 5.7. Uruguay. Victims of the military dictatorship in the Senate, Deputies, and Cabinet. 1985-2010.

Figure 5.8, which shows the percentage of guerrilla members at the ministerial level and in both chambers of Congress, highlights a clear trend of the increasing participation of former guerrilla members beginning under the Batlle administration and reaching its peak under Tabaré Vazquez in all three institutions. But nowhere is the trend clearer than at the ministerial level. Before Vazquez came to power no former guerrilla member had

been appointed to a ministerial position. Under his administration, former guerrillas accounted for 15% of his cabinet. A similar, although not as pronounced a trend, is visible in both Chambers of Congress.

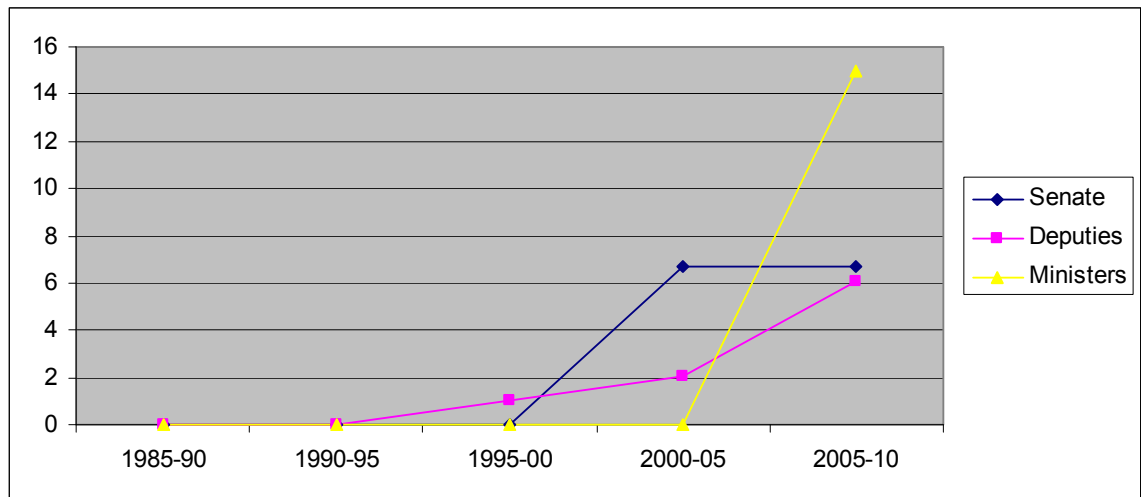


Figure 5.8: Uruguay. Guerrilla members in the Senate, Deputies, and Cabinet. 1985-2010.

Figure 5.9 shows the percentage of collaborators with the military regime who held positions in the cabinet, the Senate and lower chamber of Congress during the democratic administrations. The trend toward the decreasing participation of collaborators is clearly visible when all three institutions are taken into account. In the case of cabinet ministers, the maximum percentage of collaborators to hold cabinet rank positions – 9 percent - did so during the first Sanguinetti administration (1985-1990). This number gradually decreased with each successive government to 6% under Lacalle (1990-95), 4% under the second Sanguinetti government (1995-2000), 3% under Batlle (2000-05), and 0% under Vazquez (2005-10). There is a clear, inverse relationship between the participation of collaborators and the receptiveness of each of these government's human rights policies to the demands of the human rights movement. A similar trend is noticeable in the Senate. While there is an increase in the percentage of collaborators from 7 under the first

democratic government (1985-90) to 10 under Lacalle's administration, from this point onwards the trend toward decline to 7% under Batlle and 0% under Vazquez is once again clear. The percentage of collaborators in the Chamber of Deputies was much smaller overall, reaching a maximum of 2% under Lacalle and falling to 0% under both Batlle and Vazquez, the two presidents who pursued a human rights policy more favorable towards the movement.

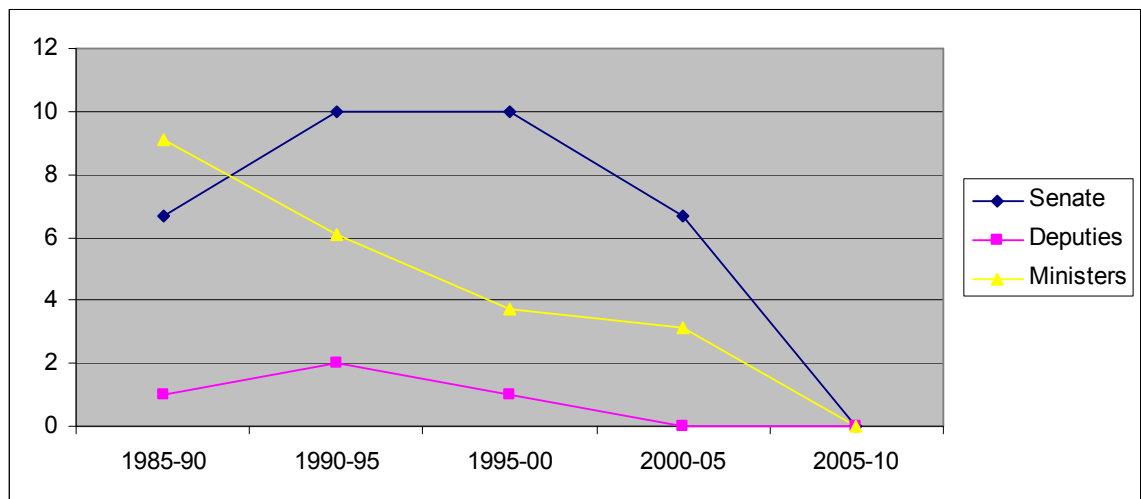


Figure 5.9: Uruguay. Collaborators with the military regime in the Senate, Deputies, and cabinet. 1985-2010.

Finally Figure 5.10 summarizes the findings for the case of Uruguay showing the percentage of politicians (ministers and legislators) and their role under the military dictatorship in each administration. As in the previous graphs, it is possible to visualize the increasing percentage of both victims and guerrilla members in government peaking under the Vazquez administration (15 and 7% respectively). At the same time there is a decreasing trend of collaborators in power reaching zero under Vazquez's government. In addition to the ideological variable, the coding of the relationship of politicians to the

military dictatorship turns out to be a strong predictor of government human rights policies in the case of Uruguay than in Argentina.

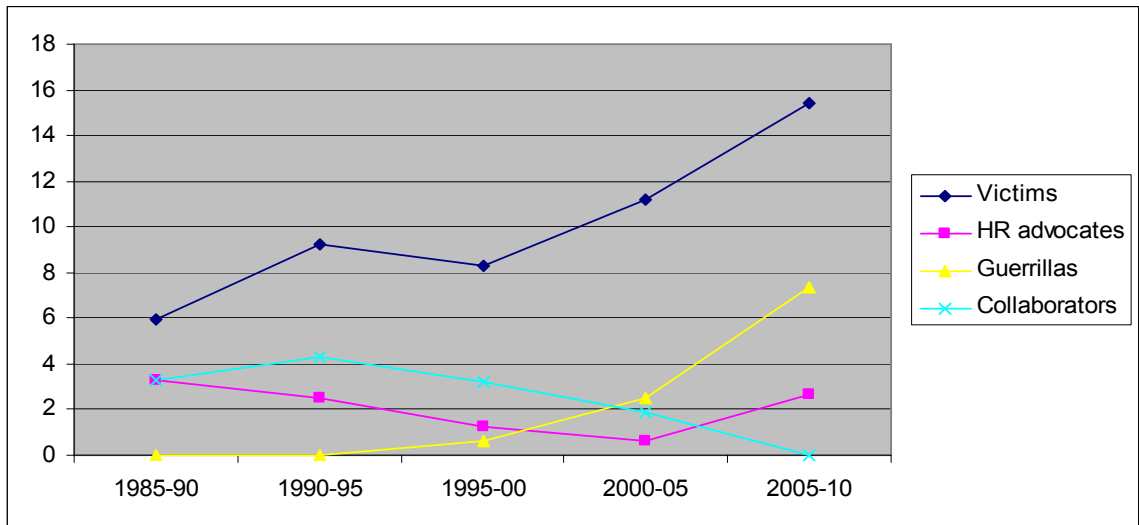


Figure 5.10: Uruguay. Politicians in power and their role in the military dictatorship as victims, human rights advocates, guerrilla members or collaborators. 1985-2010.

5.2.3.3. Chile

Figure 5.11 shows the percentage of victims of the military dictatorship both at the ministerial and congressional levels during each democratic administration. Unlike the cases of Argentina and Uruguay in which we saw a steady increase from an initial small percentage of victims in government to a higher number under the last administration in power, in Chile the percentage of victims in government peaked during the early years of the democratic transition, fell slightly in the late 1990s, and then subsequently remained quite stable.

The peak of victims' participation in the cabinet came during the Aylwin administration (when it was close to 25%), but under the next three administrations remained quite stable between 15 and 19%. The percentage of victims' participation in

ministerial cabinets never fell below 15%, which may explain the fact that the Aylwin, Lagos, and Bachelet governments addressed some of the demands of the human rights movement and even the Frei administration addressed the demand for truth even if it did not pursue justice.

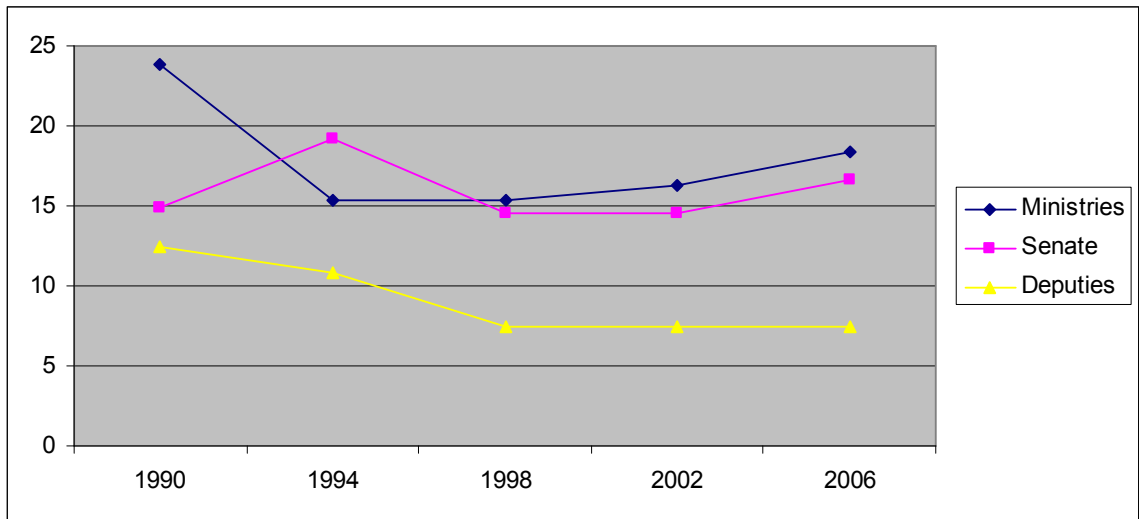


Figure 5.11: Chile. Victims of the military dictatorship in the Senate, Deputies, and cabinet. 1990-2006.

The participation of victims in the Senate has been pretty stable throughout the four democratic governments, ranging from 15 to 20%. Victims' participation in the lower chamber has been lower, but still quite stable, ranging from 7 to 12%.

As was explained in Chapter 3, in Chile the human rights movement was more successful in stalling government proposals than ran counter to their demands than in actually having their main demands addressed, in particular in terms of justice. Their success, however qualified, was possible because of their alliance with Socialist legislators, many of whom were victims of the military dictatorship. In fact, the majority

of the victims both in the Senate and the Chamber of Deputies were members of the Socialist Party in each of the democratic governments, as shown in Table 5.5.

TABLE 5.5
PARTISAN AFFILIATIONS OF THE VICTIMS
OF THE MILITARY DICTATORSHIP
IN THE SENATE AND CHAMBER OF DEPUTIES IN CHILE
1990-2007.³³⁸

Year	Chamber	PS	PR	PPD	PRSD	DC	Independent	Total
1990	Senate	3	2			2		7
	Chamber of Deputies	10	-	-	2	1	2	15
1994	Senate	5	1	1		2		9
	Chamber of Deputies	10	-	-	2	-	1	13
1998	Senate	5		1		1		7
	Chamber of Deputies	6	-	2	-	1	-	9
2002	Senate	4			1	1	1	7
	Chamber of Deputies	6	-	2	-	-	1	9
2006	Senate	5			1		1	7
	Chamber of Deputies	6	-	2	-	-	1	9

³³⁸ PS (Socialist Party), PR (Radical Party), PPD (Party for Democracy), PRSD (Radical Social Democratic Party), DC (Christian Democratic Party)

Figure 5.12 presents the percentage of collaborators in the Senate, lower chamber and presidential cabinets. Unlike the cases of Argentina and Uruguay, no collaborator ever held office at the ministerial rank. However, the presence of collaborators during the four governments of the *Concertación* in Congress, and in particular in the Senate, ranging from a high of 43 percent under Lagos to 30 percent under Bachelet, surpasses by far any percentage seen in the other two countries. The presence of such a large block of collaborators in the Senate explains why it was impossible for the human rights movement to have some of its demands, such as the repeal of the Amnesty Law, addressed or even discussed in Congress. It also illuminates the rationale of successive Chilean presidents for avoiding a political solution to the problem and instead leaving the issue of justice for human rights abuses to the courts.

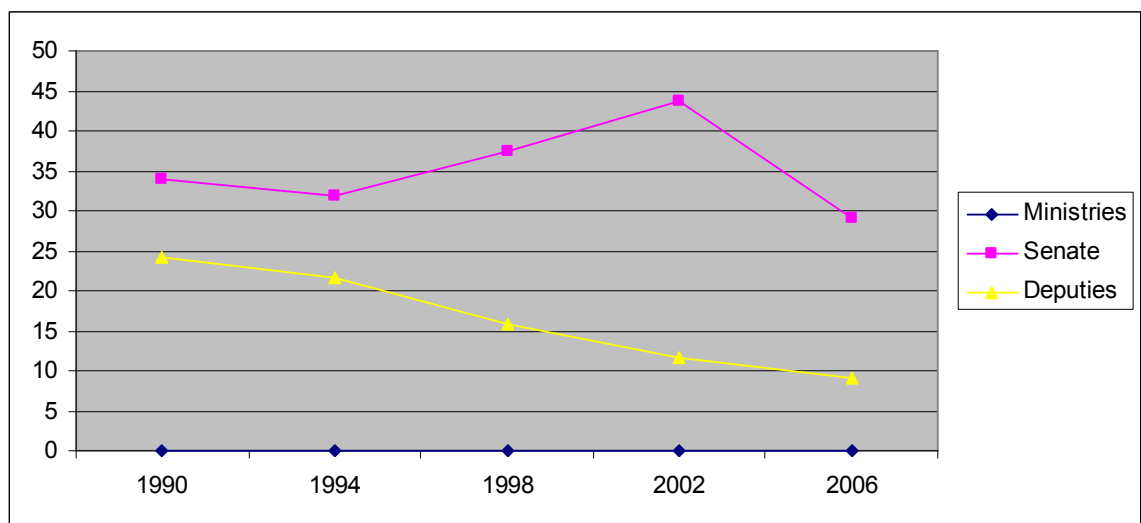


Figure 5.12: Chile. Collaborators with the military dictatorship in the Senate, Deputies, and cabinet. 1990-2006.

In contrast with the Senate, the percentage of collaborators in the Chamber of Deputies decreased from a high of 24% under the Aylwin administration to 10% during

the Bachelet government. The decrease in the percentage of collaborators in both chambers notwithstanding, Chile had the highest percentage of collaborators in elective office among the three countries and a sufficient number of seats to stall any pro human rights legislation. It is still to be seen whether this gradual decrease of collaborators in Congress will accentuate in the future, and if so, if it will have any impact on the human rights policies of future governments.

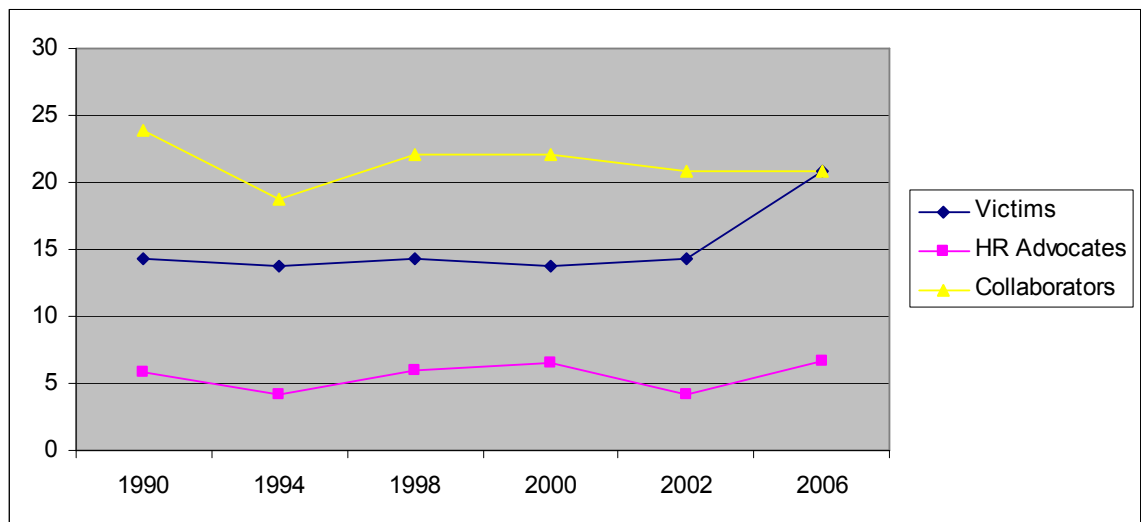


Figure 5.13: Chile. Politicians in power and their role in the dictatorship as victims, human rights advocates and collaborators. 1990-2006.

Figure 5.13 summarizes the relationship of ministers, senators and deputies towards the military dictatorship. In this graph it is possible to see that: (1) the participation rate of human rights advocates during all democratic administrations has been stable at approximately 5%, (2) the participation rate of collaborators with the dictatorship has also been stable, fluctuating between 20 and 25% throughout this period, and finally, (3) victims participated in the different democratic governments at an average rate of about 15% and a peak of a little over 20% in 2006. If the percentages of human rights advocates

are added to that of the victims, the total reaches an average of 20% since the democratic transition, which is the same as the collaborators and shows the difficulties democratic governments have had to face in dealing with human rights issues. This more or less equal division between pro human rights politicians and collaborators with the Pinochet regime is another example of the divided character of the Chilean society after the Pinochet regime (Huneus 2003).

In 2006 these constants begin to change and the passage of time will tell whether or not we are witnessing the beginning of a new trend. For the first time there was a roughly equal percentage of collaborators and victims of the military regime (20% each); if this last group is added to the human rights advocates, for the first time there was an political elite in power that was potentially more favorable to human rights groups and their demands than at any time in the past. However, the election in 2009 of the right-wing president Piñera may complicate the potential of a different Congress from addressing the demands of the human rights movement.

5.2.4. Allies in power: Argentina, Uruguay, and Chile

The relationship of politicians in power with the military dictatorship has proven not to be as powerful a predictor of government's human rights policies as the ideological position of the president across the board. The results have been more mixed, with some indicators having more predictive power in some of the countries than others. However, this variable has provided important information that helps to illuminate why some governments have been more responsive than others towards human rights movements. There are also some generalizations that remain valid for all the cases.

The presence of victims at the ministerial level has proven to be a good predictor of governments' human rights policies in the three countries. Leftist presidents have a tendency to appoint more victims of the military dictatorship to ministerial positions than right wingers. In a sense, this variable is an epiphenomenon of the ideology of the president. There was a clear increase in Argentina and Uruguay in the percentage of victims appointed at this level under the Kirchner and Vazquez administrations, respectively. Conversely, it was equally clear that the percentage of collaborators in ministerial positions dropped to zero under these same administrations. In Chile we see a more stable trend of in the participation of victims and the utter absence of collaborators in the cabinets of all four democratic governments, each of the four were headed by the center-left *Concertación*. A comparison with the cabinet of the current Chilean President, Sebastián Piñera, the first president from the right-wing coalition to be elected since the democratic transition, would be particularly instructive. However, such an analysis of this administration (inaugurated only in March 2010) is beyond the scope of this dissertation.

A second generalization to be made is that the percentage of collaborators in power matter more than the presence of victims. While victims of the dictatorship have not always supported the positions of the human rights movements (in particular in Argentina), collaborators have stood firm in their opposition to these movements' demands. Thus, the presence of collaborators in power creates more difficulties for the human rights movements' ability to advance their demands than the presence of victims facilitates this task. The case of Chile, where the Senate was packed with collaborators with the Pinochet regime throughout the *Concertación*'s governments clearly shows how legislative debates and pro human rights bills could be stalled even under leftist

presidents that were themselves victims of the dictatorship and committed to the cause of human rights.

To summarize my main findings:

1. Leftist presidents increase the chances for human rights movements to have their demands addressed;
2. Victims of the military dictatorship appointed to Ministerial positions increase the chances for human rights movements to have their demands addressed;
3. The presence of collaborators in both presidential cabinets and Congress increases the difficulties for human rights movements to have their demands addressed.

5.3. Presidential weakness

So far two conditions have been presented to explain when a government addressed the demands of human rights movements and when they ignored them. The strength of the movement and the availability of allies in power increase the chances for the human rights movement to advance its cause. While this chapter has shown their explanatory power in predicting government response to human rights movements' demands, there are two things that remain unexplained. First, these two variables do not address the differences in the degree of response left and center left presidents have had towards a strong human rights movement. As was described in Chapters 2 through 4 President Nestor Kirchner in Argentina was the most responsive of all the leftist presidents elected in the three countries, and in such an unprecedented way that it deserves a more detailed explanation. Leftist governments such as that of Lagos and Bachelet in Chile, both victims of Pinochet's dictatorship, were more open to receiving the human rights movement and inviting them to inform some government policies than their predecessors, but they did not go as far as nullifying the amnesty law, a key and permanent demand

from the human rights movement. Similarly, leftist President Tabaré Vazquez in Uruguay, compared to his predecessors in power, developed an active human rights policy, but his administration also sponsored many initiatives of reconciliation which were rejected by the human rights movement and was initially opposed to declaring the *Ley de Caducidad* null.

Second, there is an outlier, the Batlle administration, which although ideologically in the center-right of the spectrum, was the first Uruguayan government to meet with the human rights movement and address some of its demands. Thus, this case deserves further explanation.

Both the variation in the reaction of leftist governments to human rights movements and our outlier can be accounted by introducing a third variable: presidential weakness. My hypothesis to explain the first issue is as follows:

H1. The weaker the left or center left president is when assuming power the more the government will try to advance social movements' main demands.

This hypothesis begins with a paradox. We already stated in this chapter the key role Presidents have in the three countries given their strong presidential systems. However, there is a difference between the institution of the presidency, which is invariably strong given the structure of political institutions, and the strength of each particular president in power. This latter dimension is the one that this variable measures.

Presidential weakness is defined as a situation in which a president assumes power with a low percentage of electoral support. Thus, it is measured by the percentage of votes with which he was elected to power. I expect leftist and center left governments

elected with a low percentage of electoral support to be more responsive to social movements' demands.

5.3.1. Variation in Leftist Presidents' Response

Table 5.6 presents the percentage of votes with which each left or center left president was elected in each of the three countries under study. The cut off points are the following: very weak: less than 30% of the votes, weak: 31 to 40%, strong: 41 to 50%, very strong: over 50%. On the occasions in which no candidate won an outright victory in the first round and the presidential elections went to a second round runoff between the two top- vote getters), the percentages from both rounds are presented. However, the presidents' strength will be classified based on the first round to differentiate between those who got more than 50% while competing among all the candidates and those who only obtained such a number in the second round when competing against the other most voted candidate.

It is clear from this table that among the leftist presidents elected, Kirchner in Argentina is the one that began his mandate in the weakest position of all. Whereas all the others presidents classified as leftist or center left (Alfonsín, Aylwin, Frei, Lagos, Bachelet, and Vazquez) were elected with at least more than 40% of the votes and thus qualify as strong, Kirchner received only 22% in May 2003. The situation in which he took power was atypical. In the first round of elections, neither candidate got more than 45% of the vote or 40% and a difference of 10 points over the next candidate, the requirements according to Argentine electoral law to be elected president. In this situation the law stipulates that the two candidates with the highest vote totals should be the candidates in a second-round, runoff election. In 2003, those were former President

Menem with 24.45% of the votes and Nestor Kirchner with 22.24%. Based on public opinion polls Carlos Menem knew he had no chance of winning the second round, and thus decided to resign, leaving Kirchner to be inaugurated as president with much less support and legitimacy than he would have gotten had the second round been held.

TABLE 5.6
PERCENTAGE OF VOTES WITH WHICH LEFT AND CENTER LEFT
PRESIDENTS WERE ELECTED
IN ARGENTINA, CHILE AND URUGUAY
1983-2007

Percentage of votes	Argentina	Chile	Uruguay
Very Weak <30%	Kirchner (left, 2003-05): 22%		
Weak 31 to 40%			
Strong 41% to 50%		Lagos (left, 2000-06) first round: 47.96% Bachelet (left, 2006-10) first round: 45.96%	
Very Strong >50%	Alfonsín (center left, 1983-89): 51.7%	Aylwin (center left, 1990-95): 52.2% Frei (center left, 1995-00): 57.98% Lagos (left, 2000-06) runoff: 52.3% Bachelet (left, 2006-10) runoff: 53.5%	Vazquez (left, 2005-10): 51.70%

In addition, only two years earlier, in December 2001 Argentina went through a dramatic economic and political crisis in which a massive mobilization of citizens forced the resignation of President De la Rúa and the election of a transitional president by Congress (Eduardo Duhalde 2002-03). In the following years the country was immersed in a deep wave of popular mobilization with levels of direct citizen participation in politics that had not been seen in a long time. Neighborhood assemblies spread throughout Argentina's main cities. In 2002 at their peak, there were approximately 300 such assemblies with between 100 and 500 people each (Bonasso, Calloni and Bielsa 2002: 26). The assemblies organized and participated in numerous demonstrations to protest national issues such as the neoliberal and IMF-driven economic policies, the unresponsiveness of politicians, rising unemployment, the corrupt Supreme Court, the impunity of human rights abusers from the past dictatorship, and so forth, but they also focused on local issues and created cultural centers, micro-enterprises and recreational spaces for their own neighborhoods. In the meantime, ambitious proposals of direct democracy and reform of the political system were debated in their weekly meetings.

Kirchner thus took power in a moment in which Argentine constituencies veered towards the left and one in which most political institutions had lost much of their legitimacy. He knew that to be able to govern he had to increase his political support and legitimacy. In this context, addressing most of the demands of the human rights movements was one of his strategies for reaching out to the radicalized middle classes that emerged from the events of December 2001.

Finally, Nestor Kirchner was one of the presidential candidates the *Peronist* Party presented in those elections.³³⁹ As it was explained in previous sections, this is a catch all parties that includes political leaders from all the ideological spectrum and very heterogeneous constituencies. The last *Peronist* president before Kirchner was Carlos Menem, who moved the party to the right wing of the spectrum. If Kirchner wanted to gain legitimacy and support among leftist constituencies he had to make a very explicit move towards the left in his government policies to differentiate himself from Menem. During his first years in power he attempted to create a leftist transversal front which would gather the leftist branch of the Peronist Party, the Radical Party, smaller leftist parties and independent leftist constituencies.³⁴⁰ Reaching out for the human rights movement was part of this much broader political strategy.

Kirchner's plan to increase his legitimacy worked. After taking power on May 25th, 2003 with only 22% of the vote, a public opinion poll conducted in early June showed the largest approval rating of any president in Argentina: 92%. What was more surprising, in particular given the context of rejection of all politicians only 2 years before during the 2001 uprising is that nobody, 0%, responded they had a bad or very bad image of him. This was even more surprising considering that only one year before public opinion polls gave Kirchner only 2% of the vote intention and 61% did not even know from which province he was governor.³⁴¹ The unprecedented increase in his popularity had to do with

³³⁹ The *Peronist* party did not hold primaries that year and decided to present three candidates: Carlos Menem, Nestor Kirchner and Adolfo Rodríguez Saa.

³⁴⁰ The creation of a leftist front eventually failed and towards the end of his mandate and the beginning of his wife's –Cristina Fernandez de Kirchner- term he decided to root his power back in the Peronist party.

³⁴¹ See *Página 12*, “Ataque de optimismo record”, June 1st, 2003. Viewed on November 12th, 2010 at www.pagina12.com.ar

his first government measures, two of them being the removal of the top chiefs of the Armed Forces and his strong opposition against the Supreme Court of the Menem era which would lead in time to the impeachment of most of its judges.

On the contrary, all the other left and center left governments elected in Chile and Uruguay were strong ones at the beginning and throughout their mandates. All of these presidents (except for President Frei in Chile) implemented an active human rights policy, met with the human rights movement, and were receptive to their demands. However, they all fell short in their responses to the movement. Strong leftist governments are usually committed to the principle of human rights. Yet, they respond to the human rights movement's demands only as long as these measures do not imply a large political cost. These governments already have the allegiance of leftist sectors, and for this reason, they do not need to lure them with extra measures to gain their support. Governments that are strong on the left side of the ideological spectrum, usually veer towards the center, since that is there where they lack support. In terms of human rights policies, this translates into implementing measures that are relevant to the human rights movement but are sufficiently moderate so as not to offend or imply costs for more conservative sectors, such as economic reparations for victims, truth commissions, and memorials. However, on the demand of justice for the abuses committed by the dictatorship, these governments show more restraint. Since advancing the cause of justice implies high costs for right-wing sectors that typically supported military dictatorships, strong leftist government prefer to avoid such policies in favor of a more stable political environment and non-confrontational relationship with the opposition.

In addition, unlike right wing government many of the strong leftist governments had no previous relationships with the armed forces. This is very clear in the case of Tabaré Vazquez in Uruguay. As late as 1999 the Armed Forces considered the *Frente Amplio* to be their enemy. It was only when the *Frente Amplio* had gradually increased its share of the vote and had a real chance of winning a presidential election that the Armed Forces changed their official view of this party. In this context, when Tabaré Vazquez won the presidency in 2004, his policy towards the Armed Forces was to avoid conflicts with them. Moderating his human rights policies was one way of achieving this.³⁴²

5.3.2. *Explaining the outlier: the Batlle administration*

The case of the Batlle government in Uruguay deserves a special explanation. Battle was a member of the *Partido Colorado*, the party that was linked more closely to the military dictatorship and which, under President Sanguinetti, had showed complete indifference towards the human rights movement. Nonetheless, Battle was the first president after the democratic transition to meet with the human rights movement and to implement a human rights policy. Although he limited his response to addressing the demand for truth by creating a *Comisión para la Paz*, which was highly criticized by the movement, the *Comisión* marked a key step in the struggle for human rights in this country. President Battle began his administration faced with a human rights movement that had been growing stronger since the beginning of the *Marchas del Silencio* in 1995. In addition, he assumed power in a weak situation. In the first round of the presidential elections he was outvoted by the *Frente Amplio*'s candidate Tabaré Vazquez, who received 40.1% of the vote (Battle came in second with 32.8%). Battle won the second round of balloting with 54.13% thanks to the support of the *Partido Blanco*, who

³⁴² Interview with Julián González, Universidad de la Republica, Montevideo, September 4th, 2008

preferred a president from the *Partido Colorado* than from the leftist *Frente Amplio*. Thus, even when Batlle won with 54% of the vote, he could not have been oblivious to the fact that almost half of the country had voted for Vazquez and that Uruguayan society was veering toward the left. While not a champion of human rights himself, Batlle sensed the relevance that this issue had gained among public opinion through the continuous work of the human rights movement. His moderate human rights policy of addressing the demand of truth but ignoring the claims for justice can be interpreted as a strategic move to gain some legitimacy among leftist constituencies, which were a majority in the country at the time.³⁴³ The case of President Batlle shows that in a situation in which a social movement is strong and the government is weak and needs support from the left, even ideological oppositions to the movement can be overcome in the search for political legitimacy from the leftist electorate.

5.4. Conclusion

The goal of this final section is to combine the two main variables of the theoretical model and apply them to the cases to see how well they explain government responses to human rights movements' demands. Table 5.7 summarizes the analysis presented in this chapter.

Consistent with the hypotheses of the theoretical model, Table 5.7 shows that when there is a strong human rights movement and political allies are present the government response to the movements' demands will be the strongest. This is the case of the Kirchner and Alfonsín administrations in Argentina and the Vazquez one in Uruguay. When a medium strong human rights movement is coupled with the presence of political

³⁴³ Interview with Jaime Yaffe, Universidad de la Republica, Montevideo, September 2nd, 2008.

allies, government response to the movements' demands will be more moderate than in the first situation, such as the cases of the four governments of the *Concertación* in Chile.

Table 5.7 also shows that the presence of a strong movement in itself does not guarantee a favorable government response. For the government to be receptive to the movement and consider at least some of its demands, the presence of allies in power is key. Under the first Menem and De la Rúa administrations in Argentina the human rights movement was very strong but lacked political allies, making it difficult if not impossible for the government to respond to their demands. The Batlle administration, confronted by a strong movement but ideologically not sympathetic to the human rights movement's demands is the outlier that has been explained in the previous section.

TABLE 5.7
APPLIED THEORETICAL MODEL TO THE HUMAN RIGHTS MOVEMENT
IN ARGENTINA, CHILE AND URUGUAY*

	Strong movement	Medium strength movement	Weak movement
Presence of movement allies	Alfonsín 83-89 Kirchner 03-07 Vázquez 04-09	Aylwin 90-94 Frei 94-00 Lagos 00-06 Bachelet 06-10	
Absence of movement allies	Batlle 00-05 Menem 95-99 De la Rúa 99-01	Sanguinetti 85-90 Sanguinetti 95-00 Menem 89-95	Lacalle 90-95

* Shaded sections show those governments that have been more responsive to the human rights movement. Presence of movement allies is coded here based on ideology.

Finally, this table presents the worst scenario for a social movement to have their demands addressed, which is represented by both Sanguinetti's and Lacalle administration in Uruguay and the second mandate of Menem in Argentina. When the movement is not strong enough and lacks political allies the chances to achieve an active human rights policies are minimal.

While right now there are spaces in the table that remain empty or with only one case, the application of the theoretical model to the women's movement in these three countries will fill them providing a more thorough test for this theory. Chapter 9 will be devoted to this endeavor.