

sur

international journal
on human rights

13

v. 7 • n. 13 • dec. 2010
Biannual

English Edition

Glenda Mezarobba

Between Reparations, Half Truths and Impunity:
The Difficult Break with the Legacy of the Dictatorship in Brazil

Gerardo Arce Arce

Armed Forces, Truth Commission and Transitional Justice in Peru

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Cooperation Between the Universal and Inter-American Human Rights
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By Borislav Petranov



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SUR is covered by the following abstracting and indexing services: IBSS (International Bibliography of the Social Sciences); DOAJ (Directory of Open Access Journals); Scielo and SSRN (Social Science Research Network). In addition, SUR is also available at the following commercial databases: EBSCO and HEInonline. SUR has been rated A1 and B1, in Colombia and in Brazil (Qualis), respectively.

SUR. Revista Internacional de Direitos Humanos / Sur – Rede Universitária de Direitos Humanos – v.1, n.1, jan.2004 – São Paulo, 2004 - .

Semestral

ISSN 1806-6445

Edições em Inglês, Português e Espanhol.

1. Direitos Humanos 2. ONU I. Rede Universitária de Direitos Humanos

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PRESENTATION



We are very pleased to present the 13th issue of *Sur Journal*, which addresses the subject of regional human rights protection mechanisms. The purpose of this issue is to examine the development of these regional systems, their drawbacks and potentials, and to discuss the possibility of cooperation and integration between them and the international human rights system. The journal's first article, titled **Urgent Measures in the Inter-American Human Rights System**, by Felipe González, reviews the treatment given urgent measures by the Inter-American Court of Human Rights and the Inter-American Commission on Human Rights (precautionary measures, in the case of the Commission, and provisional measures, in the case of the Court).

Juan Carlos Gutiérrez and Silvano Cantú, in **The Restriction of Military Jurisdiction in International Human Rights Protection Systems**, examine cases from the Universal, Inter-American, African and European human rights protection systems in order to place the matter of military jurisdiction in a comparative perspective, particularly when this jurisdiction applies to civilians, whether they are passive or active subjects.

Addressing the African system specifically, Debra Long and Lukas Muntingh, in their article titled **The Special Rapporteur on Prisons and Conditions of**

Detention in Africa and the Committee for the Prevention of Torture in Africa: The Potential for Synergy or Inertia?, analyze the mandates of these two special mechanisms and consider the potential for conflict generated by two mandates being held by a single member.

This edition of the journal also contains an article by Lucyline Nkatha Murungi and Jacqui Gallinetti on the role of the courts of Africa's Regional Economic Communities regarding the protection of human rights on the continent, in **The Role of Sub-Regional Courts in the African Human Rights System**.

Magnus Killander, in **Interpreting Regional Human Rights Treaties**, illustrates how regional human rights courts have, for the purposes of interpreting international treaties on the subject, followed the rules established by the Vienna Convention on the Law of Treaties.

Antonio M. Cisneros de Alencar, in **Cooperation Between the Universal and Inter-American Human Rights Systems in the Framework of the Universal Periodic Review Mechanism**, makes the claim that despite new opportunities for cooperation between the global and regional human rights systems, a great deal more can still be done to make the Inter-American system benefit from the UN Human Rights Council's Universal Periodic Review Mechanism.

We hope that this issue of Sur Journal will draw the attention of human rights activists, civil society organizations and academics to the possibility of a greater cooperation and integration between the regional and the international human rights systems.

We have also included in this issue the article **Strong Link in the Chain**, by Borislav Petranov, a homage to Professor Kevin Boyle, an exceptional academic and human rights defender, and a tireless partner of Sur Journal and the other initiatives of Conectas Human Rights. His life will remain a major source of inspiration for us. This issue includes another two articles, both dealing with the topic of transitional justice in post-dictatorship Latin America. The article by Glenda Mezarobba, titled **Between Reparations, Half Truths and Impunity: The Difficult Break with the Legacy of the Dictatorship in Brazil**, reconstructs and analyzes the process developed by the Brazilian State for making amends with victims of the dictatorship and with society. It also looks at what has already been done and what still needs to be done in terms of truth and justice and in relation to reforming the country's institutions.

The article by Gerardo Alberto Arce Arce, meanwhile, discusses the process of establishing a Truth and Reconciliation Commission in Peru, and the judicialization of the human rights violations that occurred dur-

ing the country's armed conflict in light of the relations between the Peruvian armed forces and the political and civil spheres of its society, in **Armed Forces, Truth Commission and Transitional Justice in Peru**.

This is the second issue released with the collaboration of the Carlos Chagas Foundation (FCC), which started supporting Sur Journal in 2010. We would like to thank the FCC once again for its support, which has guaranteed the continued production of the print version of this journal. Similarly, we are grateful to the MacArthur Foundation and to the East East: Partnership Beyond Borders Program (Open Society Foundations) for their support for this issue.

We would also like to thank the Centre for Human Rights, of the University of Pretoria (South Africa), and the Center for Legal and Social Studies (CELS, Argentina) for their involvement in the call for papers and the selection for this 13th issue.

Exceptionally, the present issue, dated December of 2010, was printed in the first semester of 2011.

Finally, we would like to remind everyone that the next issue of Sur Journal will address the UN Convention on the Rights of Persons with Disabilities and the importance of tackling this issue within the realm of human rights.

The editors.

IN MEMORIAM

KEVIN BOYLE – STRONG LINK IN THE CHAIN¹

Borislav Petranov

Professor, practising barrister and activist Kevin Boyle died on Christmas Day 2010 in Colchester, UK, where he had taught several generations of human rights lawyers and activists² over the last 25 years. Fondly remembered by his students as an exceptionally warm and supportive teacher, he was at heart an institution builder and a colleague and enabler extraordinaire. As founding Director of Article 19 (in 1986), a major driving force behind the world renowned Human Rights Centre at Essex, and Chairman of Minority Rights Group International (in 2007-2010), and a lawyer pushing the boundaries of human rights practice, in the words of a friend, he “managed most gracefully to combine politics, legal practice and academic life”.

Described by one of his close collaborators as a “giant of the human rights community”, Kevin’s professional life is the story of the human rights movement in the last decades - from the extraordinary growth of human rights norms and institutions since the mid 1960s and the increasing use of the law for social change to the disappointment at its slow pace and little impact on the victims.

Above all, it is the story of the true origins of human rights in struggles for justice – and a fitting example of the fighter spirit and the human and intellectual qualities that may be at the root of its winning march – despite temporary diversions and setbacks. A story of humility and profound goodness (he “treated the cleaners and Heads of State equally”), a “captivating mix of high-mindedness, boyishness, principle and charm – all laced with humour and affection”, in the words of one of his longest standing friends and colleagues.

Several of the obituaries published in major media cover Kevin’s career and achievements extensively³. However, for his students in particular, and for human rights colleagues around the world, several memories stand out.



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Human rights is about justice in practice

In juggling technical rules and navigating ever more complex and numerous institutions we - lawyers especially - may sometimes forget that what matters ultimately is the justice for the individual who has suffered injustice. Gays in 1960s Northern Ireland, travellers in Ireland, peasants ripped out of their land in Eastern Turkey; activists persecuted for what they believed or journalists persecuted for what they said or allowed others to say publicly (or bombed in their editorial offices⁴), conscientious objectors - all were Kevin's "clients" in the numerous cases he worked on for the last nearly 40 years. In the words of Conor Gearty, "here seemed to be a new way to do law: get on top of all the stuff, the cases, the statutory provisions, the complex scholarship - all the ramparts with which law protects itself from external scrutiny - and then deploy them not to mystify and stifle the people but rather to empower and therefore to enrich them"⁵.

Pushing the boundaries of human rights law

For a generation which has a sometimes bewildering choice of norms and institutions it is hard to imagine what it has been to be a human rights lawyer in 1966 when Kevin became a young law lecturer in Northern Ireland - the Genocide Convention (in force since 1951) was the only UN global human rights treaty in force (although the Race Discrimination convention was signed in 1965, it did not enter into force until 1969). The European Court of Human Rights issued no judgments in 1966, and in 1972, when Kevin argued one of his first cases before the then Commission, the Court issued 2 judgments (both on just satisfaction and not on the merits)⁶ and the thought that applicants will have direct access to the Court - which in 2010 gave 1499 judgments on 2607 applications - would have struck many as fanciful and unrealistic.

Associated with more than 100 cases, Kevin's legal career is a history of pushing the boundaries of law to be more "practical and effective" rather than "theoretical and illusory"⁷.

How to vindicate individual rights in situations where general policies and practices (a pattern of violations, an "administrative practice") make violations routine and remedies illusory has been the dominant theme running through Kevin's cases - related to Northern Ireland and Turkey in particular. This still remains a major challenge in current human rights protection systems built upon individual complaints, despite reforms of institutions and progress in jurisprudence.

This line of work started with a case filed by Kevin nearly 40 years ago in which (even if declared inadmissible) the then European Commission on Human Rights ruled that it was not necessary to exhaust domestic remedies if it could be shown that the alleged abuses were part of an administrative practice⁸. Developed

Notes to this text start on page 187.

through a series of cases since then⁹, this question – still acute in a number of countries such as Russia, and not unfamiliar to readers across the world, was, of course a central issue in the series of more than 60 cases which Kevin, together with colleagues from NGOs in London and Turkey, and in close collaboration with Essex colleagues, took to the Court over a period of nearly ten years, in which they, in the words of the President of the European Court of Human Rights, made a “major contribution to human rights law generally in the crucial areas of torture, disappearances, unlawful killing and unlawful detention”¹⁰.

Bringing up the new generations of human rights workers

The last 25 years of Kevin’s life were closely associated with the Human Rights Centre at the University of Essex in the UK, after he had founded the Irish Centre of Human Rights at Galway some years before. The Centre at Essex, established upon Kevin’s suggestion to the then Dean of Law at Essex in 1983, took off after both Kevin and Nigel Rodley, a long-time Legal Director of Amnesty International, joined in 1989 and 1990, transforming it into a multidisciplinary power house of research, teaching and support for litigation. Kevin directed the Centre through perhaps half of its existence, in which it expanded its courses, housed many exciting collaborative projects but above all, became like a home to a worldwide net of human rights workers, its more than 1700 alumni from many dozens of countries probably found in nearly every human rights organization.

A born leader - builder of institutions

Two pictures lay on the table at the reception after Kevin’s funeral – one depicting an altar boy with quiet determination in his unflinching gaze, the other a young person with a loudhailer surrounded by police addressing a march in Northern Ireland. At heart – his childhood nickname being the “king” – Kevin was a natural leader but a leader in a consensus building, empowering mould – in the Irish Civil Rights Association in the early 1970s, in setting up or transforming both the Irish and Essex Human Rights Centres, in directing Article 19 and chairing Minority Rights Group International. In all these roles, in the words of some of his colleagues in those NGOs, he “carried his great learning and talents lightly”, everyone loved being around him. He accompanied students on marches in Northern Ireland, paid the fines of poor black women whose trials under the passed laws he observed in South Africa, stopped and encouraged street fundraisers for good causes, took the time to guide colleagues setting up new organizations. It is no wonder he managed to develop extraordinary nearly life-long working relationships with a number of distinguished (and probably quite strong willed) colleagues, such as Tom Hadden, with whom he authored a number of books on Northern Ireland, Françoise Hampson, with whom he worked on scores of cases from Southeast Turkey, and Sir Nigel Rodley, a close colleague at the Human Rights Centre at Essex.

Kevin was also a strong supporter of activists coming from the Global South to Essex, with diverse legal and political background. He was able to understand the many challenges and help his students to value their own experiences and address those challenges. Kevin was creative, generous and open to new initiatives. He helped an entire generation of Brazilian students in Essex, and came to the country several times to support the establishing of new institutions, such as the LLM in Human Rights in the State of Pará, and the human rights center at University of Brasília, to provide advice to scholars and organizations and to teach. His legacy is a solid group of academics and activists who are committed to continue along his path.

NOTES

1. From a dedication by Seamus Heaney inscribed personally to Kevin on the flyleaf of a copy of his collection 'Human Chain'.

2. Many of whom could justifiably say they owe their human rights careers to him.

3. See http://www.ehrra.org/index.php?page=memorial&page_ref=19; <http://www.guardian.co.uk/law/2011/jan/02/kevin-boyle-obituary>; http://www.ruthdudleyedwards.co.uk/journalism11/IrInd11_2.html.

4. See European Court of Human Rights, *Bankovic and Others v. Belgium and 16 Other Contracting States* (application no. 52207/99), Decision of 12 December 2001.

5. <http://therightsfuture.com/common-tracks/in-honour-of-kevin-boyle/>, accessed 15 May 2011.

6. See 10.3.1972 - *De Wilde, Ooms and Versyp c. Belgique/v. Belgium* (article 50); and 22.6.1972 - *Ringeisen c. Autriche/v. Austria* (article 50); see also <http://www.echr.coe.int/ECHR/EN/Header/Case-Law/Decisions+and+judgments/Lists+of+judgments/>.

7. In a famous dictum of the European Court of

Human Rights. See, e.g., *Artico v. Italy*, 1980, 3 EHRR 1, para. 33.

8. Kevin Boyle & Hurst Hannum, *The Donnelly Case, Administrative Practice and Domestic Remedies Under the European Convention: One Step Forward and Two Steps*. The American Journal of International Law, Vol. 71, No. 2, pp. 316-321 (1977).

9. The current case law absolves the applicant of the need to exhaust domestic remedies if there is "repetition of acts incompatible with the Convention and official tolerance by the State authorities has been shown to exist, and is of such a nature as to make proceedings futile or ineffective (*Aksoy v. Turkey*, § 52), see *Practical Guide on Admissibility Criteria*, <http://www.echr.coe.int/ECHR/EN/Header/Case-Law/Case-law+information/Key+case-law+issues/>.

10. Kevin listed some of these cases in *Twenty-Five Years of Human Rights at Essex*. Essex Human Rights Review, 2008; see also Reidy, Hampson & Boyle. *Gross violations of human rights: invoking the ECHR in the case of Turkey*. Netherlands Quarterly of Human Rights, vol. 15, number 2, pp. 161-73 (1997).

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