ISSN 1806-6445

sur

international journal
on human rights

13

v. 7 • n. 13 • dec. 2010
Biannual

English Edition

CONECTAS HUMAN RIGHTS

SUR - International Journal On Human Rights is a biannual journal published in English, Portuguese and Spanish by Conectas Human Rights. It is available on the Internet at <http://www.surjournal.org>

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

CONTENTS

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 Gallineti 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 during 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.

JUAN CARLOS GUTIÉRREZ CONTRERAS

Juan Carlos Gutiérrez Contreras has a Master's degree in Criminal Law and third-stage completion of a Doctorate in Criminal Law and Human Rights in the University of Salamanca, Spain. Professor at several institutions. Has been a consultant for the Office of the High Commissioner for Human Rights–Mexico; Director for the Program of Cooperation on Human Rights Mexico-European Union, and Regional Director of Center for Justice and International Law (CEJIL) Mesoamerica. Currently General Director of the Mexican Commission of Defense and Promotion of Human Rights A.C. (CMDPDH, in its Spanish acronym).

Email: direccion@cmdpdh.org

SILVANO CANTÚ MARTINEZ

Silvano Cantú Martinez is Attorney-at-Law, graduated from the Autonomous University of Nuevo Leon with Master's Degree in Human Rights and Democracy by *Facultad Latinoamericana de Ciencias Sociales* (FLACSO, in its Spanish acronym)–Mexico. Has worked in both the social and public sectors in activities related to human rights, popular education, judicial defense of vulnerable social groups and rural development. Currently Director of Incidence and Investigation of the CMDPDH.

Email: investigacion@cmdpdh.org

ABSTRACT

The essay deals with some cases within the international, Inter-American, African and European systems for the protection of human rights. It views the subject of military jurisdiction from a regional perspective, using norms, jurisprudence and other sources of the law to understand and act accordingly in those cases in which the military jurisdiction is applied extensively on civilians, either as active or passive subjects. It focuses especially on sentencing in the cases of *Rosendo Radilla Pacheco v. United Mexican States*, issued by the Inter-American Court of Human Rights in November, 2009, and *Öcalan v. Turkey*, issued by the European Court of Human Rights in May, 2005.

Original in Spanish. Translated by Maité Llanos. Revised by Benjamin Freeman.

Received in July, 2010. Accepted in December, 2010.

KEYWORDS

Human rights – Military jurisdiction – Militarism – Due process – Competence – Independence – Impartiality – Functional jurisdiction

THE RESTRICTION OF MILITARY JURISDICTION IN INTERNATIONAL HUMAN RIGHTS PROTECTION SYSTEMS

Juan Carlos Gutiérrez and Silvano Cantú

1 The extensive application of military jurisdiction today

Both international human rights law and international humanitarian law agree in recognizing a series of principles applicable to the administration of justice, including military jurisdiction. Among these principles we find equality before courts; the right for every person to be judged by competent, independent and impartial courts pre-established by law; the right to an effective appeal; the principle of legality; and the right to an effective and fair trial. That is the purpose behind Article 14 of the International Covenant on Civil and Political Rights (ICCPR), the declarations of which "apply to all courts and tribunals within the scope of that article, whether ordinary or specialized, civilian or military" (expressed in General Comment No. 32 of the UN Human Rights Committee (COMISIÓN DE DERECHOS HUMANOS, 2007)).

Given the above, the military jurisdiction problem lies in determining whether a legal authority has jurisdiction to judge civilians or military personnel who may have committed human rights crimes, especially considering principles such as due process, independence and impartiality of judicial authorities.

To engage in this discussion, one must first consider the *functionality principle*, which has merited the attention of the UNHRC, and the Inter-American Court of Human Rights (IHR Court) and has received mention by the African Commission on Human and People's Rights, (ACHPR) and the European Courts of Human Rights (ECHR) in several of their resolutions. The functionality principle limits military jurisdiction to crimes committed in relation to the performance of military duties, which effectively limits the principle to *military crimes* committed by *elements of the armed forces*. Principle No. 8 of the Project ("Functional Competence

Notes to this text start on page 96.

of Military Judicial Organs"), included in the Report of the Special Rapporteur of the Sub-Commission of Promotion and Protection of Human Rights of the UN (ONU, 2006a), expressly states "the competence [jurisdiction] of military judicial organs should be limited to infractions committed strictly within the realm of military environments by military personnel."

The IHR Court agrees with this criterion in Paragraph 272 of the Sentence in the case *Rosendo Radilla v.. United Mexican States* (CORTE INTERAMERICANA DE DERECHOS HUMANOS, 2009a), where it states: "[…]In a democratic State of law, the military criminal jurisdiction shall have a restrictive and exceptional scope and be directed toward the protection of special juridical interests, related to the tasks characteristic of the military forces".

Let us emphasize that it is a jurisdiction that is: 1) restrictive, 2) exceptional, and 3) with functional competence. It is restricted precisely to the functions within its jurisdiction, and therefore it must be exceptional within a democracy. Nevertheless, the aforementioned exceptionality has rarely been truly exceptional, and this is increasingly so. Not only do we live every day with "preemptive" wars whose motives are diluted upon further examination, but it is also common to learn about cases in which armies extend their normal operational scope (for example, their growing participation in public safety tasks in several countries in the world). This type of extension leads to abuses and surpasses the limits of an army's functionality. The armies of today also undertake "preemptive" penal inquiries as well as "preemptive" counter-insurgency tasks.

The examples of the growth of *legalized* exceptionality are abundant, but perhaps one of its most alarming facets is the extensive application of military jurisdiction. Such a broadening of military jurisdiction disrupts the thin line of functionality that distinguishes a democracy from other types of political regimes.

The Special Rapporteur on the independence of magistrates and lawyers of the United Nations, Leandro Despouy, discussed this topic in his second Report to the General Assembly, dated September 25th, 2006 (ONU, 2006b):

> *In recent years the Special Rapporteur has noted with concern that the extent of the jurisdiction of military tribunals continues to be a serious obstacle for many victims of human rights violations in their quest for justice. In a large number of countries, military tribunals continue to try members of the armed forces for serious human rights violations, or to try civilians, in clear violation of applicable international principles, and, in some instances, even in violation of their own national laws.*

The Report offers us a relevant panoramic vision of the problem by noting, for example:

1. That through the enactment of a new constitution that established the principle of personal jurisdiction, the Democratic Republic of Congo applied military jurisdiction to practically all of the crimes committed both by military personnel as well as civilians, including *crimes against humanity*.

2. That in Islamic countries such as Egypt and Tunisia, military courts prosecuted civilians using national anti-terrorist laws. In Tunisia, the decisions of the military tribunals are not appealable. Jordan, another case mentioned in the report, has national security tribunals comprised of one military and one civilian judge. Those tribunals judge any alleged crime against national security committed by either military personnel or civilians, effectively constituting a form of special jurisdiction because of the participation of military personnel in the trial.

3. In Asia, the Special Rapporteur noted with particular concern a Cambodian case in which military tribunals prosecuted civilians and allowed the impunity of military personnel involved in the perpetration of crimes such as summary execution, breaking both international and internal laws. The investigations of those crimes depend on decisions by the Executive power. Nepal presents another worrying case; its laws allow for the extension of military jurisdiction to cases of forceful disappearance, torture and summary executions. Crimes perpetrated by military personnel while on duty are not penalized.

4. The Report also refers to the prosecution and detention of alleged terrorists in Guantanamo, where the Executive power of the United States of America is the prosecutor, judge and defense attorney for the detainees. Judged by Military Courts created *ex profeso*, the defendants lacked a judicially defined status and were treated as "enemy-combatants," without enjoying the rights afforded to prisoners of war as contemplated in the Geneva Convention. They were also judged for a crime that did not exist in either international or domestic law (as it is the case of conspiracy). (*cfr. Caso Hamdan contra Rumsfeld de la Corte Suprema de Justicia de los Estados Unidos de América*, ONU, 2006b: párr. 53).

The Report of the Special Rapporteur indicates that almost all of Latin America contains latent military jurisdiction problems. In light of recent events, it is safe to affirm beyond any doubt that the problem has worsened and that Mexico represents one of the worst offenders. In 2009, the IHR Court issued a sentence against the Mexican government for the case of the forced disappearance of Rosendo Radilla Pacheco, in which the extensive application of military jurisdiction has resulted in more than thirty years of inefficacy and impunity.

Rosendo Padilla was not an isolated case. Recently, the IHR Court has reiterated its criticism of the inappropriate extension of Mexican military jurisdiction and condemned the Mexican state for the following cases – defended, respectively, by the Center for Human Rights of the Mountain "Tlachinollan" and the Center for Human Rights "Miguel Agustín Pro Juárez" (PRODH) – of Ines Fernandez Ortega and Valentina Rosendo Cantu, of the Tlapanec people, who were sexually abused by military individuals still enjoying impunity, and by the environmentalist farmers Rodolfo Montiel Flores and Teodoro Cabrera Garcia, illegally and arbitrarily detained and tortured by military personnel who have not yet been sanctioned (CORTE INTERAMERICANA DE DERECHOS HUMANOS,

2010a, 2010b, 2010c). All these cases as well as other similar ones[1] are directly linked with the unjustified breadth of the military jurisdiction, which continues to cause serious human, political, judicial and social problems derived from the impunity and the breaking of democratic rules.

This aspect is even more worrying considering that the State has not fulfilled its obligation, indicated in Article 10 of the Sentence of the IHR Court on the *Rosendo Radilla* case, to reform Article 57(II)(a) of the Code of Military Justice, which is so imprecise that it facilitates applying military jurisdiction extensively to civilians, breaking international law and Article 13 of the Constitution.

Facing the generalized and serious problems implied by the subject, it becomes imperative to have enough legal arguments to understand and act, in order to demand justice in these cases. For this purpose, the following sections seek to explain the reasons offered by the organs of the regional systems of human rights protection, through which the extensive application of military jurisdiction violates human rights, effectively perpetuating impunity and providing incentives for further violations.

2 Military jurisdiction and the administration of justice in international human rights law

2.1 Applicable international norms

International instruments have codified important norms. Both Articles 8 and 10 of the Universal Declaration of Human Rights as well as Articles 2.3(a) and 14 of the ICCPR grant the right for every person to be heard *publicly* (the "publicity principle") and give them *guaranteed rights* (included in the legal concept of "due process"). International law also mandates that courts be *competent independent and impartial, established by the law* (the "legality principle"),[2] People also must have an *available recourse* against those courts, which may protect them "against acts that may violate their *fundamental rights* recognized by the constitution or by the law," or recognized by the international instruments mentioned above. This recourse must be available even when the violation was perpetrated by persons acting in the performance of their official duties.

In the same sense, and practically in the same terms, there were declarations made by both the American Convention on Human Rights "Pact of San Jose" (hereinafter "American Convention") in its Articles 8.1, 8.5 and 25, as well as the European Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter "European Convention") in its Articles 5, 6, 7 and 13. Likewise, Article 7.1 of the African Charter on Human and People's Rights "Banjul Charter" (hereinafter "African Charter") recognizes the right of every person to appear before competent national organs against acts that violate their fundamental rights and to be judged by a competent and impartial court or tribunal. Part 2 of this article deals with the legality principle.

As noted above, these dispositions are applicable to all jurisdictions, including military jurisdiction. It must also be noted that there are only a few international

norms referring explicitly to the prohibition of applying military jurisdiction. In that sense we can quote Article IX of the Inter-American Convention on Forced Disappearance of Persons (OEA, 1994), which states:

> *Persons alleged to be responsible for the acts constituting the offense of forced disappearance of persons may be tried only in the competent jurisdictions of ordinary law in each state, to the exclusion of all other special jurisdictions, particularly military jurisdictions.*
>
> *The acts constituting forced disappearance shall not be deemed to have been committed in the course of military duties. […].*

2.2 Reports and consultative opinions on military jurisdiction

Among the reports on the independence of magistrates and attorneys mentioned above, the Report to the General Assembly of September 25th, 2006 (ONU, 2006a) and the Project of Principles on the Administration of Justice by Military Tribunals (ONU, 2006b) stand out. Another important report is the Updated Set of Principles for the Protection and Promotion of Human Rights Through Action to Combat Impunity recommended by the Human Rights Commission of the UN (COMISIÓN DE DERECHOS HUMANOS, 2005), which under Section 29 states:

> *[t]he jurisdiction of military tribunals must be restricted solely to specifically military offences committed by military personnel, to the exclusion of human rights violations, which shall come under the jurisdiction of the ordinary domestic courts or, where appropriate, in the case of serious crimes under international law, of an international or internationalized criminal court.*

Likewise, the Special Rapporteur of the United Nations on Torture, in the Report issued upon his visit to Mexico in 1997 (ONU, 1998), recommends to the Mexican state in Paragraph 88 that the violations of human rights by military personnel against civilians must be investigated and tried by the civilian courts, "independently of the fact that they may have occurred during service."

In addition, the Special Rapporteur of the United Nations on Extrajudicial, Summary or Arbitrary Executions recommended in his Report on his visit to Mexico in 1999 (ONU, 1999) that the State guarantee that the civilian jurisdiction be in charge of investigating human rights violations perpetrated in detriment of civilians. He also recommended the demilitarization of society, the avoidance of delegating the maintenance of public order and the fight against crime to the armed forces, and the creation of necessary reforms for civilian justice to try human right violators (*cfr.* ONU, 1999, párr. 107).

Likewise, the African system has the Resolution on the Right to a Fair Trial and Legal Aid in Africa (COMISIÓN AFRICANA DE DERECHOS HUMANOS Y DE LOS PUEBLOS, 2001), which establishes in Principle L a prohibition against military tribunals trying civilians. This document aims to promote this prohibition as a right for every civilian:

L. RIGHT OF CIVILIANS NOT TO BE TRIED BY MILITARY COURTS:

a) The only purpose of Military Courts shall be to determine offences of a purely military nature committed by military personnel.

b) While exercising this function, Military Courts are required to respect fair trial standards enunciated in the African Charter and in these guidelines.

c) Military courts should not in any circumstances whatsoever have jurisdiction over civilians. Similarly, Special Tribunals should not try offences which fall within the jurisdiction of regular courts.

It should be noted that in Asia and the Pacific, the LAWASIA (Law Association for Asia and the Pacific) issued in 1995 the Beijing Statement of the Principles of the Independence of the Judiciary (LAWASIA, 1995), which in its Principle 44 states that the jurisdiction of military tribunals must be limited to military crimes. There must be always a right to appeal the decisions of those tribunals before a legally qualified court or tribunal of appeals or other recourse that could potentially nullify military actions.

2.3 Contentious jurisprudence on competence, independence and impartiality of military jurisdiction

Contentious jurisprudence shows both important reasonings and conclusions regarding military jurisdiction, especially when focusing on concrete cases in which the jurisdiction's illegitimacy in its treatment of civilians is evident. In the European system, there are, among other relevant examples, the sentences of the ECHR corresponding to the cases *Incal v. Turkey* (TRIBUNAL EUROPEO DE DERECHOS HUMANOS, 1998a), *Çiraklar v. Turkey* (TRIBUNAL EUROPEO DE DERECHOS HUMANOS, 1998b), *Gerger v. Turkey* (TRIBUNAL EUROPEO DE DERECHOS HUMANOS, 1999a), *Karataş v. Turkey* (TRIBUNAL EUROPEO DE DERECHOS HUMANOS, 1999b) and *Öcalan v. Turkey* (aside from the cases on independence and impartiality of the tribunals in general, which include, for example, the cases of *Ergin v. Turkey*, *Chipre v. Turkey*, *Refineries* Stan Greek *and* Stratis Andreadis *v. Greece*, *Findlay v. United Kingdom* and *Ringeisen v. Austria*).

In the *Incal*, *Gerger*, *Karataş* and *Çiraklar* cases, the Turkish military jurisdiction (represented by the National Security Court, comprised of one military and two civilian judges) extended its competency (i.e. jurisdiction) by adjudicating several crimes including the incitation of hatred, separatism and violence, an extension that violates the principles of competence, independence and impartiality, as well as the Turkish constitution itself in Article 138 Paragraphs 1 and 2 (*cfr.* TRIBUNAL EUROPEO DE DERECHOS HUMANOS, 1998a, caso Incal apartado C.II. y párr. 27). In the *Incal* case (para. 65), the ECHR stated that in order for the tribunal to be truly independent under the terms of Article 6 of the European Convention, its members must be verified and the existence of safeguards against external influence must be assured. The ECHR further stated that there are two ways of establishing impartiality: by trying to determine the personal conviction of a judge in any given

case and by determining whether the judge has offered enough guarantees about his or her impartiality. The ECHR decided that Incal could legitimately doubt the independence and impartiality of the National Security Court due to its semi-military composition, which may have resulted in inappropriate outside influences (TRIBUNAL EUROPEO DE DERECHOS HUMANOS, 1998a, párr. 72).

As far as the African system is concerned, some outstanding examples are *Wahab Akamu and others v. Nigeria* (COMISIÓN AFRICANA DE DERECHOS HUMANOS Y DE LOS PUEBLOS, 1995), *Abdoulaye Mazou v. Cameroon* (COMISIÓN AFRICANA DE DERECHOS HUMANOS Y DE LOS PUEBLOS, 1997), *Oladipo Diya and others v. Nigeria* (COMISIÓN AFRICANA DE DERECHOS HUMANOS Y DE LOS PUEBLOS, 1998), and a case of 24 soldiers represented by the organization *Forum of Conscience* against Sierra Leona (COMISIÓN AFRICANA DE DERECHOS HUMANOS Y DE LOS PUEBLOS, 2000).

In those cases, the ACHR questioned the military tribunals not because they were comprised of army officers but rather to determine whether they conducted their proceedings with justice, equity and impartiality (*cfr.* COMISIÓN AFRICANA DE DERECHOS HUMANOS Y DE LOS PUEBLOS, 1998, párr. 27). Likewise, the ACHR stated that, whatever the character of the individual members of the tribunals that have military participation, the military composition in itself gives the appearance or even the real lack of impartiality, thus violating Article 7.1(d) of the African Charter (*cfr.* COMISIÓN AFRICANA DE DERECHOS HUMANOS Y DE LOS PUEBLOS, 1998, párr 14; COMISIÓN AFRICANA DE DERECHOS HUMANOS Y DE LOS PUEBLOS, 1997, apartado de méritos). This means that the tribunal not only must be impartial, but that it also must appear to be impartial. Moreover, this decisions leads to the possibility that a victim might not necessarily need to show partiality or lack of independence on behalf of the judges or adjudicating authorities but that a tribunal may imply such lack of impartiality from the structure of the adjudicating body. (*cfr.* O'DONNELL, 2004, p. 388).

Perhaps due to the experience of several military dictatorships in Latin America, the jurisprudence of the Inter-American Court of Human Rights on military jurisdiction is the most copious. Most of the main considerations of the inter-American tribunals are to be found in cases such as *Castillo Petruzzi and others v. Peru* (CORTE INTERAMERICANA DE DERECHOS HUMANOS, 1999, párr. 128); *Durand and Ugarte v. Peru* (CORTE INTERAMERICANA DE DERECHOS HUMANOS, 2000a, párr. 117); *Cantoral Benavides v. Peru* (CORTE INTERAMERICANA DE DERECHOS HUMANOS, 2000b, párr. 112); *Las Palmeras v. Colombia* (CORTE INTERAMERICANA DE DERECHOS HUMANOS, 2000c, párr. 51); *19 Comerciantes v. Colombia* (CORTE INTERAMERICANA DE DERECHOS HUMANOS, 2002, párr. 165); *Lori Berenson Mejia v. Peru* (CORTE INTERAMERICANA DE DERECHOS HUMANOS, 2004, párr. 142); *Masacre de Mapiripan v. Colombia* (CORTE INTERAMERICANA DE DERECHOS HUMANOS, 2005a, párrs. 124 y 132); *Masacre de Pueblo Bello v. Colombia* (CORTE INTERAMERICANA DE DERECHOS HUMANOS, 2006a, párr. 131); *La Cantuta v. Perú* (CORTE INTERAMERICANA DE DERECHOS HUMANOS, 2006b, párr. 142); *Masacre de la Rochela v. Colombia* (CORTE INTERAMERICANA DE DERECHOS HUMANOS, 2008a, párr. 200); *Escue*

Zapata v. Colombia (CORTE INTERAMERICANA DE DERECHOS HUMANOS, 2008b, párr. 105), and *Tiu Tojin v. Guatemala* (CORTE INTERAMERICANA DE DERECHOS HUMANOS, 2008c, párr. 118), among others. In all these cases, the Inter-American Court insisted upon the necessity of keeping the military jurisdiction restrictive, exceptional and functional. Many of these considerations can be found in *Rosendo Radilla v. United Mexican States*, which we will analyze in the following chapter as a case study.

3 The case of *Rosendo Radilla* and the wide application of military jurisdiction to civilian human rights violations

The Inter-American Court's sentence in *Rosendo Radilla v. United Mexican States* (case 12.511), dated November 23rd, 2009 (CORTE INTERAMERICANA DE DERECHOS HUMANOS, 2009a), represents a significant triumph for the movement of victims of crimes committed by the State during the "dirty war" and their families, who for decades have been struggling to obtain justice for systematic and massive violations of human rights during that period.

As noted above, the case of Mr. Radilla took about thirty-five years to reach the Inter-American Court. In 2001, the case was presented before the Inter-American Commission on Human Rights (ICHR) by relatives of the victims, assisted by the Association of Families of the Detained, Disappeared and Victims of Human Rights Violations in Mexico (AFADEM, by its Spanish acronym) and the Mexican Commission for the Defense and Promotion of Human Rights A.C. (CMDPDH, by its Spanish acronym).Though the plaintiffs spent twenty-seven years demanding justice from the national authorities, the Secretariat of Foreign Relations argued that they had not yet used all the domestic legal remedies. The ICHR concluded in 2005 that thirty-one years of inefficacy in internal appeals justified the intervention of the regional court. Thus, a total of thirty-five years passed before a sentence was issued against the Mexican state for only one of the hundreds of cases of impunity, pain and injustice during those years.

This case also represents an important precedent for understanding the impact of the extensive use of military jurisdiction for civilian human rights violations. We shall consider this aspect of the case in three sections: a) the incompetence of military jurisdiction to try these cases, b) the lack of judicial protection of civilians in military jurisdiction, and c) the imposition of reserves and interpretative declarations in cases of crimes against humanity under military jurisdiction.

3.1 The case of Rosendo Radilla and the incompetence of the military jurisdiction to hear cases on civilian human rights violations

Taking into account the realities of the Inter-American system and the principles of independence and impartiality of the judges, why is the military jurisdiction incompetent to try cases of human rights violations of civilians?

In *Rosendo Radilla* (para. 266), the Inter-American Court highlighted that the ICHR stated that "the military criminal jurisdiction constitutes a violation of Articles 8 and 25 of the American Convention, since it does not comply with the standards of the Inter-American system regarding cases that involve violations to human rights, mainly in what refers to the principle of the competent court". Likewise, it was careful to declare in Paragraph 273 that:

> *[…] military criminal jurisdiction is not the competent jurisdiction to investigate and, in its case, prosecute and punish the authors of violations of human rights but that instead the processing of those responsible always corresponds to the ordinary justice system. The judge in charge of hearing a case shall be competent, as well as independent and impartial.*
>
> (CORTE INTERAMERICANA DE DERECHOS HUMANOS, 2009a)

Let us consider this assertion under Mexican legislation on military justice. The Political Constitution of the United Mexican States (hereinafter "Mexican Constitution"), Art. 13, imposes a precise limitation to the extension of military jurisdiction:

> *No one shall be put on trial by using either personalized laws nor by special tribunals. […]. Personalized laws shall be applied, however, to military personnel who have committed criminal offenses or have breached the military discipline; but the jurisdiction of martial courts shall never extend to non-enrolled individuals. Civilians involved in crimes against the armed forces or who have breached the military order shall be put to trial before ordinary courts.*
>
> (ESTADOS UNIDOS MEXICANOS, 1917)

In spite of the clarity of the constitutional text, the Code of Military Justice (hereinafter "CJM") defines "military discipline" broadly, applying military jurisdiction to all crimes committed by military personnel "while they are on duty or acting under motivation of duty," thus allowing any crime committed by military personnel to be investigated by a military prosecutor and to be judged by military authorities, regardless of the crime's effect.

Likewise, it must be noted that through Articles 7, 13, 16, 27, 41, 42, and others related to the CJM (ESTADOS UNIDOS MEXICANOS, 1933,mthe Supreme Military Tribunal (the supreme organ of the Mexican military judicial system, hereinafter "STM" by its Spanish acronym); the War Councils, both Ordinary and Extraordinary; the personnel of the military judicial system; and the Attorney General for Military Justice (in charge of the investigations related to military penal law) and his agents are all comprised exclusively of military personnel. In addition, the Secretary of National Defense must agree with the President (in his role as the Supreme Commander of the Armed Forces) in order to appoint both the Attorney General for Military Justice as well as the magistrates who comprise the STM. Federico Andreu Guzman, in his expert report for the *Radilla* Court, emphasized two characteristic elements of Mexican military justice: 1) high dependency of

judicial officials and Public Ministry military personnel on the Executive Power, and 2) an extensive width of jurisdiction that exceeds the framework of strictly military crimes. (*cfr.* ANDREU GUZMÁN, 2009, párr. 11).

The first element is clearly evident from the composition of the Mexican military justice system and directly impacts the independence and impartiality that all authorities acting within a jurisdictional scope should possess. These requirements, if unmet, will clash with the principle of separation of powers within the administration of justice. The notion of independence in justice implies that all tribunals or judges must be independent from the Executive Power, the Legislative Power, and the relevant parties in a given trial. International consensus affirms this notion, as can be seen aforementioned reports by the Special Rapporteur on the independence of magistrates and attorneys, the *Rosendo Radilla* case (para. 272), the European jurisprudence in this matter, for example by the ECHR in *Stan Greek Refineries and Stratis Andreadis v. Greece* (para. 49) (TRIBUNAL EUROPEO DE DERECHOS HUMANOS, 1994), among others. Nevertheless, in the Mexican case, the opposite is true: the Army is the judge of its own cause and the acting tribunal is not part of the Judiciary but rather the Executive.

Now, regarding competence (also called "principle of the natural judge" or "jurisdictional scope"), two additional considerations are possible: fulfilling competence on the basis of either *ratione materiae* (subject matter jurisdiction) or *ratione personae* (peronsal jurisdiction). Regarding the former, there is a contradictory regulation that pits the Mexican Constitution against the CJM. Though the scope of military jurisdiction is restrictive in the primary norm, in the secondary legislation it "has a phenomenal expansion," quoting an expression used by Andreu-Guzmán (2009, para. 6 of the expert report). The CJM (Art. 57) broadens the military jurisdiction to include felonies committed against the military and all common felonies committed by military personnel during service or arising from service, in a territory declared under siege or in a place subjected to martial law, or in connection with a strictly military crime, defined in the Code of Military Justice.

Regarding this article of the CJM, the Inter-American Court decided that it surpassed the strict and closed environment of the military, resulting in a broader approach toward the active subject. However, as Miguel Sarre said in his expert report for the *Radilla* case, "it does not consider the passive subject" (CORTE INTERAMERICANA DE DERECHOS HUMANOS, 2009a, párr. 276).

> *Likewise – said the Inter-American Court in the quoted paragraph – the expert Federico Andreu-Guzman, in a declaration given before the Tribunal, stated that […] [t]hrough the characterization of the crime during the exercise of duty or during an occasion of service, as established in article 57 of the [CJM], Mexican penal jurisdiction has the characteristics of personal jurisdiction linked to the military condition of the individual on trial, and not on the nature of the crime (citations omitted).*

Due to this erroneous substantive expansion, other juridical rights, beyond those within the scope of the military jurisdiction, are affected. On this particular point, the judgment in the *Radilla* case indicates precisely what will happen as a result of the extensive application of military jurisdiction:

> *274. […] it shall be concluded that if the criminal acts committed by a person who enjoys the classification of active soldier does not affect the juridical rights of the military sphere, ordinary courts should always prosecute said person. In this sense, regarding situations that violate the human rights of civilians, the military jurisdiction cannot operate under any circumstance.*
>
> *275. […] the victims of the violations of human rights and their next of kin have the right to have said violations heard and resolved by a competent tribunal, pursuant with the due process of law and the right to a fair trial. The importance of the passive subject transcends the sphere of the military realm, since juridical rights characteristic of the ordinary regimen are involved.*
>
> *277. In the present case, there is no doubt that the arrest and subsequent forced disappearance of Mr. Rosendo Radilla-Pacheco, in which military agents participated (supra para. 150) are not related in any way whatsoever with the military discipline. From those behaviors juridical rights such as life, personal integrity, personal liberty, and the acknowledgment of the juridical personality of Mr. Rosendo Radilla-Pacheco have been affected. Likewise, in a Constitutional State, the commission of acts such as the forced disappearances of persons against civilians by the members of the military can never be considered as a legitimate and acceptable means for compliance with the military mission. It is clear that those behaviors are openly contrary to the duties of respect and protection of human rights and, therefore, are excluded from the competence of the military jurisdiction.*
>
> (CORTE INTERAMERICANA DE DERECHOS HUMANOS, 2009a, párr. 274, 275, 277)

Considering these arguments and the ones presented by the plaintiffs' defense, the Inter-American Court concluded that Article 57(II)(a) of the CJM (ESTADOS UNIDOS MEXICANOS, 1933, párr. 286):

> *is an ample and imprecise provision that prevents the determination of the strict connection of the crime of the ordinary jurisdiction with the military jurisdiction objectively assessed. The possibility that the military courts prosecute any soldier who is accused of an ordinary crime, for the mere fact of being in service, implies that the jurisdiction is granted due to the mere circumstance of being a soldier. In that sense, even when the crime is committed by soldiers while they are still in service or based on acts of the same, this is not enough for their knowledge to correspond to the military criminal justice.*

Though the expansion of Mexican military jurisdiction is unconstitutional and inadequate compared to international standards, the State continues to allow the Army to try its personnel before its own tribunals, applying a special set of norms, violating procedural rights of the civilian victims and refusing to comply with its obligation to reform the CJM (*cfr.* CORTE INTERAMERICANA DE DERECHOS HUMANOS, 2009a, punto resolutivo 10).

In this regard, it is noteworthy the recent decision of the Supreme Court of

Justice (SCJN), which held last July 12, 2011, as part of the "Consulta a Trámite en el Expediente Varios 489/2010 *Caso Rosendo Radilla Pacheco vs Estados Unidos Mexicanos*" (Opinion regarding Case 489/2010, *Rosendo Radill vs. United Mexican States*), that all judges in the country, before whom disputes over military jurisdiction might arise, must apply the IACHR criterion regarding the exclusion from their jurisdiction cases of human rights violations perpetrated by the Armed Forces, being the SCJN the court with the judicial power to decide in such situations eventual conflicts of jurisdiction between civil and military authorities. It means that the SCJN, exercising its constitutional authority, declared unconstitutional the Article 57 of the Code of Military Justice (CJM) until the Congress enacts a new provision, in compliance with the IACHR judgments in the cases Radilla Pacheco, Rosendo Cantú, Fernández Ortega and "Campesinos Ecologistas". Undoubtedly, this represents an important step in the process of compliance with the judgment,[3] but still requires that the ruling be implemented with the adoption of the jurisprudence and, more importantly, with the reform of the CJM, which is within the scope of the Legislative.

3.2 The case of Rosendo Radilla and the right to count on effective judicial remedies

The problem we are discussing is aggravated by: a) the inexistence of an effective appeal process that may protect victims (CORTE INTERAMERICANA DE DERECHOS HUMANOS, 2009a, párr. 190, 233, 265, 267, 281, 288, 296); b) the reservations and interpretational declarations attached to international treaties on the subject (CORTE INTERAMERICANA DE DERECHOS HUMANOS, 2009a, párr. 236, 312); c) the inexistence or inadequacy of penal classification of crimes that constitute violations of civilian human rights, such as forced disappearance and torture (CORTE INTERAMERICANA DE DERECHOS HUMANOS, 2009a, párr. 235, 238, 240, 288, 315–324); d) the promotion of legislative reforms aiming to protect the persons responsible for serious human rights violations (CORTE INTERAMERICANA DE DERECHOS HUMANOS, 2009a, párr. 285, 286, 288); e) the refusal to investigate the facts (CORTE INTERAMERICANA DE DERECHOS HUMANOS, 2009a, párr. 233); f) the refusal to expedite copies of the penal files, even in the case of serious human rights violations, thus denying the right of every person to participate in his own process (CORTE INTERAMERICANA DE DERECHOS HUMANOS, 2009a, párr. 182, 222, 248, 252); g) the absence of an investigation on responsibility within the chain of command, the basis for identifying the fault of both the actors and the planners (CORTE INTERAMERICANA DE DERECHOS HUMANOS, 2009a, párr. 205); h) the denial of access to truth, in those cases that are in the domain of transitional justice (CORTE INTERAMERICANA DE DERECHOS HUMANOS, 2009a, párr. 180), and i) the creation, in general, of mechanisms pretending to substitute for the punishment of those at fault and the victim's reparations (CORTE INTERAMERICANA DE DERECHOS HUMANOS, 2009a, párr. 179 y 181).

Regarding the lack of an effective appeal, the IHR Court has frequently repeated that the Member States of the American Convention need to provide effective judicial resources to potential victims of human rights violations, as stated

in Article 25 (*cfr.* CORTE INTERAMERICANA DE DERECHOS HUMANOS, 1987, párr. 90, *Excepciones preliminares del Caso Fairén Garbi y Solís Corrales contra Honduras*; CORTE INTERAMERICANA DE DERECHOS HUMANOS, 1988, párr. 91, *Caso Velázquez Rodríguez contra Honduras*; CORTE INTERAMERICANA DE DERECHOS HUMANOS, 2009b, párr. 110, *Caso Kawas Fernández contra Honduras*; CORTE INTERAMERICANA DE DERECHOS HUMANOS, 2009c, párr. 122, *Caso Anzualdo Castro contra Perú*).

What is an "effective appeal"? Diligence is one of the aspects of an effective appeal, as seen in the *Rosendo Radilla* Judgment (para. 191). This paragraph reminds us that the ministerial investigation "requires that the determination of the facts under investigation and, if it were the case, of the corresponding criminal responsibilities be made effective in a reasonable period of time, reason for which, in attention to the need to guarantee the rights of the affected parties, a prolonged delay can constitute, in itself, a violation of the right to a fair trial." (internal citation omitted). This constitutes a positive verification of the *periculum in mora*, to civilians' detriment. (*cfr.* CORTE INTERAMERICANA DE DERECHOS HUMANOS, 2005c, párr. 4 inciso c) de la Solicitud de medidas provisionales presentada por la CIDH respecto de los Estados Unidos Mexicanos en el caso Jorge Castañeda Gutman).

In the case under discussion, what rendered the ordinary penal appeal illusory was the involvement of high military commands for the commission of the crimes denounced by the family members of Mr. Radilla. As a matter of fact, due to their forced disappearance, the Attorney General of the Republic only called upon three members of the Armed Forces to testify, all already in prison for other crimes (CORTE INTERAMERICANA DE DERECHOS HUMANOS, 2009a, párr. 205 caso Rosendo Radilla). He did so while briefly and ineffectively acting within his role as the "Special Prosecutor for the investigation of actions probably constituting crimes committed by public servants against persons linked with Social and Political Movements of the Past" (FEMOSPP) and with the purpose of clarifying the crimes committed by the Mexican state against the civilian population during the 1960s and 1970s.

The aforementioned leads us to the conclusion that the independence of the tribunal through absence of external influence is a requisite for effective appeals which the military jurisdiction does not have, as indicated by the *Radilla* Judgment and, quoting another clear example of regional jurisprudence, in the ECHR's judgment in *Incal v. Turkey* (para. 65) (TRIBUNAL EUROPEO DE DERECHOS HUMANOS, 1999a), where the requirement of the absence of external influence is a central element for a judge's independence.

Now, the same Mexican legislation contains regulations that prevent the effectiveness of the *amparo* proceeding (for the protection of individual guarantees consecrated by the Mexican Constitution) whenever it extends into military jurisdiction, as long as the personal jurisdiction proves to be ineffective. When the relatives of Mr. Padilla attempted to bring the case before the ordinary trial court, the Court of the Second District declined its competence in favor of the military jurisdiction. This decision, in turn, spurred an *amparo* proceeding to revoke this resolution. However, the Court of the Sixth District immediately rejected the demand, deciding that:

> *[i]n the Mexican judicial system, penal procedures are performed only between the accused party and the Public Ministry, in charge of the penal action and with a monopoly on it, and thus, it is entitled to defend during the process of each and every one of the acts that may happen during this process and which may affect its development, [among] which […] we may find procedural subjects such as the ones pertaining to the Tribunal before which the case may have to be heard by virtue of its jurisdiction, a topic that can be analyzed through the means of defense proposed before the competent instances under the terms of article 367, fraction VIII, of the Federal Code of Penal Procedures; an appeal that […] may only be raised by the Public Ministry, unlike the case of the plaintiff before its legitimate representatives, even though they may be represented by the Social Representative […].*

This resolution invokes a norm that violates the right of the parties to participate in the process. It was disputed through an appeal to the Collegiate Court, which affirmed the disposition of the *amparo* on the conflict of competence under the argument that the Collegiate Court had previously decided, and that the *Amparo* Law, art. 73(XVI) establishes that the case cannot proceed "[w]hen the effects of the action being claimed have disappeared."[4]

For all this, the Inter-American Court concluded that Mr. Radilla's relatives were "deprived of the possibility to contest the jurisdiction of military courts to hear matters that, due to their nature, shall correspond to the authorities of the ordinary jurisdiction," (CORTE INTERAMERICANA DE DERECHOS HUMANOS, 2009a, párr. 294), due to the fact that "it is not enough for the recourses to exist formally, but instead it is necessary that they be effective in the terms of that precept. The Court has reiterated that said obligation implies that the recourse be suitable to fight the violation and that its application by the competent authority be effective." (internal citation omitted) (CORTE INTERAMERICANA DE DERECHOS HUMANOS, 2009a, párr. 296).

3.3 The case of Rosendo Radilla and the imposition of reservations and interpretative declarations in the cases of crimes against humanity under military jurisdiction

The Vienna Convention on the Law of Treaties (ONU, 1969) (hereinafter "Vienna Convention") regulates in Articles 19 through 23 the right of the States to interpose reservations to international treaties. The Inter-American Court states in its Consultative Opinion OC-2/82 that this norm requires an integral interpretation taking into account that, above all, the final purpose of the treaties on human rights must be the preservation of its subject and its final objective. This preservation requires achieving the recognition and realization of the rights consecrated in the instrument.

Now, the Mexican state imposed a reservation on Article IX of the CIDFP (cited in the paragraph on international norms applicable in this essay) in the following terms:

> *The Government of the United Mexican States, in ratifying the Inter-American Convention on the Forced Disappearance of Persons, adopted in the city of Belem, Brazil, on June 9, 1994, formulates a concrete reservation on Article IX, due to the*

> *fact that the Political Constitution recognizes the jurisdiction of war, whenever the military has committed any crimes while on duty. The jurisdiction of war does not constitute a special jurisdiction in the sense of this Convention, due to the fact that in accordance with article 14 of the Mexican Constitution nobody may be deprived of life, liberty or properties, possessions or rights, unless there is a trial performed by tribunals established previously, in which the essential formalities of the procedures are observed in accordance with the laws issued before the act in question.*
>
> (*cfr.* OEA, 1994, párr. 306)

Of course, this reservation renders Article IX of the CIDFP inapplicable, as it precisely intends to establish a procedural rule in which all actions of forced disappearance are to be investigated and tried by civilian authorities. It intends, above all, to establish effective judicial appeals that protect the victims from the risk of impunity associated to the lack of independence, impartiality and competence of the military jurisdictions hearing these matters (*cfr.* OEA, 1994, párr. 308). Article IX of the CIDFP puts a special emphasis on military jurisdiction by establishing that cases of disappearances may not be interpreted as actions committed in the performance of military duties. However, the Mexican reservation turns military jurisdiction into personal jurisdiction, violating the right to a natural judge and creating a rule instead of an exception. It thereby contradicts the subject and purpose of the Treaty and its Article IX, as well as the provisions set forth in Article 19 of the Vienna Convention.

For all the above reasons, the Inter-American Court declared the nullity of the reservation presented by the Mexican state to Article IX of the CIDFP, which tried to justify the wide application of military jurisdiction to these type of cases, for being against the object and purpose of the treaty (CORTE INTERAMERICANA DE DERECHOS HUMANOS, 2009a, párr. 312 de la Sentencia).

Finally, as the epilogue of this section, another pernicious effect stemming from the extensive application of military jurisdiction and considered by Inter-American jurisprudence is the concept of impunity that results from the application of laws or decrees of self-amnesty, the configuration of penal types that include the expiration of crimes against humanity or short-term expiration for other types of human rights-related crimes, or through the absolution of crimes against humanity, generally accompanied by ineffective investigations.

On this subject, the Inter-American Court has been emphatic in its affirmation of *Barrios Altos v. Peru* (para. 41) that

> *all amnesty provisions, provisions on prescription and the establishment of measures designed to eliminate responsibility are inadmissible, because they are intended to prevent the investigation and punishment of those responsible for serious human rights violations such as torture, extrajudicial, summary or arbitrary execution and forced disappearance, all of them prohibited because they violate non-derogable rights recognized by international human rights law.*
>
> (CORTE INTERAMERICANA DE DERECHOS HUMANOS, 2001, párr. 41)

A similar declaration was made in the same sense in *Almonacid Arellano v. Chile* (CORTE INTERAMERICANA DE DERECHOS HUMANOS, 2006c) in relation to the application of self-amnesty for public servants who may have committed crimes against humanity (*cfr.* particular vote of J. Cançado Trindade).

In *Rosendo Radilla* (CORTE INTERAMERICANA DE DERECHOS HUMANOS, 2009a, párr. 278 y *ss*..), the State showed its intention of putting the procedural schedule to work in favor of impunity through its allegations on the incompetence *ratione temporis* of this tribunal to judge the matter because by the time of the deposit of the instrument of adhesion from Mexico to the American Convention, as well as, later, to the CIDFP, the actions were performed after the subject matter of the *litis*. The State further contended that the continuing character of the forced disappearance was deemed "irrelevant" in the process because of the tardy deposit. The reasons used by the Court to reject this allegation revolved around the fact that, due to its characteristics, the crime of forced disappearance is a crime of permanent execution and non-lapsable, with effects that prolong over time as long as the location or whereabouts of the victim are not established. This is especially so given the group of imperative norms in general international law (*ius cogens*) being applied that imply a non-temporal element. (OEA, 1994, párr. 15-38).

4 The case of *Abdullah Öcalan v. Turkey* in relation to the extensive application of military jurisdiction in civilian trials

Another case to be analyzed is *Öcalan v. Turkey* (TRIBUNAL EUROPEO DE DERECHOS HUMANOS, 2003), in which a civilian was tried before a court made up of military personnel. This case highlights the violation of two procedural rights that have been affected by military jurisdiction: every person's right to be judged by an independent tribunal (Article 6.1 of the European Convention) and the right to a fair trial (Article 6.1 as related to 6.3). On the subject of independence, the ECHR examined the composition of the Court of National Security (hereinafter "CNS") of Ankara. This court tried Öcalan for terrorist activities within the framework of his activities as founder and leader of the armed group called the Worker's Party of Kurdistan (PKK). The court was comprised of two civilian judges and one military judge, in accordance with the Turkish Constitution before the 1999 Amendment to Article 143.

On June 18, 1999, having complied with the Judgment of the *Incal* case, the Great Assembly of Turkey reformed Article 143 of the Turkish Constitution in order to exclude military judges and prosecutors from the proceedings before the CNS and, in accordance with the new legislation, on June 23 the military judge in the Öcalan case was replaced by a civilian (*cfr.* TRIBUNAL EUROPEO DE DERECHOS HUMANOS, 2003, párr. 43 y 44). Six days later, the CNS issued the decision: a death sentence due to terrorist and separatist activities (*cfr.* TRIBUNAL EUROPEO DE DERECHOS HUMANOS, 2003, párr. 46).

The ECHR observed that the presence of a military judge made the CSN's independence of the Executive Power questionable (*cfr.* TRIBUNAL EUROPEO

DE DERECHOS HUMANOS, 2003, párr. 112), as it would with any tribunal in a democracy (*cfr.* TRIBUNAL EUROPEO DE DERECHOS HUMANOS, 2003, párr. 116). As in the cases of *Incal* and *Iprahim Ülger v. Turkey*, the ECHR observed that Öcalan could legitimately worry that the military judge acted under outside influence. Even after the military judge was substituted by a civilian judge, the doubts on the independence of the tribunal (which includes independence of the Legislative Power) continue to be valid, since the decisions made by the military judge outlived his substitution. Paragraph 115 of the Judgment is very clear in asserting that "where a military judge has participated in an interlocutory decision that forms an integral part of proceedings against a civilian, the whole proceedings are deprived of the appearance of having been conducted by an independent and impartial court." (TRIBUNAL EUROPEO DE DERECHOS HUMANOS, 2003).

This conclusion is similar to the one espoused by the ACHR in *Akamu and others v. Nigeria* (COMISIÓN AFRICANA DE DERECHOS HUMANOS Y DE LOS PUEBLOS, 1995), in which it questioned the independence of the tribunals provided for by the Robbery and Firearms Act of that country which were comprised of three judges: one civilian (who may be a retired judge); one officer of the army, navy or air force; and another one from the police. This court also issued non-appealable sentences that had to be confirmed by the Executive Power.

In relation to the right to a fair trial, we found several irregularities here as we did during the process before the CNS. To cite a few examples, during detention the detainee was held in seclusion for seven days and then was denied access to an attorney. During the trial, the court restricted the number and duration of meetings between the accused and his attorneys (*cfr.* TRIBUNAL EUROPEO DE DERECHOS HUMANOS, 2003, párr. 137). In addition, the defense experienced substantially delayed access to evidence, thus violating the principle of procedural equity (*cfr.* TRIBUNAL EUROPEO DE DERECHOS HUMANOS, 1991, párr. 36 y 148, y párr. 66 y 67 de la Sentencia del TEDH sobre el caso Brandstetter contra Austria). The first two hearings were performed without the presence of the accused, thus violating the right for parties to participate in their own proceedings (*cfr.* TRIBUNAL EUROPEO DE DERECHOS HUMANOS, 2003, párr. 37). The CNS denied Öcalan the right to appear as a witness for the government officials that conducted the peace negotiations with the PKK (*cfr. op. cit*, párr. 39), and it refused to let him to provide additional documentation or to request new investigations in order to gather more proof, saying that the accused was attempting dilatory tactics (*cfr. op. cit*, párr. 40).

The observance of the principles of due process and the correct administration of justice in cases in which the life of the accused is at stake is of utmost importance (*cfr. op. cit.* párr. 136). There is a consensus on this subject in the most recent European regulations, among them the prohibition of the death penalty in common Article 1 of both Protocols No. 6 and No. 13 of the European Convention, as well as the prohibition of the death penalty for terrorists in accordance with Article X.2 of the "Guidelines on Human Rights and the Fight against Terrorism" issued by the Council of Ministers of the European Council in 2002. The Inter-American Court has also provided jurisprudence by stating in *Hilaire, Constantine and Benjamin and others v. Trinidad-Tobago* (para. 148) that "[t]aking into account the

exceptionally serious and irreparable nature of the death penalty, the observance of the due legal process, along with the corresponding rights and guarantees, is even more important when a human life is at stake." (CORTE INTERAMERICANA DE DERECHOS HUMANOS, 2005b).

5 Conclusion: the significance of human rights against the expansion of militarism and the extensive application of military jurisdiction

The standards of the four systems mentioned above (universal, Inter-American, European and African) generally require that the State recognize the rights related to due process and the right to both access to and protection by justice. For the purpose of explanation we consider the first category to consist of: 1) the recognition of judicial rights of every person (presumption of innocence, right to defense, right to adequate time and means to prepare a defense, etc.); 2) the equality of the parties; 3) the right for every person to be heard without delay; 4) the publicity of the procedures; 5) the right to be present during the procedure; 6) the legality of judges and tribunals, which implies their legal existence as well as the application of relevant legal norms; 7) the competence of said judge or tribunal; 8) its independence; and 9) its impartiality (to which we must add the independence and impartiality of the Public Ministry). In the second category we may find 1) the availability of appeals, 2) the guarantee of compliance with the judgment (which include the right to investigate and sanction human right violations), and 3) the ease and speed of the process (these two are contemplated in the American Convention).

The problem with the extensive application of military jurisdiction in cases in which civilians are involved as either passive or active subjects is that it violates more than one of those principles, depending on the case and the regional jurisprudence mentioned above. It also impacts the quality of democracy as applied by that State. The military jurisdiction completes the circle of State violence, in which civilian judicial interest in due process is violated by not having a competent, independent, fair and impartial trial, as established by international human rights law.

Impunity is the most evident sign of a State that does not offer full guarantees for the realization of human rights, and it casts a shadow on the authenticity of its democracy. Military jurisdiction is, on the other hand, the most deceptive sign of impunity. It is a sign that the State favors of arbitrariness and separation of society between the privileged and the excluded.

Giorgio Agamben, in his book *State of Exception*, insists that since the Second World War "the voluntary creation of a permanent state of emergency (although eventually it went undeclared in the technical sense of the sentence) turned into one of the essential practices of contemporary states, including those so-called democratic states" (AGAMBEN, 2007, p. 25). In fact, the growing *exceptionalization* of the law, reflected in the actions of the Armed Forces in several places in the world, generates a parallel system of "justice" in which procedural arbitrariness leads to arbitrariness in the use of force. It also punishes legitimate demands for

respect and acknowledgment of human rights of hundreds of civilians who were victims of these abuses, as well as entire societies that are exposed to vulnerability before the excess of power. Peace and justice are inconceivable when everything that is intended to be an exception becomes a rule.

For all the above reasons, in a system that involves such a multiplicity of highs and lows that vary by country, the expansion of militarism would seek to evade judicial counterweights applied in democratic States. Therefore, the authors wish to share with readers their conviction that acting in accordance with international human rights law against the extensive application of military jurisdiction represents the vindication of judiciaries everywhere and the high principles promoted by modern democracies worldwide.

REFERENCES

Bibliography and Other Sources

AGAMBEN, G. 2007. **Estado de excepción**. Buenos Aires: Adriana Hidalgo Ed.

ANDREU GUZMÁN, F. 2009. **Declaración rendida por el señor Federico Andreu-Guzmán ante fedatario público (affidávit) el 22 jun. 2009** (expediente de fondo, tomo IV, folio 1319) ante la Corte IDH.

COMISIÓN AFRICANA DE DERECHOS HUMANOS Y DE LOS PUEBLOS. 2001. **Principios y Directrices sobre el Derecho a un Juicio Justo y a la Asistencia Legal en África.**

COMISIÓN DE DERECHOS HUMANOS. 2005. **Conjunto de principios actualizado para la protección y la promoción de los derechos humanos mediante la lucha contra la impunidad**. UN DOC: E/CN.4/2005/102/Add.1, 21 abr. 2005.

_____. 2007. **Observación General No. 32 del Comité de Derechos Humanos de la ONU.** UN DOC: CCPR/C/GC/32.

CONSEJO DE EUROPA. 1950. **Convención Europea para la Protección de los Derechos Humanos y las Libertades Fundamentales.**

_____. 1983. **Protocolo N° 6 al Convención Europea para la Protección de los Derechos Humanos y de las Libertades Fundamentales relativo a la abolición de la pena de muerte.**

_____. 2002a. **Directrices sobre derechos humanos y la lucha contra el terrorismo.**

_____.2002b. **Protocolo N° 13 a la Convención Europea para la Protección de los Derechos Humanos y de las Libertades Fundamentales referente a la abolición de la pena de muerte en cualquier circunstancia.**

CORTE INTERAMERICANA DE DERECHOS HUMANOS. 1982. **El Efecto de las Reservas sobre la Entrada en Vigencia de la Convención Americana sobre Derechos Humanos.** Opinión Consultiva OC-2/82 del 24 sept. 1982. Serie A No. 2.

ESTADOS UNIDOS MEXICANOS. 1917. **Constitución Política de los Estados Unidos Mexicanos.**

_____. 1933. **Código de Justicia Militar.**

HUMAN RIGHTS WATCH. 2009. **Uniform impunity. Mexico's misuse of military justice to prosecute abuses in counternarcotics and public security operations.**

LAWASIA. 1995. **Declaración de Beijing de los Principios sobre la Independencia del Poder Judicial (CCJAPRes).**

ORGANIZACIÓN DE LAS NACIONES UNIDAS (ONU). 1948. **Declaración Universal de los Derechos Humanos**.

_____. 1966. **Pacto Internacional de Derechos Civiles y Políticos.**

_____. 1969. **Convención de Viena sobre el derecho de los tratados.**

_____. 1998. **Informe sobre la visita a México del Relator Especial de las Naciones Unidas sobre Tortura.** UN DOC: E/CN.4/1998/Add.2, Relator sobre Tortura, 14 enero 1998.

_____. 1999. **Informe de la Relatora Especial de las Naciones Unidas sobre Ejecuciones Extrajudiciales, Sumarias y Arbitrarias sobre su visita a México en 1999.** UN DOC: E/CN.4/2000/3/Add.3, Relatora Sobre Ejecuciones, 25 nov. 1999).

_____. 2006a. **Proyecto de principios sobre la administración de justicia por los tribunales militares, contenido en el Informe del Relator Especial de la Subcomisión de Promoción y Protección de los Derechos Humanos de la ONU.** UN DOC: E/CN.4/2006/58.

_____. 2006b. **Informe del Relator Especial sobre la independencia de los magistrados y abogados de la Organización de las Naciones Unidas,** Leandro Despouy, a la Asamblea General de 25 sept. 2006. UN DOC: A/61/384.

O'DONNELL, D.2004. **Protección internacional de los derechos humanos.** Bogota: Oficina en Colombia del Alto Comisionado de las Naciones Unidas para los Derechos Humanos.

ORGANIZACIÓN DE LA UNIDAD AFRICANA. 1981. **Carta Africana sobre Derechos Humanos y de los Pueblos, "Carta de Banjul".**

ORGANIZACIÓN DE LOS ESTADOS AMERICANOS. 1969. **Convención Americana sobre Derechos Humanos.**

_____. 1994. **Convención Interamericana sobre la Desaparición Forzada de Personas**.

Jurisprudence

COMISIÓN AFRICANA DE DERECHOS HUMANOS Y DE LOS PUEBLOS.1995. Sentencia del **caso Wahab Akamu y otros contra Nigeria** (60/91).

_____. 1997. Sentencia del **caso Abdoulaye Mazou contra Camerún** (39/90).

_____. 1998. Sentencia del **caso Oladipo Diya y otros contra Nigeria** (218/98).

_____. 2000. Sentencia del **caso Forum of Conscience contra Sierra Leona** (223/98).

CORTE INTERAMERICANA DE DERECHOS HUMANOS. 1987. Sentencia de excepciones preliminares del **caso Fairén Garbi y Solís Corrales contra Honduras** (26 jun. 1987. Serie C No. 2).

_____. 1988. Sentencia de excepciones preliminares del **caso Velázquez Rodríguez contra Honduras** (29 jul. 1988. Serie C No. 4).

_____. 1999. Sentencia del **caso Castillo Petruzzi y otros contra Perú** (30 mayo 1999. Serie C No. 52).

_____. 2000a. Sentencia del **caso Durand y Ugarte contra Perú** (16 agosto 2000. Serie C No. 68).

_____. 2000b. Sentencia del **caso Cantoral Benavides contra Perú** (18 agosto 2000. Serie C No. 69).

_____. 2000c. Sentencia del **caso Las Palmeras contra Colombia** (4 feb. 2000. Serie C No. 67).

_____. 2001. Sentencia del **caso Barrios Altos vs. Perú** (3 sept. 2001. Serie C No. 83).

_____. 2002. Sentencia del **caso 19 Comerciantes contra Colombia** (12 jun. 2002. Serie C No. 93).

_____.2004. Sentencia del **caso Lori Berenson Mejía contra Perú** (25 nov. 2004. Serie C No. 119).

_____. 2005a. Sentencia del **caso Masacre de Mapiripán contra Colombia** (15 sept. 2005. Serie C No. 134).

_____. 2005b. Sentencia del **caso Hilaire, Constantine y Benjamin y otros contra Trinidad y Tobago** (11 marzo 2005. Serie C No. 123).

_____. 2005c. Resolución sobre la solicitud de medidas provisionales presentada por la CIDH respecto de los Estados Unidos Mexicanos en el **caso Jorge Castañeda Gutman.**

_____. 2006a. Sentencia del **caso Masacre de Pueblo Bello contra Colombia** (31 enero 2006. Serie C No. 140).

_____. 2006b. Sentencia del **caso La Cantuta contra Perú** (29 nov. 2006. Serie C No. 162).

_____. 2006c. Voto particular del juez Cançado Trindade en el **caso Almonacid Arellano contra Chile** (26 sept. 2006. Serie C No. 154).

_____. 2008a. Sentencia del **caso Masacre de la Rochela contra Colombia** (28 enero 2008 Serie C No. 175).

_____. 2008b. Sentencia del **caso Escué Zapata contra Colombia** (5 mayo 2008 Serie C No. 178).

_____. 2008c. Sentencia del **caso Tiu Tojín contra Guatemala** (26 nov. 2008. Serie C No. 190).

_____. 2009a. Sentencia del **caso Rosendo Radilla Pacheco contra Estados Unidos Mexicanos** (23 nov. 2009. Serie C No. 209).

_____. 2009b. Sentencia del **caso Kawas Fernández contra Honduras** (3 abr. 2009 Serie C No. 196).

_____. 2009c. Sentencia del **caso Anzualdo Castro contra Perú** (22 sept. 2009. Serie C No. 202).

_____. 2010a. Sentencia del **caso Inés Fernández Ortega contra Estados Unidos Mexicanos** (30 ago. 2010. Serie C No. 215).

_____. 2010b. Sentencia del **caso Valentina Rosendo Cantú contra Estados Unidos Mexicanos** (31 ago. 2010. Serie C No. 216).

_____. 2010c. Sentencia del **caso Cabrera García y Montiel Flores contra Estados Unidos Mexicanos** (26 nov. 2010. Serie C No. 220).

TRIBUNAL EUROPEO DE DERECHOS HUMANOS. 1971. Sentencia del **caso Ringeisen contra Austria** (2614/65).

_____. 1991. Sentencia del **caso Brandstetter contra Austria** (11170/84, 12876/87, 13468/87).

_____. 1994. Sentencia del **caso Refinerías *Stan Greek* y *Stratis Andreadis* contra Grecia** (22/1993/417/496).

_____. 1997. Sentencia del **caso Findlay contra Reino Unido** (110/1995/616/706).

_____. 1998a. Sentencia del **caso Incal contra Turquía** (41/1997/825/1031).

_____. 1998b. Sentencia del **caso Çiraklar contra Turquía** (70/1997/854/1061).

_____. 1999a. Sentencia del **caso Gerger contra Turquía** (24919/94).

_____. 1999b. Sentencia del **caso Karataş contra Turquía** (23168/94).

_____. 2001. Sentencia del **caso Chipre contra Turquía** (25781/94).

_____. 2003. Sentencia del **caso Öcalan contra Turquía** (46221/99).

_____. 2004. Sentencia del **caso Iprahim Ülger contra Turquía** (57250/00).

_____. 2006. Sentencia del **caso Ergin contra Turquía** (47533/99).

NOTES

1. For further reference on these cases, it is recommended to read of the report entitled "*Uniform impunity. Mexico's misuse of military justice to prosecute abuses in counternarcotics and public security operations*" (HUMAN RIGHTS WATCH, 2009).

2. The American Convention indicates that the tribunal must be established by the law before the process.

3. On July 20, 2011, the UN High Commissioner for Human Rights, Navi Pillay, issued a statement on the occasion of the International Criminal Justice Day, which highlights the SCJN´s ruling in the following terms: "As the United Nations High Commissioner for Human Rights, I join the world today in commemorating International Criminal Justice Day [...] I welcome the following positive developments, among many, that we witnessed this year: the arrest and transfer of General Ratko Mladiæ to the ICTY; the conviction of General Augustin Bizimungu at the ICTR; the conviction at ICTR of former Rwandan Minister Pauline Nyiramasuhuko for, among other crimes, the rapes committed against her fellow women during the Rwandan Genocide because of her own superior responsibility over the Interahamwe rapists; the very recent conviction by an Argentine national court in Buenos Aires of two former members of the military junta that ran a most repressive regime in Argentina in the 1970s and 1980s; and the judgment of the Supreme Court of Mexico requiring trials of soldiers in civilian courts for the violations of human rights of civilians".

4. It is worth mentioning that the *amparo* proceeding needs the approval of the person affected in the case of acts of authority. In cases of forced disappearance, this requisite prevents the effectiveness of such remedy.

RESUMO

No ensaio são abordados alguns casos dos sistemas global, interamericano, africano e europeu de proteção dos direitos humanos para situar a questão da jurisdição militar em uma perspectiva regional, da normatividade, jurisprudência e outras fontes de direito que possam ser úteis para compreender e agir adequadamente em casos nos quais a jurisdição militar é aplicada extensivamente a civis, sejam eles sujeitos ativos ou passivos. É feita uma menção especial às Sentenças dos casos *Rosendo Radilla Pacheco contra Estados Unidos Mexicanos*, emitida pela Corte Interamericana de Direitos Humanos em novembro de 2009, e *Öcalan contra Turquia*, emitida pelo Tribunal Europeu de Direitos Humanos em maio de 2005.

PALAVRAS-CHAVE

Direitos humanos – Jurisdição militar – Militarismo – Devido processo – Competência – Independência – Imparcialidade – Foro funcional

RESUMEN

En el ensayo se abordan algunos casos de los sistemas universal, interamericano, africano y europeo de protección de los derechos humanos para poner el tema de la jurisdicción militar en perspectiva regional, desde la normatividad, la jurisprudencia y otras fuentes de derecho que pueden ser de utilidad para comprender y actuar adecuadamente en casos en los que la jurisdicción militar se aplica extensivamente sobre civiles, ya sea como sujetos activos o pasivos. Se hace especial mención a las Sentencias del caso *Rosendo Radilla Pacheco vs. Estados Unidos Mexicanos*, emitida por la Corte Interamericana de Derechos Humanos en noviembre de 2009, y *Öcalan vs. Turquía*, emitida por el Tribunal Europeo de Derechos Humanos en mayo de 2005.

PALABRAS CLAVE

Derechos humanos – Jurisdicción militar – Militarismo - Debido proceso – Competencia – Independencia – Imparcialidad – Fuero funcional

Previous numbers are available at <www.surjournal.org>.

SUR 1, v. 1, n. 1 , Jun. 2004

EMILIO GARCÍA MÉNDEZ
Origin, Concept and Future of Human Rights: Reflections for a New Agenda

FLAVIA PIOVESAN
Social, Economic and Cultural Rights and Civil and Political Rights

OSCAR VILHENA VIEIRA AND A. SCOTT DUPREE
Reflections on Civil Society and Human Rights

JEREMY SARKIN
The Coming of Age of Claims for Reparations for Human Rights Abuses Committed in the South

VINODH JAICHAND
Public Interest Litigation Strategies for Advancing Human Rights in Domestic Systems of Law

PAUL CHEVIGNY
Repression in the United States after the September 11 Attack

SERGIO VIEIRA DE MELLO
Only Member States Can Make the UN WorkFive Questions for the Human Rights Field

SUR 2, v. 2, n. 2, Jun. 2005

SALIL SHETTY
Millennium Declaration and Development Goals: Opportunities for Human Rights

FATEH AZZAM
Reflections on Human Rights Approaches to Implementing the Millennium Development Goals

RICHARD PIERRE CLAUDE
The Right to Education and Human Rights Education

JOSÉ REINALDO DE LIMA LOPES
The Right to Recognition for Gays and Lesbians

E.S. NWAUCHE AND J.C. NWOBIKE
Implementing the Right to Development

STEVEN FREELAND
Human Rights, the Environment and Conflict: Addressing Crimes against the Environment

FIONA MACAULAY
Civil Society-State Partnerships for the Promotion of Citizen Security in Brazil

EDWIN REKOSH
Who Defines the Public Interest?

VÍCTOR E. ABRAMOVICH
Courses of Action in Economic, Social and Cultural Rights: Instruments and Allies

SUR 3, v. 2, n. 3, Dec. 2005

CAROLINE DOMMEN
Trade and Human Rights: Towards Coherence

CARLOS M. CORREA
TRIPS Agreement and Access to Drugs in Developing Countries

BERNARDO SORJ
Security, Human Security and Latin America

ALBERTO BOVINO
Evidential Issues before the Inter-American Court of Human Rights

NICO HORN
Eddie Mabo and Namibia: Land Reform and Pre-Colonial Land Rights

NLERUM S. OKOGBULE
Access to Justice and Human Rights Protection in Nigeria: Problems and Prospects

MARÍA JOSÉ GUEMBE
Reopening of Trials for Crimes Committed by the Argentine Military Dictatorship

JOSÉ RICARDO CUNHA
Human Rights and Justiciability: A Survey Conducted in Rio de Janeiro

LOUISE ARBOUR
Plan of Action Submitted by the United Nations High Commissioner for Human Rights

SUR 4, v. 3, n. 4, Jun. 2006

FERNANDE RAINE
The measurement challenge in human rights

MARIO MELO
Recent advances in the justiciability of indigenous rights in the Inter American System of Human Rights

ISABELA FIGUEROA
Indigenous peoples versus oil companies: Constitutional control within resistance

ROBERT ARCHER
The strengths of different traditions: What can be gained and what might be lost by combining rights and development?

J. PAUL MARTIN
Development and rights revisited: Lessons from Africa

MICHELLE RATTON SANCHEZ
Brief observations on the mechanisms for NGO participation in the WTO

JUSTICE C. NWOBIKE
Pharmaceutical corporations and access to drugs in developing countries: The way forward

CLÓVIS ROBERTO ZIMMERMANN
Social programs from a human rights perspective: The case of the Lula administration's family grant in Brazil

CHRISTOF HEYNS, DAVID PADILLA AND LEO ZWAAK
A schematic comparison of regional human rights systems: An update

BOOK REVIEW

SUR 5, v. 3, n. 5, Dec. 2006

CARLOS VILLAN DURAN
Lights and shadows of the new United Nations Human Rights Council

PAULINA VEGA GONZÁLEZ
The role of victims in International Criminal Court proceedings: their rights and the first rulings of the Court

OSWALDO RUIZ CHIRIBOGA
The right to cultural identity of indigenous peoples and national minorities: a look from the Inter-American System

LYDIAH KEMUNTO BOSIRE
Overpromised, underdelivered: transitional justice in Sub-Saharan Africa

DEVIKA PRASAD
Strengthening democratic policing and accountability in the Commonwealth Pacific

IGNACIO CANO
Public security policies in Brazil: attempts to modernize and democratize versus the war on crime

TOM FARER
Toward an effective international legal order: from co-existence to concert?

BOOK REVIEW

SUR 6, v. 4, n. 6, Jun. 2007

UPENDRA BAXI
The Rule of Law in India

OSCAR VILHENA VIEIRA
Inequality and the subversion of the Rule of Law

RODRIGO UPRIMNY YEPES
Judicialization of politics in Colombia: cases, merits and risks

LAURA C. PAUTASSI
Is there equality in inequality? Scope and limits of affirmative actions

GERT JONKER AND RIKA SWANZEN
Intermediary services for child witnesses testifying in South African criminal courts

SERGIO BRANCO
Brazilian copyright law and how it

Previous numbers are available at <www.surjournal.org>.

Previous numbers are available at <www.surjournal.org>.

ALDO CALIARI
Trade, Investment, Finance and Human Rights: Assessment and Strategy Paper

PATRICIA FEENEY
Business and Human Rights: The Struggle for Accountability in the UN and the Future Direction of the Advocacy Agenda

INTERNATIONAL HUMAN RIGHTS COLLOQUIUM

Interview with Rindai Chipfunde-Vava, Director of the Zimbabwe Election Support Network (ZESN)
Report on the IX International Human Rights Colloquium

SUR 12, v. 7, n. 10, Jun. 2010

SALIL SHETTY
Foreword

FERNANDO BASCH ET AL.
The Effectiveness of the Inter-American System of Human Rights Protection: A Quantitative Approach to its Functioning and Compliance With its Decisions

RICHARD BOURNE
The Commonwealth of Nations: Intergovernmental and Nongovernmental Strategies for the Protection of Human Rights in a Post-colonial Association

MILLENNIUM DEVELOPMENT GOALS

AMNESTY INTERNATIONAL
Combating Exclusion: Why Human Rights Are Essential for the MDGs

VICTORIA TAULI-CORPUZ
Reflections on the Role of the United Nations Permanent Forum on Indigenous Issues in relation to the Millennium Development Goals

ALICIA ELY YAMIN
Toward Transformative Accountability: Applying a Rights-based Approach to Fulfill Maternal Health Obligations

SARAH ZAIDI
Millennium Development Goal 6 and the Right to Health: Conflictual or Complementary?

MARCOS A. ORELLANA
Climate Change and the Millennium Development Goals: The Right to Development, International Cooperation and the Clean Development Mechanism

CORPORATE ACCOUNTABILITY

LINDIWE KNUTSON
Aliens, Apartheid and US Courts: Is the Right of Apartheid Victims to Claim Reparations from Multinational Corporations at last Recognized?

DAVID BILCHITZ
The Ruggie Framework: An Adequate Rubric for Corporate Human Rights Obligations?

The work of the Carlos Chagas Foundation revolves around the principle of citizenship. Its specialties and lines of research are geared towards human and social development.

Research production at the FCC, which addresses the issues of policy evaluation, gender and race, consists of in-depth studies on the various levels of education.

In the Foundation's three publications – Cadernos de Pesquisa (Research Journals), Estudos em Avaliação Educacional (Educational Evaluation Studies) and Textos FCC (FCC Texts) – this academic production features alongside the work of researchers from other institutions, providing a diversified view of the issues in the field.

Fundação Carlos Chagas

A REFERENCE IN EDUCATION WWW.FCC.ORG.BR