

Clarification Questions and Answers for the Twentieth Inter-American Human Rights Moot Court Competition of the Academy on Human Rights and Humanitarian Law

- 1. As discussed in paragraph #26, what was the date of the enactment of the Accountability, Closure, and Reconciliation Law?**

January 2, 2008. (February 1, 2008)

- 2. As discussed in paragraph #54, was Anibal Lopez a member of the MRLB?**

Aníbal López was one of the kidnapped children who died in the rescue attempt carried out by law enforcement.

- 3. As discussed in paragraph #54, under what circumstances was Anibal Lopez killed?**

See the answer to question number 2.

- 4. What were the recommendations made by the Inter-American Commission on Human Rights in the joint merits report of January 2013, referred to in paragraph 57?**

The IACHR's report made six recommendations: (1) Investigate the whereabouts of Ricardo Bolt fully, impartially, and effectively. In the event it is established that the victim is dead, take the necessary measures to turn over his remains to the relatives; (2) Conduct the domestic proceedings related to the human rights violations declared in this report and prosecute the crimes impartially, effectively, and within a reasonable period of time, for purposes of fully establishing the facts, identifying the perpetrators, and imposing the appropriate punishments; (3) Make comprehensive reparations for the human rights violations declared herein, both in the pecuniary and non-pecuniary aspects, including fair compensation, the establishment and dissemination of the historical truth of the events, the recovery of the memory of the disappeared victim, and the implementation of an appropriate program to provide psychological and social services to the relatives; (4) Bring the domestic laws into line with the Inter-American standards; (5) Take the necessary measures to prevent similar acts from occurring in the future, in accordance with the duty of prevention and the duty to guarantee the human rights recognized in the American Convention and other applicable Inter-American instruments; and (6) Publicly acknowledge international responsibility and offer a public apology for the violations declared in this report.

- 5. What were the admissibility issues raised by the State in its August 2009 reply to the IACHR, as mentioned in paragraph 56 of the facts of the case?**

The available information is limited to the facts set forth in the hypothetical case.

- 6. Which authority resolved the conflict of jurisdiction between the military courts and the Public Ministry referred to in paragraph 39?**

The Constitutional Court of the Cardenal Republic.

7. Is the forced disappearance of persons defined as a criminal offense under the laws of the Cardenal Republic?

Yes. The Criminal Code establishes the following: "The offense of enforced disappearance is committed by any person who, on the orders or with the authorization or support of the State authorities, deprives a person or persons of their liberty for political reasons, concealing their whereabouts or refusing to reveal their fate or acknowledge their detention, or by a public official or employee, whether a member of the State security forces or not, who orders, authorizes, supports or acquiesces in any such acts.

The offense of enforced disappearance consists of the deprivation of the liberty of one or more persons, even in the absence of political grounds, refusing to disclose their fate or acknowledge their detention, depriving them of the pertinent procedural guarantees, when it is committed by members of State security forces, in their official capacity, if they act arbitrarily or with an abuse or excess of force.

The offense of enforced disappearance is also committed by members of organized groups or gangs having terrorist, insurgent or subversive purposes or any other criminal purpose who, as members of or participants in such groups or gangs, engage in abduction or kidnapping.

The offense shall be deemed to persist until such time as the victim is released.

A person found guilty of forced disappearance shall be punished by a term of imprisonment from twenty-five to forty years."

8. What were the circumstances of Aníbal López's death?

See the answer to question number 2.

9. What is the current jurisdiction of the military courts in Cardenal?

Currently, the military courts have jurisdiction to hear and decide cases involving crimes committed by members of the armed forces acting in their official capacity. The case law of the Constitutional Court of Cardenal has established that the jurisdiction of the military criminal courts to investigate and prosecute its members is determined by a subjective aspect (active membership in the armed forces) and a functional aspect (relationship to service).

10. In paragraph 40, when did Annika Bolt file a complaint before the Office of the Public Prosecutor based on the statements provided by Mukundi, and is this the same "administrative decision" she was appealing in paragraph 51 in 2004?

No. The decision mentioned in paragraph 51 refers to a lawsuit alleging the financial liability of the State filed before the court for the judicial review of administrative action.

11. In paragraph 44, and throughout the problem, you make reference to the "special transitional tribunal," what is that? How is it different from the Truth Commission? Are there other tribunals in Cardenal that look at transitional justice?

The specialized transitional tribunal is the judicial body with jurisdiction to establish criminal responsibility under the procedure established in the facts of the case.

12. In paragraph 56, what petitions was the State responding to specifically?

Those described in paragraphs 54 and 55.

13. Who are the members of the Truth Commission?

The Commission was composed in two ways. First, the UN Secretary General was appointed to select three members from a pool of internationally recognized persons known for their knowledge of human rights and armed conflict. In addition, the four remaining spots were selected by the President from a pool of highly respected Cardenalese nationals, who have knowledge of human rights and conflict, and whose selection would ensure representativeness. The Secretary General appointed three former UN rapporteurs with thematic and geographic mandates who are well-known academically and professionally. The president selected a traditional Boneca religious authority, a woman nominated by victims' organizations, a history professor who is a renowned academic and former president of a public university, and a retired member of the military.

14. Were Lucrecia Rossi and Anibal López indigenous people?

No. Neither of the two was considered as such.

15. Who are the members of the Transitional Tribunal?

The tribunal is comprised by five jurists who are criminal law specialists and are subject to the same qualification requirements as the justices of the Constitutional Court. The candidates were selected by a congressional committee, with the backing of the High-Level Commission described in paragraph 22 and the Office of the United Nations High Commissioner for Human Rights.

16. In relation to paragraph 13, was the program for issuing land titles to the Boneca community implemented as promised by the government?

The program is at the implementation phase. Some lands have already been turned over, and in other cases property is being expropriation or purchased directly in order to be awarded to the community.

17. In relation to paragraph 21, do the “most serious violations” refer only to terrorism-related crimes? If so, what are those crimes, and where are they defined? Otherwise, what other crimes are considered to be “most serious violations”?

The case law of the Cardenal Republic has broadly construed the term “serious human rights violations,” and has held that it includes international crimes, as well as acts specified as such in the case law of the Inter-American Court of Human Rights.

18. In relation to paragraph 33, were the telephone wiretaps conducted by the anti-kidnapping commando unit acting on the orders of President Ferreira to identify the location of the kidnapped children authorized, or were they or unlawful?

Under the applicable law at the time, certain intelligence information was not subject to judicial authorization requirements. This included the telephone wiretaps conducted to combat cases of terrorist acts.

19. According to the facts described in paragraphs 33 and 34, what was found inside the house searched on March 28, 2000, in addition to the bodies of the 4 children and the 2 kidnapers (weapons, type of ammunition, etc.)?

Long and short range weapons, explosives, handguns, and material alluding to the MRLB were found.

- 20. Are we to understand, according to the current wording of paragraph 57, that Annika Bolt and Lucrezia Rossi were not considered victims in the Merits Report issued by the IACHR?**

They were both considered victims. The former, as the wife of Mr. Bolt, was considered a victim in relation to the articles described in paragraph 57. The latter was considered to be a victim of the violations described in the facts of the case and evaluated under the articles that the IACHR found to have been violated, as well in relation to her relatives Emily Rossi and Maximiliano Rossi.

- 21. In relation to the original number of MRLB members, what changes in membership had the organization undergone by April 2000?**

According to the Truth Commission's report, the MRLB had a force of some 50,000 combatants at its peak at the end of the 20th century. This number gradually diminished over the years, and the disarmament and demobilization process involved 18,000 combatants.

- 22. Regarding paragraph 38, "In these types of trials, the law did not allow *in absentia* defendants to have a private attorney; rather, they were given a court-appointed lawyer, assigned to the military." This seems to read that the defendants were given a court-appointed attorney who was assigned to the military, which doesn't make sense. Please clarify who assigned the attorney, to what the attorney was assigned, and whether both sides or only one had access to the attorney's legal counsel.**

The court appoints them a military defense attorney whose role in the case is solely to serve as the defendant's public defender.

- 23. In paragraph 56, does the second sentence, describing the state's argument regarding the transitional justice system, refer to admissibility, merits, or both in the sentence immediately preceding?**

The available information is limited to the facts set forth in the hypothetical case.

- 24. In paragraph 49, parents refused reparations in order to reserve their right to go before the [transitional justice?] courts to seek just reparations, but in paragraph 50, it states that a person who receives compensation does not waive their right to pursue a claim for money damages. Could the parents have accepted the compensation and still sought just reparations before the courts, or were the parents seeking something different than the sort of claim that Rossi had waived the right to, so that they needed to refuse administrative compensation in order to pursue other damages later?**

Under the transitional framework, a person who receives compensation as a victim through administrative proceedings under the Reparations Act is not barred from seeking reparations through judicial proceedings or from the perpetrator or the State. For purposes of State responsibility, if the victim so desires, he or she can obtain a higher amount of administrative compensation provided that he or she enters into a settlement agreement not to sue the State.

- 25. Were the telephone wiretaps that helped the joint commando unit find the kidnapped children conducted in accordance with the laws currently in force?**

See the answer to question 18.

- 26. Are the victims being represented before the Court by the same joint representative, or by the Inter-American Commission?**

Yes, the victims informed the Court that they would have a joint representative.

- 27. Does the waiver of prosecution of those who went before the Truth Commission and were not selected as “most responsible” perpetrators also extend to those who were not heard by the Truth Commission?**

The Truth Commission evaluated the individual situation of all demobilized persons. Given the number of demobilized individuals and the limited amount of time and resources, not all of the demobilized persons were heard at public hearings. Those who did not participate in public hearings were also eligible for the waiver of prosecution if they met the requirements of the Act.

- 28. On what date did the State of Cardenal ratify each one of the international treaties mentioned in paragraph 1 of the facts of the case, including those of the Inter-American system? On what date did it accept the contentious jurisdiction of the Inter-American Court?**

The State ratified the American Convention on August 10, 1990, and accepted the contentious jurisdiction of the Court on August 21, 1990. It ratified the Inter-American Convention to Prevent and Punish Torture on September 30, 1988 and the Inter-American Convention on Forced Disappearance of Persons on July 27, 2006. The Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity was ratified on November 11, 1970. The Rome Statute of the International Criminal Court was ratified on June 7, 2001.

- 29. When paragraph 24 of the facts of the case mentions that “the Court upheld the decision of the high-level commission,” should we understand this to be the same Court as the “specialized transitional tribunal” mentioned in paragraph 47? Is it the final instance?**

Yes. It is the same court.

- 30. Is the State of Cardenal a party to the Geneva Conventions of 1949 and the additional protocols thereto? If so, should we understand that the MRLB had a responsible authority who exercised a degree of control over part of the territory of Cardenal that allowed it to conduct organized and sustained military operations?**

The State of Cardenal ratified the four Conventions through a domestic law enacted in 1965. The State of Cardenal also ratified Additional Protocol II to the Conventions in March 1994.

- 31. Under what regulatory framework did Annika Bolt file suit against the State in 2004 to request the judicial review of the administrative decision (stated in paragraph 51 of the case), given that the Accountability, Closure, and Reconciliation Law was enacted later?**

Under the principle of the financial liability of the State established by the Constitution and the principles of the Administrative Litigation Code of the Cardenal Republic.

- 32. What policies and/or programs has the State been implementing in order to find persons who disappeared during the armed conflict?**

The State created a Search Commission made up of government institutions (Public Ministry, Ombudsman of the People, Ministry of Victims), in which victims’ organizations are represented. This Commission gives priority to the cases taken up by the Truth Commission, and is responsible for verifying the process of excavation, exhumation, and the turning over of remains. It also receives complaints not associated with the Truth Commission’s report.

- 33. What were the criteria that led to the finding that the officers and non-commissioned officers named by General Pires before the Historical Truth Commission did not qualify as “most responsible” perpetrators, as stated in paragraph 47 of the case?**

The Tribunal found that within the patterns of conduct that gave rise to the complaint against the abovementioned officers there was information linking higher-ranking individuals—both civilians and members of the military—to that conduct. Accordingly, the criterion of “most responsible” was satisfied, and it was therefore possible in that specific case to waive the criminal prosecution of the aforementioned officers.

- 34. What remedy is available under the domestic law of Cardenal with respect to the dismissal of the prosecution’s investigation (ex., paragraph 40) and the forced disappearances (habeas corpus, etc.)?**

The Code of Criminal Procedure establishes that when the Public Ministry has knowledge of an act with respect to which it is proven that there are no motives or circumstances, it will shelve the proceeding. This decision is *res judicata*. If new evidence comes to light, the investigation must be resumed, provided that the right to bring a criminal action has not been terminated. Both the prosecutor and the victims have standing to request that the case be reopened, and to submit evidence at any time that proves the elements of the crime or its potential existence. In the event that the Public Ministry denies the request to reopen the shelved case, the complainant or victim can go before a supervisory judge for the review of the legality of that decision to shelve the proceedings.

- 35. Under what circumstances did Aníbal López die, and what proceedings or remedies did his relatives avail themselves of in view of his death?**

See the answer to question number 2.

- 36. What was the decision of the Inter-American Commission with respect to the admissibility issues (preliminary objections) raised by the State, and what recommendations did the Inter-American Commission make in the Merits Report?**

See the answer to question 4.

- 37. According to the facts set forth in paragraph 54 of the hypothetical case, who are Lupita and Aníbal López?**

See the answer to question number 2.

- 38. Did the Cardenal Republic file preliminary objections during the admissibility phase before the Commission?**

The available information is limited to the facts set forth in the hypothetical case.

- 39. What domestic remedies were exhausted by petitioner Lupita López?**

See the answer to question number 2.

- 40. What was the argument for the denial of the request for reimbursement for psychological services made by the families of the murdered children?**

The Ministry of Victims stated that the registered victims could avail themselves of the administrative procedures to access the compensation measures set by law as well as the rehabilitation measures provided under the public health program. It stated that it was the victim’s decision to take part or

not in the non-monetary measures of reparation established in the law (rehabilitation, satisfaction), but that it was not possible to provide financial compensation for those services.

41. Paragraph 9 of the hypothetical case mentions reports of government repression against a significant number of people. What happened to those complaints?

The complaints were mostly public complaints made to the media and international organizations. The few cases that were brought before government authorities were shelved by the military courts or by the Public Ministry due to a lack of evidence or the failure to find the alleged perpetrators.

42. Are the decisions of the specialized transitional tribunal subject to review by a higher authority?

No. That tribunal operates as a court of last resort, as agreed by the parties in the peace accords.

43. Paragraph 17 of the hypothetical case mentions the forms of reparation to the victims; however, it never establishes the guidelines, specific actions, and components of this reparation policy. What are the specific guidelines, actions, and components used by the State of Cardenal to make reparations to the victims in accordance with paragraph 43 of the case?

The available information is limited to the facts set forth in the hypothetical case.

44. Paragraph 24 of the hypothetical case establishes that there is a mechanism for the judicial review of any kind of waiver of prosecution that is granted. According to this paragraph, the body that upheld the decision of the High-Level Commission in 97% of the cases was “the Court.” Nevertheless, paragraph 47 of the case establishes that the body in charge of handling the appeal filed by Annika Bolt was a “specialized transitional tribunal,” a judicial institution also mentioned in paragraph 44. In this regard, what is the structure and function of the specialized tribunal in charge of applying the mechanisms of transitional justice?

See the answers to questions 11 and 15.

45. According to paragraph 21 of the hypothetical case, what evidence other than the reports of the Truth Commission did the Public Ministry use to open investigations and conduct the judicial proceedings in their entirety?

The Public Ministry had a Unit for the monitoring and contextualization of the armed conflict that put together criminal profiles with the information it had in order to complement the information from the Truth Commission.

46. Under what mode of criminal action and for what offenses was Guadamuz convicted in relation to the events involving Lucrecia Rossi, as described in paragraph 55 of the case?

Guadamuz was convicted as the perpetrator of offenses defined in the Criminal Code that are identical to the ones enumerated in Article 8(2)(c)(i) and (ii) of the Statute of the International Criminal Court.

47. (a) On what date did the Cardenal Republic ratify the American Convention on Human Rights; and (b) on what date did it recognize the “optional clause,” thereby accepting the contentious jurisdiction of the Inter-American Court of Human Rights?

See the answer to question number 28.

- 48. Paragraph 28 of the case refers to the initiation of “traditional justice proceedings” by Boneca communities. What is the degree of administrative and jurisdictional coordination and/or cooperation between the traditional Boneca justice system and the government judicial system?**

Although the current Constitution recognizes the indigenous justice system as a right, in the specific case of applying transitional justice measures there is no official coordination or cooperation authority.

- 49. How were titles to the negotiated lands issued from 2006 on, and how was it guaranteed by the Cardenal Republic in 2008 (as described in paragraphs 11, 12, and 13)?**

See the answer to question 16.

- 50. What were the dates of the military dictatorship and the Ferreira administration in relation to the date of ratification of the Inter-American Convention on Human Rights by the Cardenal Republic, and in relation to the date on which it accepted the contentious jurisdiction of the Inter-American Court of Human Rights?**

See the answer to question number 28.

- 51. What domestic legal parameters (protocols, regulations, orders, laws) served as the basis for conducting the operation to rescue “the little angels”?**

Those specified in operations manual No. 85 of the armed forces, which includes the rules of combat provided in Additional Protocol I to the Geneva Conventions of 1949.

- 52. Does the Boneca population have the same access to voting as the rest of the population does?**

Yes. They currently have the same constitutionally recognized rights.

- 53. To what extent were the recommendations of the victims’ organizations implemented in the reparation measures that the parties (MRLB and Government) agreed upon?**

The laws on victims address several of the general points that were raised by the victims, including the following: there must be different forms of financial compensation, and the victims must be able to freely make decisions with respect thereto; reparation must be not only compensatory but also must include other measures of redress, and collective reparations must be included.

- 54. What steps has the state taken to implement the requirement of ILO Convention No. 169 since ratification?**

A High-Level Commission has initiated a process of coordination with the traditional indigenous authorities to jointly determine the best forms of implementation. At present, they are in the process of prior consultation on the regulatory law, which will include, as a priority, the regulation of the constitutional right to prior, free, and informed consultation.

- 55. With reference to paragraph 56, what was the State’s objection regarding the admissibility of the petitions?**

The available information is limited to the facts set forth in the hypothetical case.

56. When did the trial in absentia take place and was it different from the criminal prosecution referred to in paragraph 41?

That paragraph does not refer to the fact in question.

57. On which dates did the State ratify the OAS human rights treaties and accepted the Court's jurisdiction?

See the answer to question number 28.

58. Was there any physical evidence that Mr. Mukundi was tortured?

No.

59. Does the admittance of the fact that the children died as a result of a military error mean that the captors admit having killed the children, be it by accident?

The available information is limited to the facts set forth in the hypothetical case.

60. Have the Boneca – as a group – been specifically consulted during the peace process and concerning the transition measures?

Boneca community members were included in the delegations of victims that had the opportunity to make proposals. In Boneca territory, educational sessions were held in coordination with the traditional authorities with regard to the items contained in the peace agreement, and voting stations were set up in multiple locations so they could take part in the approval vote. Voter turnout in Boneca territory was similar to the national average.

61. What are the circumstances surrounding the death of Aníbal López? (referred to in paragraph 54)

See the answer to question number 2.

62. Paragraph 53 states that, in December 2002, Annika Bolt filed a petition before the IACHR alleging the responsibility of the State of Cardenal for the disappearance of her husband Ricardo Bolt and the attacks against the Boneca community. The petition alleged that the acts had not been properly prosecuted because not all of the officers who took part in the crimes were selected, that the sentences received by the investigated persons were minimal, and that the reparation was inadequate. However, the prosecutions and investigations did not begin until the Truth Commission began work in 2008 (see paragraphs 41-51). How could a petition in 2002 contain allegations relating to improper prosecution and inadequate reparations when the Truth Commission did not begin its work until 2008?

The petitioner filed her initial petition on the abovementioned date. While the case was pending before the Commission, she reported on the progress of the case and, on that basis, asserted different legal claims in view of the developments in the case.

63. What objections to the admissibility and merits of the petitions did the Cardenal Republic make specifically? (referred to in paragraph 56, line 2)

The available information is limited to the facts set forth in the hypothetical case.

64. When was the Military Criminal Code in force?

See the answer to question 68.

65. Was there self-amnesty?

The available information is limited to the facts set forth in the hypothetical case.

66. Who was Anibal Lopez?

See the answer to question number 2.

67. Is there an expert's report determining the cause of death of the "little angels"?

There is an expert's report determining generally that the children died as the result of an explosion.

68. Was the Military Criminal Code repealed at any time?

The Military Criminal Code was reformed by means of the constitutional amendment referred to in paragraph 14.

69. What was it that led to the determination that Pires had provided the most information, which allowed him to receive an alternative sentence?

The available information is limited to the facts set forth in the hypothetical case.

70. Who is Anibal Lopez and what are the facts concerning his case pursuant to paragraph 54 of the Hypothetical Case.

See the answer to question number 2.

71. On what legal and factual basis did the Court of the Cardenal Republic base itself when awarding Annika Bolt an additional \$10,000 in compensation pursuant to paragraph 51 of the Hypothetical Case?

See the answer to question 24.

72. What was the question that the State of Cardenal submitted to the Inter-American Court on February 2013, according to paragraph 58 of the Hypothetical Case?

Paragraph 59 establishes that the State submitted the case to the Court pursuant to Article 36 of the Rules of Procedure of the Court and Article 61 of the American Convention.

73. Paragraph 5 states that thousands of people died and were disappeared as a result of the armed conflict, and that "thousands of others were the victims of torture, sexual violence, child recruitment, and forced displacement." Were these violations caused only by State agents, or by MRLB guerrillas?

According to the report of the Truth Commission, both the armed forces of the State and the guerrilla group were responsible for acts of this nature.

74. Paragraph 10 states that while the Military Criminal Code was in force, "Cases rarely advanced to the trial stage." Did those cases include only cases against the State, or all cases processed during that time?

Mainly cases involving complaints against members of the State security forces.

- 75. In view of paragraph 3, which mentions that several members of the Boneca community were investigated and prosecuted for crimes of terrorism, what is the substantive content of the criminal procedural law of Cardenal governing the crime of terrorism?**

According to the criminal law applicable at that time, “terrorist acts” were “actions or omissions constituting a crime or simple offense carried out to create upheaval or serious fear among society or a sector thereof, or carried out by means of cruel or inhumane acts, with a revolutionary or subversive aim.”

- 76. Were the articles of the American Convention that the IACHR found to have been violated with respect to Mr. Bolt recognized as also having been violated with respect to the Boneca community?**

No. The IACHR report made no mention of the matter.

- 77. Was Mrs. Bolt also considered part of the Boneca community?**

Yes. Mrs. Bolt is included in the census kept by the community.

- 78. When did the Cardenal Republic ratify the Statute of the International Criminal Court?**

See the answer to question number 28.

- 79. Paragraph 4 (Page 1) of the Hypothetical case, the first line reads that "In April 1990, a group of people from the region-some indigenous, others not formed the armed group..." What group does the case refer to, in the "other" category of people forming the armed group? And do the MRLB militants, i.e. Lucrecia Rossi and Paulo Mukundi (Paragraph 33, Page 7) belong to Boneca Community?**

It refers to those persons that the indigenous people call the “majority population.” According to the census, in addition to the ethnic or indigenous population, the country is inhabited by whites, mestizos, and Afro-Cardenalese persons. Neither Lucrecia Rossi nor Pablo Mukundi were recognized as Boneca.

- 80. In Paragraph 24 (Page 5) the last line refers to a "Court" which upheld the decision of the high leveled commission; similarly in Paragraphs 44 and 47 (Page 9), the case refers to "a specialized tribunal" which reevaluates the conviction of Mukundi and also examines the case of Annika Bolt. Which court and specialized tribunal is the case referring to in the said paragraphs and by what statute have these courts been established and by whom and whether these courts are governed by the United Nations?**

See the answer to question 11. All of the courts of the Cardenal Republic are regulated by the Constitution and the laws of the Republic, and do not obey or report to any international body.

- 81. In Paragraph 54 (Page 11), the Hypothetical case refers to Lupita Lopez and her dead son Anibal Lopez. Is Anibal Lopez one of the captors of Little Angels children or is he one of the children who were kidnapped?**

See the answer to question number 2.

- 82. Paragraph 41 specifically states that “the children died as a result of a military error on the part of their captors during the takeover.” According to the statements, to whom is the responsibility for the children’s deaths attributed?**

The available information is limited to the facts set forth in the hypothetical case.

83. Paragraph 58 is confusing and contradictory. Please detail or explain the reasoning behind this paragraph, given that the supposed complaint filed by the Cardenal Republic before the Inter-American Court would appear to be baseless.

The available information is limited to the facts set forth in the hypothetical case and the answers to these questions.