

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, 2008. (February, 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

7. Is the forced disappearance of persons defined as a criminal offense under the law 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. 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 twentyfive 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 (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 Cardenaleses 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 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

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 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 has been violated, as well in relation to her relatives Emily Rossi and Luciano 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 whom?

27. Does the waiver of prosecution of those who went before the Truth Commission

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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~~ 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 10.

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 26.

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

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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 accept the Court's jurisdiction?

See the answer to question number 26

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 kil

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

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?

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

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