**CASE OF BOLT *ET AL.***

***v.***

**THE CARDENAL REPUBLIC**

MEMORIAL FOR THE STATE

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# Statement of Facts

In the 1990’s the *Movimiento Revolucionario Libertad Boneca* (“MRLB”) initiated an internal armed conflict to overthrow the existing order of the Cardenal Republic (“the State”).[[1]](#footnote-2) This guerrilla movement waged attacks against military installations and so-called *“standard centres of imperialism”[[2]](#footnote-3)*. The latter included civilian targets such as social clubs and schools. In 2000 they kidnapped 23 children on their way to school.[[3]](#footnote-4) The State was able to locate the house where the children were kept as well as identify some of the captors, namely Ms. Rossi, Mr. Bolt and Mr. Mukundi.[[4]](#footnote-5) After being offered the possibility of a peaceful surrender, the captors responded with gunfire. During the operation by the joint commando unit, they found long-range weapons and grenades, along with the bodies of four children, who had died from an explosion. Two captors died, while the others, including Rossi, Bolt and Mukundi managed to escape.[[5]](#footnote-6) The body of Ms. Rossi was found in June 2000, showing signs of torture.[[6]](#footnote-7) In 2002 authorities captured Mukundi, who was convicted for crimes such as kidnapping, murder and armed rebellion and was sentenced to life in prison.[[7]](#footnote-8) A new government led by Gabriela Nunes was installed with the aim to achieve peace. In 2008 the government and the MRLB reached an agreement on three points: autonomy and recognition of the Boneca, democratic constitutional reform and transition mechanisms to guarantee both peace and the rights of victims.[[8]](#footnote-9) Specialists lauded the reform of the Constitution, which included the establishment of a plurinational republic, and with regard to the Boneca, amongst others, a program was agreed to for issuing land titles. The government refused to issue a “forgive and forget”-policy for the MRLB and the military, taking into consideration the victims’ rights.[[9]](#footnote-10) A Historical Truth Commission (“HTC”) was founded. Thereby it was ensured that all parties were involved. Mr. Mukundi testified before the HTC and admitted the MRLB was responsible for the kidnapping of the children. His testimony also alleges state responsibility for the forced disappearance of Mr. Bolt.[[10]](#footnote-11) The Accountability, Closure, and Reconciliation Law (“ACRL”) was enacted on 2 January 2008[[11]](#footnote-12) and created a system to ensure a smooth transitional justice process by the creation of the Specialized Transitional Tribunal (“STT”).[[12]](#footnote-13) The agreement negotiated with the MRLB posed practical and political limitations. Therefore, it was necessary not to focus exclusively on one measure or form of justice. The measures were applied limitatively and selectively, with regard to the most responsible perpetrators and most serious crimes. These patterns were investigated in depth by the Public Ministry. Subsequently, a High-Level Commission presided by the Head of Public Ministry, and which involved the participation of the victims, the Government, representatives of the demobilized combatants and of the international community, objectively identified the cases and perpetrators to be prosecuted.[[13]](#footnote-14) Out of this study, 67 individuals were named as the most responsible, including the entire central command of the guerrillas, three former commanders of the armed forces and two former Ministers of War.[[14]](#footnote-15) The victims could appeal the decision of the High-Level Commission.[[15]](#footnote-16) The agreement with the MRLB also included an arrangement on alternative sentences as punishment.[[16]](#footnote-17) All of these transitional measures were passed by a majority vote in Congress as well as by a popular referendum, with an approval-rate of 95%.[[17]](#footnote-18) Despite the State’s efforts, three complaints were filed before the Inter-American Commission on Human Rights (“the Commission”). Firstly, Mrs. Bolt is alleging state responsibility for the disappearance of her husband as well as for the attacks against the Boneca. She is claiming these acts were not properly prosecuted, the sentences were minimal and the reparations were inadequate.[[18]](#footnote-19) Secondly, Mrs. López, the mother of one of the deceased kidnapped children, is alleging violations of the American Convention on Human Rights (“ACHR”) because of the release of the only person convicted and because the mastermind of the crime would go unpunished. On top of this, she also claims the reparations do not meet the standards of the Inter-American system.[[19]](#footnote-20) Thirdly, Ms. Rossi’s family is alleging state responsibility for her death, the failure to investigate, punish and make reparations.[[20]](#footnote-21) Since the Commission determined a violation of certain rights, the State submitted the case to the jurisdiction of the Inter-American Court of Human Rights (“the Court”).[[21]](#footnote-22) In what follows, the State will prove that no violations of the ACHR have occurred.

# Legal analysis

## Jurisdiction

The Court has jurisdiction over alleged violations of the ACHR, pursuant to Art. 61(1) and 62(3) ACHR. However, the Court has no jurisdiction over any violations of International Humanitarian Law (“IHL”)[[22]](#footnote-23), since it can only establish a violation of the ACHR, the Inter-American Convention on Forced Disappearances (“the IACFD”)[[23]](#footnote-24), and the Inter-American Convention to Prevent and Punish Torture (“the IACPPT”)[[24]](#footnote-25).

Furthermore, the Court lacks jurisdiction *ratione materiae* over the petitions of Mr. and Ms. Rossi, Mrs. Bolt and Mrs. López since the State already redressed the alleged violations of the ACHR under its domestic law. In *Acevedo Jaramillo* the Court specified that “*the State must resolve the issue in the domestic system and redress the victim before resorting to international forums such as the Inter-American System […]”.*[[25]](#footnote-26) As demonstrated below, the State has thoroughly investigated, tried and punished the persons responsible. Moreover, the petitioners were all adequately compensated under the administrative reparations program, and some even received additional compensation due to court judgments. Taking into account the subsidiarity of the Court’s jurisdiction[[26]](#footnote-27), it lacks jurisdiction *ratione materiae*.

Lastly, if the petitioners argue that they are not satisfied with what the domestic courts have awarded, it should be noted that they cannot use the Court as a fourth instance. In *Cabrera García & Montiel* the Court has stated: *“This Court has established that the international jurisdiction is of a subsidiary, reinforcing and complementary nature, and therefore it does not perform the role of a court of “fourth instance.” This means that the Court cannot act as a higher court or as an appeal court in settling disputes between parties […]”.*[[27]](#footnote-28)

Consequently, the State requests the Court to recognize its lack of jurisdiction *ratione materiae*.

## Preliminary Objections

### The petitioners failed to exhaust the domestic remedies (Art. 46(1)(a), 46(2) and 47(a) ACHR)

The State filed its preliminary objections regarding the petitions of Mrs. López and Mr. and Ms. Rossi in August 2009, when the petitions were still in the admissibility phase before the Commission.[[28]](#footnote-29) Since the State raised the objections at the earliest opportunity in the process, namely in its response to the petitions that gave rise to the proceedings, the State filed them in a timely manner.[[29]](#footnote-30) For this reason, the Court should take into account the following arguments.

Firstly, Mrs. López did not comply with Art. 46(1)(a) and 47(a) ACHR since she did not exhaust domestic remedies prior to submitting her petition before the Commission. Thereby, she disregarded the State’s competence to resolve the matter under its internal law before being confronted with international proceedings.[[30]](#footnote-31) Mrs. López claims in her petition, which was admitted by the Commission in February 2012,[[31]](#footnote-32) that she did not receive adequate reparations.[[32]](#footnote-33) However, she had the possibility to allege state responsibility before the Council of State (“CoS”), the judicial body competent for examining lawsuits against the State.[[33]](#footnote-34) Had this Court found state responsibility, it could have awarded additional reparations for the amount not covered by the reparations program. The CoS is competent to receive individual petitions, to examine claims for state responsibility and to grant additional reparations. The State provides an available, effective and adequate domestic remedy, which is suitable to address the violations.[[34]](#footnote-35) Consequently, the State requests the Court to declare Mrs. López’ claim inadmissible since she did not exhaust the domestic remedies provided.

Secondly, Mrs. López and Mr. and Ms. Rossi claim state responsibility for the failure to prosecute and punish those responsible for the alleged violations. However, they had the possibility to go before the Constitutional Court[[35]](#footnote-36) to allege that the judicial mechanism established in the ACRL violated their constitutional rights.[[36]](#footnote-37) The Commission has stipulated before that the constitutional challenge may form an adequate remedy that should be exhausted.[[37]](#footnote-38) Had the Constitutional Court found the law unconstitutional, it could have declared that it had no further effect.[[38]](#footnote-39)

Thirdly, concerning the disappearance of her husband, Mrs Bolt should have filed a writ of *habeas corpus* before the domestic courts.[[39]](#footnote-40) The Court has categorically stated that *habeas corpus* is “*the normal means of finding a person presumably detained by the authorities”.*[[40]](#footnote-41) It represents the suitable remedy to guarantee liberty, control the respect for life and integrity of a person, and impede the disappearance or the determination of the place of detention.[[41]](#footnote-42)

The petitioners cannot invoke the exceptions to the exhaustion of domestic remedies set forth in Art. 46(2) ACHR since the State has provided accessible domestic remedies, in accordance with the principles of due process of law.

### Mrs. Bolt did not properly exhaust the domestic remedies in accordance with the generally recognized principles of international law (Art. 46(1)(a) and 47 ACHR)

Mrs. Bolt filed a petition before the Commission in December 2002, which was admitted in January 2008. She exhausted the following domestic remedies only *after* submitting the petition[[42]](#footnote-43): in 2004, she filed suit against the State to request the judicial review of the administrative decision before the CoS. In 2007, the CoS found no state responsibility and denied her request.[[43]](#footnote-44) Mrs. Bolt filed a motion for the reconsideration of the judgment in 2008, which the CoS accepted in 2010. It granted an additional compensation of 10,000$, on top of what she had received in the administrative proceedings.[[44]](#footnote-45) On 20 February 2009, Mrs. Bolt filed an appeal before the STT to review the waiver of prosecution of the alleged perpetrators, which was accepted regarding former President Ferreira.[[45]](#footnote-46) However, in December 2002, already *before* Mrs. Bolt exhausted all these remedies, she filed a petition before the Commission. This proves that Mrs. Bolt preferred direct recourse to the Commission, disregarding its subsidiary nature.[[46]](#footnote-47) In conclusion, she did not comply with her duty to exhaust domestic remedies in accordance with generally recognized principles of international law, as laid down in Art. 46(1)(a) ACHR. Therefore, the State requests the Court to declare the petition inadmissible.

### The Commission violated the State’s right to defense (Art. 31(1) Rules of Procedure of the Commission)

In *Mémoli* the Court has indicated the procedural guarantees to ensure that parties can exercise their right to defense during the proceedings.[[47]](#footnote-48) More specifically, the right to defense is guaranteed by the principles of adversariality, procedural balance and legal certainty.[[48]](#footnote-49) In the case of Mrs. Bolt, the initial stage before the Commission lasted from 2002 to 2008, a period in which she asserted different legal claims in view of the development of the domestic proceedings.[[49]](#footnote-50) Mrs. Bolt exhausted the domestic remedies over a period that began more than 2 years after the initial petition was lodged and culminated 8 years after this. The Commission should have denied the petition right away, instead of prolonging the initial stage in a dilatory way.[[50]](#footnote-51) The Court has stated that in these circumstances, it cannot be understood that the requirement of prior exhaustion of domestic remedies has been satisfied. [[51]](#footnote-52) Since the exhaustion of domestic remedies is a defense available to the State[[52]](#footnote-53), the omission of the Commission to take it into account, results in a violation of the State’s right to defense.[[53]](#footnote-54) The position of the State would have been different in the pending procedure if the Commission had denied Mrs. Bolt’s petition right away.[[54]](#footnote-55) The enduring change of her approach during this period created strong procedural unpredictability. This constituted a substantial hindrance in investigating the shifting complaints laid down in the petition. On this basis, the State requests the Court to declare its disapproval of the Commission’s conduct, insofar as it should not admit any case where it is evident that the petitioners have not exhausted the domestic remedies. Since the ACRL was only enacted in January 2008[[55]](#footnote-56) and the petition was admitted in the same month[[56]](#footnote-57), the Commission did not leave the State enough time to modify its defense strategy. Taking into account the magnitude of the State’s task in setting up the transitional justice mechanism, the State’s defense position during the admissibility stage was definitely affected. Especially since the mechanism of transitional justice is very complex, the State needed more time to consider all elements of Mrs. Bolt’s claim in the light of this new mechanism. Because the proceedings before the Commission blatantly violated the State’s right to defense, the State requests the Court to declare the petition inadmissible.

## Alleged Violations

### The ACRL did not violate Art. 8 and 25 ACHR

All applicants claim the lack effectiveness of the system established by the ACRL with regard to investigation, prosecution and punishment[[57]](#footnote-58). This law was accepted by a majority in Congress and by 95% of the voters in a referendum.[[58]](#footnote-59) These claims will be discussed under the specific parts concerning the positive obligations under the alleged violations. However, the ACRL did not create a situation of impunity. The State did not violate Art. 8 and 25 *juncto* 1(1) and 2 ACHR.

The Court does not allow laws leading to total impunity and obstructing effective investigations.[[59]](#footnote-60) It has defined impunity as: “*The total lack of investigation, prosecution, capture, trial and conviction of those responsible for violations of the rights protected by the American Convention”.*[[60]](#footnote-61) There was no such situation in this case. All applicants benefited from an effective investigation. The most responsible perpetrators were prosecuted and punished[[61]](#footnote-62), in line with the demand of the Court to punish masterminds of human rights violations.[[62]](#footnote-63) The Public Ministry and the HTC identified these perpetrators, using the following criteria: the level of leadership, the degree of responsibility, the position of control and the capacity for effective control.[[63]](#footnote-64) This is in line with international case law from courts such as the International Criminal Court (“ICC”) [[64]](#footnote-65), the International Criminal Tribunal for the Former Yugoslavia (“ICTY”).[[65]](#footnote-66)Those courts apply the principle of command responsibility. Each mentioned court has a provision in its Statute proclaiming this principle, which holds that commanders are responsible for the acts of their subordinates if they knew or had to know about them.[[66]](#footnote-67) The principle of command responsibility is a “*well-established principle of International Law*”[[67]](#footnote-68) which can also be found in e.g. Art. 86 of Additional Protocol I to the Geneva Conventions[[68]](#footnote-69). The ACRL’s system of identification is in line with this principle. The Court has used the following criteria in its case law for defining serious violations: the nature of the rights violated, the scale and magnitude of violations, the type and the vulnerability of the victims or a combination of these.[[69]](#footnote-70) These criteria are echoed by the ACRL and are therefore in line with the Court’s jurisprudence. Based on the findings of the HTC, the Public Ministry selected the most serious violations to be prosecuted according to the following principles: the intrinsic nature of the conduct, the scale, the modality and the impact of the crime.[[70]](#footnote-71) They further comply with case law from other judicial bodies, such as the ICC[[71]](#footnote-72) and the ICTY[[72]](#footnote-73). The ICC’s criteria are especially relevant since the Court has referred to the ICC’s case law and Statute.[[73]](#footnote-74) The Court has further based itself on the ICTY’s opinion that crimes against humanity must be prosecuted.[[74]](#footnote-75) The ACRL allows and leads to the prosecution of the culprits of crimes against humanity. Therefore, it also complies with the principles of the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity.[[75]](#footnote-76) In 2006, the Commission largely lauded a law similar to the ACRL in Colombia.[[76]](#footnote-77) This law established the principle of opportunity. States applying this principle, select those to be prosecuted to ensure that no situation of impunity would occur, since prosecuting everyone involved would lead to court congestion eventually leading to impunity. The selection of those responsible consequently prevents a situation of impunity.

A situation of impunity would have led to a denial of access to justice for the victims, infringing their right to truth. This is not the case, as the State satisfied this right by creating the HTC in cooperation with the victims. This balanced the right to truth and the need for reconciliation and peace. Further, the Public Ministry guaranteed criminal investigations and the identification of *mega-cases* and those most responsible.[[77]](#footnote-78) Subsequently, a multi-disciplinary High-Level Commission then reviewed the information provided by the HTC and the Public Ministry to decide which crimes and perpetrators would be prosecuted. This led to the selection of 14 patterns and 67 persons to be prosecuted by the STT.[[78]](#footnote-79) Some persons were selected by the HTC, but not prosecuted. In that case a simple, free and prompt judicial remedy was provided, so victims could ask to review the waiver of prosecution.[[79]](#footnote-80) This guaranteed the right for victims to know the facts and the identity of the perpetrators. As the ACRL did not obstruct and even facilitated investigation, prosecution and punishment, there was no violation of the ACHR.

### There is no state responsibility for the violations alleged by Mrs. Bolt, Mr. and Ms. Rossi and Mrs. López

#### 2.1 There is no state responsibility for the alleged forced disappearance of Mr. Bolt (Art. 3, 4, 5, 7 j° 1(1) and 2 ACHR)

##### There was no forced disappearance with respect to Mr. Bolt

Mr. Bolt did not become the victim of a forced disappearance, since his fate does not fit the definition given by both the Court’s case law[[80]](#footnote-81) and the IACFD[[81]](#footnote-82). This definition contains the following elements: *(i)* the deprivation of liberty, with *(ii)* direct involvement of or acquiescence of governmental officials and *(iii)* a refusal of the state to acknowledge this deprivation of liberty or to disclose the fate or whereabouts of the person(s) concerned.

There is no evidence that the alleged disappearance of Mr. Bolt occurred with the direct involvement or acquiescence of the State even though the State did everything in its power to investigate, as will be discussed under the part referring to the State’s positive obligations.[[82]](#footnote-83) This Court has held that in cases of forced disappearances the burden of proof shifts towards the state when there is evidence that can support the allegations, because states are considered to control the means to clarify whether this fact has occurred.[[83]](#footnote-84) However, in the instant case the burden of proof cannot shift toward the State. In defining when the burden of proof shifts, the Court has developed a two-step test.[[84]](#footnote-85) Firstly, the party alleging a violation has to prove that there has been a state practice of disappearances or that the state has at least tolerated such a practice. In this case there has not been any recent state practice of forced disappearances. Consequently, the second step of the test, which states that the applicant has to establish a link between the practice and the particular case, automatically cannot be fulfilled. The disappearances in the past[[85]](#footnote-86) should not be taken into account, since these were not related. Therefore, the burden of proof does not shift to the State and it is up to the applicants to prove that Mr. Bolt was forcibly disappeared. In line with the foregoing, the State negates the allegations of direct state responsibility. Originally, in 2007 the CoS ruled against such a claim by Mrs. Bolt. The compensation awarded after the investigation conducted by the HTC[[86]](#footnote-87) cannot be seen as an admittance of the State’s responsibility for two reasons. Firstly, the facts of the case do not state the motives behind the awarding of this compensation by the CoS. Consequently, it has not been asserted that any responsibility was explicitly recognized.[[87]](#footnote-88) Secondly, the CoS based itself on the HTC’s findings. However, these were based on Mr. Mukundi’s allegations, which have not been proven to be true. Two different instances had already not accepted Mr. Mukundi’s allegations – namely, the Public Ministry[[88]](#footnote-89) and the CoS[[89]](#footnote-90) – prior to the HTC’s findings. Mr. Mukundi’s allegation of torture was not supported by any physical evidence.[[90]](#footnote-91) Therefore, no definite proof of torture can be established. Consequently, his allegations about the disappearance of Mr. Bolt should not be viewed as proof either. Direct state involvement or acquiescence of the State in the disappearance has accordingly not been proven. Even if the Court deems that there has been state involvement, it should still be taken into account that the State has sufficiently addressed this alleged violation domestically, as will be discussed in the next section.

According to the Court’s case law[[91]](#footnote-92), the offense of forced disappearance often involves violations of the right to judicial personality (Art. 3 ACHR), to life (Art. 4(1) ACHR), to personal integrity (Art. 5(1) ACHR) and to personal liberty (Art.7(1), 7(2) and 7(5) ACHR). Firstly, The Court has held that the forced disappearance of persons is a violation of Art. 7 ACHR.[[92]](#footnote-93) Secondly, prolonged isolation and the deprivation of liberty are in themselves cruel and inhuman treatment and constitute a violation of Art. 5(1) ACHR.[[93]](#footnote-94) Thirdly, it is often considered that the practice of forced disappearances involves secret execution, followed by concealment of the body to eliminate any material evidence, which is a violation of Art. 4(1) ACHR.[[94]](#footnote-95) Lastly, in its recent case law[[95]](#footnote-96) the Court has found that the offence of forced disappearance also includes a violation of Art. 3 ACHR. The Court justified the shift in its case law by referring to the “*evolution of the specific international corpus juris related to the prohibition of forced disappearance*.”[[96]](#footnote-97) The violation resulting from an uncertainty regarding juridical personality is only explicitly mentioned in Art. 1(2) of the Declaration on Forced Disappearance[[97]](#footnote-98), which is not a binding document. Moreover, in a Separate Opinion Judge García Ramírez questioned[[98]](#footnote-99) whether the Court did not mean *“an extreme and very serious impediment”* on human rights and not an actual non-recognition of juridical personality. The application of Art. 3 ACHR is therefore contested. However, in the instant case it has not been proven that Mr. Bolt was forcibly disappeared. Therefore, there have been no violations of Art. 3, 4(1), 5(1), 7(1), 7(2) and 7(5) *juncto* 1(1) and 2 ACHR.

##### The State fulfilled its positive obligations regarding the alleged disappearance of Mr. Bolt

From Art. 3, 4, 5 and 7 *juncto* 1(1) and 2 ACHR, several obligations can be derived. Firstly, states must respect rights and freedoms recognized by the ACHR, and secondly, they must ensure the free and full exercise of those rights.[[99]](#footnote-100) As a part of this duty, the State is obliged to provide investigation, prosecution and punishment in situations that may involve possible human rights violations.[[100]](#footnote-101) The State could have still been held accountable for what happened to Mr. Bolt, had it not reacted to these events in line with its due diligence obligation. However, the State complied with all its duties under Art. 1(1) and 2 ACHR. Firstly, the State conducted a full, impartial, effective and prompt investigation[[101]](#footnote-102) into the allegations about Mr. Bolt’s disappearance. It was closed months later due to the lack of any evidence. However, there are no facts in the case that suggest that this investigation was not conducted diligently or that it was a *“mere formality, preordained to be ineffective”*.[[102]](#footnote-103) The fact that the investigation was not successful does not imply a violation, because the duty to investigate is an obligation of means and not one of results.[[103]](#footnote-104) The establishment of a Search Commission[[104]](#footnote-105) can serve as a proof that the State’s approach towards the investigation into the alleged disappearance was not vague. This unambiguously shows the State’s dedication to find Mr. Bolt. Therefore, it can be concluded that the State diligently fulfilled its duty to investigate, despite the fact that no perpetrator was found in the specific case, thus preventing a prosecution and a punishment. In light of the foregoing, the State complied with this obligation to the fullest extent. Lastly, the State conducted a full investigation into former President Ferreira who died before the completion of the prosecution.[[105]](#footnote-106)

This Court has held in *Anzualdo Castro*[[106]](#footnote-107) that, as a part of the obligation of due diligence in dealing with disappearances, states must introduce forced disappearances as an offence in their domestic legislation. The State has fulfilled this requirement by including the forced disappearance of persons as a crime in its Criminal Code[[107]](#footnote-108). This once again confirms that there is no state responsibility for the disappearance of Bolt.

##### The State provided adequate reparations for Mrs. Bolt

The State has established a reparations program under the Ministry of Victims, within the framework of the ACRL.[[108]](#footnote-109) The aim of the program was to compensate the victims of the armed conflict and their relatives by offering measures of restitution, satisfaction, compensation, rehabilitation and guarantees of non-repetition.[[109]](#footnote-110) This victim-centred approach meets the standards of the Inter-American system.[[110]](#footnote-111) Under the reparations policy, Mrs. Bolt was granted the sum of 20,000$.[[111]](#footnote-112) On top of this, the CoS granted an additional compensation of 10,000$, bringing the total amount to 30,000$. However, it is not asserted in the facts that this compensation was given as an acknowledgement of direct state responsibility.[[112]](#footnote-113) Bearing in mind the difficult economic situation of the State[[113]](#footnote-114) and the fact that compensations are not meant to enrich the beneficiaries[[114]](#footnote-115), the amounts granted to Mrs. Bolt are in concurrence with those granted by the Court in similar cases.[[115]](#footnote-116) Moreover, the State did not only give her a fair compensation, but also included her in the programs of rehabilitation, satisfaction, and peace building as a guarantee of non-repetition.[[116]](#footnote-117) Since she already received multiple and adequate reparations under domestic law, the State complied with its duty to make adequate reparations.[[117]](#footnote-118) For these reasons, the State fulfilled its obligations with regard to the reparations.

#### 2.2 There is no state responsibility for the attacks on the Boneca as alleged by Mrs. Bolt (Art. 24 j° 1(1) and 2 ACHR)

##### The State is not responsible for the attacks on the Boneca

The State did not target the Boneca due to their status as Indigenous Peoples, unlike what Mrs. Bolt stated. The Court has specifically held that the general principles of equal protection by the law and of non-discrimination are *ius cogens*[[118]](#footnote-119). It made them especially applicable to persons more vulnerable than others, like Indigenous Peoples. Therefore, under Art. 24 ACHR, states should eliminate all discriminatory practices.[[119]](#footnote-120) The investigation into the Boneca Community occurred in a situation of conflict. It was conducted in order to find Mr. Bolt, one of the kidnappers of the children.[[120]](#footnote-121) It was not a discriminatory act. The State merely wished to find those responsible for the kidnappings. There was no disadvantaging or specific targeting of the Boneca to discriminate against them. The events were part of a general investigation into an atrocious crime. There was no violation of Art. 24 ACHR.

##### The State fulfilled its positive obligations regarding the Boneca

In the aftermath of the attacks on the Boneca, the State complied with the duty to investigate, prosecute and punish those responsible. It can be deduced from the facts that there has been an investigation and that the most responsible perpetrators of the attacks have been included in the transitional justice mechanism.[[121]](#footnote-122) Among those identified as the most responsible were three former commanders of the armed forces and two former Ministers of War.[[122]](#footnote-123) Several individuals involved have been dealt with under the official transition mechanisms.[[123]](#footnote-124) President Ferreira, as mastermind of the events, would have been prosecuted and punished if he had not died before the State was fully able to do so.[[124]](#footnote-125) Consequently, the State complied with its positive obligations concerning the attacks on the Boneca Community.

##### The State provided adequate reparations for the Boneca

Regarding the harm the Boneca may have suffered due to the investigations, the State provided adequate reparations in various ways. Firstly, in line with the duty to prevent human rights violations[[125]](#footnote-126), the State was restructured in such a way as to prevent discrimination against the Boneca. The State ratified ILO Convention No. 169.[[126]](#footnote-127) Further, the new Constitution paid mind to the ethnic diversity and autonomy of groups as the Boneca, turning the State into a plurinational republic.[[127]](#footnote-128) This prevents the occurrence of discrimination to the fullest extent possible.

The transitional justice mechanism was put into place with extensive involvement and consultation of the victims.[[128]](#footnote-129) The Boneca were also recognised as victims[[129]](#footnote-130) and therefore consulted, in line with the Court’s case law.[[130]](#footnote-131) Moreover, the State also ensured participation for the Boneca. In *Yatama,* the Court ordered states to ensure the participation of Indigenous Peoples in matters regarding them.[[131]](#footnote-132) The right to participation for Indigenous Peoples however, needs to be exercised within the framework of the state in which they live[[132]](#footnote-133), e.g. through the possibility of participating in a referendum. Firstly, the Boneca were among the consulted victims who could make proposals. Secondly, a Boneca religious authority was one of the HTC members.[[133]](#footnote-134) Thirdly, there were educational sessions on the measures of the peace agreement ensuring the Boneca were fully informed. Lastly, they could vote on the measures like all citizens, ensuring that they did not feel any pressure to accept the transitional measures.[[134]](#footnote-135) This popular referendum also guaranteed participation for the Boneca. It should be stressed that 95% of the participants in the referendum voted for the ACRL and that the voter turnout among the Boneca was similar to that in the rest of the population.[[135]](#footnote-136) This proves that the Boneca could and also did participate in this referendum.[[136]](#footnote-137)

Furthermore, the State complied with the standards of the Court’s case law by granting comprehensive reparations that are collective in nature and in keeping with the recognition of their ethnicity.[[137]](#footnote-138) In particular, these include measures for the restitution of ancestral territory[[138]](#footnote-139), measures of satisfaction in consultation with the community[[139]](#footnote-140), rehabilitation measures such as the immediate release and overturning of the convictions against area leaders.[[140]](#footnote-141) The ratification of ILO 169 and establishment of the Constitution, which gave a particular scope to the ethnic diversity and autonomy of ethnic communities, also function as guarantees of non-repetition with repercussions on the group.[[141]](#footnote-142)

#### 2.3 There is no state responsibility for the death of Ms. Rossi (Art. 4, 5 j° 1(1) and 2 ACHR)

##### The State is not responsible for the death of Ms. Rossi

General Pires’ testimony disclosed that certain members of the military acted unlawfully.[[142]](#footnote-143) There was no direct order that forced these individuals to commit acts of torture, nor to murder Ms. Rossi. An order to find[[143]](#footnote-144) someone cannot be misinterpreted as an order to rape or torture. The committed acts were not condoned. The State responded thereto by conducting an investigation into these acts, prosecuting and punishing Pires, who took responsibility.

##### The State fulfilled its positive obligations regarding the death of Ms. Rossi

The Court has held that states have the obligation to redress human rights violations.[[144]](#footnote-145) The State investigated Ms. Rossi’s case, which was handled by the HTC in conjunction with that of the kidnapped children. This investigation resulted in Pires’ testimony, in which he accepted personal and institutional responsibility for her death and torture.[[145]](#footnote-146)

The State took action by prosecuting and punishing Pires. To ensure the victims’ rights, the State put extensive measures into place to ensure an effectively functioning transitional justice mechanism, including the HTC. The Court has accepted the use of truth commissions to clarify the facts of human rights violations.[[146]](#footnote-147) In this case the HTC was not a replacement for the judicial proceedings. As required by the Court’s case law[[147]](#footnote-148), the STT offers a secondary independent judicial determination of the facts, as it was not bound by the findings of the HTC. In the instant case, Pires was prosecuted before the STT.

States dealing with the aftermath of a conflict often neglect to prosecute state agents, who have taken part in violations.[[148]](#footnote-149) However, in this case the State has not shied away from prosecuting its state officials, even high ranking ones. In *Rochela Massacre,* the Court held that sentences should be proportionate to the rights violated and the culpability with which the perpetrators acted. The circumstances of the case should be taken into account.[[149]](#footnote-150) Moreover, a judicial authority should issue the punishment and determine its reasons.[[150]](#footnote-151) As he is not the direct perpetrator, he was ordered to community service and to report weekly at court. The STT took into consideration that Pires had a leading role in the finding of the truth, being one of the military members providing the most information in the HTC sessions, therefor giving closure to Ms. Rossi’s family.[[151]](#footnote-152) As he no longer poses a risk, the goal of the punishment was not to exclude Pires from the reformed society. His sentence allows him to repay his debt to society. Additionally, the punishment is justified since it was established by the STT. Its members[[152]](#footnote-153) were appointed by a congressional committee with the backing of both the High Level Commission – which involved the victims, as well as the government, combatant and the international community – and the valued UN High Commissioner for Human rights. This procedure guaranteed that all parties were involved throughout the process.

##### The State provided adequate reparations for Mr. and Ms. Rossi.

The State has also complied with its obligation to provide appropriate reparations for Mr. and Ms. Rossi. They both received 25,000$[[153]](#footnote-154), which – as explained above[[154]](#footnote-155) – is a fair and adequate reparation under the Reparations Act. The administrative program is in accordance with the standards of the Commission since it operates without prejudice of the judicial reparations.[[155]](#footnote-156) Persons who receive compensation do not automatically waive their right to pursue a claim for the amount allegedly not covered by the administrative compensation.[[156]](#footnote-157) Under this program Ms. Rossi’s family received 40,000$. However, they may negotiate a reparation settlement.[[157]](#footnote-158) The Commission has consistently approved settlements in which petitioners definitively renounce their right to file a claim against the state.[[158]](#footnote-159) Regarding domestic settlement procedures, the Court has considered that *“of the national mechanisms that exist to determine forms of reparation, these procedures should be evaluated and encouraged”*.[[159]](#footnote-160) In the instant case, Mr. and Ms. Rossi concluded an agreement with the State in which they voluntarily waived their right to sue the State in order to obtain a higher amount of compensation.[[160]](#footnote-161) They were never pressured to conclude the agreement through which they obtained an extra compensation of 10,000$ in total. Therefore, the total amount of 50,000$ is an adequate and fair compensation. Nevertheless, Mr. and Ms. Rossi immediately filed a petition at the international level of jurisdiction, the Inter-American Commission. This illustrates that they preferred to have direct recourse to the Commission, and thereby blatantly abused the endeavours of the State to establish a fair reparations program and to resolve the problem under its internal law. In conclusion, the State complied with its obligations under Art. 4 and 5 *juncto* 1(1) and 2 ACHR.

#### 2.4 There is no state responsibility for the death of Aníbal López (Art. 4, 19 j° 1(1) and 2 ACHR)

##### The State did not violate Aníbal López’ right to life

Firstly, the State stresses the fact that Mr. Guadamuz and Mr. Mukundi admitted that the children died as a result of a military error on the part of the captors.[[161]](#footnote-162) Therefore, the State is not responsible for the death of Aníbal López.

However, if the Court would find that there is not enough evidence whether Aníbal López died in the hands of the captors, the State emphasizes that its rescue operation was in concurrence with the principles of international human rights law (“IHRL”), as well as those of IHL. More specifically, as described below, the use of force was absolutely necessary and proportionate. It was grounded on the existence of exceptional circumstances and only occurred when all other measures failed.[[162]](#footnote-163)

Art. 4(1) ACHR establishes that the right to life cannot be suspended under any circumstances.[[163]](#footnote-164) Nevertheless, the State has the right and obligation to protect its population when they are being threatened by violence.[[164]](#footnote-165) In doing so, the law enforcement may use force to protect themselves or other persons from imminent threat of death or serious injury, or otherwise to restore public security, law and order.[[165]](#footnote-166) The Court has explained that, in such extraordinary circumstances, a state has the right to use force, *“even if this implies depriving people of their lives […]*”.[[166]](#footnote-167) However, as required by IHRL and IHL, the use of force should be absolutely necessary and proportionate in relation to the posed threat and the aim pursued.[[167]](#footnote-168) Moreover, in accordance with IHL, the violence may not be directed against civilians.[[168]](#footnote-169) Additionally, according to the precautionary approach, whenever the lawful use of force is unavoidable, the law enforcement must avoid and, in any event, minimize, incidental loss of civilian life.[[169]](#footnote-170) On top of this, the state should also provide a legal framework to regulate the use of force and to deter any possible threat to the right to life. Especially, it must guarantee that its security forces, which are entitled to use legitimate force, respect the right to life of the people under their jurisdiction.[[170]](#footnote-171) Since the events occurred in the context of a non-international armed conflict the ACHR should be interpreted in a way that complements the norm of IHL.[[171]](#footnote-172)

In the instant case, the State clearly fulfilled all of the abovementioned criteria. The use of force was legitimate and strictly unavoidable in order to protect the right to life of the 23 children. By refusing to surrender peacefully and using explosive devices, the guerrillas made a situation of imminent danger even more acute, making it absolutely necessary for the law enforcement to undertake swift action and save the children. Moreover, as required, the State provided a legal framework for the use of force.[[172]](#footnote-173) Therefore, even if the rescue operation had caused the death of Aníbal López, which is highly unlikely[[173]](#footnote-174), this would have been a tragic, but unwanted consequence of a legitimate use of force. The Court should also keep in mind that, as a direct result of the operation, 19 children were eventually rescued and reunited with their families. Moreover, given the fact that the use of violence in the rescue operation was proportionate, executed with precaution and only directed against the captors, the operation was in accordance with the principles of IHL as well as IHRL. For these reasons, the State did not violate Art. 4(1) ACHR.[[174]](#footnote-175)

##### The State fulfilled its positive obligations regarding Aníbal López’ death

Regarding the State’s duty to prevent[[175]](#footnote-176), the Court uses the concept of vulnerability as a criterion to enhance human rights protection *vis-à-vis* individuals who belong to a vulnerable group, such as children.[[176]](#footnote-177) The latter have special rights under Art. 19 ACHR, to which specific obligations correspond.[[177]](#footnote-178) The Court has indicated that “*the special vulnerability, owing to their condition as children, is even more evident in a situation of internal armed conflict”.*[[178]](#footnote-179) Accordingly, the State must adopt all necessary and reasonable measures to prevent or protect the rights of those who are in such a situation of vulnerability. Furthermore, whenever the state is *“aware of a situation of real and imminent danger for a specific individual or a group of individuals and has reasonable possibilities of preventing or avoiding that danger”*[[179]](#footnote-180), the positive obligation of the state is determined in function of the particular needs for protection of those persons in function of their particular needs.[[180]](#footnote-181) As shown above, the children found themselves in a situation of real and imminent danger. Therefore, by conducting a rescue operation, the State maximized its efforts and took all the necessary and reasonable measures to prevent the violation of the right to life of the children.

Furthermore, Mrs. López claims that the State did not punish the persons responsible.[[181]](#footnote-182) However, this claim is without merits since the State punished the perpetrators. Firstly, it has to be noted that Mr. Bolt was sentenced to life in prison by a domestic court.[[182]](#footnote-183) Secondly, Mr. Guadamuz was sentenced to 5 years in a detention site[[183]](#footnote-184). Thirdly, Mr. Mukundi was imprisoned for 7 years. On top of this, the STT sentenced him to an additional penalty of 180 days of community service.[[184]](#footnote-185) Keeping in mind the extensive and voluntary cooperation of Mr. Guadamuz and Mr. Mukundi in the establishment of the facts and their genuine show of remorse[[185]](#footnote-186), the sentences are justified.

##### The State provided adequate reparations for Mrs. López

Lastly, Mrs. López alleges the lack of reparations for the death of her son. However, as stated in the facts[[186]](#footnote-187), she received 20,000$. This amount is in accordance with amounts granted by the Court in the past.[[187]](#footnote-188) Besides, Mrs. López could have sued the State before the CoS in order to receive additional compensation for the harm not covered by the reparations.[[188]](#footnote-189) Also, the State invited the López family to participate in the psychological and social services program. Mrs. López declined this offer and asked for the reimbursement of the expenses of the specialized services she used instead.[[189]](#footnote-190) However, as stated by the Court, a state is only obliged to provide psychological treatment by state institutions and personnel.[[190]](#footnote-191) Furthermore, as a measure of satisfaction and a guarantee of non-repetition, the school was considered by the collective reparations program to be a symbol of the war’s interference in childhood. Additionally, a program was started, headed by a mother of one of the kidnapped children, to promote the school as a place of peace, coexistence, and reconciliation. This state initiative even received the Ibero-American Peace Prize in 2013.[[191]](#footnote-192) For these reasons, the State has clearly provided comprehensive domestic reparations to Mrs. López, in accordance with the standards of the Inter-American system.

## Reparations (Art. 63(1) ACHR)

As shown above, the State has complied with the provisions of the ACHR and therefore there is no state responsibility. Insofar as the petitioners are claiming more reparations, they are appealing a matter that has already been definitively settled under the State’s internal law. Thereby, they use the Court as a fourth instance, especially since reparations are meant to serve as full restitution and not as a means for enrichment.

If the Court would find violations nonetheless, it should take into account that the State has already provided reparations in accordance with the Court’s case law[[192]](#footnote-193) as well as its poor economic situation. Firstly, the State adopted guarantees of non-repetition by reforming its Constitution and establishing a plurinational state.[[193]](#footnote-194) Moreover, the participation of society in the peace process and the uncovering of the truth by the HTC will prevent similar events to occur again. The State has ensured the victims’ right to participate in the drafting of the ACRL, the reform of the Constitution and the establishment of the reparations program. When drafting the public policy on reparations, one of the State’s objectives was to redress the harm caused by the conflict. Thereby, the State applied the standards of international human rights law with a view to provide a low-cost, streamlined administrative avenue with the possibility of judicial review. Secondly, the State has fulfilled its obligation to investigate, prosecute and punish those responsible. The State guaranteed the victims’ right to the truth by the establishment of the HTC and the judicial proceedings before the STT, which led to the prosecution and punishment of the perpetrators. Thirdly, the State established an administrative reparations program for the victims, with the possibility to conclude a reparations agreement with the State.[[194]](#footnote-195) Fourthly, as a measure of restitution and satisfaction, the State created a Search Commission in order to find disappeared persons,[[195]](#footnote-196) and established a program for issuing land titles to the Boneca.[[196]](#footnote-197) Lastly, as a measure of rehabilitation, the State provided psychological and social services for the victims.[[197]](#footnote-198) It should also be noted that the measures granted by the State were already in line with the reparations ordered by the Commission in its joint merits report of January 2013.[[198]](#footnote-199) Consequently, the latter have no added value. For these reasons, the reparations reflect the outcome of an open and transparent process of consultation with civil society and the institutions involved.[[199]](#footnote-200)

# Request for Relief

For all these reasons, the Cardenal Republic respectfully requests the Inter-American Court of Human Rights to:

1. Hold that the Court has no jurisdiction *ratione materiae* over the case given the arguments set forth in paragraphs 1 until 4;
2. Declare the petitions inadmissible for the following reasons:
   1. Mrs. López, Mrs. Bolt, Mr. and Ms. Rossi did not exhaust domestic remedies in accordance with Art. 46 ACHR;
   2. The proceedings before the Commission violated the State’s right to defense.
3. Subsidiarily, to hold that:
   1. The Accountability, Closure and Reconciliation Law is compatible with Art. 8 and 25 *juncto* 1(1) and 2 of the American Convention on Human Rights;
   2. The Cardenal Republic did not violate Art. 3, 4, 5, 7 and 24 *juncto* 1(1) and 2, nor any other article of the American Convention on Human Rights with regard to Ricardo and Annika Bolt;
   3. The Cardenal Republic did not violate Art. 4 *juncto* 1(1) and 2, nor any other article of the American Convention on Human Rights with regard to Aníbal and Lupita López and Lucrecia, Emily and Maximiliano Rossi.
4. In the most subsidiary order, hold that no further reparations are needed should the Court hold that there are any violations, since the Cardenal Republic sufficiently provided internal reparations.

Respectfully,

The Cardenal Republic

1. Hypothetical, p.1, §4. [↑](#footnote-ref-2)
2. Hypothetical, p.2, §9. [↑](#footnote-ref-3)
3. Hypothetical, p.6, §30. [↑](#footnote-ref-4)
4. Hypothetical, p.7, §33. [↑](#footnote-ref-5)
5. Hypothetical, p.7, §34. [↑](#footnote-ref-6)
6. Hypothetical, p.7, §37. [↑](#footnote-ref-7)
7. Hypothetical, p.7, §37; Hypothetical, p.8, §38. [↑](#footnote-ref-8)
8. Hypothetical, p.3, §11-12. [↑](#footnote-ref-9)
9. Hypothetical, p.3, §14-15. [↑](#footnote-ref-10)
10. Hypothetical, p.8, §37, §§41-42. [↑](#footnote-ref-11)
11. Clarification Questions, no.1. [↑](#footnote-ref-12)
12. Hypothetical, p.4, §18. [↑](#footnote-ref-13)
13. Hypothetical, p.5, §22. [↑](#footnote-ref-14)
14. Hypothetical, p.5, §23. [↑](#footnote-ref-15)
15. Hypothetical, p.5, §24. [↑](#footnote-ref-16)
16. Hypothetical, p.5, §25. [↑](#footnote-ref-17)
17. Hypothetical, p.5, §26. [↑](#footnote-ref-18)
18. Hypothetical, p.11, §53. [↑](#footnote-ref-19)
19. Hypothetical, p.11, §54. [↑](#footnote-ref-20)
20. Hypothetical, p.11, §55. [↑](#footnote-ref-21)
21. Hypothetical, p.12, §58. [↑](#footnote-ref-22)
22. *Las Palmeras v. Colombia*, IACtHR, 4 February 2000, §33; *Bámaca Velásquez v. Guatemala*, IACtHR, 25 November 2000, §208; *The Santo Domingo Massacre v. Colombia,* IACtHR, 30 November 2012, §23. [↑](#footnote-ref-23)
23. Article XIII IACFD. [↑](#footnote-ref-24)
24. *Vélez Loor v. Panama,* 23 November 2010, § 32-33; *Bámaca Velásquez v. Guatemala,* IACtHR, 25 November 2000, § 223. [↑](#footnote-ref-25)
25. *Acevedo-Jaramillo et al. v. Peru* (Interpretation), IACtHR, 24 November 2006, §66. [↑](#footnote-ref-26)
26. *Zambrano Velez et al. v. Ecuador***.** IACtHR, 4 July 2007, §47. [↑](#footnote-ref-27)
27. *Cabrera García & Montiel Flores v. Mexico*, IACtHR, 26 November 2010, §16. [↑](#footnote-ref-28)
28. Hypothetical, p.11, §56; Clarification Questions, no.12. [↑](#footnote-ref-29)
29. *Acevedo-Jaramillo et al. v. Peru,* IACtHR, 7 February 2006, §124; *Herrera Ulloa v. Cosa Rica,* IACtHR, 2 July 2004, §81; *Díaz Peña v. Venezuela*, IACtHR, 26 June 2012, §114. [↑](#footnote-ref-30)
30. *Velásquez Rodriguez v. Honduras*, IACtHR, 29 July 1988, §61; *The Santo Domingo Massacre v. Colombia*, IACtHR, 30 November 2012, §33; *Liakat Ali Alibux v. Suriname*, IACtHR, 30 January 2014, §15. [↑](#footnote-ref-31)
31. Hypothetical, p.11-12, §57. [↑](#footnote-ref-32)
32. Hypothetical, p.11, §54. [↑](#footnote-ref-33)
33. Hypothetical, p.10, §51. [↑](#footnote-ref-34)
34. *Velásquez Rodriguez v. Honduras*, IACtHR, 29 July 1988, §66; *Godínez Cruz v. Honduras*, IACtHR, 20 January 1989, §67; *Fairén-Garbi and Solís-Corrales v. Honduras*, IACtHR, 15 March 1989, §§88 and 91. [↑](#footnote-ref-35)
35. Clarification Questions, no. 6. [↑](#footnote-ref-36)
36. *Almonacid-Arellano et al. v. Chile,* IACtHR, 26 September 2006, §124. [↑](#footnote-ref-37)
37. *Santander Tristán Donos v. Panama,* IACHR, Report No. 71/02, 24 October 2002, §22. [↑](#footnote-ref-38)
38. *Gelman v. Uruguay,* IACtHR, 24 February 2011, §§218, 221 and 222. [↑](#footnote-ref-39)
39. Art. 7(6) ACHR. [↑](#footnote-ref-40)
40. *Velásquez Rodríguez v. Honduras*, IACtHR, 29 July 1988, §65. [↑](#footnote-ref-41)
41. *Chitay Nech et al. v. Guatemala,* IACtHR, 25 May 2010, §203; *Bámaca Velásquez v. Guatemala,* IACtHR, 25 November 2000, § 192. [↑](#footnote-ref-42)
42. Hypothetical, p.9, §47; p.10, §§51 and 53. [↑](#footnote-ref-43)
43. Hypothetical, p.10, §51. [↑](#footnote-ref-44)
44. Ibid. [↑](#footnote-ref-45)
45. Hypothetical, p.9, §47. [↑](#footnote-ref-46)
46. *Zambrano Velez et al. v. Ecuador***,** IACtHR, 4 July 2007, §47; *Velásquez Rodriguez v. Honduras,* IACtHR, 29 July 1988, §61; *Acevedo-Jaramillo et al. v. Peru* (Interpretation), IACtHR, 24 November 2006, §66. [↑](#footnote-ref-47)
47. *Mémoli v. Argentina,* IACtHR, 22 August 2013, §26; Advisory opinion OC-19/05, IACtHR, 28 November 2005, §27; *Cayara v. Peru,* IACtHR, 3 February 1993, §63; *González Medina and family v. Dominican Republic,* IACtHR, 27 February 2012, §28. [↑](#footnote-ref-48)
48. *Furlan and Family v. Argentina,* IACtHR, 31 August 2012, §49; Advisory Opinion OC-19/05, IACtHR, §27. [↑](#footnote-ref-49)
49. Clarification Questions, no. 62. [↑](#footnote-ref-50)
50. Art. 31(1) of the Rules of Procedure of the Commission. [↑](#footnote-ref-51)
51. *Díaz Peña v. Venezuela*, IACtHR, 26 June 2012, §123. [↑](#footnote-ref-52)
52. *Díaz Peña v. Venezuela*, IACtHR, 26 June 2012, §114 [↑](#footnote-ref-53)
53. *Grande v. Argentina*, IACtHR, 31 August 2011, §45; *the Dismissed Congressional Employees (Aguado Alfaro et al.)* v. Peru, IACtHR, 24 November 2006, §66; *González Medina and family v. Dominican Republic*, IACtHR, 27 February 2012, §28; *Díaz Peña v. Venezuela*, IACtHR, 26 June 2012, §115. [↑](#footnote-ref-54)
54. *Mémoli v. Argentina,* IACtHR, 22 August 2013, §38 (a contrario). [↑](#footnote-ref-55)
55. Clarification Questions, no.1. [↑](#footnote-ref-56)
56. Hypothetical, p.11, §53; Clarification Questions, no.1. [↑](#footnote-ref-57)
57. Hypothetical, p.11, §§53-55. [↑](#footnote-ref-58)
58. Hypothetical, p.5, §26. [↑](#footnote-ref-59)
59. *Case of the Massacre of El Mozote and Nearby Places v. El Salvador*, IACtHR, 25 October 2012, § 249. [↑](#footnote-ref-60)
60. *Constitutional Court v. Peru*, IACtHR, 31 January 2001, §123. [↑](#footnote-ref-61)
61. Hypothetical, p.4, §21; p.9, §§44-46. [↑](#footnote-ref-62)
62. *Baldeón-García v. Peru,* IACtHR, 6 April 2006, §94. [↑](#footnote-ref-63)
63. Hypothetical, p.4, §21. [↑](#footnote-ref-64)
64. *Prosecutor v. Jean-Pierre Bemba*, ICC, 15 June 2009, §407. [↑](#footnote-ref-65)
65. *Prosecutor v. Halilovic*, ICTY, 16 November 2005, §56. [↑](#footnote-ref-66)
66. Art. 28 Rome Statute of the International Criminal Court A/CONF.183/9, 1 July, 2002; Art. 7(3) Statute of the International Criminal Tribunal for the Former Yugoslavia, S/RES/827, 25 May 1993. [↑](#footnote-ref-67)
67. Preliminary Report of the Independent Commission of Experts established in accordance with Security Council resolution 935, S/1994/1125 (4 October 1994), §§129-130; *See also*: Art. 1 Agreement between the United Nations and The Royal Government of Cambodia concerning the Prosecution under Cambodian Law of Crimes committed during the Period of Democratic Kampuchea, 6 June 2003. [↑](#footnote-ref-68)
68. Protocol Additional to the Geneva Conventions of 12 August 1946 9, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977. [↑](#footnote-ref-69)
69. T. KARIMOVA, What amounts to ‘a serious violation of International Human Rights Law’?, Geneva Academy Briefing No. 6, Geneva, August 2014, p. 25; see also: Separate Opinion of Judge Sergio García Ramírez concerning *Goiburú et al. v Paraguay*, IACtHR, 22 September 2006, § 6. [↑](#footnote-ref-70)
70. Hypothetical, p.4, § 21. [↑](#footnote-ref-71)
71. *Prosecutor v. Abu Garda,* ICC, 8 February 2010, §31; ICC, *Draft Policy paper on Preliminary Examinations*, 4 October 2010, p.13-14, §70. [↑](#footnote-ref-72)
72. *Prosecutor v. Furundžija*, ICTY, 10 December 1998, §155. [↑](#footnote-ref-73)
73. *Goiburú et al. v Paraguay*, IACtHR, 22 September 2006, §82; *Case of the Serrano-Cruz Sisters v. El Salvador*, IACtHR, 1 March 2005, §62; *Case of Almonacid-Arellano et al v. Chile*, IACtHR, 26 September 2006, §101; *Gelman v. Uruguay*, IACtHR, 24 February 2011, §65. [↑](#footnote-ref-74)
74. *Gelman v. Uruguay*, IACtHR, 24 February 2011, §209. [↑](#footnote-ref-75)
75. Art. 4, Convention on the Non-applicability of statutory limitations to war crimes and crimes against humanity A/7218, United Nations General Assembly, 11 November, 1970. [↑](#footnote-ref-76)
76. *Statement by the Inter-American Commission on Human Rights on the Application and Scope of the Justice and Peace Law in Colombia*, IACHR, OEA/Ser/LV/II.125, 1 August 2006. [↑](#footnote-ref-77)
77. Hypothetical, p.4, §17. [↑](#footnote-ref-78)
78. Hypothetical, p.5, §§22-23; p.9, §44. [↑](#footnote-ref-79)
79. Hypothetical, p.5, §24. [↑](#footnote-ref-80)
80. *Gelman v. Uruguay*, IACtHR, 24 February 2011, § 65; Art. II of the Inter-American Convention on the Forced Disappearance of Persons, OAS, 6 September 1994. [↑](#footnote-ref-81)
81. Art. II Inter-American Convention on forced disappearance of persons. [↑](#footnote-ref-82)
82. Paragraph 18 and 19. [↑](#footnote-ref-83)
83. *Bamaca Velasquez v. Guatemala*, IACtHR, 25 November 2000, §§145 and 152-153. [↑](#footnote-ref-84)
84. *Velasquez Rodriguez v. Honduras*, IACtHR, 29 July 1988, §126 [↑](#footnote-ref-85)
85. Hypothetical, p.1, §5. [↑](#footnote-ref-86)
86. Hypothetical, p.10, §52. [↑](#footnote-ref-87)
87. Hypothetical, p.10, §51. [↑](#footnote-ref-88)
88. Hypothetical, p.8, §40. [↑](#footnote-ref-89)
89. Hypothetical, p.10, §51. [↑](#footnote-ref-90)
90. Clarification question, no.58. [↑](#footnote-ref-91)
91. *Garcia and family members v. Guatemala,* IACtHR, 29 November 2012, §99. [↑](#footnote-ref-92)
92. *Gudiel Alvarez et al. (“Diario Militar”) v. Guatemala,* IACtHR, 20 November 2012, §198; *Velasquez Rodriguez v. Honduras,* 29 July 1988, §155. [↑](#footnote-ref-93)
93. *Garcia and family members v. Guatemala,* IACtHR, 29 November 2012, §105; *Velasquez Rodriguez v. Honduras,* 29 July 1988, §156. [↑](#footnote-ref-94)
94. *Garcia and family members v. Guatemala,* IACtHR, 29 November 2012, §107; *Velasquez Rodriguez v. Honduras,* 29 July 1988, §157. [↑](#footnote-ref-95)
95. *Anzualdo Castro v. Peru,* IACtHR, 22 September 2009, §101. [↑](#footnote-ref-96)
96. *Anzualdo Castro v. Peru,* IACtHR, 22 September 2009, §92. [↑](#footnote-ref-97)
97. *Declaration on the Protection of All Persons from Enforced Disappearance*, UN General Assembly, *A/RES/47/133*, 18 December 1992; L. BURGORGUE-LARSEN & A. UBEDA DE TORRES, The Inter-American Court of Human Rights, Oxford, Oxford University Press, 2011, p. 303. [↑](#footnote-ref-98)
98. *Anzualdo Castro v. Peru,* IACtHR, 22 September 2009, Separate Opinion, Judge Sergio Garcia Ramirez, §31 [↑](#footnote-ref-99)
99. C. MEDINA, *The American Convention on Human Rights*, Cambridge, Intersentia, 2014, p 10-11. [↑](#footnote-ref-100)
100. *The case of the Massacres of El Mozote and Nearby Places v. El Salvador*, IACtHR, 25 October 2012, § 283. [↑](#footnote-ref-101)
101. *Gelman v. Uruguay*, IACtHR, 24 February 2011, §183. [↑](#footnote-ref-102)
102. *Velasquez Rodriguez v. Honduras,* IACtHR, 29 July 1988, §177*.* [↑](#footnote-ref-103)
103. *Gelman v. Uruguay*, IACtHR, 24 February 2011, §184. [↑](#footnote-ref-104)
104. Clarification Questions, no.32. [↑](#footnote-ref-105)
105. Hypothetical, p.9, §47. [↑](#footnote-ref-106)
106. *Anzualdo Castro v. Peru*, IACtHR, 22 September 2009, §66; *Case of Gómez-Palomino v. Peru*, IACtHR, 22 November 2005, §149. [↑](#footnote-ref-107)
107. Clarification Questions, no.7. [↑](#footnote-ref-108)
108. Hypothetical, p.10, §52. [↑](#footnote-ref-109)
109. Hypothetical, p.10, §51. [↑](#footnote-ref-110)
110. *Blake v. Guatemala,* IACtHR, 22 January 1999, §§31-32; *González et al. (“Cotton Field”) v. Mexico,* IACtHR, 16 November 2009, §451. [↑](#footnote-ref-111)
111. Hypothetical, p.10, §51. [↑](#footnote-ref-112)
112. Hypothetical, p.10, §51. [↑](#footnote-ref-113)
113. *El Amparo v. Venezuela*, IACtHR, 14 September 1996, §28. [↑](#footnote-ref-114)
114. *La Cantuta v Peru*, IACtHR, 29 November 2006, §202. [↑](#footnote-ref-115)
115. *Nadege Dorzema et al v. Dominican Republic*, IACtHR, 24 October 2012, §288; *Gutiérrez and family v. Argentina*, IACtHR, 25 November 2013, §186; *Luna López v. Honduras*, IACtHR, 10 October 2013, §§255-256. [↑](#footnote-ref-116)
116. Hypothetical, p.10, §51. [↑](#footnote-ref-117)
117. *Gómez-Palomino v. Peru,* IACtHR, 22 November 2005, §112. [↑](#footnote-ref-118)
118. *Juridical Condition and Rights of the Undocumented Migrants* (Advisory opinion OC-18/03), IACtHR, Ser. A, No. 18 (17 September 2003), §101. [↑](#footnote-ref-119)
119. *Yatama v. Nicaragua*, IACtHR, 23 June 2005, §§184-186. [↑](#footnote-ref-120)
120. Hypothetical, p.7, §36. [↑](#footnote-ref-121)
121. Hypothetical, p.4, §21 in conjunction with p.11, §53. [↑](#footnote-ref-122)
122. Hypothetical, p.5, §23. [↑](#footnote-ref-123)
123. Hypothetical, p.6, §28. [↑](#footnote-ref-124)
124. Hypothetical p.9, §47. [↑](#footnote-ref-125)
125. *Velasquez Rodriguez v. Honduras,* IACtHR, 29 July 1988, §175. [↑](#footnote-ref-126)
126. *Convention concerning Indigenous and Tribal Peoples in Independent Countries*, C169, ILO, 5 September 1991; Hypothetical, p.3, §13. [↑](#footnote-ref-127)
127. Hypothetical, p.3, §14. [↑](#footnote-ref-128)
128. Hypothetical, p.3, §§16-17. [↑](#footnote-ref-129)
129. Hypothetical, p.8, §43. [↑](#footnote-ref-130)
130. *Mayagna (Sumo) Awas Tingni Community v. Nicaragua*, IACtHR, 31 August 2001; *Saramaka People v. Suriname*, IACtHR, 28 November 2007. [↑](#footnote-ref-131)
131. *Yatama v. Nicaragua*, IACtHR, 23 June 2005, §225. [↑](#footnote-ref-132)
132. Preamble, ILO Convention No.169, 27 June 1989. [↑](#footnote-ref-133)
133. Clarification Questions, no.13. [↑](#footnote-ref-134)
134. Clarification Questions, no.60. [↑](#footnote-ref-135)
135. Clarification Questions, no.60. [↑](#footnote-ref-136)
136. Clarification Questions, no.52 and 60. [↑](#footnote-ref-137)
137. Hypothetical, p.3, §12. [↑](#footnote-ref-138)
138. Hypothetical, p.3, §13; *The Mayagna* *(Sumo) Awas Tingi Community v. Nicaragua,* IACtHR, 31 August 2001, operative paragraphs; *Yakye Axa Indigenous Community v. Paraguay*, IACtHR, 17 June 2005, §225*; Saramaka People v. Suriname*, IACtHR, 28 November 2007, §85. [↑](#footnote-ref-139)
139. Hypothetical case, p. 8, §43; *Massacre of Plan de Sánchez v. Guatemala,* IACtHR*,* 19 November 2004, *§101-102; Moiwana Community v. Suriname*, IACtHR, 15 June 2005, §§209 and 210. [↑](#footnote-ref-140)
140. Hypothetical, p.8, §43. [↑](#footnote-ref-141)
141. Hypothetical, p.3, §§13-14. [↑](#footnote-ref-142)
142. Hypothetical, p.8, §42. [↑](#footnote-ref-143)
143. Hypothetical, p.7, §36. [↑](#footnote-ref-144)
144. *Velasquez-Rodriguez v. Honduras,* IACtHR, 21 July 1989, §25; *Acevedo-Jaramillo et al. v. Peru* (Interpretation), IACtHR, 24 November 2006, §66; *Bueno Alves v. Argentina,* IACtHR, 11 May 2007, §128; *Rochela Massacre v. Colombia*, IACtHR, 11 May 2007, §226; *Zambrano Vélez et al. v. Ecuador*, IACtHR, 4 July 2007, §131; *Boyce et al. v. Barbados*, IACtHR, 20 November 2007, §117. [↑](#footnote-ref-145)
145. Hypothetical, p.8, §42. [↑](#footnote-ref-146)
146. *Anzualdo Castro v. Peru*, IACtHR, 22 September 2009, §119. [↑](#footnote-ref-147)
147. “*Las dos Erres*” *Massacre v. Guatemala*, IACtHR, 24 November 2009, §232. [↑](#footnote-ref-148)
148. E.g. *19 Merchants v. Colombia*, IACtHR, 5 July 2004, §263. [↑](#footnote-ref-149)
149. *Rochela Massacre v. Colombia*, IACtHR, 11 May 2007, §196; *Valle Jaramillo v. Colombia*, IACtHR, 27 November 2008, §78. [↑](#footnote-ref-150)
150. *Rochela Massacre v. Colombia*, IACtHR, 11 May 2007, §196. [↑](#footnote-ref-151)
151. Hypothetical, p.9, §46. [↑](#footnote-ref-152)
152. Clarification Questions, no.15. [↑](#footnote-ref-153)
153. Hypothetical, p.10, §50. [↑](#footnote-ref-154)
154. Paragraph 20. [↑](#footnote-ref-155)
155. *Principal Guidelines for a comprehensive reparations policy*, IACHR, 19 February 2008, p.2-3, §§6-7. [↑](#footnote-ref-156)
156. Hypothetical, p.10, §50. [↑](#footnote-ref-157)
157. J. Pasqualucci, “The Practice and Procedure of the IACtHR”, p.246. [↑](#footnote-ref-158)
158. *Inocencio Rodríguez (Argentina),* IACHR, Report No. 19/11, 23 March 2011, §§12-16; *Valerio Castillo Báez (Argentina),* IACHR, Report No. 161/10, 1 November 2010, §§17-21; *Annual Report 2013*, IACHR, Chapter II, §175. [↑](#footnote-ref-159)
159. *Gomes Lund et al. (“Guerrilha Do Araguaia”) v. Brazil,* IACtHR, 24 November 2010, §303; See also: *Manuel Cepeda Vargas v. Colombia,* IACtHR, 26 May 2010, §246. [↑](#footnote-ref-160)
160. Hypothetical, p.10, §50. [↑](#footnote-ref-161)
161. Hypothetical, p.8, §41. [↑](#footnote-ref-162)
162. *Montero-Aranguren et al v. Venezuela*, IACtHR, 5 July 2006, §§67-76. [↑](#footnote-ref-163)
163. *Montero-Aranguren et al v. Venezuela*, IACtHR, 5 July 2006, §63. [↑](#footnote-ref-164)
164. *Neira Alegría v. Peru*, IACtHR, 19 January 1995, §74. [↑](#footnote-ref-165)
165. Principle 9 of the *Basic Principles on the Use of Force and Firearms by Law Enforcement Officials*, UN Doc. A/CONF.144/28/Rev.1., Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 7 September 1990. [↑](#footnote-ref-166)
166. *Neira Alegría v. Peru*, IACtHR, 19 January 1995, §74; *“Report on Human Rights and Terrorism”*, IACHR, 22 October 2012, OEA/Ser.L/V/II.116, §87; *Kerimova and Others v. Russia*, ECtHR, 3 May 2011, §246. [↑](#footnote-ref-167)
167. *Montero-Aranguren et al v. Venezuela*, IACtHR, 5 July 2006, §68; *Santo Domingo Massacre v. Colombia*, IACTHR, 30 November 2012; §214. [↑](#footnote-ref-168)
168. *Santo Domingo Massacre v. Colombia*, IACtHR, 30 November 2012, §§212-213; Art. 13, §2 of Protocol II Additional to the Geneva Conventions (8 June 1977); J-M. Henckaerts & L. Doswald–Beck, *“Customary International humanitarian law*”, volume I, rules, ICRC, Cambridge, 2005, Rule 7, p.25-28. [↑](#footnote-ref-169)
169. Principle 5, b) of the *Basic Principles on the Use of Force and Firearms by Law Enforcement Officials,* UN Doc. A/CONF.144/28/Rev.1.,; *Santo Domingo Massacre v. Colombia*, IACTHR, 30 November 2012, §216; *Ergi v. Turkey*, ECtHR, 28 July 1998, §79. [↑](#footnote-ref-170)
170. *Montero-Aranguren et al v. Venezuela*, IACtHR, 5 July 2006, §66. [↑](#footnote-ref-171)
171. *Santo Domingo Massacre v. Colombia*, IACtHR, 30 November 2012, §187; *Afro-Descendant Communities Displaced from the Cacarica River Basin (Operation Genesis) v. Colombia*, IACtHR, 20 November 2013, §221. [↑](#footnote-ref-172)
172. Clarification Questions, no. 51. [↑](#footnote-ref-173)
173. See Hypothetical, p.8, §41. [↑](#footnote-ref-174)
174. C. MEDINA, The American Convention on Human Rights Crucial Rights and Their Theory and Practice, Intersentia, Cambridge, 2014, p.51. [↑](#footnote-ref-175)
175. Art. 4(1) j° art. 1(1) ACHR. [↑](#footnote-ref-176)
176. Art. 19 ACHR; *Vargas-Areco v. Paraguay*, IACtHR, 26 September 2006, §77. [↑](#footnote-ref-177)
177. *Santo Domingo Massacre v. Colombia*, IACtHR, 30 November 2012, §192. [↑](#footnote-ref-178)
178. *Mapiripán Massacre v. Colombia*, IACtHR, 15 September 2005, §156; Santo Domingo Massacre v. Colombia, IACtHR, 30 November 2012, §239. [↑](#footnote-ref-179)
179. *Luna López v. Honduras*, IACtHR, 10 October 2013, §123; C. MEDINA, The American Convention on Human Rights Crucial Rights and Their Theory and Practice, Intersentia, Cambridge, 2014, p.62. [↑](#footnote-ref-180)
180. *Santo Domingo Massacre v. Colombia*, IACtHR, 30 November 2012, §188. [↑](#footnote-ref-181)
181. Hypothetical, p.11, §54. [↑](#footnote-ref-182)
182. Hypothetical, p.8, §38. [↑](#footnote-ref-183)
183. Hypothetical, p.9, §45. [↑](#footnote-ref-184)
184. Hypothetical, p.7, §37 in conjunction with p.9, §44. [↑](#footnote-ref-185)
185. Hypothetical, p.7, §35; p.8, §41; p.9, §44. [↑](#footnote-ref-186)
186. Hyptothetical, p. 10, §49. [↑](#footnote-ref-187)
187. *Vargas-Areco v. Paraguay*, IACtHR, 26 September 2006, §151. [↑](#footnote-ref-188)
188. Paragraph 6. [↑](#footnote-ref-189)
189. Hypothetical, p.10, §49. [↑](#footnote-ref-190)
190. *Rio Negro Massacre v. Guatemala*, IACtHR, 4 September 2012, §289; *Nadege Dorzema et. al. v. Dominican Republi*c, IACtHR, 24 October 2012, §259. [↑](#footnote-ref-191)
191. Hypothetical case, p.9, §48. [↑](#footnote-ref-192)
192. *Statement of the Inter-American Commission on Human Rights on the Application and Scope of the Justice and Peace Law in Colombia*, IACHR, 1 August 2006, §48; *Blake v. Guatemala*, IACtHR, 22 January 1999, §§31-32; *González et al. (“Cotton Field”) v. Mexico*, 16 November 2009, § 450; *González Medina and family v. Dominican Republic*, IACtHR, 27 February 2012, §251. [↑](#footnote-ref-193)
193. Hypothetical, p.3, §14. [↑](#footnote-ref-194)
194. Hypothetical, p.3, §17; p.10, §50. [↑](#footnote-ref-195)
195. Clarification Questions, no.32. [↑](#footnote-ref-196)
196. Hypothetical, p.3, §13. [↑](#footnote-ref-197)
197. Hypothetical, p.10, § 49. [↑](#footnote-ref-198)
198. Clarification Questions, no.4. [↑](#footnote-ref-199)
199. Hypothetical, p.3, §§16 and 17. [↑](#footnote-ref-200)