

## 2015 INTER-AMERICAN MOOT COURT COMPETITION

### Case of Bolt *et al.* v. the Cardenal Republic

#### I. The Cardenal Republic and the Boneca Indigenous People

1. The Boneca Indigenous People have traditionally resided on ancestral lands that were colonized by Spain. Centuries later, the independent republics of Cardenal and Celeste, formed in the struggle for American independence, agreed to divide the area and entered into border treaties with one another. Both the Cardenal Republic and the Celeste Republic are founding members of the OAS and have ratified all of the organization's human rights treaties. The Cardenal Republic has also ratified the Statute of the International Criminal Court and the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity. Currently, the Cardenal Republic has a population of 100 million inhabitants. According to the most recent census, 4.5% of the total population is considered to belong to some ethnic group and, within that percentage, 90% belong to the Boneca People.

2. In the 1960s, the Cardenal Republic was ruled by a military dictatorship with an assimilationist policy. Hundreds of thousands of Bonecas were massacred, their authorities murdered, banned, and persecuted, and a large part of their territory was confiscated. In





would draft a report on what happened and make it possible to unearth the truth surrounding the reasons, motives, and patterns of serious violations of human rights and international humanitarian law. They also agreed to forums for the participation of victims in the planning, execution, and monitoring of the policy, as well as broad measures for access and participation in the public sessions of the Truth Commission and in the criminal proceedings. The agreement also included a policy of individual and collective reparations that additionally recognize the components of restitution, compensation, satisfaction, rehabilitation, and guarantees of non-repetition. This policy is being carried out by the Ministry of Victims and Reconciliation, which is responsible for administering the programs, including the financial compensation program that is granted to the victims on an

to identify the most serious and emblematic cases, based on four criteria: (i) intrinsic nature of the conduct; (ii) scale; (iii) modality, and finally, (iv) impact of the crime.

22. A high-level commission presided over by the Head of the Public Ministry, and which involved the participation of the Government, representatives of demobilized combatants, victims, and the international community through representatives from the guarantor countries of the process, evaluated this information and identified the cases and perpetrators to be prosecuted. This mechanism included both members of the guerrilla and members and former members of law enforcement, and popular and indigenous leaders convicted or investigated for terrorism-related crimes.

23. In total, 14 patterns were identified from an in-depth study of 236 acts, and 67 individuals were named as the "most responsible" perpetrators—including the entire central command of the guerrillas (comprised by six individuals), three former commanders of the armed forces, and two former Ministers of War. Respected national political analysts and historians coincide in their positive assessment of the representative nature of the selection process.

24. For persons who may have been presented before the Truth Commission but not selected, it was established that the State would waive criminal prosecution and they would therefore not be subject to judicial investigation. However, a free, prompt, and easily accessible judicial mechanism was established so that victims could request the judicial review of any kind of waiver of prosecution that was granted. All in all, 354 requests for review were filed and the Court upheld the decision of the high-level commission in 97% of the cases examined.

25. With respect to punishment, the parties agreed un

erasing what happened will only fuel the reactivation of hatreds and keep old wounds open, thus closing the doors to reconciliation and stirring up conflict, hatred, and revenge. Other

their captivity, there were complaints of abusive raids by law enforcement, torture, and arbitrary detentions associated with the search for the children.

33. On March 28, 2000, a joint army-police anti-kidnapping commando unit conducted an operation in a slum in the capital city. The authorities were led to that area based on telephone wiretaps that allowed them to identify the location where the kidnapped children were potentially being held. According to the intelligence information there were seven captors, three of whom were identified as MRLB militants: Lucrecia Rossi, Paulo Mukundi, and Ricardo Bolt.

34. The anti-kidnapping unit asked the captors to release the children and peacefully surrender, in exchange for which their lives would be respected. The captors responded to the offer with shots fired from a handgun. The official police report stated that a loud noise (like the sound of a grenade) was heard inside the house. The joint commando unit, on the direct orders of President Ferreira, opened fire with long-range weapons and grenades in order to gain access to the structure. Following a momentary confrontation, members of law enforcement managed to enter the house. Of the seven individuals presumed to be the captors, two bodies were found that were later identified as MRLB militants, none of them Bonecas. Bolt, Rossi, and Mukundi allegedly fled through tunnels that had been built in the house. In one room, they found the bodies of 4 children who had died as the result of an explosion.

35. That same day, the 19 remaining children turned up alive in different areas of the city with flowers in their hands. The death of the four children had a severe impact on Cardenalese society. President Ferreira swore on the children's graves that he would not rest until

#### IV. Domestic proceedings in the case

38. A military court opened an investigation against Paulo Mukundi, Ricardo Bolt and Derek Guadamuz (the latter as Commander-in-Chief of the MRLB and the alleged mastermind of the acts) for the kidnapping and murder of the children. All were tried and convicted *in absentia* and sentenced to life in prison. 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. It was determined in the proceedings that three other individuals had taken part in the acts, but that they had died by the time the decision was handed down.

39. The Public Ministry opened an investigation into the events of March 28, 2000 against the army and police commanders who led the operation. The military justice authorities challenged the jurisdiction of the Public Ministry, arguing that it had jurisdiction over the case. In the end, the case was turned over to the military courts for investigation and prosecution. Days later, the case was shelved on the grounds that it lacked merit.

40. The relatives of Ricardo Bolt filed a complaint before the office of the public prosecutor alleging his disappearance, based on the statements provided by Mukundi. The Public Ministry opened an investigation that was closed months later for lack of evidence proving the veracity of the statement. The investigation into Mukundi's claims of torture was met with the same fate.

41. For years the guerrillas denied that their members had murdered the children, while the State claimed that it had been an act of cruelty committed by the captors once they saw that they were cornered. In 2008, the Truth Commission decided to select this case as a



with the community, several of the convictions against area leaders for terrorism-related offenses were overturned, and their immediate release was ordered. These leaders were included in the registry of individual victims and compensated in accordance with the general guidelines of the reparations policy for victims.

44.

49. According to the compensation tables set by the Reparations Act, each one of

53. The Inter-

admitting the petitions filed by Lupita López and Emily and Maximiliano Rossi. Once they were admitted, it decided to consolidate these petitions with the case of Ricardo Bolt, which had been at the merits phase since Report 14/98. Both the petitioners and the State reiterated their petitions in their arguments on the merits of the case. In January, 2013, the IACHR issued a joint merits report declaring the responsibility of the Cardenalese State for the violation of the rights enshrined in Articles 3, 4, 5, 7, 8, 24 and 25 of the American Convention, all read in conjunction with Articles 1(1) and 2, with respect to Ricardo Bolt; the rights enshrined in Articles 4, 8, and 25 of the American Convention, all read in conjunction with Articles 1(1) and 2, with respect to Aníbal and Lupita López, and the same articles with respect to Emily and Maximiliano Rossi.

58. The State expressed its complete disagreement with the content of the report, and in February 2013 filed a case before the Inter-American Court of Human Rights. In its complaint, the State asserted that the Commission's decision jeopardized peace and democratic stability, as the news that the system of transition was going to be changed had been understood by both the military sectors and by factions of demobilized guerrilla combatants as a betrayal of the peace process. The Government stated that it had intelligence information about a planned military coup and about actions taken by groups of 1ahTf 1ahTf rnment