

( Translated by Attorney Eunice Gibson, a CSN Board Member on June 5, 2010)

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Ref: 802316 Prosecutor 216, MT

With all due respect:

I am responding to your official letter dated March 10, 2009, which I found in my office this week. You requested me to attend a judicial proceeding the next day, March 11, a proceeding that I cannot attend because of an ethical impediment.

I beg you to respect the reasons that I will set forth, reasons that form the basis for this impediment.

Since the beginning of the 1980's, my personal circumstances and the apostolic missions that were entrusted to me involved me more and more in organizations, groups and movements that are devoted to the defense and promotion of fundamental human rights. In that field, legal instruments and familiarity with the judicial mechanisms in our society constitute an important resource. Without prejudice, but rather with the hope that the administration of justice can more and more be inspired with human, ethical, social, legal and democratic values, that it could help alleviate the suffering of so many victims with whom I came in contact, I cooperated earnestly with judicial proceedings intended to establish the truth and to correct actions that did serious harm to the human dignity of a lot of people.

Nevertheless, throughout these 29 years a multitude of negative and terrifying experiences undermined and destroyed my faith in the administration of justice. Not just the prevailing impunity that constitutes an affront to the many thousands of victims I have known, but also the direct knowledge of the proceedings, of the techniques and the tricks that invalidate and contradict the lawful basic principles of justice, have planted questions in me, uneasiness, reservations and moral repugnance, as little by little I was led to discover the bottomless perversion of the judicial system. I experienced a radical repulsion of conscience against any other participation in legal proceedings.

Only the testimony of concrete experiences that I have lived through can express the depth of this ethical impediment. It would be impossible to enumerate all of the experiences that have led me to this moral rupture, but if I just describe some of them that

have had the greatest impact and have been most traumatizing to me, you will find my position understandable.

In July 1993, a farming community in the center of Bolívar Province asked me to intervene to try to block a forced disappearance. They had witnessed one morning how Army patrols took away a young man who was trying to load two bulls onto a boat. In the afternoon they saw him come back covered with blood and half naked, almost unable to move, dragged by the soldiers who took him to a vessel and he was never seen again. The community gave me their impression that perhaps the soldiers had tried to crucify him or that they had crucified him, because his hands and his feet were bleeding profusely.

The complaint that I filed immediately with the United Nations resulted in the Government revealing his whereabouts, but they claimed that he had been arrested in conformity with applicable Colombian law and that his injuries had been caused before he was captured and had nothing to do with his arrest; that he had confessed to being a guerrilla and that he had been sentenced to prison by legitimate authorities in a proceeding with all of his constitutional rights.

The “truth” that the government was providing by means of the institutions in which I had put my faith and with which I had cooperated honestly, appeared so far from the true experience of those farmers whom I had met directly in a visit some weeks before, that I decided to make a copy of the file and go and look for the prisoner in the prison in Cartagena. When I read his “confession” to him, he was astonished. He assured me that they had taken advantage of him because he was illiterate. He said he had never said what was written there. He really had been tortured. They inserted sharp sticks into the soles of his feet and this has left him with a lot of difficulty in walking. A doctor had signed a false report and his public defender and an agent of the Inspector General’s office had signed reports stating that they had been with him at trial, but he had never seen them.

That was an encounter with the perverted apparatus that cuts through multiple institutions working together to destroy a poor illiterate young farmer who had no money to defend himself. I learned how they invent false “truths” that were delivered even to proceedings in the United Nations. I was in the presence of a lie that tried to hide a horrendous crime and that was endorsed by numerous government institutions: Military, police, judicial, forensics, defense lawyers, the Inspector General’s office, investigators, judges, officials in the President’s Office for Human Rights, and in the Foreign Ministry. I asked myself if the officials in the United Nations would believe the government and if I had been stigmatized as a “liar”. I could feel the price then of following the dictates of my conscience: it would involve confronting too many institutions and paying high costs that would damage my own reputation.

One of the cases in which I was deeply involved, almost taking on the role of a judicial officer, was the case of Carmen de Chucurí. In the Committee that I coordinated at that time, the Committee for Peace and Justice, it was my job to receive numerous displaced

farmers from that municipality in Santander. They all told dramatic stories about the triple alternatives to which they were made to submit: *“Either you go along with the paramilitaries’ plans, or you leave this region, or we will kill you.”* Commanders from the military base walked around the town in the company of the paramilitary leaders. They worked together to charge the “taxes” to finance the paramilitaries.” They unloaded from buses those who refused, so that they could kill or “disappear” them. They actually used cars belonging to the city to take away the people they planned to murder, so they could throw their bodies into a whirlpool in a nearby stream, so that it would swallow them up.

In our data bank, we recorded hundreds of fatalities and thousands of displaced people. We filed complete complaints, with tremendous efforts for precision and systematization, in every judicial forum: The Office of Criminal Investigation, the Inspector General’s Office, The Office of the President, and under the new Constitution of 1991: with the Attorney General, with the Public Defender, and with the Vice President’s Office. The vigorous communication with all of these institutions; the extreme gravity of the situation; the attention that they appeared to be paying to our complaints, all of this gave us confidence that the justice system would act and that the government would protect the population, would repair the enormous damage that had been caused, and would take measures to see that these actions by paramilitaries would be prohibited. They asked us to cooperate in the search for witnesses who would dare to give testimony and we succeeded in convincing many of them. The officials went to Bucaramanga so that the victims would not have to take too much risk, and they filled many notebooks with testimony. That seemed to point to a very impressive judicial action.

Nevertheless, with the passage of time, my serious doubts about the system of eyewitness testimony grew deeper. The people testified and testified and the years went by without any noticeable result of any kind. We soon realized, instead, that the complaining witnesses were paying high prices and that the defendants remained safe and secure. I remember Mr. Juan de Dios Gómez. He was paid very quickly for his complaints. He was killed. And I remember Mr. Octavio Sierra. I went with him to give his testimony in Bogotá and just a few days later, trembling, I had to mourn his murder. I remember Father Bernardo Marín, the parish priest of the town. He bravely filed a complaint based on what was happening and on October 4, 1990, he miraculously escaped an attempt on his life, along with the municipal clerk. The clerk was the closest collaborator with the parish and with the judge. After they escaped death, they were immediately charged with crimes, based on flagrant falsehoods. On the advice of the Bishop, Father Marín fled the country and died in exile.

Along with all that, a criminal proceeding did go forward through the “Regional Justice” in Cúcuta. This seemed to promise some results, but as soon as the first Attorney General under the new Constitution of 1991 took office, he seized control of the case. He released the two or three paramilitaries who had been captured and he offered all of the soldiers who had been accused to give their version of what happened. They were given interrogatories that were set up to preclude their guilt and that is what happened. Later he called me in for a long questioning, because I had filed the most complaints. From the

very first question, I understood that it was all planned to invalidate my complaints because I had not been an eyewitness to any of the crimes. I could see that the Prosecutor had absolutely no interest in discovering who had committed the crimes nor the identity of the victims. He only wanted to identify those who had filed the complaints. I refused to give the names of the complainants because the memory of those who had paid for their complaints with their lives was fresh in my mind. Because of that, the Attorney General subjected me to arrogant and offensive treatment.

When a judicial officer dared to attempt to have some paramilitaries captured, the soldiers that were there took the lead in gathering a tumultuous crowd of people and they rushed to free the paramilitaries who had been arrested. They were not punished but the judge who had had them arrested, following all legal formalities, was punished. All of this demonstrated that trusting in the justice system did not result in any solution. On the contrary, there were very high costs for the complainants. Soldiers, people from the Inspector General's Office, and journalists then connived to stigmatize, in the court of public opinion, all of us who made complaints. They were able to count on the large and prestigious communications media, such as *El Tiempo*, *La Prensa*, *RCN Radio* and others. They destroyed our reputations gratuitously, without offering us even a chance to reply.

When the Attorney General's Office, the Public Defender's Office, the media and other institutions were closing ranks in solidarity with the military and the paramilitaries, the Commander of the Army charged me with "*making a false criminal accusation, and libel against the armed forces*". I was converted, then, into someone "guilty of justice" for daring to seek justice. The "truth" that I made up fantasies about paramilitary actions supported by the Army, and created imaginary lists of deaths, disappearances, and displacements was broadcast all over the country. We had to wait 13 years, until the creation in July 2004 of the truce zone in Santa Fe de Ralito, where the highest paramilitary commanders admitted publicly, in their speeches, that the Government had supported the paramilitary action in El Carmen de Chucurí and that it would have to admit responsibility for what happened.

The case of El Carmen de Chucurí was packed with demoralizing lessons. I was left for all time with profound questions about the validity of testimony in our judicial system. Everything about the case showed us that the testimony did not produce any effect at all on justice. But the essence of the problem came to light one day when a group of about ten farmers who came from an area near El Carmen came to Bogotá, accompanied by the Police Inspector himself, to file a complaint about the arrest, torture and cruel murder of one of the citizens by a collection of soldiers and paramilitaries. They even brought along the bloody cord with which they had tied the victim up and dragged him to a river.

The Attorney General's first Assistant spent two days receiving the testimony. Finally, he gathered us all together and he told us: *Your testimonies are very impressive but, please, don't get your hopes up; tomorrow the military will bring the same number of witnesses to swear that everything you all say is false, and your testimonies will be null and void.* That's where I found the key that I have been experiencing all this time:

testimony is something that can be manipulated and that's why the great majority of cases nowadays are only based on testimony. At the time the decision is made, which in our system grants the widest margin of arbitrariness to the decision-maker, it can yield to the preferences or interests of the prosecutor, of the judge or of the justice.

But testimony is a "method of proof". Decisions are made with a purpose, which is the political preference of the judges. I will never forget the signal I received from the Attorney General one day when, in between court hearings, we were talking about El Carmen de Chucurí in his office: "*You have to keep in mind which side you are on,*" he said. I have no doubt that he was on the side of the soldiers and their paramilitary scheme, and of the proceedings of the justice system, fundamentally the testimony, because no other kind of proof was involved. Testimony was simply a medium to be manipulated in the service of the decision made in advance: "*for the side that he was on*".

While I was occupied with the search for justice for the victims of El Carmen de Chucurí and in the effort to stop such a horrendous bloodbath, Attorney Eduardo Umaña Mendoza showed me some documents that revealed very clearly the way some agencies of the Government are operating. Among the photocopies that Dr. Umaña Mendoza showed me were the testimonies given to the Inspector General by a noncommissioned officer in Military Intelligence, Bernardo Alfonso Garzón Garzón. The documents laid bare the preparation of numerous crimes that made the national news and identified the perpetrators, all of them government officials. This officer had worked for 20 years in the Charry Solano Battalion of Intelligence and Counter-Intelligence and he, himself, had taken part in the planning of many crimes. His testimony explained cases of forced disappearance, such as that of the university student José Cuesta, of the political militants Amparo Tordecilla and Nydia Erika Bautista, of the M-19 militant Irma Franco, dragged out of the Palace of Justice on November 7, 1985, and of the Christian activist Antonio Hernández Niño, among others.

What gave his testimony more credibility was his decisive effort to find the mortal remains of Nydia Erika Bautista in the town of Guayabetal (Meta Province). Dr. Umaña Mendoza carried out its recovery successfully. One of the most impressive statements by Officer Garzón makes one lose all faith in the work of the government intelligence agencies: "*Because I worked in that unit, I know that you can fabricate any kind of evidence, use any kind of tricks or whatever you want against a person in order to make it look any way you want*".

The evidence given by Officer Garzón to the Inspector General on January 22 and 23, 1991, along with the eight pages in his own handwriting, reveal the uselessness of the Colombian justice system because it shows how such a quantity of criminal acts remained and still remain in absolute impunity.

When Dr. Umaña gave me those photocopies telling about the case of a woman who disappeared from the Palace of Justice, I had already had another experience with that. On August 2, 1989, I had already turned over to the Deputy Inspector General of this

country an 18-page document that had been given to me for safekeeping by another government intelligence agent, Ricardo Gámez Mazuera. In the document he made chilling revelations about what happened at the Palace of Justice, particularly about the people who disappeared in that operation, along with many other criminal acts. But when I was notified that the case was “placed on file”, along with a copy of the investigation carried out, that confirmed for me the sad reality that the investigative agencies in the Colombian government investigate those who file complaints and not those complained against. That is how they routinely manage to certify impunity for the crimes. Later, Dr. Umaña Mendoza mentioned to me that some of the testimony of Officer Garzón Garzón had been stolen from the Inspector General’s files.

Another of the cases that demonstrated to me the unscrupulousness with which Colombian “justice” manipulates testimonial evidence was the case of the massacre at Trujillo. This case brings back memories of experiences too painful and distressing, so that even remembering them still upsets me profoundly. I knew Father Tiberio Fernández, the parish priest in Trujillo, very well. They cut him in pieces. So when people from there disappeared, and when victims and witnesses started leaving the town and even the country, we were able to obtain abundant first hand information. As was done routinely at that time, the government’s judicial and disciplinary institutions came to our Committee so that we would furnish them with witnesses, whom they promised to “protect”. It took us many years to understand the internal reasoning of this method of gathering evidence and the manipulation they performed on us, and the harm done to the victims and to justice itself. Only by observation and analysis, looking a long ways backward at the complete absence of results, could we see the light on the evil dynamic of impunity.

Many of the victims’ families in Trujillo were called to give testimony by the investigating judges. The judges never tried to find even one piece of technical evidence and they never made any observations “on site” or investigated the versions that were rumored throughout the region. They knew perfectly well that no witness would say anything substantial because the threats that were made throughout the area were carried out without mercy: *“anybody who opens his mouth will be floating in the Cauca River the next day”*. And they used that as an excuse to open and close scanty files that only contained the coroner’s report and the useless testimony of one relative or another. That’s how they justified their salaries. They protected themselves against eventual reprisals by the killers and they had a perfect excuse to file the case away and not get into any problems with anybody: *“it was not possible to identify the guilty party”* in spite of the fact that the whole town and the whole area knew their names and fled in terror every time the SUV’s of F-2 of Tuluá or of the Palacé Battalion of Buga appeared in the streets of the town, because some more people could disappear.

With that kind of procedural intrigue, the judicial and disciplinary officials got into the good graces of the killers and the killers were entrenched in the government’s security agencies. Everywhere they practiced a “justice” founded on **only useless testimony** of those who, as far as the case was concerned *“saw nothing and heard nothing.”*

Nevertheless, one day a witness appeared who had seen it and had heard it, and whose remorse compelled him to testify. What this repentant paramilitary, Daniel Arcila Cardona, revealed, with a wealth of detail, was terrifying. I have never been able to forget that morning when he arrived in my office. He was very agitated. He had found out that his testimony was going to be invalidated because a diagnosis from the office of forensic medicine declared him to be “insane”. Immediately I went with him to the office of the Inspector General and I asked that psychiatrists at a prestigious medical school examine him so that they could issue a different diagnosis. After many doubts about whether this was permissible, finally he was sent to the Colombian Psychiatric Society, requesting a complete evaluation, but it took so long to obtain the appointment, that by the time they obtained it, Daniel had already been cut in pieces by the same people who carried out the massacre, with an inconceivable extravagance of cruelty.

Looking backward to analyze the Trujillo case file permits us to conclude that the reception of useless testimony constitutes the core of that justice/impunity that is now customary. But the unexpected appearance of a useful witness turned upside down all the legal work they did to disqualify the witness. Instead of comparing his revelations with the skimpy data furnished by the terrified and useless witnesses and with observations at the site and the multitude of technical tests that they could have carried out, the judges and officers of the Inspector General sent the witness for a “psychiatric examination”. Their psychiatric diagnosis was later invalidated absolutely by committees of experts working with the Trujillo Commission sponsored by the OAS, but by the time that happened, the witness had already been cut in pieces and all of the decisions at the trial and appellate level were already final.

Judge No. 10 for Public Order at that time, the one who accumulated the majority of those ridiculous open files, one night received the *smoking gun*, as she confessed informally to a group of legal scholars from various governmental institutions: they had brought her “two gunny sacks full of human heads pulled out of the Cauca River”. That corroborated the testimony of Daniel Arcila, but the connivance of all the institutions with the system of impunity resulted in the failure of any “scholar” that was present to file a formal complaint about her confession or to urge justice officials to carry out any investigation and no one has ever known what she did with those heads.

Another episode that confirmed for me the inconceivable perversion with which “justice” acted in the Trujillo case had to do with another piece of testimony. An associate who was close to Father Tiberio did not want to abandon the country without contributing something to the investigation, because his conscience required that of him. At that time, we did not yet know the horrifying evil with which the judicial process was carried out and we went along with some security measures furnished by the Inspector General’s Office and the Office of Criminal Investigation, so his testimony was taken. The judge’s attitude seemed very strange. A few minutes after starting it, he postponed taking the statement for two days, but only after he had clearly identified the witness and questioned him informally about what he could testify to.

On the second day, the same people who had carried out the massacre kidnapped the witness's mother. They promised to kill her along with the rest of the family if the witness did not refuse to continue his statement. They had photocopies of the first page of the statement in their possession. There could be no doubt: the judge had given the killers the copy of what the witness had already said and they knew how to neutralize the witness through terror. I immediately placed this situation in the hands of the highest judicial and disciplinary authorities. An honest ruling on this blackmail would have allowed the Supreme Court even to reconsider the acquittal of the killers, which had been immediate. Nevertheless, five years later I was notified that the case had been filed away, because of the statute of limitations. In those five years, the only procedural activity had consisted in calling me to sign the complaint. No other proceeding had been carried out before the statute of limitations expired, so that the impunity would be complete.

The lessons we can see when we look back seriously are sadly very clear: the justice system relies on "testimony alone", combined with the corrupt use of testimony and the use of the resources of the statute of limitations and *res judicata* to enclose the disgrace of injustice in strongboxes made of steel.

But sometimes hope is stubborn and it clings to small possibilities to alleviate the suffering that can become unbearable. When I attended one of the hearings on the Trujillo case held in Washington before the Inter-American Commission on Human Rights, I was surprised by the attitude of the representative of the Colombian Government. He admitted that he had no arguments to offer in defense. He deplored the horror of what had happened and suggested the creation of a nonjudicial committee to establish the truth of what had happened and to make recommendations. With inevitable doubts, I committed myself completely to carry the project forward. Before my incredulous eyes the Committee was created and it performed uncommonly well.

After four months of intense work, its conclusions were convincing, in spite of the fact that seven governmental institutions and five ministries were represented, including the military and the police. The conclusions admitted the responsibility of the Colombian government, not only because its agents took part in the awful crimes, but also because its judges made decisions that were contrary to reality and its other authorities failed to do their duty. President Samper publicly committed himself to carry out all of the recommendations made by the Committee and that the Inter-American Commission on Human Rights could count on it. Fourteen years later, nevertheless, not one of the recommendations has been carried out. Impunity continues just as defiantly as it did at the moment of that appalling genocide.

But the perversion with which testimony is manipulated in the judicial institutions in Colombia does not just look to hide the responsibility for the crimes of agents of the government, or of the Paramilitary/Government and guarantee them full immunity when they face justice. It also invents false culprits, in order to ravage the liberty of innumerable innocent people, to discredit groups, organizations or movements that



criticize the government, or simply to neutralize or to terrorize complainants or witnesses, turning the accusers into the accused.

As an example of this, I can never forget the tragedy of a poor farmer whom we took in along with his wife and his seven children in October 1992. They stayed in a shelter that we had for displaced people in Barrancabermeja. His house and two others, located near the airport in Barrancabermeja, had been burned down by the Army. The soldiers told them that since they had not warned them that there were guerrillas nearby, so that they could attack them, that made them accomplices with the guerrillas and that's why they burned down their houses. Not only that, they took away the identity documents from these poor farmers and then started asking them for their documents every time they passed a checkpoint. They announced that wherever they found them, they would kill them. Our complaints and demands for protection from the Inspector General counted for nothing and nothing was done.

Three years later, this farmer was living in a poor neighborhood in the suburbs of Barranca, where he paid a token rent and managed to buy an old and beat-up motorcycle, that he paid for in payments of hunger. He thought that after three years the persecution would be over. Nevertheless one day in February 1995, when he got up he saw his little house surrounded by soldiers who seized him and took him away. On the way to the New Granada Battalion headquarters, he was able to hear the Lieutenant talking to the soldiers, asking them how they could fabricate some evidence against him. One soldier suggested to the Lieutenant that they use two alleged guerrillas already in custody at the headquarters, because they would have to "cooperate with the justice system" in order to have their sentence reduced. This would be the best time to negotiate with them in order to get them to accuse the farmer. The new "evidence" that they made up was so stupid and had so many contradictions and was so incoherent that nobody could have imagined that it would be accepted.

We were touched by the difficult situation of this former lodger and his family so we searched for a lawyer to defend him. The lawyer, after examining the evidence, thought that this case would be too easy, since the set-up was so clumsy that there was nothing to hang onto. He demonstrated to the court that the motorcycle, that the soldiers swore had been given to him by the guerrillas for his guerrilla activities, had been sold for pitifully small payments. The former owner proved that with papers in hand. Same with the homemade shotgun for hunting that he had in his bedroom. Almost every farmer has one, but the soldiers insisted it was the one that the guerrillas had stolen from a woman named Carmen after they killed her.

It was proved, through the testimony of her own children, that Carmen had not been murdered, but had drowned in the river. It was proved that the supposed guerrillas who were negotiating the reduction of their sentences could not have been bodyguards for any commander, as they were saying, because at that time they would have been only 12-15 years old and besides they contradicted each other when they identified themselves several times as militants for the ELN and at other times for the FARC.

The manager of Ecopetrol himself certified that the supposed attacks on the pipeline that were charged to this farmer had never taken place. The soldiers had sneaked a paper into the farmer's shirt. It contained the name and address of the owner of a pizzeria, and they were trying to prove that he intended to kidnap her, but graphology tests showed that the handwriting was not his, just as it was shown that the people whose "kidnapping" they were trying to pin on him were never kidnapped at all.

All of the "evidence" collapsed with incredible ease, but what did not collapse was the guilty verdict, based on *"the rules of healthy criticism"* that prosecutors and judges habitually reach for to support their sovereign liberty in the evaluation of the evidence. These "rules" are never made explicit, nor are they analyzed along with the evidence. They have been converted into a cliché that supplants the absence of proof. How can someone continue to believe in justice?

This judicial connivance, unfortunately, doesn't constitute exceptional, unusual, or extraordinary conduct in Colombia. It is much more "normal" than anyone could imagine, and that is demonstrated in the book *"Liberty; a hostage to "democratic security"*, based on real files. The book calculates that just in the two first years of the government of President Uribe Vélez there were 6,332 arbitrary arrests.

Once when I was in Cali, I found out, thanks to the Public Defender, that on that day (October 11, 1995) the seventh search of the home of an honest and well-known labor leader had taken place. The next day I visited the neighborhood where he lived and I talked with many of the people. I found out that there had been an infinity of arbitrary actions, even tortures and pillages by the Police, but nobody was able to do anything about it. I tried to intervene directly in the case of the labor leader, because these procedures seemed to me so aberrant that I was very curious about how "justice" could legitimize that kind of depravity, that as the people revealed, was much more routine than one could imagine.

After having the opportunity to read the file, the first thing that caught my attention was that during just one morning, an agent of the Judicial Police, Henry Cabrera, had testified before a prosecutor and had requested a search warrant; the prosecutor had filed the motion for the search warrant, and the search had been carried out. Agent Cabrera swore that he had overheard a telephone conversation in which an unidentified person complained that in the house there were weapons belonging to the guerrillas and "subversive propaganda".

According to the statement of facts, the police arrived without a court-ordered search warrant and when the owner of the house refused to let them in without the warrant, they broke down the doors, climbed the terrace, photographed the contents of the house, called the inhabitants names for several hours and confiscated: two folders containing complaints about massacres, a video containing the complaint of a forced disappearance, and family photographs.

An hour and a half later Prosecutor 115 arrived with a Colonel of Police, carrying the “search warrant”. The colonel called the labor leader, who by that time had arrived at his home now occupied by the police, and the colonel asked him if it was true that he had belonged to the Patriotic Union Party. The labor leader said that he had and the colonel then said that that was proof enough that he was a “subversive”. When they wrote up the report on the search, the owner of the house asked to make a record of the damage done, but the prosecutor took him aside and “advised” that he not demand the making of a record because the colonel “could file criminal charges”. There was no doubt that we were facing a Kafkaesque and Macondian “justice” system.

Everybody was telling me that to make a complaint to the Inspector General’s Office in Cali was entirely useless, because the office was totally ineffective. So I went to the Inspector General’s Office official assigned to the Judicial Police in Bogotá. But Dr. Fernando González Carrizosa, who was famous for being effective, the first thing he did was to send the complaint to Cali, where, once they established that a motion for a search warrant and a search warrant itself existed, they considered that the law had been followed and they filed the case away, ignoring all of the irregularities used to concoct those documents, and ignoring the other eight criminal acts complained of. The order to file the case away was appealed, but then Dr. González Carrizosa resolved that by waiting until the expiration of the six-month statute of limitations provided in the Disciplinary Code for “filing a case away”.

My insistent application to the disciplinary authorities urged that they examine how irregular it was to make an anonymous call, without anyone to take responsibility for the accusation, the basis for such serious attacks on the liberty of a person and of a family. That very same search provided the most compelling evidence that the anonymous information was false. That also corroborated the fact that the other seven searches were based on false accusations. Nobody took responsibility for those attacks on liberty and nobody found himself obligated to accept criminal punishment for them, nor to pay for the damage.

The person responsible for all this abomination was an anonymous phantom that supposedly was talking on the other end of a phone call, in a “call” that quite probably never existed, and as a nonexistent phantom, it can never be touched by a justice system; yet it was accorded full credibility by police, prosecutors, judges and the Inspector General’s Office and given effective power to wreck the lives, liberty, property and reputation of honest people. In this whole proceeding, our system of “justice” and “disciplinary control” seemed to me to be absolutely absurd, aberrant, and radically immoral, and it was still more aberrant and immoral to refuse to examine similar aberrations and to cover them up so hypocritically with the veil of “statute of limitations”. Unfortunately, I have seen proceedings such as this repeated an infinite number of times and that reality makes it “normal”.

I have often asked myself if all judicial officials are so evil, or if these cases, even though they are so numerous and have been repeated in so many areas of our geography and in so many years of our history, may still, even with everything, have a certain character of

exceptionality. In reality, I have known honest officials throughout all of the El Carmen de Chucurí proceeding, the Trujillo case, and the Magdalena Medio case, but their efforts were always ineffective and not a few of them were close to being punished or discharged, or forced to resign. Our cooperation with them always ended in high costs for the victims and legitimization of impunity.

One of the cases in which the circumstances made me believe that the justice system could be effective was the case of Meta. Ten years after the genocide of the Patriotic Union Party, the Citizens' Committee of Meta had done an admirable job of collecting information, and we ended up with a list of 1,033 victims, arranged by municipality and by date. Nevertheless, there was not justice in a single case. Every single one of those cases remained in total impunity, and that was not for lack of information or lack of testimony. Several of the paramilitaries who were in the service of Victor Carranza had made terrifying confessions about their criminal structure, but all of that, collected in Case # 019, which in turn accumulated another 18 cases of concerted and horrendous crimes, resulted in a decision of "not guilty". The Fourth Public Order Judge in Villavicencio, Marcela Fernández, had to go to inconceivable extremes in order to find the professional killers not guilty of the very crimes they themselves had confessed. She found it "incredible" that they would have committed them. When almost the entire Citizens' Committee for Human Rights had to leave Villavicencio because of threats to their lives, we were presenting the reports to high officials of the government, of the Attorney General's Office and of the Inspector General's Office, and we saw the possibility of creating a Committee-Meta, this time trying to answer the question: why does the justice system not function in Meta?

We would have had to have very strong participation by the Attorney General's and the Inspector General's Offices in order to get access to the files and to identify the bottlenecks that were keeping the justice system from effectively handling the more than a thousand crimes. The Attorney General's Office and the Inspector General's Office were solemnly committed to carry out their functions. A major publicity effort was undertaken by the Committee-Meta and the German Ambassador was set up as Overseer.

Just a few days after the ceremony, it was time to start visiting the municipalities to interview all of the authorities. In those interviews, the officials of the Attorney General's Office and the Inspector General's Office play a role of the highest priority. A large crowd arrived at the airport, except the officials from the Attorney General's Office and the Inspector General's Office. At the same time, the Samper government started using that Committee which was not functioning as a cover to defend himself against criticism by the international community at the United Nations because of the impunity in Meta Province. This produced the resignation of all the of the non-government members of the Committee, so that they would not continue to be used by the government in such a dishonest way. The absolute impunity continued and the remaining members of the Citizens' Committee of Meta Province were murdered relentlessly, some in Bogotá and others in Villavicencio, and there was no justice for those crimes either.

At the time when our hope for the work of the Meta Committee was at its highest level of optimism, I visited the Deputy Attorney General several times, accompanied by Attorney Josué Giraldo Cardona, President of the Citizens' Committee of Meta, who was murdered on October 13, 1996. Everything looked as if the hour of justice had come. But one day one of those few functionaries who stood out for his rectitude discovered one of those stoppers that obstructed any working of the justice system in Meta Province. He gathered overwhelming evidence that the highest officials of the Attorney General's Office in Meta (from the Sectional, the Regional, and the Investigative) frequently met with Victor Carranza, the head of paramilitaries in the area, the one who directed the criminal organizations who had wiped out hundreds of lives and the area, and they drank whiskey and celebrated luxurious banquets together.

The result was that that official who revealed this was fired with lightning speed once we presented the evidence to the highest levels of the Attorney General's Office. Then we decided, along with Attorney Josué Giraldo, to visit the Deputy Attorney General once again to express our astonishment that the first official who dared to reveal the corruption of the justice system in Meta Province would be discharged. The Deputy responded by telling us not to take it upon ourselves to interfere in the internal problems of the Attorney General's Office. That was the end of our hopes. The murder of Josué just a few days later buried our hopes for the justice system even deeper.

Today, when so many lawyers and honest people on the Caribbean Coast assure us that the prosecutors and judges of the majority of the government departments on the Coast have periodically, in recent years, broken bread with the paramilitary leader "Jorge-40" (or with his appointed successors). He asks the officials to explain what they've done and plots against the fundamental rules of the administration of justice on the Coast. By now there is no one who relies on the Attorney General's Office to request serious investigations on that kind of aberration. Even if they would formally announce an investigation, by now nobody would believe in it.

It is said that "hope is the last thing you lose", but its capacity for endurance is not infinite either. Nevertheless, I have tried many times to put the justice system to the test and to attempt one time or another to use the procedures set up in our system of laws, to see if by chance it would function. At least the attempts would serve as historical records of the fact that it does not function. In the last few years, because of circumstances and because of the apostolic missions that have been assigned to me, I followed more closely the hundreds of crimes against humanity that have been perpetrated in the areas of Urabá and northern Chocó Province.

At the beginning of March 1997, I was in Turbo coordinating the installation of a team of religious, men and women, and lay people from the Justice and Peace Committee that was to accompany the thousands of displaced people in the region. Just at that time another several thousand displaced people arrived at the Turbo Stadium. They came from more than 30 communities from the riverbanks in Cacarica and the other tributaries of the Atrato River.

Listening to those people throughout several days revealed the horrors of the “*Operation Genesis*” commanded by General Rito Alejo Del Río who commanded the 17<sup>th</sup> Brigade at that time. Hundreds of paramilitaries also took part in that operation. It’s difficult to imagine that so much cruelty could be possible and that such a massive violation of so many human rights could be conceived of by a government that claims to be founded on the Constitution of 1991.

We were not only moved by the bombings of civilian populations; the audacious and concerted actions confessed by both soldiers and paramilitaries; the scorn and denial of human life and every individual and collective human right; the demolishing of whole settlements, many of which were burned down; the terrifying inhumanity of the massive displacement, so much more cruel when it involves thousands of people who had to add to their terror the total lack of basic necessities.

There were acts of cruelty so horrendous that humanity has only recorded them under the most inhumane tyrannies, such as the decapitation and cutting in pieces of Marino López Mena on February 27, 1997 in the settlement of Bijao-Cacarica. The soldiers and the paramilitaries even played football with his head. General Del Rio, who directed the entire military-paramilitary operation known as “Genesis”, counted on the enthusiastic endorsement and personal and friendly support of the then-Governor of Antioquia, Álvaro Uribe Vélez, later the President of Colombia. For me that explains the support that the government has maintained for total impunity.

The first attempt at legal defense for all of these displaced people took the form of 57 civil rights actions filed by heads of families. The justification for this petition could not be more evident. Nevertheless the various courts and tribunals that should have made a decision at the trial or first appellate level, reached for every evasive means imaginable to relieve the President and the military high command of responsibility. Some hid behind lack of territorial jurisdiction; others claimed that the civil rights claim was not intended to protect collective rights, ignoring the fact that all of the claimants were trying to protect their individual rights as heads of families; other judges denied the facts without making any effort to verify them; and finally, the Court of Appeals in Antioquia, which consolidated appeals, decided to ignore all of the statements that other judges had received on what had actually happened, and relied on the readings that the judges had made at their desks, functionaries entirely separated from reality. They followed their ideology and politics, subject to whoever was in power at the time, claiming that displacement in Colombia is caused by “*fratricidal internal disputes among illegal groups*”. I was dumbfounded to find out that all the appeals court judges based their finding, not on facts absolutely verifiable, but on their personal opinions about the conflict, opinions that could not survive any confrontation with reality. I went back to asking myself what role the Colombian “justice” system plays in the reality lived and suffered by the victims. I had to accept the verdict in the decisions that gave a convincing answer: the truth is the colossal absentee.

What was experienced in the Lower Atrato River area and in Urabá in Antioquia Province beginning in 1997 was terrifying. General Del Río put together a unit for

action, using the 17<sup>th</sup> Brigade and an ample number of paramilitary groups in the area. The effect of that was measured in hundreds of crimes against humanity, such as extrajudicial executions, tortures, forced disappearances, forced displacements, bombings of the civilian population, sexual abuses, pillage, destruction of the belongings needed by the people for their most elemental survival, arbitrary arrests, judicial frame-ups, and installation of paramilitary bases in coordination with the military and the police, in full view of everyone in the community.

But not even the complaints by the second in command in the Brigade, Colonel Carlos Alfonso Velásquez, nor by the Mayor of Apartadó, Dr. Gloria Cuartas, produced any corrective measure. They just filled a file that was growing larger with the complaints of soldiers and former soldiers, merchants and business people in the area and remorseful paramilitaries. As the Executive Secretary of Justice and Peace, I initiated a series of complaints and sent certified records to all of the authorities about what was happening, and my successors on the Commission continued to keep minute records of all that went on, filing the records with all the authorities, but all of them continued to downgrade the records and no judicial or disciplinary action was undertaken.

In June 2001 I decided to present to the Attorney General's office a list of 207 crimes against humanity perpetrated in the communities in the area. After I received a very evasive response from the Attorney General's Office, which only sent a list of "preliminary" proceedings that had been undertaken, most of which had already been filed away, I decided to ask a prosecutor who was familiar with the case against General Del Río (File # 426) for a formal investigation of the more than 200 crimes that he was responsible for and that ought to be investigated and punished in accordance with the parameters of international law. This is because they revealed systematic behaviors that are defined by the international community as Crimes Against Humanity. With the goal of urging the application of justice to such barbarity, I asked that I be recognized as a civil party in the proceeding, in the capacity of public plaintiff, as is contemplated by the Code of Criminal Procedure.

That was one of the experiences that gave me the most direct knowledge of the putrefaction of our "justice" system. I felt repugnance in taking part as a "Party to the Proceeding" in a proceeding the antecedents and contexts of which showed the justice system's lack of volition. It also showed an accumulation of acts of cover-up and immunity by all of the levels of power, in favor of the criminals. It showed an abundance of attitudes affected by bad faith and collusion.

Nevertheless, keeping in mind the terror that was paralyzing all of the victims, I decided to do it as their representative because I was affected morally by all the crimes that left and right had destroyed an infinite number of lives and human values. As might have been expected, the Attorney General, Luis Camilo Osorio and his assistant assigned to the Supreme Court, Dr. Guillermo Mendoza Diago, repeatedly denied me that right. They refused to recognize any of the parameters of international law that ought to have been applied and not only that, they concealed all of the information solicited by means of the Right of Petition, although internal regulations do not permit its concealment.

Because of that, I decided to file a civil rights action. That was also dismissed by the Supreme Court but that dismissal was overruled by the Constitutional Court in its Decision T-249/2003, which gave the Attorney General 48 hours in which to turn it over to me, as a Civil Party in the capacity of a Public Plaintiff in the name of all Humanity.

In spite of the fact that the case against General Del Río was nearing the deadline for a decision, I had located numerous pieces of evidence. I had tried to transfer other evidence from other cases, and the results of a number of others that were never concluded. It was evident that Attorney General Osorio, after he took office, first deciding to nullify all the work that had been done by previous prosecutors in the case and then taking it over himself, assigning it to his own office, was steering everything toward the statute of limitations.

He obstructed the investigation of that retired general for any crimes different from “criminal conspiracy” (working with paramilitary groups), putting aside the enormous accumulation of crimes against humanity that his troops had perpetrated together with the paramilitaries in numerous communities. He pointed to the claims of a group of General Del Río’s subordinates as essential investigations that needed to be carried out. Those claims appeared to fit a libretto that was uniformly prepared and rehearsed, filled with lies.

He refused to transfer the case or to carry out a number of tests that had been requested and to verify the multitude of very serious complaints that had been made, such as huge paramilitary bases installed right beside military bases, known license plates and telephone numbers, testimonies of former soldiers and police officers, such as that of the former chief of the judicial police in that area, testimonies by merchants and business people. One of those testimonies very seriously compromised the ex-Governor of Antioquia Province, Alvaro Uribe Vélez, later the President of Colombia.

That file, at the same time it disclosed a multitude of official crimes by means of courageous and convincing testimony, demonstrated, this time with great audacity, the effort to cover numerous high-ranking government officials with impunity. Not one single technical test, not one single on-site inspection was carried out. Not one single murder was investigated, nor were any of the other numerous crimes against humanity.

The Attorney General seemed to understand *criminal conspiracy* as the formal constitution and by-laws of a business, in a manner completely foreign to his duty as a criminal prosecutor. That duty is the reason that his office exists. Further, he impeded investigation of the numerous high officials of the army and the police, provincial and municipal officials, prosecutors, trial judges and appellate judges, who worked together to deprive the victims of protection and to shield the killers. This was in spite of the fact that there had been many complaints by witnesses who based their charges on photocopies of official documents. One complaint was made by Captain Cárdenas, who was in charge of the Judicial Police in Urabá during the tours of duty of Generals Del Río and Carreño as commanders of the 17<sup>th</sup> Brigade. He identified numerous commanders and other high officials by their own names, with times and dates of their corrupt actions.



One of the most heroic witnesses, former soldier Oswaldo Giraldo Yepes, merits a special chapter in this case. He was a professional soldier in the Army's 11<sup>th</sup>, 17<sup>th</sup>, 13<sup>th</sup> and 4<sup>th</sup> Brigades. In all of those assignments, he discovered unanimity of action with paramilitary groups. That led him to seek re-assignments, and finally to his retirement from the Army. In his sworn statements, he reported horrendous crimes and a practice routine among the soldiers, such as "legalization" of dead bodies. This consisted in murdering civilians and later dressing them in camouflage, placing weapons in their hands, then firing them, in order to present them as having been killed in combat.

Once he had retired from the Army, paramilitaries and the police in his hometown, Yarumal, crowded around him, demanding that he work with them. Since they were not successful in co-opting him, they repeatedly filed false complaints against him. Nevertheless, he continued to make numerous of his previous complaints to the Attorney General's Office and to the Inspector General's Office. The Attorney General's Office connected him to the case against General Del Río for "criminal conspiracy" because his testimony supported a conclusion that the General had taken part in all of those crimes, which he insistently denied.

Oswaldo Giraldo Yepes ended up being the **only person charged**, while all of the defendants were exonerated by Attorney General Osorio. The lawyer for General Del Río pressured him in different ways to retract his testimony, and he and his family were subjected to continual threats of death. When they achieved his formal retraction, after a year, they set him free and again he was surrounded by paramilitaries who lived on the La Carolina ranch. The ranch is the property of President Uribe Vélez and is located in the district of Los Llanos de Cuivá, in the municipality of Santa Rosa de Osos. The paramilitaries demanded that he work with them and they offered him a salary. Since they could not co-opt him, they murdered him on April 2, 2005, without the Attorney General's Office trying to do anything to investigate the crime in the light of what had gone before.

The prosecution of General Del Río, in which I acted as a Civil Party in the capacity of representing the public in the name of humanity, showed me as nothing else could the rottenness of our system of "justice". A few weeks before the investigation was closed, my lawyer and I filed complaints of 150 irregularities in the case. We were stupefied by the arbitrariness and lack of legal basis with which every motion that did not support dismissal was denied. It was evident that the case was on track for dismissal, dragging the law with it as well as all of the rights of the victims. Sixty-eight organizations stated publicly on April 2, 2004, that such a conclusion must be confronted vigorously, as one that offended every juridical, moral, and humanitarian principle that humanity has gained through the centuries.

Not to my surprise, and confirming one more time the ethical collapse of the Attorney General's Office, Attorney General Iguarán designated as his Deputy Dr. Mendoza Diago, who had conducted Case 5767 in favor of General Del Río. This case could well have been identified as one of the most scandalous monuments to impunity and

corruption that the country has experienced in its history. I was just as scandalized when Dr. Luis González León, who had, as National Director of Prosecutors, blocked the investigation of 300 crimes against humanity against the Peace Community of San José de Apartadó, was named Director of the Peace and Justice Prosecution Unit. He had accumulated malfeasance after malfeasance, crimes that the “Justice” system also refused to investigate.

In this situation, in which my ethical reserves steadied me in the face of the procedures followed by the Attorney General’s Office, a document fell into my hands. It was from the prestigious international defender of human rights known as HUMAN RIGHTS WATCH, and it was a study entitled “A WRONG TURN”. It illustrated what was going on in the Attorney General’s Office under the direction of Attorney General Luis Camilo Osorio. The document collected testimony of 16 former prosecutors, prosecutors, and other justice system officials: *“More than a dozen ex-officials and judicial officials in active service told HRW that the actions and statements of Attorney General Osorio had made clear that any effort to demand an accounting of high military officials accused of abusing human rights would not be well received.”* *“According to one prosecutor, the message transmitted to his office was ‘lower the profile of cases related to paramilitary activities’, or, according to another prosecutor, ‘don’t interfere with the military’”*. The document added that in the first 15 months under Attorney General Osorio, nine prosecutors who were working on human rights cases were discharged and another 15 were forced to resign.

Another factor that intensified my ethical concerns about the Attorney General’s Office was the case of a technician in the Technical Investigation Group (CTI is the Spanish acronym.), Richard Maok Riaño. I was able to obtain his complaint document. On September 17, 2002, Richard Maok Riaño, who had worked for two years and four months in the Attorney General’s Office as an administrative assistant III in the CTI (1999 to 2002), turned in a report that demonstrated the existence of 54 interconnections between the telephone numbers of employees of the Attorney General’s Office and paramilitary leaders in different regions of the country. He also discovered connections between paramilitaries and members of the Army, the Police, the DAS (Colombian FBI) and Congress.

When the Attorney General found about his discoveries, he discharged him, had his house searched, and had him investigated. When the investigator was harassed with all kinds of threats, he had to leave the country. But the very acts of the Attorney General’s Office coincided with these discoveries: the exoneration of paramilitary leaders and the big promoters of paramilitarism, like Carranza, former Minister Carlos A. Marulanda, Generals Del Río, Millán, Uscátegui and the failure to open investigations in the very numerous cases that involve the military with the paramilitaries; and, on the contrary, the ease and arbitrariness with which they prosecuted community leaders with put-up testimony.

All of this shows that the Attorney General’s Office maintains a false façade before the country: It claims to embrace the constitutional principles that make it an independent

agency that acts according to the universal principles of the administration of justice and to decide cases based on the law, but in the crude reality, that's not the way it is. Its "truth" is not constructed on the basic boundaries of impartiality and independence, but instead depends on the interests of the politically and socially powerful. This creates a profound and enormous ethical problem for those who find themselves involved, whether actively or passively, in its proceedings.

In all of my relations with the Colombian "justice" system I have seen that all of the investigative activity is based almost exclusively on verbal testimony. But the way that they construct and administer the testimony is entirely repugnant and unacceptable from the ethical point of view. I will never forget one episode that I experienced in Barrancabermeja many years ago: when I was walking out of the New Granada Battalion headquarters after filing a complaint about outrageous abuses of the shelter for displaced people, I found a long line of very poor young people. My curiosity led me to inquire of some of them who were waiting there and they told me that they wanted to "negotiate reports of information".

I felt a fundamental moral repugnance, but I also felt sadness and indignation as it was proved to me how they exploit the misery of our people to turn them into "informants" and "complainants" against their own neighbors. Who could have confidence in such "truths" put together in that way and negotiated like merchandise? This is an inconceivable degradation of the truth, its total perversion. It is also a policy of destruction, at very deep levels, of the moral conscience of the people of the society.

We have seen on television where the Army and Police generals deliver bundles of cash to supposed "informants" wearing masks. On October 8, 2002, some communications media reported that in two months the Police had delivered 186,000 millions (about \$93 million) in "rewards" (El Nuevo Siglo, October 8, 2002, page 11A). A few days later they corrected that, saying that it was 186 million, which is plenty (about \$93,000). We saw President Uribe Vélez, on the day after his inauguration, open the "network of informants" in Cesar Province, supposedly composed of 1,220 informants. These he announced as a "down payment" on the million informants that he promised in his campaign, beginning with 100,000. These would receive a salary of 309,000 pesos per month (about \$155).

At the beginning, the Minister of Defense rejected giving them weapons, because she remembered that the CONVIVIR, when they existed, spent 31,800 million pesos (about \$15,900,000) a year on weapons, besides the expenses for communication, training, and personnel. That inauguration was the basis for the Police to reveal and publicize the "Security Fronts" that they had been promoting since the '90's. In Bogotá there would be 6,667 fronts with 70,129 people and in Medellín 694 (1,134 in Aburrá Valley). Could anyone with even the very minimum of moral conscience collaborate with a judicial institution that creates its "truth" in this way?

But one of the cases that has showed me, most persistently and systematically and over the most prolonged period, the collapse of decency in the administration of justice in

Colombia is the attitude of the “justice” system toward the Peace Community of San José de Apartadó. For ten years I have followed closely the lack of justice, the contumacious impunity, the complicity with crime, the cover-ups and the protection provided to innumerable murderers. I see the moral disintegration of the judicial apparatus. The hundreds of incidents that brazenly demonstrate some of this collapse of decency in the “justice” system combine the insolent impunity with which the criminality of government officials and their paramilitary helpmates is protected, with the judicial set-ups by which they try to terrorize anyone who insists on identifying himself or herself as a defender of the Peace Community.

The Peace Community of San José de Apartadó will never forget the terrifying deeds that the Army carried out on July 12, 1977 in the town of Mulatos and they still weigh heavily. (Mulatos is the same place where the massacre of February 21, 2005 was carried out). Eight residents were dragged from their homes at 5:00 a.m., tied to trees, tortured for eight days and later murdered. In order to file complaints against the 16 soldiers, the people hurried to the military base at La Maporita (Chigorodó, Antioquia Province), the previous location of the 17<sup>th</sup> Brigade. The 16 who carried out the massacre were under the command of Lieutenant Gualdrón and Corporals Cruz and Peñalosa. A judicial commission came up to the area and took statements from all of the surviving residents, promising prompt justice, but after 30 years, that still has not arrived.

The violent assaults by the Army and the paramilitaries in response to the creation of the Peace Community since 1996-97 costing more than 180 lives (20 of them slain by the guerrillas and the rest by agents, both direct and indirect, of the government) have been accompanied by numerous promises of justice. Nevertheless, ten years have passed under a series of fierce attacks that can only be called crimes against humanity. The credibility of Colombian justice has progressively deteriorated, leading to the conclusion that it has collapsed in its integrity and its levels of corruption are so great that it can no longer act with any legitimacy.

As a matter of fact, in spite of the more than 700 criminal attacks for which complaints have been filed, both through Colombian procedures and before the international community, there is not a single one in which judicial authorities have achieved any result whatsoever. In the face of this obvious situation, anyone might ask where the key to this impunity is to be found. It is certainly not the lack of formal complaints, as complaints have been filed, with details and clues that would permit any honest investigator to identify the perpetrator in all of the more than 700 attacks. Nor is it the lack of testimony, because more than 120 members of the community and of the local population have provided formal statements and some of them have paid with their lives or have been displaced, forced to leave.

Observing many of the cases permits one to detect the procedures that explain the systematic impunity. The judicial officials have to demonstrate that they are carrying out some kind of procedure. The job for which they are paid requires that. But they have to avoid taking any kind of risk, and that is a heavy burden, so they leave it to the victims. They are always demanding that victims or their families make sworn statements, giving

no importance to the risk they run, and that they furnish information to which only a judicial official would have access.

But when even the statements fatten the file, when the time comes to analyze them, they are discarded, sometimes with absurd levels of arbitrariness. The lack of technical evidence, the lack of on-site inspections, of investigation of contexts and connections, the search for statements supporting the killers, protected by obedience to superiors or their interest in promotion, etc.—all of this means that the principle of “testimony only” will shipwreck any result, thanks to the intrinsic vulnerability of testimony. It can easily be underrated or manipulated, so as to be able to show prosecutorial effort, without disturbing any institutions or any persons guilty of the crimes. In other words, the strategy of “testimony only” allows all of the prosecutorial activity to submit, finally, to the political direction received in advance, which determines beforehand who is guilty and who is not, as well as to the ideological inclinations of judicial officials, or to the pressures of high government officials who design the profound corruption of the judicial apparatus.

The Peace Community of San José de Apartadó, unlike many communities that have been victimized in this country, has made an extraordinary effort to seek justice and to cooperate with the justice system. One of the principles of the Community’s Declaration of Establishment reads: *“The members of the Peace Community of San José de Apartadó are committed to oppose injustice and impunity for what has been done”*. (Art. 3, Paragraph 1, e.). But that is exactly why they cannot accept ineffective functioning.

In July 2000, after the horrible massacre of the six leaders of the town of La Unión, there was an effort to create a *“Committee to Advance Investigations.”* It was made up of representatives from the Attorney General’s Office, the Inspector General’s Office, and the Public Defender’s Office, along with the Office of the United Nations in Colombia. But this effort didn’t produce any result either and all the evidence indicates that the Committee never met.

In July 2004, under the leadership of Luis Eduardo Guerra (a victim in the massacre of February 21, 2005) the Community offered a proposal for a *Committee to Evaluate the Justice System*, with the goal of having national and international experts examine thoroughly the factors that are at work to prevent the justice system from producing any results related to the crimes perpetrated against the Peace Community. That proposal was offered repeatedly in the inter-institutional meetings carried out in compliance with the order for interim relief issued by the Inter-American Court for Human Rights, but the Attorney General’s Office was always opposed to creating this Committee.

On November 12, 2003, I filed a formal complaint with the Attorney General of this country about the more than 300 crimes against humanity of which the San José Community has been the victim. I requested a prompt and impartial investigation, in conformity with the guidelines of international law. Attorney General Luis Camilo Osorio not only failed repeatedly to do his duty, allowing all of the procedural limitations periods to expire, without even opening a preliminary investigation, but also, in open

violation of the constitution, he refused to answer any of the petitions that asked him to explain his illegal behavior.

The House of Representatives Criminal Prosecution Committee was asked to prosecute him, but that was useless too, because that Committee lacks the minimum conditions of impartiality to be able to sue a high functionary of the government and furthermore, the level of corruption in that agency is extreme. I cannot forget the revulsion that I felt when I saw that while I was delivering my statement, the president of the Committee was sound asleep and the other members, as well as the lawyer assigned by the Attorney General, remained in the Congressional cafeteria. It was obvious that the proof and the arguments (presented in the hearing room) had not the least importance to them; what was really important to them were the political negotiations going on in the cafeteria.

It's difficult to find a community of victims that has exerted as much effort to obtain justice, but in this very search, the depth of the moral crisis in the judicial sector has been revealed. In the case of the massacre of February 21, 2005, the Community had a perfect right to prefer that the case be handled by international tribunals, and to refuse to provide more testimony. The testimony would only be ignored so that the systematic impunity could be legitimized, and the lives of more witnesses would be sacrificed.

In 1997 the Attorney General's and the Inspector General's lack of willingness to bring to justice the extremely serious crimes that were being carried out could not have been plainer. As a matter of fact, throughout the whole year, the paramilitaries had a permanent checkpoint installed on the road that leads from Apartadó to San José. The checkpoint was less than five minutes from the military base in the Policarpa neighborhood of Apartadó. It was there that so many people were murdered and "disappeared" and the rest of the people had to suffer the permanent theft of their means of subsistence.

All of the authorities were informed in great detail exactly what was going on, beginning with the President of the Republic and his ministers, those agencies that control the government, and also the local and provincial authorities, but nobody, absolutely nobody, wanted to do anything, in spite of the entreaties that were repeated all year and that were intensified every time there was a new crime. Neither did any criminal or disciplinary agency prosecute the judicial, disciplinary or administrative authorities for their obvious complicity in the crimes. Our entreaties included evidence that they refused to consider.

But to all of that impunity we have to add the permanent campaign of defamation of the Peace Community. On repeated occasions (May 27, 2004 and March 20, 2005) President Uribe hurled public accusations against the Peace Community of San José. These accusations were very far from the truth. It has been equally useless to apply to the House of Representatives' Prosecution Committee to investigate and to charge him with the crimes of false accusation of a criminal act and defamation, just as the Constitutional Court ordered in its Decision T-1191/04, because the Committee doesn't offer the most minimal amount of impartiality that would be required, and there is no other legal means

possible to make him answer to justice. But the effects of these false accusations and defamation have fatal consequences for the Community and for the people of the area.

Many people who live in Apartadó have come up to members of the Peace Community of San José to comment that the atmosphere of discredit around the Community and the people of the area is extremely widespread. Journalists and radio announcers, municipal authorities, and members of the armed forces and judicial agencies are constantly and vehemently spreading an image of the Peace Community as implicated in the insurgency. Everybody ends up believing these “truths” meant for mass consumption, while their intent is obviously evil and criminal.

On February 12, 2003, the Army News Agency placed a communication on its web page: <http://www.ejército.mil.co>. It states that in the town of Caracolí in the municipality of Apartadó, *“eleven terrorists from the ‘Otoniel Alvarez’ gang of the FARC were captured while transporting explosives and munitions”*. It was very quickly proven that this was a frame-up, and a person who had been able to talk with some of the paramilitaries who took part in the frame-up along with the Army gave testimony at the office of the United Nations High Commissioner for Human Rights in Bogotá.

The Army and the paramilitaries had planned to murder two leaders of the Peace Community when the vehicle that the two were going to use would be leaving Apartadó. In order to “justify” the crime, they had placed a box with explosives inside the vehicle, so that the subsequent “investigation” would make them appear to be “guerrillas”. Because it appeared suspicious that there were both soldiers and paramilitaries in the bus terminal, all apparently interested in the vehicle in which the two leaders were going to travel, the driver decided to leave ahead of time. That frustrated the murder because the paramilitaries who were going to do the murder had not yet arrived at the site agreed upon when the car passed it by. So an Army patrol that was farther up on the same road was called and told to stop the vehicle and look for the box of explosives in order to frame all the passengers. This infamous communication by the Brigade was published that same afternoon and has remained on its web site for several years, in spite of the fact that the government periodically tells the Inter-American Court that it has been removed.

The frame-up of February 12, 2003 cannot be uncoupled from the blackmail to which a young man was subjected five days earlier. In fact, just one of the numerous cases of false accusations and blackmail that members of the Community and residents of the area have suffered, is the case of Lubián Tuberquia. It became known through direct and live testimony by officials of the Ministries of Interior, Defense, and Foreign Relations, by the Vice President’s Office, the Attorney General’s Office, the Inspector General’s Office, the Public Defender’s Office, the Office of the United Nations and a number of embassies.

On February 7, 2003, they wanted to make Lubián testify at the Attorney General’s office in Apartadó that the leaders of the Peace Community were guerrillas. They told him that if he refused, they would accuse him of being a militant, with the support of false witnesses. In spite of having appeared at all of the stages of the proceedings, the

Colombian “justice” system did absolutely nothing to investigate the frame-up, neither to protect the victim nor to investigate such criminal behavior by an entire military brigade.

This kind of thing has been repeated so many times at the checkpoints, where first they accuse the farmers of being “guerrillas”, and minutes later, when they have achieved the psychological effect of the fear that is produced by successful frame-ups, they make them all kinds of offers based on the official policies of “re-insertion”. The offers are conditioned on their agreement to accuse the leaders of the Community of being guerrillas. Some young people have given in to the economic cajolery and to the power that the 17<sup>th</sup> Brigade offers them and right now they make up a group of supposed “guerilla deserters” who support the plans designed by the Army to defame the Peace Community.

They now move all around the area. With illegal weapons and illegal uniforms, they take part in threats, tortures, illegal arrests and frame-ups and furnish false testimonies, and are paid by prosecutors and judges. In the last few months (January and February of 2009) this criminal strategy against one of the leaders of the Community who was a member of the Community’s Internal Council has been republished by Colonel Germán Rojas Díaz, Commander of the Voltígeros Battalion. Using continuing harassment, he has made clear to Reinaldo Aleiza that if he does not help to destroy the Peace Community, he will be falsely charged as the “financier of the FARC’s 58<sup>th</sup> front” and also as a “drug trafficker”. The evil of this blackmail, based on accusations that are absolutely false, is obvious, and bringing it to the attention of all the authorities has only produced the intensification of the threats on his life.

The scam of February 12, 2003, considered in the light of the blackmail to which Lubián Tubercuía was subjected a few days earlier, made clear that the plan to eliminate the leaders of the Community was starting to be carried out. Because of that, on February 25, 2003, I filed a civil rights action, pleading for the right to life and other fundamental rights for the 12 members of the Community whose names had been mentioned in the questioning sessions or in the extermination plans at the Brigade

It was another nasty experience with our false “justice”. The Supreme Court returned the case to a distribution court in Apartadó, referring it to a criminal court judge, Nicolás Alberto Molina Atehortúa, who not only violated all of the deadlines, but he also delayed more than 80 days in deciding the case, while the Constitution prescribes that “in no case” may the decision take more than 10 days (Article 86). But he also refused to protect the most fundamental rights when he did not know – or pretended not to know – that a civil rights action may not be confused with a criminal or disciplinary proceeding.

Even more serious, the judges of the Antioquia Court of Appeals: Sonia Gil Molina, Jaime Nanclares Vélez and Yacira Elena Palacio, affirmed that decision, leaving totally defenseless the people who had been so fiercely threatened. They relied on the same “ignorance”, real or fictitious, of the most elementary specifics of the constitutional civil rights action. Worse yet, the Prosecutor Guillermo León Valencia Cossio refused to penalize Judge Molina Atehortúa, ruling that he had respected the legal deadlines in



making his decision. Furthermore, the Supreme Council of the Judiciary refused to penalize either the judge or the appellate judges. After that the Constitutional Court, in its Decision T-327/04 pointed out that they had ignored the very essence of a civil rights action. In several documents I asked if they believed that keeping that judge, those appellate judges and that prosecutor in their positions would contribute to the protection of fundamental rights of Colombians, or if it would put them at higher risk, but I never received any answer.

Only the Constitutional Court, in its Decision T-327/04 came out in defense of the fundamental rights of the members of the Community, but its very clear decisions were always violated and ignored, in spite of the fact that the Inter-American Court for Human Rights has repeatedly demanded that they be obeyed.

The fact that I was pursued, stalked, throughout a decade of working for “justice” for the Peace Community of San José de Apartadó, showed me very clearly the rock bottom of a justice system that has completely abandoned its purpose, that has lost and brazenly refused to recognize the qualities on which the legitimacy of any justice system must be based: impartiality, independence, and integrity. The refusal to recognize these principles produces, on the one hand, a defiant impunity that favors all of those responsible for crimes against humanity and that refuses to examine its institutional and para-institutional practices that reveal how they are rooted in systematic criminality; and on the other hand, a permanent habit of judicial frame-ups that are aimed at making criminals out of the Peace Community, its leaders and the people of the area, to shame them before the country and to justify their plan to kill them off.

In fact, numerous residents of San José have been arrested illegally and arbitrarily by the Army and the judicial authorities have never corrected nor made amends for those acts that were obviously illegal. In the records that have been placed in the hands of the President and of the disciplinary agencies of the government, more than 75 arbitrary arrests were outlined, not even counting all the cases of forced disappearance.

Often the practice of illegal and arbitrary arrest has gone along with the crime of torture. Between February 12 and February 27 of 2004, Colonel Néstor Iván Duque, the Commander of the Bejarano Muñoz Battalion of the 17<sup>th</sup> Brigade tortured at least five members of the Community of San José. They were later released through writs of *habeas corpus*, but the “justice” system never even investigated Colonel Duque for a crime that international law considers a “crime against humanity”.

In subsequent months, several more farmers were tortured by Colonel Duque’s troops in the various towns. All of the authorities have been notified of 45 cases of torture, and that doesn’t count the numerous cases of threats and displacements, but our fraudulent “justice” system has never done anything about it, in spite of the fact that the Colombian government signed and ratified the International Convention Against Torture.

Many farmers in the area have been victims of false accusations, subjected to judicial frame-ups, official inspections, photographed and insulted at the military and paramilitary

checkpoints that they keep putting up in the roadways, their homes and possessions looted, and subjected to robbery and pillage by officials of the government.

Taking photographs at military checkpoints has become common practice and when the people ask what the photograph is for, the soldiers give contradictory answers, but those who have been taken illegally to the 17<sup>th</sup> Brigade installations, report that those photographs constitute the raw material for the frame-ups. There they show albums with hundreds of photos and they pressure you to accuse one or another resident of “being a guerrilla”. Just pointing out the photo, under pressure and torture, they take as “judicial proof” against a victim.

Many of the towns are subjected to pillage by the military raiders. One of the towns victimized most frequently is the town of Mulatos, where again and again they have burned crops, destroyed homes and stolen animals, money, tools, and household goods. President Uribe has been asked urgently to force the Army to return ten pack animals stolen by the soldiers on August 24, 2004 in Mulatos. This is really ruinous for the impoverished subsistence of these farmers. Now they don't have any way to take their few products to market. But our sham “justice” system keeps quiet and does nothing in the face of these outrages.

A number of members of the Community, while being illegally detained in the 17<sup>th</sup> Brigade headquarters, have discovered the illegal presence of paramilitaries on the premises; paramilitaries recruited in the territory of San José. Wilmar Durango, before he was murdered by the very same Army on December 23, 2005, stated publicly numerous times that they were paying him 600,000 pesos (about \$300) a month to testify before prosecutors to whatever the soldiers told him to say. (All of the prosecutors are in the service of the Brigade.)

Samuel Tuberquia was used by Colonel Duque to make false accusations in the actual presence of his victims. They made Gloria Tuberquia sign statements containing numerous lies. They blackmailed her by threatening to take away her baby girl, nine months old, after they kept her illegally at the Brigade headquarters for several months and created a set-up for her “demobilization”. She agreed to it only to keep them from taking her baby away. All of this was well known by our disingenuous “justice” system and also by the Inspector General's staff. They did nothing to investigate or penalize these outrages, or to interfere while these abominations became routine.

In none of these cases did the Colombian “justice” system achieve any result whatsoever. It has never protected nor aided a single one of these victims, nor has it corrected systematic criminal behavior. It has not examined the institutional practices that have been revealed as systematic and routine for more than a decade, in spite of the fact that the international community has consistently demanded such examination and such correction.

The massacre perpetrated by the Army in the towns of Mulatos and La Resbalosa on February 21, 2005 was another occasion that brought to light the government's phony

justice system and its perverted functioning. Once the crime was committed and perhaps because of the powerful international reaction, not only the Ministry of Defense but the Office of the Vice President of the Republic and all the levels of the judiciary hastened to deny any participation by the Army in the crime. Instead they conjured up a false version of what happened.

The Minister of Defense and the military high command asserted that their troops had been two days' march from the location of the massacre, although their presence was evident in a number of towns near the scene of the crime. They tried to prove their absence by means of some documents called "*Insitop*" that register the daily locations of the troops, but that method only served to bring to light that those documents lie. Hundreds of residents suffer the presence of the troops in locations different from those indicated on the "*Insitop*".

The development of Case #2138 in the UNFDH (Attorney General's Human Rights Unit) regarding this massacre has made it very clear, through the confessions of the soldiers who are implicated, that the reports on the location of troops were falsified from the first. The officers in charge gave false information as to their location. This same prosecution has brought to light the fact that the military hierarchy has learned to write up the orders for operations with extreme care, so that everything looks legal. Illegal and criminal directives are issued orally and secretly. That is the way they worked out the plan of action for that massacre, between the troops of the 17<sup>th</sup> Brigade and the paramilitary detachment from the front known as "Heroes of Tolová" who were under the direction of the paramilitary commander known as "Don Berna".

When the written texts match the legal rules, covering up the orders that are transmitted orally and clandestinely, the military and the other government officials demand that the investigative procedure be confined to written evidence. Once all of these tactics were discovered, they also cast light on a lot of other cases where it was suspected the documents furnished by the Brigade were faked, "adjusted", or changed "ex post facto". One example would be the numerous documents offered in the prosecution of General Del Río that disagreed completely with the real and concrete testimony relating to the events in question.

The Assistant Attorney General for Antioquia, Francisco Javier Galvis, hastened to tell all the radio stations that the Community's victimization was because of the guerrillas and that their territory was used by the guerrillas for "summer vacation". Not content with that, he accused the historic leader of the Community, Luis Eduardo Guerra, slaughtered in the massacre, of devoting himself to the fabrication of explosives, that one of them had exploded in his own house last August, and that Guerra had subsequently accused the Army of causing the explosion.

Such a pack of lies didn't even agree with the investigation that had been carried out by his own office the previous year. The Office had proved that the grenade that exploded in Luis Eduardo Guerra's house in August of 2004 had been left by the Army in a field belonging to the Community. He stored it in his house after the soldiers at the checkpoint

assured the Public Defender that it “was not dangerous” and they did not want to accept its return. They insisted that grenades like that one were only used to produce smoke in order to let pilots flying over know where the troops were.

It is difficult to believe that the Director of the Attorney General’s Sectional Office would not know the outcome of an investigation conducted by his own office. More than that, it is inexcusable to spread such tabs to the mass “information” media at a time when a Community has suffered such a horrible massacre. How can we not think that he was trying to protect the guilty and that he was trying to blame the victims by spreading lies, when making up such things and spreading them was the worst thing he could do? The phony “impartiality” and “independence” of the justice system, along with its internal perversion, could not have been displayed more nakedly.

But simultaneously, the Minister of Defense and the Office of the Vice President hastened to make up another spurious version of the massacre. Their goal was to placate the international protest, which was very intense. They made use of a fake “re-inserted” individual, who in reality was a poor resident of the town of Las Nieves, in the area of San José de Apartadó. He had been tortured in March of 2004 and later subjected to a judicial frame-up, to blackmail, and brainwashed so that he lost his moral conscience and he found himself in the power of his torturers.

I had met this victim, Elkin Darío Tuberquia, after his arbitrary arrest on March 12, 2004 when he told me personally about the tortures to which he had been subjected by Colonel Néstor Iván Duque and another soldier who was called “Big Boss Steven”. He gave me his statement in an atmosphere of absolute spontaneity, an atmosphere he created himself. He told me that the Colonel twisted his shirt collar until he was almost strangled. He lifted him up off the floor by the hair, with his neck twisted, and hitting his head against the wall while kicking him in the stomach. After beating him up, he came with a cell phone in his hand and told him that if he wouldn’t “confess”, he would turn him over to the paramilitaries who were already at the door waiting to kill him. He told Elkin that he had ten people ready to swear that he was a guerrilla (other young men who had given in to the pressure to make false accusations. They were bribed or threatened so that they were ready to act as “witnesses” in court.)

When the Public Defender arrived, the Colonel told him that Elkin was “cooperating voluntarily with the Army”. After he had related the false stories about the Community’s leaders, and told about the raising and selling of cacao, which, according to the Colonel, was “for the guerrillas”, the Colonel made Elkin say that he was a guerrilla and say that the guerrillas are living in San José. He told Elkin that if he did not say it, the paramilitaries would kill him the minute he stepped out the door, or in case he was sent to jail, they would murder him in the jail.

Elkin explained to me that he had collaborated with the guerrillas twelve years ago and that he had already served three years in jail for that, but that he had not been with the guerrillas for a long time. That was corroborated by one of the paramilitaries who were with Colonel Duque. Later “Big Boss Esteban” came with a video camera and he said

for Elkin to stand in front of it and say that he was a guerrilla. When Elkin repeated his real story, the officer “Esteban” and Colonel Duque commented that there would be no help for it; they would have to turn him over to the paramilitaries so that they could kill him.

In the several conversations that I had with Elkin after this, he told me about the terrible sufferings he had had years before because of completely arbitrary persecution by the Army, which had left him ruined financially. They had made him flee in conditions of terror and misery and he had to ask himself, fearfully, about the future of his children, of his wife, and of his home. In fact, the town of Las Nieves, where he had lived, was now completely empty because of the terror. Elkin was set free a few days later, thanks to a writ of *Habeas Corpus* brought by the Public Defender’s Office, but he was arrested again on December 22, 2004.

When I found out that there was a second warrant for his arrest, I requested a copy of his file, in order to find out why they were so focused on a person who had already done prison time for his collaboration with the guerrillas in the past, and could not be considered a militant at the present time, except for their eagerness to bag the high numbers of “re-inserteds” for which the government was pressuring the military units.

His file, analyzed in detail, revealed a dirty judicial frame-up: not only Elkin, but also the other man who was captured and tortured with him, Apolinar Guerra. They had made them sign a confession, although they did not understand what was being done to them. They told them that they had a lawyer at the Public Defender’s Office, but she did not visit them and yet she counter-signed their confession. With extreme haste, they were found guilty and new warrants for their arrest were issued to comply with the “plea bargain” that they supposedly had accepted “freely”.

Both of them assured me that they had never seen the lawyer in any of the proceedings and that they did not understand what they were signing. With the same unusual speed, the Appellate Court for Antioquia affirmed the finding of guilt, paying no attention to the complaints of torture. They tossed those complaints arbitrarily, relying exclusively on their own feeling that the complaints must be false. They failed to order even the most minimal investigation of their objectivity, in spite of the fact that torture is a crime against humanity, and that the Public Defender had affirmed the complaints.

After their second capture, one that flagrantly violated the order of the Constitutional Court (Decision T327/04) that prohibits bringing arrestees to the Brigade headquarters, Elkin’s whereabouts was a mystery. Not through the Public Defender’s Office, nor through the Ministry of Interior, nor the Inspector General’s Office, was it possible for him to have access to a lawyer. Several weeks later, they said that “he was re-inserted” and that he was “co-operating with the Army”. From what he told me about his moral convictions in the long talks that we had, in an atmosphere of absolute freedom where he could talk about very deep moral positions, facing as he did, the reality that was destroying him, I arrived at the conclusion that he had been subjected to some psychic maneuvers that led to the breakdown of his moral conscience.

Just a few weeks later the massacre in the towns of Mulatos and La Resbalosa took place. Why was I sad but not surprised when I heard through the mass communications media that Elkin Tuberquia, who was posing as “re-inserted from the guerrillas” was denying all of our complaints about the Army’s responsibility for the massacre and accusing the guerrillas? I heard his “version” on the radio and I read it in the press statements that the Ministry of Defense and the Office of the Vice President were disseminating profusely in those days. In that version they dared to present Luis Eduardo Guerra, the historic leader of the Peace Community who was slaughtered there, as well as the other victims, as militant guerrillas who had decided to “re-insert themselves” and that Luis Eduardo had telephoned Elkin to help him in the process. The guerrillas had found out about his decision and that was why they had murdered him.

Anyone who had the slightest acquaintance with Luis Eduardo and the other victims could understand perfectly, immediately, that anyone saying such a thing was insane, or had been subjected to blackmail so extreme that his life was at stake, but the vast majority of the Colombian public and the world did not know the victims. They had no other way to judge such a story except with suspicion, but public opinion was assaulted with a nastiness that was unusual, difficult to imagine. I had no doubt that Elkin had suffered a profound “brainwashing”, that he was a puppet in the hands of his torturers and that his moral conscience had been absolutely crushed and turned off.

On May 25, 2005, the Second Constitutional Commission of the House of Representatives scheduled a second debate about the massacre carried out in San José de Apartadó on February 21 of that year. On that occasion the obscenity of the lying exceeded all limits when retired General Jaime Alberto Canal, a member of that parliamentary commission, upon taking up the Army’s defense, made use of four false witnesses. One of them was Elkin Tuberquia. The accumulation of falsification that the ex-General himself was capable of, added to those pronounced without the slightest hesitation by the four false witnesses who were presented as “re-inserted guerrillas”, was without shame in its assault on the truth.

In the few minutes allowed to me, I exposed in bold strokes the judicial frame-up that had victimized Elkin Tuberquia and I reported on my repeated petitions to the President of the Republic, asking that Elkin be turned over to an international humanitarian entity that was highly credible so that he could have access to attorneys and psychologists, and leave the circle of alienation in which his victimizers were keeping him. A similar proposal was immediately approved by the Second Commission of the Chamber, with a directive to carry out the transfer before the session ended, a proposal that was not carried out.

The case of Apolinar Guerra, the other person who was tortured along with Elkin Tuberquia by Colonel Duque and subjected to the same judicial frame-up, is even more worrisome. The soldiers have already used him on several occasions to torture children in the Peace Community. An excessively depraved psychic process must have been carried out to convert a torture victim into a torturer. I have repeatedly asked the

President of the Republic to permit an investigation of this case by experts, but I have never received any answer.

But the wickedness of our sham “justice” system goes to such extremes that at the very same session of the Second Commission of the House of Representatives, on May 25, 2005, General Carlos Alberto Ospina, Commander General of all of the Military Forces, stated that Colonel Duque, who carried out so many tortures and blackmails, had already been acquitted by the Inspector General of the charges of torture, thanks to the recantation of his accusers, who were his victims. There is no commentary adequate to describe such terrifying levels of evil.

On February 28, 2007, thanks to a Petition filed months earlier, there was an answer from the Provincial Inspector General’s Office in Apartadó allowing me to examine disciplinary file 045-06869/04. The Inspector General’s Office ordered the proceedings that investigated the conduct of COLONEL NÉSTOR IVÁN DUQUE LÓPEZ, who had tortured several residents in the area of San José de Apartadó, along with many other criminal acts, to be filed away. As a matter of fact, the file showed that the Provincial Inspector General ORLANDO ALBERTO TIRADO GONZÁLEZ ordered the definitive closing of the investigations on February 15, 2005. Reading the file, you get the impression that Colonel Duque himself is conducting practically all of the proceedings. Because of his position he is telling the Inspector General’s staff what documents should be considered, who should be interviewed, or whose statement ought to be taken, as well as what things should be included as attachments.

The only thing the Inspector General did was to summarize the items that were delivered, driven and controlled by the Colonel and that is the basis for the conclusion to “invalidate the behaviors that had been induced”, so as to file the case away and “clean up” his service record.

The most important part of the file is the recanting of the two who were tortured: ELKIN DARÍO TUBERQUIA TUBERQUIA and APOLINAR GUERRA GEORGE, who gave statements right in the 17<sup>th</sup> Brigade headquarters (on January 13 and 20, 2005). They both then stated that their complaints of being subjected to torture were “untrue”. These retractions revealed extremely vile methods used by the justice system and by disciplinary agencies. This was especially true for those of us who had received their complaints and those of their families in March of 2004 and who could identify precisely the details of the brutal tortures with these same victims. The victims themselves had later detailed the tortures minutely to the Regional Public Defender, who had used the testimony to file a motion for *habeas corpus*.

These victims, as has subsequently been the basis for detailed complaints filed on other occasions, were co-opted by the Army to work as paramilitaries, who have involved them in the commission of multiple crimes. There is evidence of a transformation of their consciences and a destruction of their moral principles. This has brought them, not just to lie in such a flagrant manner as they did in these proceeding, but also to hatch a lot of other frame-ups in favor of the Army and against the Peace Community. It has brought

them to take part in criminal undertakings, including in some in which torture has been practiced.

There is also evidence of a type of disciplinary investigation that refuses to recognize the most elementary principles of independence and impartiality, where the Inspector General's staff limit themselves to following the instructions of the killers in order to keep a "clean" record. The ethical collapse of this kind of institution that is supposed to protect the citizens from such criminal assaults by the government could not be more evident. Nevertheless, what they are constructing with so much iniquity can collapse very quickly. Apolinar Guerra, after having been used by Colonel Duque and by other members of the Army and by those government security agencies to commit crimes and to aid in judicial frame-ups through false testimony, paid-for, was disappointed when some promises were not kept. When he found himself implicated in a criminal prosecution as a result of his cooperation with the Army, he decided to reveal many of those blackmails.

In a public hearing in Medellín on December 9, 2008, part of Case # 2008-00011 in Branch 1 of the criminal court for the specialized circuit of Medellín (page 12 of the record), he admitted that he had been subjected to torture by Colonel Néstor Iván Duque on March 12, 2004, along with Elkin Darío Tuberquia. By that time, through the confessions of Army officers, it was known that the same Colonel had been the operations commander of "Operation Phoenix" which turned into the massacre on February 21, 2005 in the towns of Mulatos and La Resbalosa in San José de Apartadó. Around the same time the testimony of the paramilitaries Luis Adriano Cano and Everth Veloza, alias "HH", before the Justice and Peace Unit became known. According to that testimony, Colonel Duque had visited "HH" to ask his permission to have Cano murdered, because he was the one that began the revelation of the truth about what happened in the massacre.

In the last few years the corruption of the justice system has been more evident. Between the end of 2005 and the beginning of 2006, seven farmers from towns in San José de Apartadó were arrested without any warrant. They had completely abandoned some passing assistance they had given to the guerrillas. At one time they had to do that or they would have been made to leave their farms. If you follow these proceedings, you can see the accumulation of violations of the Code of Criminal Procedure as well as of the principles of international law related to the conduct of a criminal case. First was the usurpation of the judicial power by the executive, because all of the steps of the proceeding were decided by the 17<sup>th</sup> Brigade, with the acquiescence of the prosecutors, judges, appellate judges, and representatives of the Inspector General and of the Public Defender. People were imprisoned illegally at Brigade headquarters. There was illegal questioning with no lawyer present. Extortion was practiced on the defendants, demanding that they plead guilty. Witnesses were bribed to give false testimony and illegal evidence was presented.

In the month of February 2007, multiple inmates in the jail at Carepa told me face to face that they had been pressured by military lawyers to testify that a leader of the Peace



Community, who had been murdered “was a guerrilla” and that they had each been offered two million pesos (about \$1,000) for each such statement.

When in the same month of February I received the complaints of seven people from the district who were on a list of people to be killed, according to the testimony of a paramilitary who was joined with the 17<sup>th</sup> Brigade, I turned to several different authorities and to the Inter-American Court for Human Rights to try to protect their lives, but in a few weeks I found out that most of them had been arrested. When I examined the file I could see that here was another obvious frame-up, put forth by members of the armed forces with the collaboration of a prosecutor. In addition, I discovered that in this same case, they were accusing another three people who belonged to families who are members of the Peace Community, of a terrorist attack that took place in Apartadó in 2004. Once again I found out that it was a case constructed with false witnesses who had been bribed and, worse yet, when a lawyer pointed out the evidence that there had been false witnesses, the prosecutor assigned to the appellate court in Antioquia continued to argue that the false testimony was “valid”.

A more thorough analysis of this file and of the files related to the arbitrary arrests in 2005, 2006 and 2007 supports a conclusion that they have established a sham criminal “justice” system in Urabá, one that from the beginning refuses to recognize the constitutional principle of separation of powers (National Constitution, Art. 121). The military controls the cases from their planning, searching for and paying false witnesses, arrests that are marginally legal, illegally bringing the defendants to military installations where they are subjected to illegal “investigations” without lawyers. Later those are called “interviews”. Defendants are pressured with blackmail that will not be recorded in the file but are aimed at achieving an extortionate “confession”. Illegal “evidence” is presented, without any record of chain of custody as is called for in the Code of Criminal Procedure.

Along with that, everything reveals an agreed-upon, preplanned outcome, among military and judicial officials, disciplinary and public defender officials, because everything that was cooked up in the Brigade is endorsed by them without any argument. They ignore their obligation to appraise the aptness of the witnesses and the evidence and avoid reliance on testimony that is affected by prejudices, pressures, interests and prior situations that might affect the reliability of the testimony, such as the absence of pressures and compulsions on the victims themselves.

The very pre-established textbook definition of “rebellion”, cut out and pasted to magnetic documents that escape the ethical evaluation of the official is not harmonized with the actions being judged. There the farmers appear more like victims than like actors in the conflict, every time they were pressured to provide some very secondary aid to the insurgency, only to keep from having to abandon their subsistence farming plots. The “hunt for the militants” is the context for all of this pretense of a justice system. Neither does this harmonize with the total tolerance for the paramilitaries. There is an order not to touch them for all that they have done in the past, while the supposed “militants” are pursued for any detail of collaboration in their past. It is evident that this

is contrary to the highest principle of constitutional law, that of “equal protection of the laws” (Article 13).

I have often asked myself if an institutional apparatus that defines its specific field of action with the words “truth” and “justice”, concepts with evident moral content, can carry out its function with methods that are so far from the universal ethical principles recognized by humanity, such as truth and justice. I have asked myself if the legal system can create concepts or techniques that legitimately assume the names of “truth” and “justice”, when their very operating systems contradict the fundamental ethical content with which humanity has identified those values/concepts for centuries.

The government’s judicial and disciplinary apparatus, propelled by the reigning juridical positivism has been cutting off every connection with the world of values, of ethics, of political ideals, of humanism, and of religion, in order to erect an autonomous expertise that is “aseptic”. It has been creating the sovereign concept of “procedural truth” as the basis of its “justice”.

But when it is possible to unveil the methods for the creation of that procedural “truth”, and one can see the increasing number of cases where that “truth” is concocted with **false** testimony, produced by the buying and selling of testimony, with blackmail, bribery, manipulation and all kinds of violence, all at the service of interests that will never be confessed, then there is no possibility of relating, even slightly, the procedural “truth” with the value **TRUTH** that is innate in the moral conscience of humanity. On the contrary, they have been creating a more and more untraversable chasm between the procedural “truth” and the real truth. The same can be said of a “justice” that grounds its decisions on that procedural “truth” and one that no longer can endure any examination of its impartiality, independence and integrity.

That is where the conflict of conscience stands: When one is aware, through numerous painful experiences that could not in any way be considered exceptional, that the institutional systems that take on the label of “truth” and of “justice” are defined more honestly with the concepts of “falsehood” and of “injustice”, then cooperation with the institutional apparatus that sustains this collides with the moral conscience.

When throughout several decades, judicial and disciplinary formalisms are propped up without serving their natural and legal purpose of punishing the guilty, protecting the victims and correcting conduct that destroys lives, dignity and rights of people and groups, but rather, on the contrary they put themselves at the service of the continual and systematic repetition of the same criminal acts, we are facing, without any doubt, the **practice of deceit and make-believe**. This is aggravated by its consequences, the destruction and degradation of human lives. To cooperate, then, with those false and deceptive formalisms, **would be at odds with Christian morality**, and worse still, **would be at odds with universal ethics**.

In the spiritual tradition of Christianity, the truth has always been one of the central values of Christian identity. The Catholic Catechism, in its most recent 1992 version, establishes the following in this respect:

- \* *“A lie consists in speaking a falsehood with the intention of deceiving” (. . . ) “Lying is the most direct offense against the truth. Lying is speaking or acting against the truth in order to lead into error someone who has the right to know the truth. By injuring man’s relation to truth and to his neighbor, a lie offends against the fundamental relation of man and his word to the Lord”.*
  
- \* *“The gravity of a lie is measured against the nature of the truth it deforms, the circumstances, the intentions of the one who lies and the harm suffered by its victims. If a lie in itself only constitutes a venial sin, it becomes mortal when it does grave injury to the virtues of justice and charity.”*
  
- \* *“By its very nature, lying is to be condemned. It is a profanation of speech, whereas the purpose of speech is to communicate known truth to others. The deliberate intention of leading a neighbor into error by saying things contrary to the truth constitutes a failure in justice and charity. The culpability is greater when the intention of deceiving entails the risk of deadly consequences for those who are led astray.”*
  
- \* *“Since it violates the virtue of truthfulness, a lie does real violence to another. It affects his ability to know, which is a condition of every judgment and decision. It contains the seed of discord and all consequent evils. Lying is destructive of society: it undermines trust among men and tears apart the fabric of social relationships.” (No. 2482-2486)*
  
- \* *“When it is made publicly, a statement contrary to the truth takes on a particular gravity. In court it becomes false witness. When it is under oath it is perjury. Acts such as these contribute to condemnation of the innocent, exoneration of the guilty, or the increased punishment of the accused. They gravely compromise the exercise of justice and the fairness of judicial decisions.”*

To cooperate, then, with lying and deceit, is at odds with the moral conscience, as the Catechism explains it:

- \* *“Conscience is a judgment of reason whereby the human person recognizes the moral quality of a concrete act that he is going to perform, is in the process of performing, or has already completed. In all he says and does, man is obliged to follow faithfully what he knows to be just and right. It is by the judgment of his conscience that man perceives and recognizes the prescriptions of the divine law”.*

\* “Conscience is a law of the mind; yet (Christians) would not grant that it is nothing more; I mean that it was not a dictate, nor conveyed the notion of responsibility, of duty, of a threat and a promise . . . (Conscience) is a messenger of him, who, both in nature and in grace, speaks to us behind a veil, and teaches us by his representatives.” (No. 1778)

\* *The dignity of the human person implies and requires uprightness of moral conscience. Conscience includes the perception of the principles of morality (synderesis); their application in the given circumstances by practical discernment of reasons and goods; and finally judgment about concrete acts yet to be performed or already performed. The truth about the moral good, stated in the law of reason, is recognized practically and concretely by the prudent judgment of conscience. We call that man prudent who chooses in conformity with this judgment.*

\* “Man has the right to act in conscience and in freedom so as personally to make moral decisions. “He must not be forced to act contrary to his conscience. Nor must he be prevented from acting according to his conscience, especially in religious matters.” (Second Vatican Council, document entitled ‘*Dignitatis humanae*’) (No. 1782)

The same Catechism treats as a settled issue that judicial systems and, in general, governmental authority can deviate from its natural purpose and be perverted, thus abdicating its legitimacy:

\* “Authority is exercised legitimately only when it seeks the common good of the group concerned and if it employs morally licit means to attain it. If rulers were to enact unjust laws or take measures contrary to the moral order, such arrangements would not be binding in conscience. In such a case, ‘authority breaks down completely and results in shameful abuse.’” (Encyclical *Pacem in Terris* of Pope John XXIII, No 51) (No. 1903)

The myths that they are imposing and establishing in the every-day institutionality of societies, that Erich Fromm called “*the pathology of normality*”, are creating false suppositions that easily tranquilize the citizens’ moral conscience and frequently permit institutional mechanisms to serve the exact opposite of what they were established to do. Lamentably, most people live on those social myths and don’t bother to examine the coherence between means and ends; between institutional mechanisms and moral and social values that they claim to serve, even when repeated experiences reveal evident and profound contradictions between the mechanisms and the values.

This happens very frequently with the moral values of TRUTH and JUSTICE, so necessary and fundamental for the healthy and humane life of all of society. But many times we suppose that those values come to life automatically through institutional legal systems that have become “normal” and routine, and that the conscience of every individual can serenely avoid the issue of whether the ends of truth and justice are really being accomplished or nearly accomplished by these systems. We are content to respect

the legal systems established to do that, without asking ourselves to what *truth* and to what *justice* it is contributing and, mistaking respect for the legal system for its contribution to the accomplishment of those values.

Fortunately the Colombian Constitution of 1991 safeguarded the fundamental principle of freedom of conscience. It explicitly prohibits forcing any person to act against his conscience (Article 18). This principle is also consecrated in all the declarations and covenants on human rights.

Humanity's moral conscience is committed to the search for TRUTH and JUSTICE and gratefully accepts submission to institutionalized systems that facilitate society's efforts toward Truth and Justice. This may often imply annoyances, exertions, or personal inconveniences. What the moral conscience cannot accept is involvement in institutional systems that, by fictions or pretenses of truth and justice, lead one to contribute, positively and in practice, to falsehood and injustice. This is invested with superlative seriousness when the pretense compromises the lives and the dignity of countless human beings.

For all of these reasons, I respectfully beg you to excuse me from any statement, version, investigation or interview, given that it is morally impossible for me to do so. The National Constitution establishes that "*no one shall be obliged to act against his conscience*". (Article 18).

Sincerely,

Javier Giraldo Moreno, S.J.

ATTACHMENT:

On January 19, 2009, I submitted an urgent petition to the chief justices of the highest courts in the country and also to the offices of the agencies of control, asking that they declare an "*unconstitutional state of things*" in the administration of justice in Urabá. The legal grounds are 13 cases that involve a greater number of files that have been meticulously analyzed. These demonstrate concretely the manner in which key principles of the Colombian Constitution; almost all of the Guiding Principles of the Code of Criminal Procedure; countless rules of international law included in the treaties signed and ratified by Colombia, as well as principles of the Criminal Code are systematically ignored.

One violation stands out to show the basic corruption of the judicial system, something that permeates all of the actions we have complained of. That is the usurpation of the judicial power by the executive, through the 17<sup>th</sup> Brigade. As a matter of fact, it's the Brigade that decides who will be prosecuted in Urabá and who will not be. The same Brigade decides whom to capture, without waiting for judicial orders, and takes the

captives to their headquarters, ignoring elementary rules and orders of the Constitutional Court and the Inter-American Court for Human Rights.

They have invented a model for illegal investigations, not allowing lawyers. They call it an “interview” and it’s carried out in a context of terror, of threats, and of “negotiations”, of which no written record is made and whose results are then flatly denied in case there is a complaint. They concoct “proofs” by using phony “re-inserted” people who have been co-opted by money or benefits while at the same time they are connected to the criminal actions of the Brigade.

One of those criminal actions by the Brigade that goes almost unnoticed is the crime of false testimony. There they have made up the “principle of accumulation”. According to this principle, a number of lies will constitute a truth. They use various testimonies they have previously put together with criminals, and the sheer volume of them replaces the lack of verifiable facts. They have agreed beforehand with the prosecutors and judges that they will not evaluate the adequacy of the witnesses or the evidence and that they will accept uncritically the bundle of evidence furnished by the Brigade. They will even abstain, most of the time, from examining the legality of the arrests. When eventually a material or technical piece of evidence is discovered, such as magnetic files, prosecutors and judges have agreed beforehand to ignore the requirement of a chain of custody. The goal is to be able to include in the “proofs” anything that would lead to a finding of guilt, at the discretion of the military.

They have made into a career the application of a generalized definition of the crime of “rebellion” to actions that do not fit the definition in the Criminal Code. They even interpret it to cover forced cooperation with the insurgents in order to avoid displacement, and they include farming activity or fixing roads, even though that makes the workers more into victims of violence than agents of it. Thus they pay no attention to the principles of legality.

There is another noticeable connivance between the soldiers, judicial officials and public defenders. They use it to pressure the victims to confess to the charges that they are pushing, and agree to a plea bargain. They abuse them with blackmail, presenting huge disadvantages and excessive penalties if they don’t plead guilty, in contrast to laughably minor penalties and almost imminent freedom if they agree. This strategy is aimed at bulking up their statistics of “demobilizations” or “re-insertions” by multiplying fictitious cases, products of compulsion.

Thus we see a systematic violation of the principle of separation of powers (Articles 13, 121, and 228 of the Constitution); of the principle of equal protection of the laws (Article 13 of the Constitution); the principle of legality (Article 29 of the Constitution); the right to be tried by tribunals that are independent, competent and impartial (Article 14 of the International Convention on Civil and Political Rights and Article 8 of the American Convention on Human Rights); an abuse of testimonial proof; of the formula for plea bargains; an illegal and illegitimate use of “intelligence reports” and of “battle orders”,

violating in this respect the constitutional principle of “Habeas Data”, the right to public information (Article 15 of the Constitution).

They abuse the poverty of the frame-up victims, who have no access to a technical defense. They violate their rights by offering them the Public Defender as their only technical defense, when the Public Defender has already agreed with the military and judicial officers to pressure them to take a plea bargain and admit falsely to the charges they have pressed against them. They ignore the rules that look for consistency in the weight given to evidence because they never evaluate the quality of the witnesses; they fail to respect the rules that guarantee the credibility of technical evidence; they pay no attention to the principles that, according to the Code of Criminal Procedure, could support a conviction; they never make any moral appraisal and, determined to find guilt, they ignore defenses that are provided by law.

Above all, they have knowingly insisted on TESTIMONY, the only evidence in the majority of cases, to degrading and debased extremes, converting it into merchandise that is bought and sold, so that today it is possible to calculate the prices that will be paid for testimony that agrees with the results they are looking for. The “procedural truth” has reached the point where it can be measured, then, by its cost in money.

The total absence of procedural activity in investigating and punishing the judicial officers and the executive branch which have acted in such a monstrous manner and for so many years reveals a connivance of all of the judicial power with this kind of exercise of “justice”. It has been converted into the most efficacious endorsement for the indefinite continuation of such practices, to the end that the justice system continues to delegitimize itself and so that the number of victims continues to increase in greater and greater proportions.

Since the above-mentioned Petition to the High Courts illustrates more precisely my Conscientious Objection to a justice system that violates its own rules and that has reached an extreme level of degradation and debasement, I attach the entire document of 188 pages.