

Corrupted Justice and the Schizophrenic State in Colombia

Javier Giraldo, S.J.

A. Introduction

On March 12, 1999, THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS of the Organization of the American States published its Third Report on the Situation of Human Rights in Colombia. In the fifth chapter, it states:

- *“Impunity and denial of justice continue to be prominent in Colombia. Impunity in relation to all types of crimes is widespread. In June of 1996, the Superior Council of the Judiciary reported that between 97 and 98% of all crimes go unpunished, and that 74% of crimes go unreported. Other state authorities provide similar statistics. According to information issued by the National Police, 90% of all crimes go unpunished. According to the 1996 report of the Commission for the Rationalization of Public Spending and Finances, the level of impunity in all cases has reached 99.5%. That organization asserts that only one of every 100 crimes reached the trial stage of criminal proceedings....*
- *It appears that the rate of impunity is even greater in relation to crimes involving human rights violations, resulting in a failure by the state to comply with its responsibilities and a denial of justice to the victims of violations and/or their family members. Human Rights monitors assert that virtually 100% of all crimes involving human rights violations go unpunished. The experience of the Commission in the cases that are brought before it substantially supports this assertion....*
- *Impunity in Colombia is structural and systemic. It is not simply a question of leaving numerous individual crimes unpunished. Rather, the issue is one of the creation of an entire system of impunity which affects the culture and life of the nation even for those individuals who are not directly affected by human rights violations or other crimes. Most international observers agree that this high level of impunity is itself one of the most serious human rights violations occurring in Colombia” (Inter-American Commission, 1999: Chapter V, Nos. 12, 14, and 16).*

Nevertheless, successive Colombian governments have boasted of "improvements" in the performance of justice. In reality, constitutional, legal, and administrative changes have taken place in the last decade without improving either human rights standards or the application of justice.

Following the normal procedure, human rights violations are denounced before the judiciary and/or before the disciplinary authorities. It is useful to recall, however, that since the 1991 Constitution, there is a new criminal procedure. Under the previous system the investigatory stage was performed by an examining judge and the trial stage by a trial judge, but no one single authority took responsibility for the criminal investigation as a whole. Under the new procedure it is not the judge, but rather the prosecutor who must investigate and indict suspected criminals, after which judges will determine whether they are guilty. The Prosecutor General of the Nation is elected by the Supreme Court of Justice from a list of candidates submitted by the president. He or she and his/her delegates have competence throughout the national territory. To carry out its functions as an investigative and prosecutorial body, the Office of the Procurator General may adopt measures to ensure that criminal suspects will appear before the courts, including the issuance of preventive detention orders. The Office of the Prosecutor General also directs and coordinates the work of investigative entities that depend upon the national police and other similar agencies.

From the 1980s onward, a parallel system of justice has been developed, which was first called Public Order Jurisdiction and later Regional Justice. This jurisdiction includes drug-related crimes, crimes against the state and constitutional order, arms manufacturing and trafficking, terrorism, and membership in illegal armed groups. In these processes, those involved in the proceedings such as judges, prosecutors, and witnesses are allowed to keep their identities secret. The National Tribunal acts as its appeal court. Many international organizations have rejected this jurisdiction because of its structural violation of due process.

The Military Criminal Justice system is applied to members of the military forces and national police in active service and "in connection with that service." This latter principle has been extended, in fact, to all their crimes, encompassing criminal and civil crimes as well as disciplinary violations. The commander of the respective division, brigade, battalion, or other entity initiates the proceedings and serves as the court of first instance in conjunction with the martial courts that he names. The Superior Military Tribunal, whose president is the Commander of the Military Forces, acts as the appeals tribunal.

Since the early 1980s, the army has developed, with the explicit or implicit consent of the other powers of the state, a strong and widespread illegal paramilitary structure. This structure is composed of armed civilians acting under hidden direction from military officials to carry out the 'dirty' operations that could affect the state's legitimacy. Paramilitary agents enjoy the utmost impunity, as this article demonstrates.

Among the institutions of control, the Constitution establishes the Public Ministry, headed by the Procurator General of the Nation, with assigned relevant functions in protecting human rights. The Procurator General is elected by the Senate from a list presented by the president, the Supreme Court, and the Council of State. His office is responsible for carrying out disciplinary investigations and sanctions against state agents, including civilians and members of the state's security forces; thus, it has the right, for example, to investigate human rights violations and eventually to order the removal from service of members of the military forces, the national police, or any other state agent for responsibility in those violations.

The Office of the Procurator is divided into the offices of delegate procurators (for human rights, the military forces, the national police, the judicial police, and so on) to carry out its work. As the Inter-American Commission on Human Rights has remarked, the disciplinary sanctions that may be assessed by the Procurator General are not adequate in cases of grave human rights violations; a criminal proceeding is required.

From an administrative viewpoint, the State of Colombia is divided into departments. Each departmental unit is ruled by a governor elected by popular vote, but whose power is very limited. The public order is absolutely controlled by national agencies.

In spite of the above-mentioned mechanisms for the administration of justice and their supposed "improvement," impunity has become one of the most characteristic features of the Colombian state. If from a quantitative point of view the administration of justice is inefficient, from a qualitative analysis, it appears corrupt and counterfeit. Below we conduct a thorough analysis of some cases in which the state's version of "justice" was applied.

The Inter-American Commission on Human Rights has stated that impunity of an entire system of impunity which affects the culture and life of the in Colombia is "*structural and systemic*" and that "*the issue is one of the creation of an entire system of impunity which affects the culture and life of the nation.*" It is not easy,

however, to discover how that "*structural and systemic impunity*" works in the "*daily cultural life*" of Colombians, mainly in the daily lives of poor people. Neither governmental nor academic studies regarding the functioning of justice have captured that reality.

This article examines concrete cases from the point of view of a human rights nongovernmental organization linked to the poor in Colombia. During the last 10 years, as Executive Secretary of the Justice and Peace Commission, I visited the judiciary's buildings in Colombia numerous times to petition that the oppressive acts perpetrated by state agents and paramilitary groups against thousands of powerless people be investigated and punished. After 10 years, the time has arrived to evaluate the results. What level of justice has been achieved? It is necessary, however, to change the names of victims who are still alive, given the risk that witnesses to human rights violations face in Colombia, especially those who have suffered the cruelty of state crimes.

B. Mechanisms of Impunity

1. The Disappearance of Facts During the Investigation

On April 17, 1995, the Justice and Peace Commission received a letter from the President's Advisor on Human Rights that relayed to us the response of the Procurator General's office concerning the closure of a case. The file, No. 008-142621, had been closed based on a highly suspect conclusion: "*the alleged deeds investigated did not occur*" (Resolution of closure, January 12, 1994).

"Elias" was a young, illiterate peasant. In July 1993, when he was arrested by a military patrol, he was trying to load two bulls onto a small boat in a distant village belonging to Pinillos, a town from the department of Bolivar. The people of that village were distressed when they saw that a military unit had brought Elias back that evening, almost naked, with bleeding arms and legs, barely able to move. It seemed to the villagers that the soldiers had tried to crucify him. Elias was transported in a military ship, and from that evening, his whereabouts were unknown for 15 days, when, thanks to a chain of reports, we discovered what had occurred.

Our first estimation of the facts, received from various churches, was sent immediately to the Working Group on Enforced Disappearances of the United Nations. Some days later, the office of the Presidential Advisor of Human Rights energetically denied this report, stating that Elias had been arrested

according to proper legal procedures, that he had confessed beforehand that he belonged to subversive guerrilla groups, and that injuries on his body had been produced by independent causes before he was arrested.

This official answer helped us find Elias imprisoned in Cartagena. He had already been condemned to 30 months in prison. When I read him several pieces of his "confessed illegal behavior," he was astonished. He then realized that the judiciary had unjustly exploited his illiteracy.

Extended conversations with Elias in prison helped us to reconstruct the facts, to confront the different versions of events, and to evaluate the rather strange case file. Two incompatible "truths" appeared before us: the judiciary's "truth" and that which we discovered little by little through our own research, through contact with the victim and his suffering, with his community and witnesses, as well as by evaluating the parts of his file.

We became convinced beyond any doubt that Elias had been illegally arrested; that he was atrociously tortured during the entire day of his arrest when sharpened sticks were inserted into his feet; that either military or judicial officials exploited his illiteracy to construct "proofs" of his guilt; that a doctor signed a false statement about his injuries; and that those who signed the papers in the file as "his legal defenders" were never present at the hearings.

Strengthened by our moral conviction, we requested that the Procurator General's office investigate not only the military unit that arrested and tortured Elias, but also the judiciary officials who constructed the case file. The final decision, however, was to bury the file because "*the alleged deeds investigated did not occur.*"

What was the ultimate truth for the international organizations dealing with this case? If they believe in official truth, put forward by the highest state powers, our Commission denounced a deed that "never had happened." How far our truth is from the judiciary's "truth"!

After serving 30 months in prison, Elias faded away in Cartagena's slums, as a soul of misery, too frightened to return to his village. We no longer see him.

2. *Neglect and Denial as Official Policy*

On May 26, 1994, we received an official letter from the Procurator General's office announcing another case to be closed. The file, No. 008-146209, had been buried because "*no government officials were involved in the acts.*"

Since 1989, supported by other human rights groups, our Commission maintained a shelter for displaced people in Barrancabermeja. It was very difficult for its residents to endure the many attacks and threats by underground powers that wanted to terrorize them for their various ways of resisting them. In fact, in June 1991, the shelter's walls were riddled with machine gun bullets for several nights; on October 11 and 12, 1991, two successive massacres were perpetrated a few meters in front of the shelter; on March 4, 1992, paramilitary groups entered the shelter and threatened its residents for several hours.

The climax arrived on May 15, 1992, when a poor girl went into the shelter at night seeking protection because "paramilitaries were persecuting her." The person in charge of the shelter was suspicious of the girl's demeanor and questioned her. When she was unable to answer, she wept deeply and confessed the true purpose of her visit: she had been coerced by paramilitary groups to work as an infiltrator for them; they had sent her to the shelter to investigate everything in order to prepare another attack against the displaced people and the coordinating team of the shelter. Several years earlier the girl had worked as an agent for that paramilitary group of soldiers and civilians, and to refuse such work would have meant death for her and her family. The clear data she shared with us helped to uncover past paramilitary attempts to terrorize the people in the shelter as well as the magnitude of planned future deeds. We immediately decided to close the shelter until public pressure might produce some normalcy. Unfortunately, we could not protect the girl; when we searched for her to offer her passage to another zone of the country, she had disappeared. The police later found her decomposed corpse near Barrancabermeja.

The data the poor girl gave us allowed us to identify the criminal structure behind the plan to destroy the shelter and persecute the displaced people. Among those involved were military officials belonging to the Army 14th Brigade headquartered in Puerto Berrio. Its training center for paramilitary activities is in Campo Capote, not too far from Barrancabermeja. The girl's diary also included the phone numbers of some civilians working with the military officials. A preliminary analysis of information gathered showed the existing links between that criminal structure and many other crimes perpetrated in that wide region. We discovered unquestionable links with other case files already submitted to the Procurator General's office, namely numbers

022-78993, 022-76456, 022-64929, 022-76419, and 022-76609.

Moreover, a witness whose testimony was first heard by several counselors of the Archbishop of Medellín and later by the Procurator General's officials had already denounced the same criminal organization as guilty of the murders of Father Jaime Restrepo (January 17, 1988) and Sister Teresita Ramirez (February 28, 1989). This witness was also murdered. Because of the staggering amount of evidence against the parties involved, we hoped for a successful end to this investigation. We demanded, therefore, that the judiciary and the Procurator General's office undertake an investigation.

The judicial case file was opened some days later with preliminary proceedings No. 3267 in Barrancabermeja, but was very rapidly buried without any attempt to shed light upon this chain of crimes. When I visited Prosecutor General Gustavo De Greiff to explain how important and urgent this investigation was for ensuring the safety of displaced peoples in that region, he constantly refused to talk about justice, promising instead to intervene with the Minister of Defense so that the shelter could be reopened. In a very difficult dialogue with Defense Minister Rafael Pardo Rueda, he strongly and repeatedly denied to me any responsibility of the armed forces in such crimes and failed to respond to the overwhelming evidence. Meanwhile, the Prosecutor General said he was only an unbiased observer in this discussion.

The proceedings undertaken by the Procurator General's office (File No. 008-146209) went a little further. Some depositions were taken from the shelter's coordinators, and investigators visited the 14th Army Brigade headquarters and gathered a list of persons belonging to that unit. Several months later, however, the file was closed. Despite military lists from the IV Brigade that contained 35 names similar to those reported by the murdered girl, no depositions were requested, nor were any other steps taken, save the file's closure.

"No government officials were involved in the acts" was the official statement despite the evidence. No government officials wanted to search out the truth. Perhaps all were aware that such an investigation might publicly expose the state's paramilitary activities and erode its legitimacy. To avoid such a "danger," the best tactic is neglect and denial.

3. The Debasement of Human Testimony

El Carmen de Chucuri is a town located in the department of Santander. Since the early 1980s, a strong paramilitary structure has developed and still continues, thanks to the tolerance or open support provided by diverse state powers. The Commission received from displaced persons many denunciations of horrors committed there. Several hundred crimes, such as murders, disappearances, tortures, bombardments, rapes, and pillage were carried out by members of the army and associated paramilitaries. Most of them were presented by our Commission to state authorities. In this case, too, we collided with the walls of impunity. Below I focus on the way in which the judiciary handled the testimonies, the most striking aspect to us in this case.

A. ***Testimony as a substitute for evidence:*** Since 1989, we have provided denunciations related to this case. However, the civil authorities did not listen to us. Because of our insistence, though, some judicial and disciplinary authorities asked us to help them locate witnesses who dared to testify about the deeds. It was not easy to convince them, given the risks they ran, but a considerable number of them did, heroically.

At that time, given our elementary judicial experience, we did not understand the narrow investigations carried out. Later, we caught on to the absolute lack of elementary searches for evidence: for instance, the failure to disclose cause of death, the absence of exhumations or ballistic research, and no inspections "in situ" to discover data. Objective proofs were lacking; the investigators attempted to provide a foundation for the cases via testimonies only.

B. ***The witnesses as targets:*** We became especially concerned about the safety of the witnesses when fierce persecution against them began. Mr. Juan de Dios Gomez had failed to gather the signatures he needed to support a second bill of denunciations he had written, when he was murdered on June 24,1992, in revenge for his previous testimony. Mr. Octavio Sierra went to Bogota and gave declarations before judiciary officials and a few months later he was killed, on February 16,1993. On October 4,1990, the parish priest, Father Bernardo Marin, the town's ombudsman, Pedro Agustin Cespedes, and other town leaders escaped from an attempt against their lives planned by the local military forces. The number of murdered witnesses increased when the paramilitary leader Luis Carreno traveled through El Carmen's villages displaying lists of people who had given declarations and announcing that they would be killed in the next few days.

C. ***"Faceless Witnesses":*** Both the judiciary and the Prosecutor General's officials insisted that we help them in gathering testimonies. Realizing the increasing risks, they offered the witnesses a new and legal means of hiding

their identities. In spite of our constant disagreements with "*faceless justice*," but given the enormous risks the witnesses had to face, we persuaded additional people to give their declarations. Depositions under "*reserved identity*" were not given as much weight as those with identified people. We could not, however, continue to risk the sacrifice of human lives.

D. ***The Role of the Prosecutor General:*** Extremely troubling for us was the attitude of Prosecutor General Gustavo De Greiff. First, he removed the file on this case from the prosecutor's office in Cucuta and transferred it to his own office in Bogota to maintain close control over it. Second, a few days after he had taken the file, he set free the few individuals other prosecutors had arrested with enormous difficulty. Third, he summoned military officials who were on trial, took declarations from them while not confronting them with inarguable facts, and then acquitted them at once.

Before declaring the file inactive, De Greiff called me to his office for a six-hour declaration. His first question revealed his true purpose to me: "*Do you know El Carmen de Chucuri and how much time have you spent there?*" I immediately surmised that he wanted to annul the numerous denunciations from our Commission contained in the file by stating that "we didn't witness the crimes" and thereby to discount our work. Through subsequent questioning I confirmed this purpose. The main interest of the Prosecutor General was to investigate the witnesses: their identities, their addresses, and their presumed "illegal conduct."

De Greiff did not offer any questions about the deeds we had denounced, and he was not interested in finding those responsible for the many crimes. On the contrary, it seemed to me that he was searching for a means to portray the witnesses as guilty people. I resolutely rejected his demand to supply him with the witnesses' addresses. Above all legal obligations, the defense of human life was of utmost concern to us. On that occasion, the Prosecutor General could not contain his fury when faced with denunciations that could have stopped the state's paramilitary strategy.

E. ***"Valid witnesses" against denouncers of human rights violations:*** As the Prosecutor General was trying to dismantle the trial by other methods, several witnesses were accused before him. One was the parish priest, the first to denounce the crimes. After escaping from an October 4, 1990, assassination attempt, he was accused of helping guerrilla groups (File No. 2698, "*faceless justice*" in Cucuta). The "witnesses" were known to associate with paramilitary groups, and their depositions did not provide any concrete information supported by coherent data about places, times, and circumstances that might

implicate the accused. When the priest's attorney demanded the closure of the file by declaring an absolute lack of evidence, the Prosecutor's answer was: "*His innocence has not yet been sufficiently proven,*" which denied the universal principle of presumption of innocence. Even the priest's closest collaborator and a fellow denouncer, Orlando Rueda, was put on trial for the same accusations.

Another individual named also "Orlando Rueda" was arrested on March 13, 1993, by troops from Luciano D'Elhuyart's Battalion in San Vicente de Chucuri and atrociously tortured. When I visited him in Bucaramanga's jail, he told me that the soldiers had tortured him so that he would confess to membership in guerrilla groups. I could see traces of torture on his body and hematomas under his nails, where the militaries had inserted needles.

F. **"Witnesses" manipulated before the mass media:** When further evidence gathered against the paramilitary structure seemed to bring the judicial process further along, the case started to be judged by the mass media. So-called witnesses, who were in fact supporters of the paramilitaries, were brought from El Carmen and "interviewed" by the mass media to deny the existence of paramilitary groups in their town and to accuse all those who denounced human rights abuses as guerrilla supporters.

We then observed the incredible power of mass media to manipulate people's minds. Several mass media groups were strongly engaged in this campaign, promoted by high military commanders and paramilitary associates; dailies such as *El Tiempo* and *La Prensa*, as well as broadcasting chains such as RCN, led by a man without ethics, engaged in the manipulation.

Public statements that we sent to the mass media to contradict this dirty campaign were never published. We began to take legal action against our detractors and several judicial officials made favorable decisions for us. The powerful disparagers in the media and the military discounted these decisions, and despite our legally supported claims, the judiciary's officials pretended not to know about them.

There was, then, "*an official truth*" for mass consumption: the existence of paramilitary groups in El Carmen was invented by the Justice and Peace Commission. What happened to thousands of victims was ignored.

G. **"Counterweight Witnesses":** While the mass media campaign was able to silence protesters' voices in the country and abroad, the judicial process

sought an end that appeared legal. The judiciary's strategy was to incorporate "*counterweight testimonies*" into the file so that the initial ones were annulled. The military brought forward many of these testimonies, which one can trace from the file.

On November 11 and 12, 1992, for example, several "witnesses" arrived in Cucuta transported by military helicopters. They declared that not one paramilitary group existed in El Carmen and not one military official was engaged in attempts against civilians. On December 2, 1992, another group of "witnesses" followed the same path.

When the representative of Public Ministry revised the file, he wrote that in his view such "*testimonies*" were unbelievable (File No. 1997, page 437, rel. to 372 and 380). In fact, some of the same "*witnesses*" acknowledged that the military forced them to travel to Cucuta and had told them that they must make statements.

We again had first-hand experience of the military's strategy to discredit testimonies in September 1994, when we accompanied some peasants from El Carmen to the Prosecutor General's office. They had witnessed the cruel murder of a villager by a paramilitary unit and gave us a wealth of information. The official who took their declarations said to them: "*Your account is really very impressive, but don't build your hopes up; perhaps the military will bring other testimonies in the days to come in opposition to these and then yours will be overruled.*"

H. *Testimonies and violent responses:* Before and after the file was under the close control of the Prosecutor General, several low-level judiciary officials tried to arrest some paramilitary agents. On March 29, 1992, a heroic judicial official attempted to capture numerous identified paramilitaries in El Carmen's town square, assisted by police helicopters. The military command headquartered in El Carmen reacted so violently that the judicial official barely left the scene alive. In a combined violent action, the military and associated civilians were able to apprehend the few people already arrested and set them free. During subsequent days, the army accused the judicial official of aiding guerrilla groups by arresting respectable citizens, guided by the town's former priest "who was a guerrilla fighter." In fact, the former parish priest had left the country months beforehand because of intensified death threats against him, as the Bishop and the Security Administrative Department would prove.

Several years later, on January 11, 1996, other low-level judicial officials successfully attempted to capture two former mayors from El Carmen who had

directed the criminal paramilitary structure, but had been freed by General Prosecutor Gustavo De Greiff. Again, the furious reaction of the military unit headquartered in El Carmen placed the judicial officials' lives in extreme danger. In fact, an armed confrontation between the soldiers and the judicial officials preceded the capture. On subsequent days, political confrontations occurred between the Prosecutor General's office and the high command of the armed forces. As a result of the political fight, judicial officials could no longer carry long-range arms and, consequently, the military would always have an advantage over them.

I. *Testimony: A cry for public support viewed as slander of the military.*

Over the course of several years, our Commission received testimony from numerous victims from El Carmen. Most of them spoke to us about murders, forced disappearances, tortures, pillage, bombardments, threats, extortion, and forced displacements. We always analyzed these denounced deeds, searching for coherence and truthfulness before bringing them to the judiciary, but by following judicial proceedings, we became aware that impunity was always the only result. Therefore we began to seek public reactions by publishing two reports, in 1990 and 1992, as a cry directed to the public, so that more and more conscientious people might press the government to stop the atrocities.

When the second report was published, Army General Harold Bedoya accused us before the judiciary of slandering the Armed Forces of the State. Four years later, the prosecutor's verdict acquitted us when it acknowledged that the deeds we denounced had taken place. The authors of those deeds, however, remained unpunished. By such means, the military showed that it would permit only silence as the reaction to its atrocities.

J. *Last testimony and despair.* In 1996, a paramilitary deserter from El Carmen came to our office and beseeched us to connect him with the Prosecutor General's office. Weariness pushed him to escape and to denounce what he had experienced in the paramilitary structure. We accompanied him to the human rights unit of the Prosecutor General's office, where he offered to guide investigators to show them, "in situ," numerous paramilitary bases and explain their links to military units. Some months later, tired of waiting for acceptance of his offer, he returned to El Carmen to live in the labyrinths of violence, profoundly disillusioned by the lack of interest and the absence of justice.

Conclusions and Questions

Many questions arise over the value of testifying before the judiciary after such experiences, particularly along the following lines:

- The substitution of a search for evidence by testimony;
- The taking of testimony solely from victims' relatives;
- The acceptance of testimony — when coming from the victims' surroundings — only when it is useless;
- The position of suspicion with regard to a victim's supporting testimony when it seems useful;
- The persecution of, and judicial proceedings against, useful witnesses that come from a victim's surroundings;
- The counteraction against useful witnesses through "counterweight witnesses";
- The validation of "counterweight witnesses" before the mass media;
- The transformation of cries of injustice into accusations of slander and therefore felonies;
- The arbitrary discarding of troubling testimonies;
- The discrediting of useful but troubling testimonies.

We must ask, is it worthwhile to testify in judicial proceedings?

4. The Principle of "Res Judicata": A Steel Box to Shield Unspeakable Crimes

The following cases demonstrate how the principle of *res judicata* can be manipulated to achieve impunity. *Res judicata* means that cases already tried cannot be retried.

Between 1987 and 1994, in Trujillo, a town located in the southern department of Valle, about 300 people were murdered or disappeared by military and police units acting together with armed civilians. This systematic practice targets three categories of victims: protesters and members of grass-roots organizations, socially marginalized people, and witnesses. The most scandalous cases took place in March and April 1990, when more than 20 people were cut into pieces with a chain saw, among them the parish priest of Trujillo, Father Tiberio Fernandez. Our Commission followed the judicial proceedings in this case very closely, and once the decision to allow these crimes to go unpunished was made, we brought the case before the Inter-American Commission of Human Rights.

In 1994, the Colombian government accepted an agreement with the Inter-American Commission to seek a "friendly solution." A large nonjudicial commission deliberated for several months, and in January 1995, Colombia's president publicly recognized governmental accountability for those crimes and promised to fulfill all the Commission's recommendations. Most of the promises were not kept, however, with none implemented in the judiciary field. The judicial procedure showed us how a very old legal principle, *res judicata*, is usually deceptive in Colombia.

A first acquittal was pronounced on January 4, 1991, by the third public order judge. He had compiled the case file after various formalities were performed by several local judicial officials. The file referred to more than one hundred crimes that were summarily dismissed with utter impunity. As usual, the relatives of the victims were summoned to recount each crime, but they said nothing because of the atmosphere of terror in which they lived. No other research was undertaken and the files were quickly closed.

In this case, inaction was the main feature. When, for instance, the tenth public order judge of Tulua received several sacks containing human heads, she neglected to record the deed and then denied its occurrence, despite witnesses who heard that story from her off the record.

Both the third public order judge and disciplinary authorities who investigated the same case in their jurisdiction used the proceedings to dismantle the account of the only first-hand witness, who gave testimony. This individual was

a member of the paramilitary group involved in the massacre who had repented after the most heinous slaughters. He was sent for psychiatric evaluation by the Legal Medical Institute and the results were used to claim that his depositions were invalid. His own father was manipulated by the military before the judiciary to declare that his son had habitually lied since childhood. The father only revealed these manipulations after his son was arrested by the police, cut into pieces, and thrown into the Cauca river one year later.

The investigative strategy that led the proceedings to such a depraved acquittal was clear to us: to fill the file with useless declarations of the victims' terrorized relatives; yet if an unexpected witness appeared who had seen and heard what others did not observe, then all further direct means to dismantle such proof were used. Moreover, the judge kept the file closed so that no other unexpected witness could possibly testify.

On August 22, 1990, the third public order judge, Dr. Ezequiel Sanabria Palacios, was asked to take a declaration from another witness who had been a close friend of Father Tiberio Fernandez, the murdered parish priest. This time the judge was extremely cautious because he wished to prevent any entrance of this type of testimony into the file. After preliminary proceedings to identify the witness, the judge suddenly suspended the formalities. Two hours later, the witness was called by his relatives, who demanded forcefully that he suspend his declaration definitively since the entire family would be extorted. A few hours later, the witness himself was called by a paramilitary leader who had already heard the details of his presentation before the judiciary. The paramilitary leader promised to kill him and his family if he testified further.

Once padded with useless depositions from terrorized victims' relatives and manipulated results, the file was ready for the acquittal of January 4, 1991. The Public Order Superior Court confirmed the sentence on September 20, 1991, even though the sentence had not determined exactly the concrete crimes and victims it referred to. Thus, this case became *res judicata*: the justice system could never deal with these atrocities again, unless a very complicated path were taken before the Supreme Court, which would require a condemnation case against the judge.

The judge's behavior in this case, however, was so depraved that a way seemed open to attempt a "procedure of revision" before the Supreme Court. In 1991, a disciplinary process against the judge was started at our request (File No. 10368 of the Judiciary Section Council of Cundinamarca). Some time later, the non-judicial commission rendered its report as a judicial process before the National Tribunal was also under way (File No. 492).

On May 11, 1996, we received an official notice from the Judiciary Section Council announcing that a statutory time limitation had been placed on File No. 10368, and as a result it had been dismissed. We immediately demanded a copy of the judiciary proceeding. It showed us that in five years, only four preliminary steps toward resolution had been taken. These were the reception of the plea, the review of the judicial file on the Trujillo massacre to confirm that there was a foundation for the plea (there was), a request from us for a deposition ratifying the plea five years later, and, finally, the application of the statutory limitation. We were forced to conclude that in the Colombian judiciary, stalling is considered justice.

This judicial process was concluded very quickly on August 14, 1995, with a statement before the National Tribunal from prosecutors, who considered the judge's behavior to be "*thoroughly in accordance with the law.*" Both disciplinary and judicial decisions seemed tainted to low-level government officials who protested. From then on, however, the case was officially silenced because of the high status of the decision-makers.

In spite of such decisions, the formal legal path to seek justice was not closed, though it had become more difficult. Several times we applied pressure upon either the Prosecutor General or the Procurator General to reopen a way for the "procedure of revision" before the Supreme Court. Respondents always avoided their responsibilities, however. Beyond any doubt, when the ancient and respected principle of *res judicata* is applied in a context of corrupted justice, the principle itself becomes a new device for impunity, a sort of **"steel box" to shield unspeakable crimes.**

5. Statutory Limitations: A Scheme for Inter-Institutional Complicity

On October 11, 1995, a house break-in occurred for the seventh time against a trade union leader in a neighborhood of Cali's 20th district. Without a judicial order, the police broke down the door, climbed to the terrace floor and invaded the dwelling. One and one-half hours later, the 115th section prosecutor arrived together with a police colonel who presented a judicial search order. They filmed all of the family's belongings, outraging the residents, and took away, as "proof of felony," two folders containing denunciations about massacres and disappearances that had occurred in that region.

The police colonel interrogated the trade union leader about his militancy in the Patriotic Union party. When he answered affirmatively that he was a member, the colonel said to him it was an "illegal and subversive" organization even though the party has legal status. When the trade union leader demanded of the prosecutor that all these inappropriate pressures be recorded, the prosecutor's answer was: "Don't insist on this denunciation because the colonel could make trouble for you."

On the same day, the police burglarized six other houses in that neighborhood, without any legal right, and stole numerous photographs of young people. They accused all the young people in the neighborhood of belonging to armed groups. Some of them, gathered at random in the streets by the police, were put into a house, tied with ropes, and beaten over a period of time.

The families in that neighborhood were very concerned about the photographs stolen by the police. Frequently, some newspapers in Cali publish photographs of young poor people living in the slums, calling them "dangerous felons." Sometime later, their corpses are found in the rubbish dumps of the city. Through this practice the newspapers seem to "justify" beforehand the slaughters.

According to the research program of the Cali mayor's office, called The Epidemiology of Violence, between 1993 and 1995, 123 people were murdered in the city. Most of them (55%) were 15 to 30 years old and the vast majority lived in the three poorest districts.

For some time our Commission has been very concerned about the phenomena of criminalizing social protest and political opposition and "social cleansing." We visited the families in Cali affected by these repressive practices and decided to follow the case closely.

We analyzed preliminary proceedings No. 118, which were initiated by the 115th section prosecutor of Cali, and discovered that a police security agency official, Mr. Henry Cabrera Alvarez, had submitted an accusation before the prosecutor on October 11, 1995. He demanded a search of the trade union leader's house and supported this police action based on "information from an unidentified source" received by an intelligence unit. According to that anonymous source, "an arsenal to be used by guerrilla groups was hidden in the targeted house." The sequence of events revealed the internal illogic of police searches:

- Justifying a housebreaking on the basis of charges by "anonymous sources" whose contradictions became evident.
- Protecting the presumed "anonymous source," whose deceit had been proven in six previous break-ins.
- Pressure on the trade union leader by Prosecutor Gonzalez Palomino so that no record might be left concerning the threats of Colonel Bernal Cardenas.

(This scenario of political persecution has been repeated thousands of times; on May 13, 1998, our Commission was the victim of an identical scenario.)

When we demanded that the delegated procurator for judicial police investigate the police sweep in Cali, its Cali section hurriedly declared that all proceedings had been "according to the law" and archived the file with statement No. 34 on January 17, 1996. The Cali section procurator only took the written documents into account for his investigation, ignoring the illegalities we had denounced. The gap between the written and unwritten procedures permits the system that institutionalizes impunity. No one was called to declare anything. No one investigated whether what had happened had been justly recorded.

Moreover, Cali's section procurator not only accepted uncritically the deed related to the judicial officials' behavior regarding the trade union leader's housebreaking. He even neglected to take into account the other grave violations of human rights referred to in our plea: the illegal entries by the police into other neighborhood homes, the illegal detentions of young people, the tortures, threats, and so on. Above all, Cali's section procurator avoided investigating the major illegal activities we focused on in our plea. Why is an "anonymous denouncer" not convicted when his lies have been proven? Why did the police and the judiciary hide behind a "source" who is not held responsible for injuring people? Who establishes the existence, identity, and responsibility of a "denouncer" who spreads lies? Who repairs the damages caused by a nonexistent, unknown, or irresponsible "denouncer"? As we insistently expressed to Cali's section procurator, the answers to all these questions are necessary to shed light upon the systematic practices of political persecution.

When the dismissal was sent to us, we appealed and demanded that the neglected eight violations of human rights be professionally investigated. We

were astonished when the dismissal was abruptly confirmed on June 12, 1996. The only "action" taken between our appeal and the confirmation of the dismissal was to wait for the Statute of Limitations to expire so that the case could be closed.

The Statutory Limitation helped to effectively reinforce the impunity that the Delegated Procurator for Judicial Police, Dr. Fernando Gonzalez Carrizosa, had implemented.

6. Brazen Impunity for Participants in Genocide

When our Commission began in 1988, the department of Meta was already a crisis area for human rights organizations because of the bloodbath occurring there. The government's targets were the militants of the Patriotic Union (UP) and their sympathizers.

The Patriotic Union began as a political party in November 1985. It gathered many people who were disappointed with the traditional parties, as well as some former guerrilla fighters who, after participating in peace talks with President Betancur's government, had decided to try a democratic path. One of the regions where the new political force had rapidly developed was Meta. The Patriotic Union won seven mayoralties there in the 1986 elections as well as the majority in numerous town councils. The UP also gained several congressional seats at the national level.

Looking back, several forces were clearly working together to eliminate the new party by means of a strong paramilitary structure that empowered the entrenched landowners who controlled the traditional political parties and the drug traffickers who were allied with the landowners and the army. The army identified the new militancy of the UP with its traditional enemy, the guerrilla groups.

From the inception of the UP until December 1989, one militant was murdered every 39 hours. During election periods, assassins killed one militant every 26 hours. The rate of genocide against the UP during the first 10 years was, in fact, one murder every 53 hours.

In 1991, our Commission established a section in Meta, so we could confront the issue of genocide more directly. Some time later, a local Civic Committee for Human Rights was founded. The Committee included the local church and

members of numerous social organizations that worked very closely with us.

Upon our arrival, the judiciary had already taken some cases and begun legal proceedings. Twenty case files had been opened between 1988 and 1989, which referred to 40 or more disappearances and murders. These were later assembled into File No. 019. The grouping of cases had been requested by paramilitary leader Victor Carranza's attorney. The unified process was entrusted to the Public Order Fourth Judge, Dr. Marcela Fernandez. The gathering of the case files made it easier to manage the process leading toward either justice or impunity, depending on the judge's will. Unfortunately, the enemies of justice were much too powerful and impunity prevailed.

When the judge received the files, she found *prima facie* evidence of human rights violations. The evidence included corpses exhumed at the farms of Mr. Carranza, the confessions of paramilitary militants, and much more. Nevertheless, during the five months of proceedings, the judge devoted her time to dismantling the evidence. She declared the witnesses "psychopathic" without testimony from mental health experts; she rejected self-incrimination by paramilitary gunmen; and she neglected to analyze the strong links between the testimonies and the data obtained from an analysis of the exhumations. The testimony from one witness was rejected only because he said "very ugly things" about the paramilitary leader.

File No. 019 was closed on May 18, 1990, by means of acquittal. Thus, a significant number of cases showing the strategy of genocide were barred under the *res judicata* principle. The way remained clear for a policy of genocide. We then had to witness a series of new episodes that followed.

On February 11, 1993, four peasants were kidnapped when they were traveling in a jeep between Villavicencio (Meta's capital) and Montfort. The day after, we interviewed the other passengers in the jeep and even a member of the police, who gave us important information. It became clear that at the army's Villavicencio checkpoint, the army had arranged for the kidnapping. We strongly demanded that all the authorities save the lives of these peasants, but they disappeared forever, and the crime has remained unpunished.

One of the passengers in the jeep had owned a convenience store in Montfort, and the military patrols had accused him of selling food to the guerrillas. His movements from then on were closely monitored by military officials. The military knew that the convenience store owner was traveling by jeep toward Montfort, and soldiers stopped the jeep at the military checkpoint. All

passengers in the jeep were told to show their documents. According to the testimonies we received, the interrogation of the passengers at the military checkpoint was monitored by phone from the army's intelligence office in Villavicencio. When the jeep continued its route, the soldiers realized that the peasant they had targeted was in the back of the jeep with three other individuals. Five minutes ahead, the jeep was intercepted by another vehicle with armed men, but the targeted peasant had left the group a few moments before. Nevertheless, the peasants who were in the back of the jeep were kidnapped.

Although given incontestable evidence about the disappearance that implicated military officials, the case was taken by the military criminal justice system, where military officials are judged by their companions and convictions seldom occur. Information about this case was withheld from the missing peasants' families and human rights organizations.

On April 19, 1993, Delio Vargas was abducted in the evening in Villavicencio, as he was arriving at his house with his wife and his children. Delio worked in a local government office, belonged to the Patriotic Union, and headed ASCODAS, a humanitarian organization for assisting displaced peasants. One day later, thanks to testimonies we received, the vehicle in which he had been held as well as an army intelligence service sergeant who had participated in the kidnapping were identified. There was no doubt that Delio was at a military facility, but we did not know where. Moreover, on subsequent days, several young soldiers sent us a covert message saying that Delio and other two missing leaders had been tortured in the 7th Army Brigade headquarters and then transported by military helicopter to the farm of Victor Carranza (a known paramilitary leader).

On July 9, 1993, when some data indicated Delio might be alive, I decided to implore that the presidential adviser on human rights make a conscious effort to save Delio's life. I demanded that he lead a search, with reliable government officials, to Carranza's farms to establish Delio's whereabouts. His response was to demand help from the Minister of Defense, who immediately informed the 7th Army Brigade commander. The military reacted furiously and promised to file a criminal law suit against us for slandering the army. We realized once again that we had encountered a situation in which the nets of crime intertwine with the supposed institutional nets of counter-crime.

Three years later, on February 6, 1996, I was summoned by the Technical Corps of the Criminal Investigations Police to confirm my letter of complaint as a judicial plea. I was astonished to discover that the "plea" was my urgent

request directed to the Presidential Adviser on Human Rights to establish Delio's whereabouts. That request ought have been granted within 24 hours. Yet what success could come from a search 31 months after the disappearance of Delio?

In 1995, our data bank had already recorded 1,000 unpunished crimes related to fundamental human rights violations, perpetrated during the last 10 years in Meta. Moreover, the members of the Meta Civic Committee for Human Rights who were still alive had received numerous death threats. In our opinion, impunity guaranteed ongoing genocide. We then proposed that the government establish a commission of diagnosis and follow-up on human rights concerns in Meta to investigate why the judiciary failed to function there.

After several months of lobbying before state and government officials, the commission was approved and it began operations in September 1995. The commission's aim was to review the existing case files, both judicial and disciplinary, so that devices of impunity could be exposed. Such a task could not be accomplished without the cooperation of the Prosecutor General and the Procurator General's offices, because rules of confidence had to be respected.

Many promises, however, were not fulfilled. The legal status and budget that the government had promised the commission were never granted. The representatives of the Prosecutor General, as well as those of the Procurator General, failed to fulfill all of their duties. In January 1996, the commission ceased to work, but the government still used it to shield itself from international protests against the genocide in Meta. As a result, all the human rights nongovernmental organizations participating in the commission resigned.

The commission's failure was followed, on October 13, 1996, by the murder of the president of Meta's Civic Human Rights Committee, lawyer Josue Giraldo Cardona. Several years before, he had been threatened, and several times before he had given declarations before the Prosecutor General's office concerning these threats. In his depositions he had identified individuals and vehicles belonging to the 7th Army Brigade headquartered in Villavicencio and associated them with paramilitary agents. In spite of numerous international claims for his safety coming from international governmental and nongovernmental organizations, neither the executive authorities nor the judiciary took measures to ensure his safety. His death was an expression of the boldness of the perpetrators of genocide, confident of their impunity.

After we made new demands, the Inter-American Human Rights Court adopted special measures in this case. The Colombian government was required by the court to protect the few surviving members of the Meta Civic Human Rights Committee who continued to expose the criminal structure responsible for so many deaths and disappearances, and to address the injustice in this case. In response, the Colombian government has only offered bodyguards to escort the survivors of the Meta Civic Human Rights Committee when they meet with the agents of the institutions involved in the crimes.

7. Comrades as Judges: Purported Justice in the Military Criminal Jurisdiction

"Gerardo" worked on a cattle and wood ranch, in the northeastern region of the Antioquia department. Elkin was the main muleteer on the ranch whose owner, "Oscar," was a Patriotic Union militant and a member of the town council.

On February 6, 1988, two of the Bombona Battalion's patrols arrived at the village in the afternoon and waited in ambush. When Elkin passed, driving the ranch's mules, he was held and hidden by the soldiers. Later, two other ranch laborers were held for a few hours. When, later that evening, Elkin failed to return home, his wife, his boss, and his companions became very worried. In the evening, various ranch laborers searched for him, but at midnight they returned home without success. They found only some of his mules without harnesses.

After the laborers went to bed, the house suddenly was fired upon by military patrols. Bullets from machine guns injured Gerardo's right leg and wounded other ranch laborers. All the residents of the house were dragged out by the soldiers and the families' belongings were pillaged. Elkin's wife and children as well as the wounded laborers were arrested as "guerrilla fighters captured in action." Gerardo was driven unconscious to the hospital where his right leg had to be amputated. Before leaving, the military insisted that Elkin's wife tell them where they could find Oscar.

The next day Elkin's corpse was found, shot and strangled. The local civil authorities and the villagers around Oscar's ranch realized that the soldiers were looking for Oscar, a member of the UP, and when they failed to find him, they vented their fury by attacking his ranch and laborers.

When these events were "investigated" by the Military Criminal Proceeding 50th Judge at the 14th Army Brigade headquarters, they became a false "official story" carefully shaped to achieve the acquittal of the military agents. The "official story," whose text was ritually repeated at all important stages of the process, was the creation of military agents, and ignored the views of the victims and villagers. That "official story" contained the following elements:

According to the military, Elkin, the muleteer, became "a guerrilla courier." The proof would have been produced by the Bombona Battalion's intelligence unit (B-2), once Elkin had been arrested. This "proof consisted solely of the testimony of the intelligence agents. Nobody, during the process, consulted B-2's archives or investigated the truth of its information.

Elkin's wife became "a suspicious woman." Her distress after her husband's disappearance had been observed by the soldiers involved in the ambush. She had looked around, called other laborers of the ranch, and demanded that they go out searching for her husband. All of those movements were described by the military agents as "suspicious relations with strange men who arrived and left the house riding horses and carrying arms back and forth."

The other peasants who were arrested while they labored on the ranch became "guerrilla supporters." Again, the only "proof was alleged archives held by Bombona Battalion's B-2 section, archives that no one ever saw or searched for during the process, and whose sources always remained unknown.

Elkin, the muleteer, was murdered because he allegedly "attempted to escape, and the soldiers in charge immediately had to open fire on him."

The ranch house had to be surrounded and fired upon with machine guns because "guerrilla fighters carrying arms on their backs entered it at midnight, and they refused to come out when the patrol commander ordered to come out with their hands up."

The looting of the ranch house "was invented by the residents."

All this was presented by agents of the army involved in the crimes. Despite the statements of several terrorized peasants from the village before the military judge, in which important elements of their testimony contradicted the military story, the peasants' views were ignored during the process. In fact, the victims were not allowed, as usual, to participate in the trial with legal representation.

The "official story" absolutely ignored key elements that would have shed light upon the true magnitude of the crimes: the political persecution against the owner as a militant of the Patriotic Union; the presence of a known paramilitary agent who accompanied the army patrols; the crime's consequences, such as the wounds that led to the permanent disability of one of the peasants; the Elkin family's loss of their livelihood; the destruction of Oscar's ranch; and the subsequent unemployment and displacement of the terrorized peasants.

Some months later, the lieutenant who had commanded the operation was killed in a distant region. The judge took advantage of the situation to concentrate most of the charges upon the dead official, thereby leaving only minor charges against the low-ranking agents who actually had shot Elkin. The dead lieutenant became a scapegoat. Eventually, only four low-ranking soldiers were tried for allegedly obeying the orders of the dead official.

According to the Military Criminal Code (articles 547 and 568), the judges are aboard of military officials chosen from those of a rank superior to those accused. When the decisions of the Council of War contradict evidence, the council's president can send the case to the Military Superior Court for possible revision. The Military Superior Court can then ask the Council of War for a second decision. If the War Council upholds the verdict, the Military Superior Court must accept it.

Such military "judges" are usually comrades of the accused, and act on the basis of institutional solidarity. They protect one another. In this case, during the trial, the board of military "judges" listened to many speeches (summarized in the records) in which the victims were demonized as "enemies of the fatherland" and the attackers became "heroes." The victims were not allowed legal representation. After such a travesty, the accused were acquitted. No less than three war councils took place (the first was annulled), and each ratified the acquittal.

The verdict was so shameful that even the Military Superior Court made the following statement:

"We do not agree with this kind of justice, based on spurious feelings when instead it ought to be based on sound criticism of the evidence without feeling, using a cold and analytical justice without breeding impunity; but despite all the arguments, "the law is hard but it is the law" and no other solution remains but to accept the verdict" (Military Superior Court, statement of January 23, 1995: 3).

In this case, even the military court judged military "justice" as not being justice at all.

C. Footnotes to a Tragic Experience: Crime, Law, and Power, and the Shaping of a Schizophrenic State

The denunciations made and the work done by the Justice and Peace Commission during the last 10 years do not involve common crime, when persons act against the lives or property of others. To defend the fundamental human rights of the most destitute and vulnerable sectors of the population implies dealing with the citizen-state relationship.

We understand the term "right" as implying not only an ethical, but also a practical requirement. The practical dimension, however, cannot be guaranteed unless the legitimate power of the state is used to protect citizens' rights. Only the state, not private groups, can guarantee such rights and the rule of law; otherwise, we return to the law of the jungle, where the strongest rules. The meaning of the "rule of law" is the assurance of equal rights for all citizens before the law.

In the case of common crime, if citizens attack one another, the state, by applying the rule of law, serves as an arbitrator and dispenser of justice. When it is the state itself that attacks its citizens, these citizens obviously lack protection. That is why the universal tradition of law has always recognized the existence of "natural rights" beyond the state, which can be claimed by persons not simply as citizens belonging to their own state, but as human beings belonging to humankind. Thus, the term "human rights" as opposed to "citizen rights" refers both to the inalienable rights of humankind and to the state as the potential violator of those rights. This is why international human rights covenants are signed by political states, which then become accountable for their fulfillment before the international community.

Consequently, whenever we claim that there is a violation of human rights, we identify two fundamental characteristics: (a) inalienable demands or possessions that belong to human beings are being disrespected; and (b) the aggressor is the state itself. Common delinquency is ruled out as a violation of human rights and so are the actions of insurgent groups. These groups may violate the norms of internal war, the norms of international humanitarian law, or may perpetrate common crimes, but they are not responsible for violations of human rights, as such.

The testimonies we have presented here are some of the thousands of crimes perpetrated directly or indirectly by state agents in Colombia. They include permanent genocidal practices, extermination of groups, individual and collective assassinations, forced disappearances, horrific tortures, bombardments, rapes, pillage, destruction of goods necessary for people's subsistence, extortion, arbitrary detentions, and threats. Furthermore, the state engaged in prevarications and neglect so that all the preceding crimes remained unpunished.

Many of these state crimes aimed to punish ideological or political positions, protests, and denunciations. Others aimed to dissuade people from critical positions by terrorizing them, their relatives, friends, or neighborhoods. In other words, we face a criminal state. At the same time, we resort to the justice system of the same state, to denounce its own crimes. Is there a contradiction?

Perhaps the contradiction is inherent to the state's role: on the one hand, the state appears to be a steward of the law, from which its legitimacy derives. This is the rationale for the fact that only the state is allowed to maintain coercive instruments such as a judiciary, penal codes, and police. On the other hand, the state is also a social manifestation of power. Power, defined as dominance, embodies many kinds of oppression when it fails to represent the consensus of its citizens.

The state, as an entity, articulates in itself both a self-legitimizing discourse (through which it appears as in charge of the "rule of law" and keeper of human and citizens' rights) and the representation of powerful interests. In this second sense, the state carries out violence against the social layers opposed to those interests.

How can these two contradictory dynamics coexist within the state's structure? How can such a contradiction be practiced daily by state officials? How can such a contradiction be perceived through the course of the state's institutional performance?

In trying to understand this dual essence of the state, 10 painful years of daily experience with the search for justice have revealed the existence of a schizophrenic state. According to the psychiatric definition, an individual becomes schizophrenic when the self is deeply split so that a part of the self is perceived as alien. As a result, the self becomes ambiguous and confused. Likewise, a "schizophrenic state" is that which endures deep disturbance in its cognitive associations, affecting its identity. Regarding the concrete case of the

Colombian state, the state attempts to couple its self-legitimizing discourse with its criminal practices, and this leads it to the first great split: the "para-state," a part of its self considered "alien" (the main component of the para-state is paramilitarism).

It was not sufficient, however, to give birth to paramilitarism, which raised new contradictions. In fact, the state was still forced to abide by "the rule of law," because it retained sufficient legal and constitutional devices for self-correction when the evidence revealed paramilitarism to be a part of itself. At this juncture, another split was fostered. The links between the state's administrative functions and its judicial ones were severed, so that all administrative self-correcting functions were avoided and cases were passed on to the extremely inefficient judicial system.

The second split was insufficient as well. Once the contradictory coupling of the "rule of law" and "state crimes" was established within the judicial system, resolution became impossible, as has been demonstrated throughout this article, given that a sector of the state was supposed to prosecute another part of it. The judiciary's reluctance to investigate and judge state officials has been shown. Another split was "necessary" within the judicial system.

The first split affecting the judicial field was the split between Law and Ethics. Even in university law studies, positivist and objectivist scholars of law have prevailed. Over time the law has been conceived as independent of any kind of moral, ethical, ideological, or religious thought. Legal scholars and students have increasingly trusted in the capacities of the Law itself to achieve justice, without taking into account the political, social, and cultural context. The judicial process has thus become an issue of applying some objective rules without engaging the ethical principles of the judicial officials.

One consequence of the split between Law and Ethics is a chasm created between a kind of "truth" shaped by limited and manipulated records within the judicial files, which I call "process-truth," and the actual truth that one can access outside the judicial files, when the pressures, threats, manipulations, fears, and mechanisms of control are overcome and the victims and witnesses are accessible on the basis of trust and spontaneity. Judicial performance remains shut within a set of rules leading to "process-truth." Judicial ethics become understood as a loyalty to such rules and formalities.

It becomes clear enough, then, that so many accumulated splits strengthen the state's schizophrenia, allowing the coupling of two contradictory dynamics: a

state in charge of "the rule of law" and state crime, producing a deeply sick state. The search for the "process-truth," guided by the covert but strong goal of denying the criminality of the state, has used various mechanisms of impunity, as illustrated by the cases analyzed above. These mechanisms include: the resort to military criminal jurisdiction, the reduction of evidence collection to testimony, usually manipulated by threats and bargaining or annulled (when it is useful) via "counterweight-witnesses," and application of the principles of Statutory Limitation and *resjudicata*, using the passage of time to produce impunity.

All of these mechanisms of impunity have been added to another, older one: Colombia's archaic legal system. In Colombian law, "crimes against humanity" as adopted by the international community after World War II have not been incorporated in the penal code. The Colombian criminal codes continue to focus on the guilt of the individual. Thus, the systematic character of crimes against humanity, revealed by structural linkages between the state and the crimes, is obscured, and remains outside Colombian justice.

The crisis of justice in Colombia is deeper than one can imagine, and solutions must take into account not only administrative aspects, but also the corruption of the traditional rules of law. Justice must be rethought, to confront the most important problems of the daily life of society and to encompass elementary principles of ethics. The traditional rules of law, as long as they are separated from ethics, no longer work, as concretely demonstrated by the case of Colombia.

Reference: * Inter-American Commission on Human Rights, Organization of the American States, 1999 Third Report on the Situation of Human Rights in Colombia.

Note: For reasons of space, several parts of the original article (sections 8, 9 and 10 of Part B) demonstrating the violation of other traditional norms of justice had to be eliminated by the editors.

Edited by **Social Justice** – P. O. Box 40601, San Francisco, CA 94140 –Vol. 26, No. 4 (Issue 78, Winter 1999)-