



COMMEMORATIVE MURAL PAINTED BY GONZALEZ BRIGADE. PHOTO: JAVIER SULE

On February 21 2005, in the villages of La Resbalosa and Las Mulatos (municipality of Apartadó), Luis Eduardo Guerra and his partner Beyanira Areiza were extrajudicially executed along with his son Deyner Andrés Guerra Tuberquia (11 years old). During the same operation, Alonso Bolivar, Sandra Milena Muñoz and their children Natalia (5 years old) and Santiago (18 months old), members of the Peace Community of San José de Apartadó, were assassinated. Alejandro Pérez Castaño was also killed there.

Since February 24, 2005, the Peace Community publicly stated that the National Army was responsible for said acts. The Colombian state's response was to stigmatize the Peace Community¹ and to suggest that this crime was instead attributable to the FARC-EP². This response had the purpose of diverting investigations and favoring the perpetrators; various supposed witnesses were sent to the city of Bogotá, brought before diplomatic representatives, presented before Congress

1 President of the Republic, Communication, March 20, 2005, available on <http://www.presidencia.gov.co/sne/2005/marzo/20/03202005.htm> translated to English: [There are good people in the community of San José de Apartadó. But some of its leaders, supporters, and defenders have been seriously accused, by people who reside there, of helping the FARC and of wanting to use the community to protect this terrorist organization].

2 Ministry of Defense, Commander of the Military Force, March 1, 2005, available on <http://www.mindefensa.gov.co/irj/go/km/docs/Mindefensa/Documentos/descargas/Apartado/Comunicado%20Comando%20General%20FFMM.pdf>. Interviews of the supposed witnesses to the acts were also released, available on: <http://www.mindefensa.gov.co/irj/go/km/docs/Mindefensa/Documentos/descargas/Apartado/Entrevista%20a%20Desmovilizado%20de%20las%20FARC%2003-03-05.pdf>



PILGRIMAGE TO THE “VEREDA LA RESBALOSA”. PHOTO: JAVIER SULE

and the Attorney General’s office, welcomed into the Ministry of the Interior’s protection programs³, and paid with paramilitary resources⁴.

Investigations carried out up until today by the Office of the Attorney General have sought to determine the partial responsibility of the material actors, broadening the connection and definition of the responsibility of the commanders of the state forces and of the paramilitary structure. Additionally, determination of the context and antecedents of the crimes have been omitted, infringing the realization of the duty to carry out a comprehensive investigation.

Over the years, it has been established that in the development of a criminal plan, Operation *Fénix* was ordered by the 17th Brigade and complemented by the Mission *Táctica Feroz*, which was devised and planned by the Commander of the Caribbean Joint Command, General Mario Montoya Uribe. In setting up Operation *Fénix*, various troops were made available, centralizing command at the Vélez Battalion and the Anti-Guerilla Battalion No. 33 of Cacique Lutaima, amounting to approximately 270 available men. On the part of paramilitaries, more than 80 men from the *Héroes de Tolova* Front participated.

Today it has been unequivocally established that military and paramilitaries spent various nights together; that they installed integrated patrols (a military, a paramilitary); that during the massacre the troops were supplied on the ground, affording the conclusion that the commanders knew of their troops exact location; that security keys to the communication radios were lifted permitting communications between the military and paramilitaries; and that the operating schemes⁵ of the Brigade had been altered ahead of time.

Up to now, 29 rank and file paramilitaries have been the subject of prosecution and conviction (having benefited under the Justice and Peace law), and five members of the National Army (4 lower ranked officials and 1 sub-official) have been convicted. Within the framework of the ongoing proceedings, two Generals and three Colonels have been linked to the investigations. This means that quantitatively speak-

**10 YEARS LATER
JUSTICE CONTINUES
FAVORING THE
PERPETRATOR**

3 Office of the Attorney General, Statement by Apolinar Guerra George, June 26, 2009, located at 2138, Cuaderno 23, folio 254.

4 Office of the Inspector General, Statement by Hever Veloza García, May 22 2008, located at 009-171963-08

5 Documents from the National Army that permit the establishment, in real time, of the position of the troops that participate in a military operation, the chain of command and their position.

ing, the actions of the justice system reached only 11% of those who participated in these criminal acts.

The lack of knowledge portrayed by the Attorney General with respect to a victim's right to effective recourse is highly worrying⁶. Since July 2008, evidences were gathered in order to establish the liability of the Commander and the Commander-in-Chief of the 17th Brigade⁷. Only five years later, in April 2013, Generals Héctor Jaime Fandiño and Gabriel Jaime Zapata were linked as co-authors of these crimes, one month later they were indicted⁸. Despite legal provisions, more than 660 days have passed where the National Unit for Human Rights has neglected to define the situation and to advance the investigation.

Coronels José Orlando Acosta Celis⁹, José Fernando Castro¹⁰ y Néstor Iván Duque¹¹, are connected to the investigations since September 2009, their legal status being resolved in January 2010. Since then, the Attorney General discontinued investigating their liability, despite the existence of clear legal grounds¹² to do so.

Since May 2008, an inquiry was sought to connect and indict Diego Fernando Murillo "alias don Berna", the

6 Articles 8 and 25 of the American Convention on Human Rights

7 Office of the Attorney General, National Unit on Human Rights, cuaderno 17, folio 182.

8 Article 354 of the law 600 of 2000 (Code of Criminal Procedure): *"If the syndicate is not deprived of their liberty, the window to resolve the legal situation will be ten (10) calendar days starting with the indictments or declaration of absence, the Attorney General or its delegate will apply the same window and terms, provided that there were five (5) or more apprehended and the capture of all took place on the same date."*

9 E3 Commander of the 17th Brigade, at the time of incident, had under his charge logistics, operations and the location of troops, among which the preparation of the operation schemes that were altered starting on February 17, 2005.

10 E2 Commander of the 17th Brigade, at the time of incident had under his charge the operational and informant guidelines and was responsible to turn in "Ratón" and "Jonas", members of the *Héroes de Tolova* Front.

11 Commander of the Bejarano Muñoz Battalion, assigned to the 17th Brigade of the National Army, was delegated command of Operation Fénix, during which the crimes were executed.

12 Article 329 of the law 600 of 2000 (Code of Criminal Procedure): *"Time period for the instruction. The judicial representative that has directed or carried out the previous investigation, if they were competent, will be the same one to open and advance the instruction, save if they were reassigned. The time period of instruction cannot exceed eighteen (18) months from the starting date. However, if it has to do with three (3) or more syndicates or crimes, the maximum term will be twenty-four (24) months. Once the term of instruction has expired, the only appropriate action will be the qualification."*

Commander of the *Héroes de Tolova* Front, which was received by the Office of the Attorney General. Seven years later, it has still not been completed, under the argument that he is under threat, that he is waiting for state protection, and that he does not believe he has trustworthy counsel to be able to respond to the justice system.

The victims' representatives have also demanded the investigation of those who hid the truth in exchange for remunerations, contributing to the deviation of investigations. In particular, they demanded responsibility for the false testimony of Maritza Gómez Monroy, Elkin Tuberquia Tuberquia, Carlos Alberto García Cuadrado and Apolinar Guerra George, who received compensation of resources from the officials of the National Army, with money sent by paramilitary commanders. Despite having certified the copies to investigate them since November 2008, this process has also been paralyzed, favoring the perpetrators.

The Office of the Inspector General has also affected the right to due process and to conduct investigation without unjustified delays. In October 2012, the Criminal Chamber of the Supreme Court of Justice transferred the case so that an opinion be rendered with respect to proceedings for the extraordinary remedy of cassation, criticizing the acquittal of Lieutenant Colonel Orlando Espinosa Beltrán¹³ and Major José Fernando Castaño López. Despite having a window of only 20 days, the opinion has delayed 840 days, completely obstructing the administration of the justice system.

In light of the repeated failure to act by the Office of the Inspector General, on February 18, 2015, a writ of protection (*tutela*) was filed against it before the Civil Chamber of the Supreme Court of Justice, which referred it the next day to the Criminal Chamber of the Superior Tribunal of Bogota. Meanwhile, on March 3, 2015, the Tribunal referred it to the Civil Chamber, and

13 The Commander of the Vélez Battalion, who exercised command over Captain Guillermo Armando Gordillo, who confessed his participation in the acts and the participation of Lieutenant Colonel Espinosa Beltrán in the planning of the crimes. Currently he is acting as the Human Development Official, Fourth Division of the National Army. Available on: <http://www.ejercito.mil.co/wap/index.php?idcategoria=90185>



ILLEGAL EMBLACEMENT BY THE 24TH MOVIL BRIGADE TO THE COMMUNITY PROPERTIES DURING THE COMMEMORATION IN "LA RESBALOSA". PHOTO: JAVIER SULE

on March 6th the Civil Chamber once again ordered a referral. 14 days have passed without anyone assuming responsibility to protect the rights of due process and access to justice.

What has been described here reveals a pattern of systematic impunity and of indifference to the rights of the victims, in which the only ones who benefit are the perpetrators. This allows and feeds into repeated aggressions against the Peace Community of San Jose de Apartadó, forced to experience a pattern of denied justice, whereby the resulting omissions are a cover-up of the grievance-generating structure that today continues to operate with total freedom.

What is related here reaffirms and validates once more the statement of the Peace Community, "Justice, in order to be legitimate, must respect some minimum parameters that the history of civilization has set out as essential requisites of its acceptance and importance. The majority of those principles are today openly and flagrantly flouted in Colombia."

Therefore we seek to ask the Colombian authorities to put into effect the following:

- That the Office of the Attorney-General arrange for the investigations relating to the February 21, 2005 incidents against the Peace Community of San Jose de Apartadó, be specifically assigned to a Delegated Prosecutor before the Supreme Court of Justice, given the characteristics of those investigated and the obstructions that the investigation experienced.
- That the Office of the Prosecutor of the International Criminal Court express its concerns regarding the Colombian authorities systematic impunity and promotion of the same, and express the need to advance an investigation of these acts on the part of the ICC.
- That there be investigations of the persons that have, through their acts, contributed to the impunity of these crimes and the cover-up of those responsible for them.

Bogotá, 11 March 2015
dhColombia
Gloria Cuartas Montoya