



Corporación Colectivo de Abogados

Personería Jurídica 1292 de 1980 - Minjusticia

José Alvear Restrepo

Jorge Noguera, former DAS Director and the President's Right Hand, has been:

Called to Trial

For the Homicides of Trade Unionists, Human Rights Defenders, and Politicians who Denounced the Pact between Paramilitarism and the Political Class in Colombia.

URGENT CALL FOR SOLIDARITY

Colectivo de Abogados "José Alvear Restrepo"
José Alvear Restrepo Lawyers' Collective
Bogotá, Colombia
May 13, 2009

We reach out to you to be able to mobilize together so this impunity that has begun to fracture –and the trial that now awaits Jorge Aurelio Noguera Cotes, former director of the DAS¹- may be surrounded with the proper guarantees for due process and respect for the victims' rights to truth, justice, and reparation.

Colombian Attorney General Mario Iguarán Arana has just recognized the criminal responsibility of Mr. Noguera for the homicides of trade unionists, human rights defenders, and politicians who denounced the pact between paramilitarism and the political class in Colombia. The Attorney General also recognized that during his administration the DAS was put to the service of paramilitarism in Colombia, as had been expressly requested by the representatives of the civil party, attorneys from the *Corporación Colectivo de Abogados José Alvear Restrepo*, José Alvear Restrepo Lawyers' Collective.

Unfortunately, the representative of the Procurator General's Office requested the investigations on the homicides be closed, that is it did not examine the abundant evidence of the prosecution against Mr. Noguera with respect to his responsibility for the homicides of trade unionists, human rights defenders and politicians who denounced the pact between paramilitarism and the political class in Colombia

In these conditions, Mr. Noguera Cotes must face charges for *Aggravated Conspiracy to Commit a Crime, Aggravated Homicide* –of human rights defender Alfredo Correa D'Andreis, trade unionists Ms. Zully Esther Condina and Adán Pacheco, and the politician and sociologist Fernando Piscioti Van Strahen-, *Improper Use of Classified or Secret Information, Destruction, Suppression or Concealment of Public Document, Abuse of Authority by both Arbitrary and Unjust Act*, as well as *Misappropriation and Bribery*.

Therefore, we consider pronouncements should be made by journalists, NGOs, trade unions, coalitions, attorneys, judges, multilateral organizations (for instance the ILO, the UN, the OAS, among others) to support the victims of these crimes against humanity and

¹ The Administrative Department of Security (DAS) depends directly on the Office of the President of the Republic. It is the principal Colombian intelligence agency and has criminal investigation powers. The DAS also undertakes the "protection" of senior public servants and persons under threat, as for example trade unionists, leaders from indigenous and Afro-Colombian communities, human rights defenders, journalists, and persons from the political opposition, among others.

request the Supreme Court of Justice be allowed to carry out its competency with the necessary guarantees for the exercise of due process and judicial independence, especially as this concerns a criminal trial being prosecuted against one of the most senior officials of the current government.

PROCEDURAL BACKGROUND AND ACTS: Jorge Noguera Cotes was the director of the DAS from September 2002 to October 2005. Then, he was appointed consul in Milan, Italy, but had to return to Colombia to be prosecuted for grave crimes. Later, he was initially detained on February 22, 2007, but was released from jail by way of a *Habeas Corpus* granted by the Superior Council of the Judicature on March 23, 2007. On July 6, 2007, Jorge Noguera was arrested for the second time and called to trial on February 1, 2008, for the crimes of *Aggravated Conspiracy to Commit a Crime*², in conjunction with *Improper Use of Classified or Secret Information*, and *Abuse of Authority by Both Arbitrary and Unjust Act*, as the investigation continued for *Homicides*. However, during the trial stage on June 12, 2008, the Criminal Chamber of the Supreme Court of Justice overruled the measure because Attorney General Mario Iguarán did not directly carry out the investigation and therefore the Court ordered his immediate release from prison. Abiding by the Supreme Court's decision, the Attorney General newly opened an investigation against Mr. Noguera Cotes, summoned him to provide a statement, and examined dozens of pieces of new evidence that continues to demonstrate his criminal responsibility. As a result, he ordered Noguera's preventive detention and he was newly detained on December 12, 2008. Presently he is being held at the La Picota Central Penitentiary in Bogotá, Colombia. Lastly, due to the irrefutable evidence concerning his intervention in the previously mentioned homicides, the Attorney General's Office presents criminal charges on May 6, 2009.

Grave and conclusive evidence exists concerning the responsibility of Jorge Noguera Cotes as the perpetrator by means of the crimes:

Numerous national and international articles and reports revealed the assertions made by the DAS Chief of Information Technology, Rafael García, on the proven existence of a criminal structure within the DAS, which was coordinated with paramilitary groups and controlled by its director Jorge Noguera Cotes. Because this structure committed multiple crimes, including murder, President Uribe Vélez replaced Mr. Noguera Cotes and appointed him consul in Milan. Every day the mass media continued to reveal new denunciations, which brought the president to order Jorge Noguera to return to face justice as the only way to diminish the pressure of the scandals.

It has been proven Jorge Noguera, as the head of the Uribe presidential campaign in the department of Magdalena, immediately demonstrated his desire to enter into the Administrative Department of Security (DAS). This was expressed to Álvaro Uribe Vélez, once he became president elect.

It has been proven a criminal structure was established over the legal apparatus of the DAS –at its most senior levels- with the arrival of Jorge Aurelio Noguera Cotes. It has also been proven that, through the use of his public privileges, Noguera provided the necessary contribution for paramilitary actions, including both that deployed on behalf of the “*counterinsurgency war*,” which actually has been a persecution of the civilian population, as that concerning the definitive taking of power, as seen in the proven events of the so-called “*Pact of Ralito*.”³

² The crime of aggravated conspiracy to commit a crime has been the classification for paramilitarism since the criminal code was reformed in 2000 and penal classifications making express reference to the term “*paramilitarism*” were eliminated.

³ The ‘*Pact of Ralito*’ was the first documented evidence known concerning the formal alliances between the political class in Colombia and paramilitarism. This agreement in particular concerned the commitments acquired in the meeting of July 23, 2001, which was convened by the paramilitary chiefs Salvatore Mancuso Gómez, Diego Fernando Murillo Bejarano, aka Don Berna, Rodrigo Tovar Pupo, aka Jorge 40, and Edward Cobo Téllez, aka Diego Vecino. Furthermore, 29 politicians from the Caribbean coast also asserted their intention of ‘*refounding our country*’ and establishing ‘*a new social contract*.’

It has been proven the chief of information technology, Rafael García Torres, was a paramilitary. Knowing this situation, and having a close friendship from years before, Jorge Noguera appointed him to this important position, which dealt with the handling of the most sensitive information on State intelligence and security. The objective was for him to be a liaison with the Northern Bloc and put the DAS to the service of the paramilitaries.

It has been proven the persons brought as defense witnesses, most of whom are friends of Jorge Noguera and belonged to the different levels of the Organized Power Structure that committed the crimes, uniformly deny the testimony provided by the prosecution witnesses so as not to incriminate themselves. Nonetheless, they recognize the other acts, circumstances, and existing relationships among those who one way or another intervened in the investigated homicides.

It has been proven Jorge Noguera placed persons in key positions within the DAS to be functional for his crimes. As such, they were members of the Organized Power Structure he partially controlled as the director of the DAS. This included such senior level DAS officials as Rafael García Torres, who was the chief of information technology, Gloria Bornacelly, director of the Magdalena office, Rómulo Betancur, director of the Bolívar office, Emilio Vence, director of the Atlántico office, Alfredo Valle Anaya, deputy director of the Magdalena office, Giancarlo Auque, director of intelligence and general secretary, and Enrique Ariza, chief of intelligence at the DAS, among others.

According to testimony provided by Rafael García, Giancarlo Auque was in charge of the commissions with contracted persons at the DAS. The DAS information technology office handled these procedures. In this way, García coincides with other evidence gathered as part of this case, which indicate Noguera had committed to giving the paramilitary Northern Bloc a commission of between 5% to 10% of all the contracting at the DAS. Many of these resources ended up being funneled through the information technology office. During the Noguera administration of the DAS, approximately 24 billion pesos were invested from 2003 to 2004. Rafael García also coincided with other evidence gathered in the case, including the statement provided by Rodolfo Benítez concerning INDUMIL, the state-owned military industry, and the statements provided by Nancy Estela Ospina Córdoba. Ms. Ospina Córdoba, who was in charge of contracting under Auqué, sustained that “[...] *the secretary general managed the expenses and the small account contracts were managed by the administration deputy office. Contracting was totally delegated to the secretary general and he in turn delegated it to the administrative deputy director.*”

Rafael García has informed the justice system the appointment of Rómulo Betancur and Emilio Vence Zabaleta, who were the respective directors of Bolívar and Atlántico offices during the Noguera administration, were consulted and defined by paramilitarism. Betancur had already been a DAS official, but left due the indications of his alleged ties with paramilitaries.

Up to now, the most representative members of the organized power structure are in the following situations:

Member	Position in DAS / Relationship with DAS.	Current Situation
Jorge Noguera Cotes	National Director.	Detained and accused of aggravated conspiracy to commit a crime and other grave crimes.
Rafael García Torres	Director of Information Technology.	Released due to time served. Convicted for the crime of aggravated conspiracy to commit a crime.
Giancarlo Auqué de Silvestri	Director of Intelligence – General Secretary.	No information available.
Gloria Bornacelly	Director of Magdalena Office	Detained for aggravated

		conspiracy to commit a crime.
Javier Alfredo Valle Anaya	Deputy Director of Magdalena Office	Requested in extradition. Conspiracy to commit a crime and aggravated homicide.
Rómulo Betancur Garrido	Director of Bolívar Office	He was detained for conspiracy to commit a crime. Later, the investigation was closed.
Enrique Osorio de la Rosa.	Informant. (He did not pass the entrance exams.)	On October 16, 2008, he was detained for aggravated conspiracy to commit a crime. ⁴
Álvaro Pupo	External – Relationship with Noguera.	No information available
Jorge Castro Pacheco	External – Relationship with Noguera and Rafael García	Detained and charged with aggravated conspiracy to commit a crime.
José Gélvés Albarracín	External – Relationships with Noguera and Rafael García.	Confessed paramilitary.
Enrique Ariza	Director of Intelligence at the DAS.	Has been implicated in the alleged creation of an alternative wiretapping center within the DAS to the service of the paramilitary Carlos Mario Jiménez Naranjo, aka Macaco.
Edgar Ignacio Fierro Flórez, aka Don Antonio.	External - Relationship with Jota Valle or Javier Valle.	Detained and currently participating in the Justice and Peace proceedings.
Rito Alejo del Río, retired general from the national army.	External - Direct relations between Noguera and paramilitary leadership.	Detained and presently facing charges for homicide of protected person and aggravated conspiracy to commit a crime.
Jimmy Nassar	External - Relationship with Enilse López, aka La Gata.	No information available.
Rodrigo Tovar Pupo, aka Jorge 40, paramilitary boss for the Northern Bloc.	External - Relationship with Noguera and Rafael García.	Extradited. He has multiple convictions in Colombia. He ordered Mr. Fierro Flórez, aka Don Antonio, to commit the crimes documented in the well-known computer ⁵ . Presently he has been extradited to United States, where he faces criminal charges for drug trafficking.

It has been proven Jorge Noguera belongs to this group of politicians and public figures who have ties had with paramilitaries. He is also from the Department of Magdalena, which has become one of the departments most affected by the relationships between members of congress and paramilitarism. According to follow-up carried out by the José Alvear Restrepo Lawyers' Collective, 14 members and former members of congress have been implicated in these ties, which is the totality of representatives elected for the 2006 – 2010 legislative period. Of these 14 members and former members of congress, 9 are presently under detention, 4 have pled guilty to the charges, and 2 have been convicted for their relations with paramilitary structures. Furthermore, it should also be mentioned the former mayor of Santa Marta, José Francisco Zúñiga Riascos, who was convicted for the crimes of aggravated conspiracy to commit a crime and coercion of voters,⁶ and the former

⁴ According to sworn testimony provided by Rafael Enrique García Torres on October 16 2008, Osorio was being held at the prison in Santa Marta.

⁵ The so called “computer of Jorge 40” includes several computers and removable flash drives and hard discs, which were seized by the Technical Investigation Agency (CTI) of the Attorney General's Office on March 11, 2006, during the arrest of former army captain Édgar Ignacio Fierro Flórez, aka Don Antonio, who was the right hand to then paramilitary boss Rodrigo Tovar Pupo, aka Jorge 40, in Santa Marta, Magdalena.

⁶ *Condenado Exalcalde de Santa Marta por Parapolítica*. Attorney Generals' Office, www.fiscalia.gov.co/PAG/DIVULGA/noticias2009/antiterrorismo/TerroStaMartaAbr02.htm.

governor of Magdalena, Trino Luna Correa, who was convicted for the crime of aggravated conspiracy to commit a crime for his relations with paramilitary chiefs Rodrigo Tovar Pupo, aka Jorge 40, and Hernan Giraldo Serna, among others.⁷

However, the court rulings on the paramilitary alliances within the Colombian State do not only concern the congress since investigations are also being carried out against persons from different parts of the State apparatus, who allowed the installation of the paramilitary system and provided support with their authority as governors, assembly members, mayors, council members, State consultants, and public officials, including the former Director of DAS, Jorge Aurelio Noguera Cotes.

It has been proven that, as a witness of the prosecution, Rafael García is an utterly normal and coherent person with a good analysis of the reality of the contexts. His testimony has varied in accordance with the circumstances of time and fashion, but are not contradictory or deceitful. Most importantly, according to a medical ruling, he does not suffer from any illness or incapacity that affects his mental abilities and he has the capacity to differentiate between reality and fantasy.

In addition to Rafael García, there are numerous other witnesses in this case, including Colonel Pardo Ariza and Colonel Rubio Conde, then director of Interpol, DAS officials Rodolfo Benítez, David Rivero, among others, and the paramilitaries Salvatore Mancuso Gómez and Edgar Ignacio Fierro Flórez, aka Don Antonio. In addition to the more than 50 thousand pages of multiple documents, reports, and rulings, these witnesses prove the criminal conduct committed by Jorge Noguera and conclusively demonstrate Noguera's responsibility as the perpetrator of the crimes for which he is being investigated.

It is proven paramilitary groups exist in Colombia and that in most case these groups always acted hand in hand with the State security agencies like the DAS and civilian authorities like the so called para-politicians, as has been recognized by paramilitary commanders during the denominated Justice and Peace proceedings, as is the case of Salvatore Mancuso and Edgar Ignacio Fierro Flórez, among others.

In addition to having Rafael García as a liaison with the paramilitarism, it is proven Jorge Noguera also had Alvaro Pupo Castro, a cousin to Rodrigo Tovar Pupo, aka Jorge 40, Rito Alejo Del Río, Jorge Castro Pacheco, and José Géives Albarracín.

It is proven that, through his director of information technology Rafael García, then director of the DAS Jorge Noguera filtered information to paramilitary Hernan Giraldo, chief of the so called Tayrona Resistance Bloc of the Sierra Nevada of Santa Marta. This included filtering information to them on the inter-agency operation coordinated by the Office against Money Laundering of the Attorney General's Office, initially designated Operation RODADERO and later Operation CICLÓN. This information was filtered in a timely fashion to paramilitaries, in addition to the multiplicity of actions carried by the DAS's national administration to hinder the realization of the operative. As stated by detectives in this operation, this resulted in the operation being ineffective to a large degree.

It is proven that Jorge Noguera interfered in Operation OTTERLOO, which was directed against paramilitaries under the command of Carlos Castaño who had previously entered an arsenal into Colombia. Colonel Henry Rubio Conde, who acted as the director of INTERPOL at the time the corresponding investigations were carried out on these acts, has provided essential testimony on this matter.

It is proven that during the alleged demobilizations Jorge Noguera legally held meetings with such paramilitary bosses as Rodrigo Tovar Pupo, aka Jorge 40. It is also proven that he held illegal meetings before and after these demobilizations. During these meetings he coordinated his criminal activities. Likewise, he met with the liaisons that took information

⁷ *Condenado el suspendido gobernador de Magdalena Trino Luna.* Caracol Radio, www.derechos.org/nizkor/colombia/doc/trino.html.

to Hernan Giraldo Serna and Rodrigo Tovar Pupo, aka Jorge 40, as was the case of Alvaro Pupo Castro.

It is proven that over the last ten years more than 60% of the trade unionists murdered in the world were murdered in Colombia. It is also proven that there is rampant anti-union violence, in addition to violence committed against human rights defenders. Furthermore, these persons have been the target of anti-insurgency intelligence work. Several DAS officials have recognized trade unionists were the object of intelligence work and this information was included in their databases and put on lists Noguera gave to paramilitaries. Later, these same persons were in fact the object of threats, forced displacement, murder, and forced disappearances.

It is proven the DAS had intelligence reports on the members of different labor organizations, including CUT, ANTHOC, FENSUAGRO, SINDIAGRICULTORES, and USO, as well as social leaders. Some of this information was also obtained through the protection program for trade unionists.

Through testimony provided by DAS officials David Rivero and Rafael García, it is proven that Jorge Noguera requested the names of persons investigated by intelligence and gave them to paramilitary boss Rodrigo Tovar Pupo, aka Jorge 40, to carry out the actions. He also created and provided lists of trade unionists, leftists, and human rights defenders, which included the professor and social leader Alfredo Correa D'Andreis, the journalist and trade unionist Zully Condina and the politician Fernando Piscioti. Later, these persons were murdered, as recognized by the paramilitary Edgar Ignacio Fierro Flórez, aka Don Antonio.

It is proven the murdered Alfredo Correa D'Andreis, who was a professor and member of the teachers union, ASPU, Ms. Zully Codina, who was a journalist and a trade union leader in the health industry, and the sociologist Mr. Fernando Piscioti, who was a liberal party politician, appeared in DAS intelligence reports with information on their personal lives and social and work-related activities. This surveillance was carried out over a number of years. The trade unions ANTHOC, CUT – Bolívar Chapter, USO, and other local trade unions, were also mentioned. This activity is the initial phase to the dirty war.

It is proven the activists Alfredo Correa D'Andreis, Zully Codina, Adán Pacheco, and the politician Fernando Piscioti were victims of counter-insurgency policies based on the notion of the "*internal enemy*" and "*political war*" against social organizations and trade unions, which were implemented through the organized power structure over which Jorge Noguera Cotes had direct control.

It is proven there was a plan to exterminate trade unionists and opposition leaders by paramilitary groups, as they themselves have recognized. These paramilitary groups were to use the lists provided by DAS as a result of intelligence work. Consequently, multiple murders were carried out, including those of Alfredo Correa D'Andreis, Zully Codina, Adán Pacheco, and Fernando Piscioti.

It is proven the DAS, as directed by Alfredo Valle Anaya, created false intelligence reports and manipulated reintegrated combatants, who were nothing more than paramilitaries or false witnesses, in order to criminally investigate and prosecute the professor Alfredo Correa D'Andreis, member of the teachers' union, ASPU. Later Mr. Correa D'Andreis was released after the baseless prosecution failed. With these same intelligence reports, Rodrigo Tovar Pupo, aka Jorge 40, and Edgar Ignacio Fierro Flórez, aka Don Antonio, proceeded to murder this person, which is similar to the situation of other social leaders as in the case of Adán Pacheco.

It is proven Edgar Ignacio Fierro Flórez, aka Don Antonio, military commander for Rodrigo Tovar Pupo, aka Jorge 40 –both of whom belonged to the paramilitary Northern Bloc– recognizes and accepts the responsibility for the crimes committed. This proves once more the existence of the Organized Power Structure and demonstrates how it executed

persons that appeared on the lists given by order of Jorge Noguera Cotes to the paramilitary groups.

It is proven there is an Organized Power Structure that had its legal structure within the DAS and in turn an illegal structure that broke the law through the commission of crimes, as in the three previously mentioned cases. It is also proven it acted in coordination with the AUC or paramilitaries.

It is proven this Organized Power Structure had Jorge Noguera Cotes at the most senior level, which is made up of the perpetrators that plan and organize the criminal acts. Rodrigo Tovar Pupo, aka Jorge 40 is also at this level, that being those who as **leading perpetrators**, belong to the intimate circle directing the organization. The intermediate perpetrators in the hierarchy are on the second level. They exercise some form of control over a part of the organization, which is why they may be designated **organizational perpetrators**. Lastly, the mere **executing perpetrators** are on the lowest level. They only appear as accomplices to the overall criminal enterprise,⁸ who in this case were the hit men directed by Edgar Ignacio Fierro Flórez, aka Don Antonio.

It is proven the DAS acted in an illegal fashion under the direction of Jorge Noguera Cotes, despite the fact it is a State institution. This does not necessarily mean DAS as an organization was totally removed from law. To the contrary, it committed crimes through acts constituting the crimes undertaken within the framework of its actions, which makes them contrary to the law.

It is proven Jorge Noguera Cotes, as an indirect perpetrator or the man in the background, had expendable or interchangeable direct perpetrators, the executors or “men in front.” These executors are interchangeable or substitutable, since the power structure functions automatically in the case of the DAS in connection with the paramilitaries. This guarantees the execution of the act for the man in the background and allows him to proceed to dominate events of diverse nature. It is relevant to note that both the man in the background and the man in front should face criminal charges. The immediate perpetrator is responsible for directly executing the act. The indirect perpetrator is responsible for his conduct that consists in making use of another person or persons to commit the crime and manipulating the organized power structure. The indirect perpetrator should face criminal charges for having domination over the realization of the criminal event.

It is proven former director of the DAS, Jorge Noguera Cotes, as the director of the Organized Power Structure, had knowledge of the crimes he determined to be committed against persons that intelligence alleged to have had ties with the opposition.

Moreover, the DAS's scaffolding was diligent, urgent, and operative during the Noguera administration. When he left the DAS, the agency had to remove more than 200 officials. This process has yet to be completed up to today. It is also important for this to be done in the other State security agencies, including the army and the police.

REQUEST FROM THE VICTIMS:

Considering there is a file with more than 50 thousand pages containing much grave and conclusive evidence for the prosecution, which is not limited to the testimony provided by Rafael García Torres, the Supreme Court of Justice should be surrounded with the guarantees needed to apply justice. It is important to remember Jorge Noguera Cotes put the DAS to the service of paramilitarism. He financed them and provided them with information. He also eliminated background records, arrest warrants, and extradition requests against its members. Lastly, he supported the commission of homicides against

⁸ Ambos, Kai and Grammer, Christoph. *Dominio del hecho por organización*. Cuadernos de Doctrina y Jurisprudencia Penal. Ed. Ad-Hoc. N° 16.

those considered opposition. All of these actions were committed by Noguera Cotes, as he belonged to paramilitarism and took advantage of his position as the director of the DAS.

According to the ILO, Colombia has the highest murder rate of trade unionists in the world. Consequently, when Jorge Noguera was called to trial for these grave and painful crimes, as one of the most responsible persons, it is only a first step to ending impunity.

We also consider it fundamental to request that progress be made in determining the criminal responsibility of the other members of the organized power structure of the DAS and paramilitarism. Moreover, it is important the victims may actively participate in the trial and not be hindered in intervening as witnesses in the case. Lastly, the position of the Attorney General's Office should remain consistent with the determinations in the indictment, as these determinations are logical, legitimate, and fair with respect to matters proven in the case against Noguera Cotes.

Therefore, we invite international human rights organizations, trade unions, journalists, bar associations, judges, and multilateral organizations (including the ILO, the UN, and the OAS), among others, to accompany this historic trial concerning the crimes of state committed after the enforcement of the International Criminal Court.

We are still waiting for a definitive historical decision that allows demonstrating whether or not progress may be made in overcoming impunity in Colombia and in bringing to trial domestically those who are most responsible for the grave crimes committed against trade unionists in Colombia, which would consequently dignify the victims and Colombian society.

Specifically, we request the following actions from the national and international community:

- Support for the Supreme Court of Justice so it may have the guarantees necessary for the application of justice, the proper guarantees for due process, and respect for the victims' rights to truth, justice, and reparation.
- Insistence for the case to progress in determining the criminal responsibility of the other members of the Organized Power Structure of the DAS and paramilitarism;
- Support so the victims may actively participate in the trial and not be hindered in intervening as witnesses in the case;
- Monitoring so the position of the Attorney General's Office remains consistent with the determinations in the indictment, which is a reflection of what has been proven.
- Visits from international observation missions during the trial to accompany the case, the victims, and their representatives;
- Pronouncements from international organizations to support the victims, the case investigated by the Supreme Court of Justice, and judicial independence.

Colectivo de Abogados "José Alvear Restrepo"

May 12, 2009

Bogotá, Colombia