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Canada

“Mapiripán Massacre Scandal” Affair:

LWB Canada Troubled by Public Attacks against Its Partners in Colombia

Quebec City, November 18th, 2011 – Lawyers Without Borders Canada (LWBC) expresses its solidarity with its partners at the human rights law firm, the *Colectivo de abogados « José Alvéar Restrepo »* (CAJAR), which has been the object of offensive statements for several days by numerous political personalities.

A recent testimony of Ms. Mariela Contreras is at the root of the present affair. Ms. Contreras declared before the Colombian justice system in 2002, and before the Inter-American Court on Human Rights (IACHR), in 2005, that she had lost her husband and two sons in the massacre perpetrated by paramilitaries in July 1997 in the village of Mapiripán, with the complicity of regular military forces. On October 25th, 2011, she testified at Court that she had in fact lied and fraudulently benefited from the monetary compensation paid by the Colombian State as a result of the historical ruling in this case.

The Office of the Attorney General of Colombia (*Fiscalía General de la Nación - FGN*) had recognised Ms. Contreras as a victim of the massacre in 2002. She was not represented by CAJAR as party to these proceedings until the case was brought before the IACHR, in 2003.

LWBC, like CAJAR, was troubled to learn that victims may have sought to induce national and international judiciary systems into error, and hopes that these allegations will be the object of a detailed investigation.

Nonetheless, LWBC stresses that attorneys who represent victims are not responsible for establishing the facts at issue in a criminal trial. This falls under the responsibility of competent State authorities. In the present case, the FGN declared in 2002 that Ms. Contreras had lost relatives during the massacre, and recognised her as a victim of the massacre. The truth of Ms. Contreras’ testimony of the events she claimed to have witnessed was never challenged by the State since her statement before the FGN in 2002.

Many cabinet ministers and the Inspector General of Colombia (*Procurador General de la Nación - PGM*)¹ have requested that punitive sanctions be imposed on CAJAR, despite the fact that no penal or disciplinary authority has ever established that its members have committed any offence or violated its professional ethical rules.

¹ The functions of the Inspector General of Colombia, as defined at sections 277 and 278 of the 1991 Constitution, are to be responsible for ensuring respect of the Constitution and of the Law, to promote fundamental rights, to protect the public good, and to guarantee the public service’s ethical conduct. For more information : www.procuraduria.gov.co/

LWBC strongly objects to the fact that high-ranking officials of the Colombian government have jumped so quickly to conclusions in this matter, and have insinuated that CAJAR was driven by greed and was seeking, by all means possible, to convict the State². This conduct seriously undermines CAJAR's advocacy efforts for victims.

This behaviour also contradicts Executive Orders requiring State representatives to recognise the importance and the legitimacy of the work of human rights advocates³. They are also in violation of the *Basic Principles on the Role of Lawyers*⁴, which were adopted by the United Nations in 1990 establishing that "Governments shall ensure that lawyers a) are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference; [...] c) shall not suffer, or be threatened with, prosecution or administrative, economic or other sanctions for any action taken in accordance with recognized professional duties, standards and ethics."

By publicly condemning CAJAR from the outset, political representatives have impeded the impartiality of Colombia's judiciary, which is the only authority responsible for establishing the facts of the present affair.

In a 2005 ruling, the IACHR explicitly acknowledged the possibility the Colombian authorities' investigation did not allow the number of victims to be identified with certainty, many of whom have never been found and remain missing to this day. In this same judgment, the Court ordered the Colombian State to take the necessary measures to make the most accurate count of victims possible, in order to allow for individualised measures of reparation. However, today public authorities are trying to blame the continued uncertainty as to the number of victims on CAJAR attorneys, even though this is clearly not their role nor their responsibility.

LWBC commends the IACHR for convoking the parties of the *Mapiripán Massacre v. Colombia* case to a special hearing on November 23rd 2011, in San José, Costa Rica,

² On October 27th, 2011, when invited to comment on the possibility that certain recognised victims of the massacre in the Mapiripán ruling would in fact not actually be victims, President Juan Manuel Santos declared: "Shady economic interests are trying to profit from this system [the Inter-American System of Human Rights], and show no regard for it, because they seek to enrich themselves by acquiring State resources. [...] We would never have imagined that they would recommend to some individuals to lie and to claim that they are victims, where in fact they are not. This is one of the worst forms of corruption ever!" (*Hay intereses oscuros y económicos que utilizan ese sistema, y hacen burla de él, para lucrarse con los recursos del Estado. (...) Lo que no nos imaginamos es que recomendaban que mintieran e hicieran pasar por víctimas a quienes no lo eran. ¡Qué más acto de corrupción que este!*) <http://m.eltiempo.com/politica/crticas-a-fallo-en-contra-del-estado-en-caso-de-mapiripn/10650084>. As early as October 26th, 2011, the Inspector General has qualified those representing the "false victims" as "criminal groups specialised in defrauding the Colombian State" (*bandas criminales que se han especializado en estafar al Estado colombiano*) <http://m.elcolombiano.com/articulo/13877>

³ See Presidential Directive no 7, September 9th, 1999, (http://www.presidencia.gov.co/prensa_new/direc/1999/dri07_99.pdf) and Defence Ministry Directive no 009, July 8th, 2003, (<http://www.derechoshumanos.gov.co/Programa/Documents/2010/legislacion/Directiva009de2003-Mindefensa.pdf>).

⁴ UN Doc. A/CONF.144/28/Rev.1 p. 118 (1990).

and sincerely hopes that this will be an opportunity to clearly establish the parties' respective responsibility in this matter.

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