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President Iván Duque Márquez
President of the Republic of Colombia
Carrera 8 No. 7 – 26
Palacio de Nariño
Bogotá, Colombia

Mr Francisco Barbosa Delgado
Fiscal General de la Nación
D.C. Diagonal 22B No. 52-01 (Ciudad Salitre)
Nivel Central
Bogotá, Colombia

23 July 2020

Dear President Iván Duque Márquez and Mr Francisco Barbosa Delgado,

Re: Alleged illegal espionage against lawyers from the Inter-church Commission of Justice and Peace (CIJP), José Alvear Restrepo Collective (CAJAR), and other human rights defenders

We write on behalf of the Colombian Caravana (hereafter 'Caravana'), a UK registered charity that organises the International Caravana of Jurists; ABColombia, the advocacy project of a group of five leading UK and Irish organisations with programmes in Colombia: CAFOD, Christian Aid UKI, Oxfam GB, SCIAF and Trócaire; London Mining Network; Colombia Solidarity Campaign; UIA-IROL (The Institute for the Rule of Law of the International Association of Lawyers); Lawyers for Lawyers; *Kolumbien Plattform Schweiz* (Platform Colombia Switzerland, 17 Swedish organisations working on Colombia); Lawyers Rights Watch Canada; *Fundación de la Abogacía Española* (Spanish Bar Foundation); Sol De Paz Pachacuti; and *Kolko - Menschenrechte für Kolumbien* (Kolko - Human Rights for Colombia).

Over the years, we have called upon the Colombian government to protect the ability of lawyers and human rights defenders to represent their clients without any interference in their work, in order to comply with both Colombian and international law.

The signing organisations are deeply concerned to learn about recent allegations of the Colombian National Army's unlawful surveillance activities of 130 individuals, including lawyers of the José Alvear Restrepo Collective (*Colectivo de Abogados José Alvear Restrepo* - CCAJAR), lawyers of the Inter-church Commission of Justice and Peace (*Comisión Intereclesial Justicia y Paz* - CIJP); and other human rights defenders such as Luz Marina Cuchumbé and Jani Silva.

According to reports published in the *Semana* magazine, this was part of a mass surveillance scheme carried out between February and December 2019, during which time General Nicacio de Jesús Martínez de Espinel was Commander-in-Chief.¹ Following *Semana's* reporting of illegal surveillance, the Foundation for Press Freedom (*Fundación para la Libertad de Prensa* – FLIP) has alleged 14 journalists have been also subject to illegal surveillance, adding 14 new names to the 130 already reported.²

For several years we have advocated that the lawyers of CIJP and CCAJAR, as well as other groups of lawyers and human rights defenders who perform the role of a lawyer, must be able to carry out their work protecting human rights without intimidation or threat. Undoubtedly, any unwarranted or illegal surveillance poses a threat to their ability to carry out their work.

We have been informed that, in January 2020, members of CIJP were subject to alleged illegal surveillance on at least two occasions. On 30 January, Camilo Álvarez and Danilo Rueda, respectively a member and the Executive Secretary of CIJP, were followed and photographed by an unknown man, upon them leaving a university centre where they had been promoting the Peace University (*Universidad de Paz*) initiative.³ We have also received reports that Danilo Rueda, was declared the target of an assassination plot.⁴

On multiple occasions, in January 2020, drones were spotted flying over the CIJP offices.⁵ Further, on 30 January 2020, a drone was found fallen in the courtyard of the home of Daniel Prado (lawyer, associated with the CIJP), in Bogotá. We understand that the drone had the ability to record video and sound. Moreover, since 2019, Daniel Prado has faced a campaign of threats and acts of intimidation as a result of his role as the victims' counsel in the case against the paramilitary group known as 'Los 12 Apóstoles'.⁶

We understand that surveillance, threats, and harassment are not isolated or unusual incidents for human rights lawyers in Colombia. In October 2019, lawyer Germán Romero, reported information theft, followings, calls, and a direct death threat from an unidentified individual. These incidents occurred in the context of Mr Romero's multiple investigations into High Commanders of

¹Semana Magazine "Las Carpetas Secretas" 5 January 2020 at <https://www.semana.com/nacion/articulo/espionaje-del-ejercito-nacional-las-carpetas-secretas-investigacion-semana/667616>

² <https://flip.org.co/index.php/es/informacion/pronunciamientos/item/2523-catorce-nuevos-casos-de-periodistas-que-fueron-victimas-de-acciones-de-perfilamiento-por-parte-del-ejercito-nacional>

³ CIJP: Seguimiento a defensores, 30 January 2020 at <https://www.justiciaypazcolombia.com/seguimiento-a-defensores>

⁴ CIJP: Nuevo plan contra Justicia y Paz por promover verdad, derecho a la tierra y al ambiente, 2 February 2019 at <https://www.justiciaypazcolombia.com/nuevo-plan-contra-justicia-y-paz-por-promover-verdad-derecho-a-la-tierra-y-al-ambiente>

⁵ World Organisation Against Torture: Colombia: Actos de vigilancia ilegal contra la CCJ y contra el abogado Daniel Prado, 11 February 2020 at <https://www.omct.org/es/human-rights-defenders/urgent-interventions/colombia/2020/02/d25693/>.

⁶ <https://www.omct.org/es/human-rights-defenders/urgent-interventions/colombia/2020/02/d25693/>

the Armed Forces and their alleged responsibility for extrajudicial executions and enforced disappearances.⁷

It has been well publicised that CCAJAR was one of the many organisations subject to 'Operation Transmilenio' by the now defunct Administrative Department of Security (*Departamento Administrativo de Seguridad - DAS*) between 2002 and 2010. It is understood that the purported aim of the operation was to disrupt and dismantle target organisations. Surveillance activity was not limited to CCAJAR members but also extended to their family members. Death threats were sent, including the gruesome example of a package containing a decapitated doll with red paint to signify blood being sent to a CCAJAR lawyer and with reference to her young family.⁸ We understand that to date, there remain demands for further investigations into these acts in order to see those with overarching responsibility for these crimes brought to account.⁹

We are aware that Colombia has a history of State-enacted illegal intelligence activities against lawyers and other human rights defenders and that this illegitimate surveillance is alleged to have led to serious crimes, such as assassination attempts and murders,¹⁰ as referenced by the United Nations¹¹ and the Inter-American Commission for Human Rights.¹²

We state unequivocally that any surveillance measures must fully comply with international human rights law, in that they must be necessary, proportionate, legitimate, regulated by law, transparent, and subject to appropriate oversight.¹³ Without proper oversight or regulation, the surveillance of human rights defenders is likely to have a chilling effect on their tireless advocacy efforts and expose them to unnecessary risks.¹⁴ We note that the State has a responsibility to protect lawyers and other human rights defenders. We respectfully draw your attention to Articles 1, 5, 9(5) and 12 of the UN Declaration on Human Rights Defenders (1998)¹⁵ and to Articles 16 and 17 of the UN Basic Principles on the Role of Lawyers (1990).¹⁶

⁷ Colombian Caravana, Lawyers for Lawyers, Lawyers Rights Watch Canada, Fundación de la Abogacía Española, Ilustre Colegio de Abogados de Bizkaia, Observatoire International des Avocats, joint letter, 22 October 2019, http://www.colombiancaravana.org.uk/wp-content/uploads/2019/12/carta-conjunta-a-autoridades_Germán-Romero_def.pdf

⁸ CCAJAR, ChuzasDas ocho años de espionaje y barbarie, 1 May, 2016, <https://www.colectivodeabogados.org/?ChuzasDas-ocho-anos-de-espionaje-y-barbarie>

⁹ CCAJAR, Condenan a Jorge noguera por concierto para delinquir al interior del DAS, 11 September 2017

¹⁰ FIDH, Colombia – Las actividades de inteligencia del Estado – DAS – al servicio de intereses criminales y de persecución política, 21 May 2010.

¹¹ UN Special Rapporteur on the situation of human rights defenders, Press Release: Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to Development, A/HRC/13/22/ Add.3, 4 March 2010

¹² Comisión Interamericana de Derechos Humanos, Comunicado de prensa No 09/09 Preocupación de la CIDH por actividades de inteligencia en Colombia, 26 February 2009

¹³ Necessary and Proportionate: International Principles on the Application of Human Rights to Communications Surveillance, May 2014, <https://necessaryandproportionate.org/principles>

¹⁴ See, in particular, the statement released by the UN Office of the High Commissioner for Human Rights in Colombia at <https://www.hchr.org.co/files/comunicados/2020/press-release-intelligence-May-2020.pdf>.

¹⁵ Article 9.5: the State shall conduct a prompt and impartial investigation or ensure that an inquiry takes place whenever there is reasonable ground to believe that a violation of human rights and fundamental freedoms has occurred in any territory under its jurisdiction. Article 12: 1. Everyone has the right, individually and in association with others, to participate in peaceful activities against violations of human rights and fundamental freedoms. 2. The State shall take all necessary measures to ensure the protection by the competent authorities of everyone, individually and in association with others, against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the present Declaration. 3. In this connection, everyone is entitled, individually and in association with others, to be protected effectively under national law in reacting against or opposing, through peaceful means, activities and acts, including those by omission, attributable to States that result in violations of human rights and fundamental freedoms, as well as acts of violence perpetrated by groups or individuals that affect the enjoyment of human rights and fundamental freedoms.

¹⁶ Which state that: 16. Governments shall ensure that lawyers (a) are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference; and (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. 17. Where the security of lawyers is threatened as a result of discharging their functions, they shall be adequately safeguarded by the authorities.

We also recognise that whistleblowers play a vital role in accountability and good governance and that they must be protected. We affirm that any witnesses who have been or are able to provide information in relation to any illegal surveillance or harassment of human rights lawyers or human rights defenders must be appropriately protected and that the State has a responsibility to ensure that they are not harmed as a result of providing an account of any alleged criminal offences or human rights violations.

We understand that members of CAJAR are currently reviewing documentation regarding the criminal responsibilities for extrajudicial executions allegedly perpetrated under the command of army general Nicacio Martínez between 30 October 2004 and 23 January 2006, to be filed at the Special Jurisdiction for Peace and the International Criminal Court.¹⁷

While we acknowledge and welcome the opening of an investigation into the newly alleged surveillance, we call upon the Office of the Attorney General to:

- Immediately adopt the most appropriate measures, agreed with the individuals concerned, to guarantee the physical and psychological integrity of the human rights defenders affected and their family members: this includes the opening and purging of all existing intelligence files, whether from the State security bodies or other institutions, that might have been collected on human rights organisations;
- Conduct a prompt, independent, impartial and effective investigation into the death threats referred to in this letter, with a view to identifying those who carry the highest responsibility and bring them before a competent, independent and impartial court to be tried and, if found guilty, sentenced in accordance with the law;
- Privately and securely communicate with the victims of this alleged illegal surveillance to inform them of all the information that has been collected on them, ensuring their safety and the security of their information is maintained at all times.
- Notify CIJP, CCAJAR and other entities, as appropriate, of the progress of investigations regarding former General Nicacio de Jesús Martínez Espinel and other members of the army linked to the allegations of illegal surveillance.
- Take the necessary action to ensure that future intelligence operations comply with human rights, as outlined in Necessary and Proportionate: International Principles on the Application of Human Rights to Communications Surveillance.
- Provide guarantees of protection for witnesses and whistleblowers (in addition to their family members and the information itself) willing to contribute to a reconstruction of the truth, an indispensable step to guarantee non-repetition. These individuals currently do not enjoy the minimum security conditions to do this.

We also call upon the Colombian Government to:

- Immediately end all acts of intimidation and surveillance against human rights defenders and particularly against lawyers in Colombia, ensuring that any surveillance carried out on any individual complies with human rights standards, and decisions to undertake surveillance are made independently and are necessary, proportionate, legitimate, transparent, and subject to appropriate oversight and regulation;

¹⁷ <https://www.elespectador.com/noticias/judicial/colectivo-de-abogados-jose-alvear-restrepo-dice-que-hay-indicios-de-que-fueron-chuzados-articulo-900293>

- Issue public declarations in support of the independence of the judicial process and recognise openly and publicly the importance of lawyers and human rights defenders and their fundamental contribution to truth, justice and reparation, providing guarantees of non-repetition as are necessary in a democratic society;
- Support the proposal from the President of the Truth Commission for a restructuring of the National Army, generating conditions that do not allow for a repetition of these alleged incidents. Ensure the promotion of and guarantees for the National Army's maximum cooperation with judicial authorities to identify and sanction the direct perpetrators and intellectual authors of any illegal activity.

While we do not act directly on behalf or as a representative of CIJP, CCAJAR or any other individual or organisation, we write in support of human rights and to draw attention to the international community's call to protect lawyers and human rights defenders, to ensure support for rule of law, and to tackle impunity.

We would be grateful to receive updates regarding the progress of the matters raised in this letter, and respectfully ask that an initial response be sent to the Colombian Caravana within 28 days.

Yours sincerely,

- Charlotte Gill, Chair – Colombian Caravana
- Louise Winstanley, Programme and Advocacy Manager – ABColombia (Advocacy Group of British and Irish Agencies with Programmes in Colombia: Oxfam, Christian Aid, Sciaf, CAFOD and Trócaire)
- Richard Solly, Coordinator – London Mining Network
- Andy Higginbottom, Secretary – Colombia Solidarity Campaign
- Jacqueline R. Scott, Director General – UIA-IROL (The Institute for the Rule of Law of the International Association of Lawyers)
- Sophie de Graaf, Executive Director – Lawyers for Lawyers
- Stephan Suhner – *Kolumbien Plattform Schweiz* (Platform Colombia Switzerland, 17 Swedish organisations working on Colombia)
- Heather Neun, Director/Colombia Monitor – Lawyers Rights Watch Canada
- Carles McCragh Prujá, Vice-President – *Fundación de la Abogacía Española* (Spanish Bar Foundation)
- Marta Pérez Iglesias, President – Sol De Paz Pachacuti
- Christiane Schwarz, Coordinator – *Kolko - Menschenrechte für Kolumbien* (Kolko - Human Rights for Colombia)

CC:

- Patricia Linares, President of the Special Jurisdiction for Peace
- Carlos Alfonso Negret Mosquera, National Human Rights Ombudsman
- Antonio José Ardila, Colombian Ambassador to the United Kingdom
- Mr Colin Martin-Reynolds CMG, British Ambassador to Colombia,
- Alberto Brunori, Representative in Colombia of the Office of the UN High Commissioner for Human Rights
- Mary Lawlor, UN Special Rapporteur on the Situation of Human Rights Defenders
- Diego García-Sayán, UN Special Rapporteur on the Independence of Judges and Lawyers
- Francisco José Eguiguren Praeli, IACHR Special Rapporteur on Human Rights Defenders