EXAMINING WORKERS' RIGHTS AND VIOLENCE AGAINST LABOR UNION LEADERS IN COLOMBIA

HEARING

BEFORE THE

COMMITTEE ON
EDUCATION AND LABOR

U.S. HOUSE OF REPRESENTATIVES

ONE HUNDRED ELEVENTH CONGRESS

FIRST SESSION

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EXAMINING WORKERS' RIGHTS AND VIOLENCE AGAINST LABOR UNION LEADERS IN COLOMBIA

Thursday, February 12, 2009
U.S. House of Representatives
Committee on Education and Labor
Washington, DC

The committee met, pursuant to call, at 10:03 a.m., in room 2175, Rayburn House Office Building, Hon. George Miller [chairman of the committee] presiding.

Present: Miller, Kildee, Payne, Andrews, Woolsey, Kucinich, Wu, Davis, Grijalva, Sestak, Hirono, Hare,Courtney, Shea-Porter, Fudge, Polis, Sablan, Titus, McKeon, Souder, Platts, Guthrie, Cassidy, and Roe.

Staff present: Paulette Acevedo, Legislative Fellow, Education; Aaron Albright, Press Secretary; Tylease Alli, Hearing Clerk; Tico Almeida, Labor Counsel (Immigration and International Trade); Chris Brown, Labor Policy Advisor; Jody Calemine, Labor Policy Deputy Director; Lynn Dondis, Policy Counsel, Subcommittee on Workforce Protections; Adrienne Dunbar, Education Policy Advisor; David Hartzler, Systems Administrator; Lloyd Horwich, Policy Advisor, Subcommittee on Early Childhood, Elementary and Secretary Education; Jessica Kahanek, Press Assistant; Sara Lonardo, Junior Legislative Associate, Labor; Ricardo Martinez, Policy Advisor, Subcommittee on Higher Education, Lifelong Learning and Competitiveness; Alex Nock, Deputy Staff Director; Joe Novotny, Chief Clerk; Rachel Racusen, Communications Director; Meredith Regine, Junior Legislative Associate, Labor; Melissa Salmanowitz, Press Secretary; Michele Varnhagen, Labor Policy Director; Mark Zuckerman, Staff Director; Robert Borden, Minority General Counsel; Cameron Coursen, Minority Assistant Communications Director; Ed Gilroy, Minority Director of Workforce Policy; Rob Gregg, Minority Senior Legislative Assistant; Richard Hoar, Minority Professional Staff Member; Alexa Marrero, Minority Communications Director; Jim Paretti, Minority Workforce Policy Counsel; Molly McLaughlin Salmi, Minority Deputy Director of Workforce Policy; and Linda Stevens, Minority Chief Clerk/Assistant to the General Counsel.

Chairman MILLER [presiding]. The Committee on Education and Labor will come to order for the purposes of conducting the hearing on examining worker rights and violence against labor union leaders in Colombia. This is an important hearing for a number of rea-

sons. And I want to thank the members of the committee for participating.

And certainly, I want to thank our witnesses for participating. It is my understanding that this hearing—we will be using translators for our witnesses. It is my understanding that when we speak, there will be simultaneous translation so our witnesses will understand what we are saying.

When the witnesses are speaking, the translators will then translate to us. So this is going to take a little more time than a usual hearing with the witnesses, but we want to provide sufficient time so the witnesses can properly give us the information that they have traveled this distance to do so.

I would like to begin by recognizing myself for the purposes of an opening statement. And then I will recognize Congressman McKeon for his opening statement.

Today this committee meets to examine whether ongoing violence and weak labor protections are impeding the ability of Colombian workers to exercise their fundamental human rights. Sadly, Colombia has been the most dangerous place in the world to belong to a labor union for the past two decades. In some recent years, there have been more labor killings in Colombia than in the rest of the world combined.

According to the National Labor School, a leading Colombian think-tank, almost 2,700 trade union members have been killed in Colombia over approximately the past 20 years. And, the number of labor union members killed last year jumped by more than 25 percent over the 2007 levels. It remains difficult to know who is responsible for most of these deaths because so few cases have been investigated, let alone prosecuted.

The Colombian Commission of Jurists tells us that the impunity rate for these crimes still remains at a staggering 96 percent. At Colombia's current pace of investigations and indictments, it would take several decades to get through the backlog. This means that thousands of killers continue to escape justice.

We will hear testimony today that many labor killings have been perpetrated by rightwing paramilitary death squads, whose leaders have acknowledged targeting union leaders. According to reports, many of the killings have been carried out by the United Self-Defense Forces of Colombia, or AUC. Although the right-wing paramilitary group was officially disbanded a few years ago, the demobilization process may have been unsuccessful.

Some former AUC paramilitary fighters appear to be now operating within organized criminal gangs. When I was in Colombia last year, union leaders told me they were increasingly receiving death threats from a new deadly gang called the Black Eagles.

Another possible explanation for the rising violence is the disturbing phenomenon of extrajudicial killings. This is where innocent civilians are murdered by Colombian armed forces and inappropriately classified as casualties of war. These so-called false positives, the deaths of these individuals, have taken the lives of thousands of Colombian citizens, including union members.

We will hear testimony today of a case where the Colombian Army killed three unarmed labor union leaders and then altered

the crime scene in order to make it look like the victims had engaged in an armed conflict.

There is concern that some anti-labor violence stems from decisions by the Colombian business and political leaders. For instance, paramilitary leaders have admitted accepting money from a broad array of Colombian and multinational corporations. And President Uribe's former director of national intelligence has been accused of turning over hit lists to right-wing paramilitaries containing the names of union leaders under government protection.

While Colombian prosecutors have made some modest progress very recently in securing some convictions in these labor-homicide cases, important questions still remain. First, do these investigations and convictions actually find out the truth behind the murders? We will hear testimony today that prosecutors often accept motives without investigating the real underlying motive.

And, prosecutors too often investigate with preconceived and incorrect theories of the case. One young woman who is testifying today intervened in her deceased father's investigation. She will tell us that her intervention was because prosecutors were advancing a false theory that her father's death was a result of a crime of passion stemming from an adulterous affair. Indeed, ongoing complaints about the publication of inaccurate motives has led the Colombian attorney general's office to stop issuing public reports regarding motives in these cases.

Second, are prosecutors conducting thorough and systematic investigations aimed at holding all those who are responsible for both the planning and executing the labor killings? Some legal observers say that prosecutors are shortchanging investigations only after securing convictions of the material author of the crime. The material author is likely to be a low-level person who pulled the trigger and not one of the intellectual authors who either ordered, planned or paid for the killing of that individual.

Finally, today's hearing will inquire about additional obstacles that prevent the Colombian workers from exercising their fundamental rights. The International Labor Organization has identified significant areas where Colombia's labor laws are non-compliant with the core international labor standards.

By raising these questions today, I hope that we can begin to find solutions to ensure that the backlog of murders are finally adjudicated and that Colombian workers have basic labor rights to which all workers should be entitled and should be able to exercise without fear of violence against them and/or their families or their organization.

Thank you very much. And I would like now to recognize Congressman McKeon, the senior Republican on the committee for the purposes of his opening statement.

[The statement of Mr. Miller follows:]

Prepared Statement of Hon. George Miller, Chairman, Committee on Education and Labor

Today this committee meets to examine whether ongoing violence and weak labor protections are impeding the ability of Colombian workers to exercise their fundamental human rights.

Sadly, Colombia has been the most dangerous place in the world to belong to a labor union for the last two decades. In some recent years, there have been more labor killings in Colombia than in all of the other nations of the world combined.

According to the National Labor School, a leading Colombian think-tank, almost 2,700 trade union members have been killed in Colombia over the past twenty years. And, the number of labor union members killed last year jumped by more than 25 percent over 2007 levels.

It remains difficult to know who is responsible for most of these deaths because so few cases have been investigated, let alone prosecuted.

The Colombian Commission of Jurists tells us that the impunity rate for these crimes still remains at a staggering 96 percent.

At Colombia's current pace of investigations and indictments, it would take several decades to get through the backlog.

This means that thousands of killers continue to escape justice.

We will hear testimony today that many labor killings have been perpetrated by right-wing paramilitary death squads, whose leaders have acknowledged targeting union leaders.

According to reports, many of these killings have been carried out by the United Self-Defense Forces of Colombia—or A.U.C. Although the right-wing paramilitary group was supposedly disbanded a few years ago, the demobilization process appears to be unsuccessful.

Some former A.U.C. paramilitary fighters appear to be now operating within organized criminal gangs.

When I was in Colombia last year, union leaders told me they are increasingly receiving death threats from a new deadly gang called the "Black Eagles."

Another possible explanation for the rising violence is the disturbing phenomenon of extrajudicial killings. This is where innocent civilians murdered by the Colombian Armed Forces are inappropriately classified as casualties of war.

These "false positives" have taken the lives of thousands of Colombian citizens, including union members. We will hear testimony today of a case where the Colombian Army killed three unarmed labor union leaders and then altered the crime scene in order to make it look like the victims had engaged in armed conflict.

There is concern that some anti-labor violence stems from decisions made by Colombian business and political leaders.

For instance, paramilitary leaders have admitted accepting money from a broad array of Colombian and multinational corporations.

And, President Uribe's former director of national intelligence has been accused of turning over 'hit lists' to right-wing paramilitaries containing the names of union leaders under government protection.

While Colombian prosecutors have made some modest progress very recently in securing some convictions in these labor-homicide cases, important questions still remain.

First, do these investigations and convictions actually find out the truth behind the murders?

We will hear testimony today that prosecutors often accept motives without investigating the real underlying motive.

And, prosecutors too often investigate with pre-conceived and incorrect theories of the case.

One young woman, who is testifying today, intervened in her deceased father's investigation. She will tell us that her intervention was because prosecutors were advancing a false theory that her father's death was a result of a "crime of passion" stemming from an adulterous affair.

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Second, are prosecutors conducting thorough and systematic investigations aimed at holding all those who are responsible for both the planning and executing the labor killings?

Some legal observers say that prosecutors are shortchanging investigations after only securing convictions against the "material author" of the crime. The material author is likely to be the low-level person who pulled the trigger and not one of the "intellectual authors" who either ordered, planned or paid for the killing.

Finally, today's hearing will inquire about additional obstacles that prevent Colombian workers from exercising their fundamental rights. The International Labor Organization has identified significant areas where Colombia's labor laws are noncompliant with core international labor standards.

By raising these questions today, I hope that we can begin to find solutions to ensure that the backlog of murders are fully adjudicated and that Colombian workers have basic labor rights to which all workers should be entitled.

Mr. MCKEON. Thank you, Mr. Chairman. We are here today for the first hearing of the Education and Labor Committee in the 111th Congress. Last week we learned that nearly 600,000 Americans lost their jobs in the month of January. About 3.6 million jobs have been lost since the recession began just over a year ago. Stock values are down, and with them the value of millions of workers' retirement savings.

I could go on about the grim economic circumstances before us, but I think we are all well-aware of the challenges we face and particularly the impact on the American workforce. Any of these challenges would seem an appropriate topic for the first hearing of this panel.

Unfortunately, we are not here to examine our nation's dire economic straits today. Instead the majority has decided the first order of business for this committee, the committee that oversees job training and retirement security and health care is an examination of the circumstance of workers in Colombia.

Don't get me wrong. I am troubled by the reports of the violence in Colombia. And I personally believe that one of the best things we can do to stem the violence and improve conditions in that country would be to enact the stalled Colombia free trade agreement.

But here in this room where we have a responsibility to look out for the concerns of the American workers, American students and American families, I find it baffling that we are setting those issues aside to look at the situation facing workers in a foreign country. Certainly, this Congress has a role to play in protecting human rights around the world. And to that end, we have an entire committee dedicated to foreign affairs.

To the witnesses who are here today, I do want to thank you for joining us. While I clearly believe we should be focused on issues impacting American workers, I know that you have compelling stories to share and insights to offer. As long as we are here to examine this topic, perhaps we can expand the scope of the discussion to reflect the need for free trade to help put an end to the unacceptable pattern of violence in the nation of Colombia.

I would also like to point out, Mr. Chairman, that Ambassador Barco is here from Colombia. I think she should be recognized. I hope as we continue to work on this issue, if we are going to do that, it would be good to let her have a chance to state perhaps the other side of the issue. It is unfortunate that we can't have her testifying here today.

Once again, I want to thank the witnesses for being here. I hope the next time this panel gathers the topic will hit a little bit closer to home. I think we owe that to the 600,000 workers who lost their jobs last month.

And I yield back.

[The statement of Mr. McKeon follows:]

Prepared Statement of Hon. Howard P. "Buck" McKeon, Senior Republican Member, Committee on Education and Labor

Thank you. We're here today for the first hearing of the Education and Labor Committee in the 111th Congress. Last week, we learned that nearly 600,000 Americans lost their jobs in the month of January. About 3.6 million jobs have been lost since the recession began just over a year ago. Stock values are down, and with them, the value of millions of workers' retirement savings.

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I yield back.

Chairman MILLER. I thank the gentleman for his statement. He will get an opportunity to help those 600,000 workers later today on the floor when we vote on the Economic Recovery Act that extends their unemployment benefit, extends their food stamp benefit, extends their health care benefits. So we will get an opportunity to do that later today.

I, too, want to recognize Ambassador Barco. She has sent, on behalf of the Colombian government, transmittal to us providing us additional information of documents that have been prepared by the government on this continuing issue.

This is not a minor issue between these two countries. And it is not a minor issue with respect to the free trade agreement. I am trying to have these hearings outside of the consideration of the free trade agreement so we can develop an answer to the questions that are being raised by people across our country about this issue and whether or not American workers are going to be required to compete with people that when they try to organize a workplace, the army shows up to put an end to it. So this is fundamental to wages in this country and to protections in this country.

So without objection, I would ask that the documents submitted by Ambassador Barco be included in the record of this hearing. Hearing no objection, so ordered.

[The information provided by the Colombian Government may be accessed at the following Internet address:]

http://colombiaemb.org/docs/labor%20documents/embassy%20of%20colombia%20material%20on%20labor%20february%202009.pdf

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Chairman MILLER. I would also say that Ambassador Barco has been very helpful to this committee, to me, both when I traveled to Colombia and in following up on questions that we have submitted to various agencies of the Colombian government with respect to this issue. She has worked very hard to get us responses and to go back and get us more comprehensive responses when we weren't satisfied with the first ones. So I want to thank her for her service. And I would like to recognize her.

Ambassador Barco, please—thank you very much.

And with that, for those who just came in, we will be allowing our witnesses some additional time because of the need for translations. And we have discussed this with the minority, and both sides have agreed to it.

With that, I would like to welcome our witnesses today. Several of them have traveled all the way from Colombia. And we are very grateful for their willingness to come here and to share their perspectives and opinions.

We are aware that some of our witnesses may be taking on substantial personal risk by being here today. Far too many times, senior government officials in Colombia have made statements stigmatizing legitimate human rights work, labor union advocacy and criticism of the government's policy as somehow a cover for the FARC guerilla activities.

Such comments were made publicly just this past weekend about those Colombians who travel abroad to discuss current human rights situations. Given that those unfortunate comments have been made just days prior to the travel of the witnesses we have invited here today, I must state that I trust and hope that the Colombian government will treat our witnesses at today's hearings respectfully and will refrain from making similar accusations against them.

I would like to begin by introducing Jose Luciano Sanin, who is the professor of constitutional law and director of the National Labor School, a research organization based in Medellin, Colombia. Mr. Sanin is executive director since 2006. And prior to that, he was the organization's academic director. He has written extensively on a broad range of topics, including the Colombian constitutional court, political and human rights and the core labor standards set out by the International Labor Organization.

Our next witness will be Yessika Hoyos from Bogota, Colombia, where she recently graduated from law school and now works on human rights cases at a nonprofit law firm. Ms. Hoyos comes to this work after having personally experienced the loss of her father to anti-union violence. She is a founding member of the organization called Sons and Daughters Against Impunity, which advocates for justice to be done in uninvestigated and untried cases currently pending in the Colombian judicial system.

Judge Jose Nirio Sanchez was a distinguished Colombian judge for 35 years. And during that time, he received commendations from the U.S. Drug Enforcement Agency for his work to help bring Pablo Escobar to justice. Judge Sanchez is among the original set

of three judges appointed in 2007 to serve on a special court designed to address the backlog of labor-homicide cases.

After only 6 months on that special court, Judge Sanchez was unexpectedly removed by a very narrowly split vote of a judicial committee. To my knowledge, nobody has offered any meaningful explanation for his removal, though I do note that the Colombian vice president wrote me and stated that Judge Sanchez was an excellent judge. Given that high recommendation,I am glad that Mr. Sanchez has agreed to share the lessons learned from his time adjudicating labor-homicide cases with the committee today.

Maria McFarland is a senior America's researcher for Human Rights Watch where she covers Latin America and serves as the organization's primary expert on Colombia's ongoing internal armed conflict. Ms. McFarland has traveled extensively throughout Colombia and has researched and written several major publications on that topic. She has also testified before the U.S. Congress and the Canadian Parliament and is a frequent voice in the media on Colombia-related issues.

Our final witness will be James M. Roberts, who is a research fellow in economic freedom and growth at the Heritage Foundation's Center for International Trade and Economics. He previously served the U.S. State Department as a foreign service officer for 25 years and coordinated various U.S. assistance programs. Mr. Roberts holds a master's degree in international and developmental economics from Yale University, an MBA from the University of Pittsburgh and a bachelor's degree in international affairs from Lafayette College in Eastern Pennsylvania.

Welcome to all of our witnesses. And again, we will provide sufficient time so that you can properly lay out the concerns that you want this committee to hear.

And, Mr. Sanin, we are going to begin with you. And you are going to have to figure out how you share the microphone with your interpreter.

STATEMENT OF JOSÉ LUCIANO SANIN VÁSQUEZ, DIRECTOR, ESCUELA NACIONAL SINDICAL, MEDELLIN, COLOMBIA

Mr. SANIN [speaking Spanish].

TRANSLATOR. I will be doing the interpretation when he finishes.

Chairman MILLER. Why don't you cut it into thirds, if you might? Thank you. Don't worry about it. We will get through this.

Mr. SANIN [through translator]. Colombia is in the midst of a very serious and unique situation of hostility towards the exercise of labor union rights and freedom of association. A few statistics are sufficient to demonstrate this fact.

And first, I am going to talk about violence against labor unions in Colombia and impunity as well. Approximately 1 union worker has been murdered every 3 days over the past 23 years, which translates into 2,694 murders between the first of January of 1986 and December 31, 2008.

After a reduction of 60 percent in the rate of homicides between the years 2003 and 2007, in 2008——

Chairman MILLER. We are going to need you to speak right into the microphone. I don't know if you need an adjustment. Thank you.

TRANSLATOR. Sorry about that.

Mr. SANIN [through translator]. In 2008 we had a serious increase of 25 percent, going from 39 homicides in 2007 to 49 in 2008. Sixteen of those murdered were union leaders. And as far as we have gotten this year, we already have three cases of homicides and 14 death threats.

Every year more than 60 percent of union members that are murdered throughout the world are Colombians. The rate of union murders in Colombia is five times greater than that of any other place in the world, including those dictatorial regimes that don't allow unionization.

Union workers in Colombia have been the victims of 9,911 violent acts in the last 23 years. In addition to the murders, 231 union members were the victims of attempted murder. One hundred and ninety-three were victims of forced disappearance. Four thousand, two hundred were threatened with death. And here in my hands I have the copies of 70 threats that were issued against union members in 2008.

Thirty-five percent of these acts of violence have occurred under the government of President Alvaro Uribe. And 482 of the assassinations have occurred during his government.

Of the 2,694 union members that have been murdered in the last 23 years, the attorney general's office informs us that it is investigating 1,104, which means that 60 percent of these cases either do not exist or we are not told about the existence of any criminal investigations that are underway. Additionally, only about 90 of the murdered union members have had cases successfully prosecuted against their murderers. This means that close to 96 percent of these murders remain unsolved and in impunity.

These court decrees do not allow us to see the truth behind the facts because they punish only the material authors of these crimes and not their intellectual authors. The investigation is done case by case without a global strategy for investigating them. The union movement has been insistent in demanding an investigation of all cases and in proposing changes to the method of investigation that is currently being used.

At the current rate of sentencing, justice will take approximately 37 years to overcome impunity. And that is under the assumption that no more murders occur from today on and that the special investigation and prosecutions unit is maintained.

These numbers contradict what the Colombian government is telling the world, that anti-union violence and impunity are problems that have been overcome. Quite the contrary. The measures adopted are insufficient and inadequate because they have not been able to break the structural and historic anti-union violence in the country.

And I am going to give you some more numbers that have to do with the limitations and violations of workers' rights. In Colombia we have an institutional design and a governmental practice and business practice that goes against union freedom. One of these situations is made clear by the following numbers.

First of all, I am going to talk about the obstacles to unionization. There are 18,749,836 workers in Colombia, out of whom less than 3 million have the right to associate in a union because the

law establishes that this can be done only by those workers who are related through work contracts. That means that only four out of every 100 workers are currently affiliated to a union in Colombia.

Chairman MILLER. If you can ask that Mr. Sanin, if you might, start to wrap up his testimony. Thank you.

Mr. SANIN [through translator]. The ministry of social protection between 2002 and 2007 denied the registration of 253 new unions. This situation was reported several times to the Committee on Freedom to Unionize at the ILO, which produced various recommendations for these acts, arbitrary acts of the state to stop the creation and working of these unions.

These acts began to diminish, thanks, not to the government, but because the constitutional court issued several decrees according to which the ministry of social protection is not authorized to deny the registration of these unions. This is partial progress to end the agreements under the ILO. But it requires legal regulation that will eliminate the obstacles and conflicts that persist today.

Finally, I just want to talk about how this has affected the working cooperatives in Colombia. And this is a new model of labor relations that means very low costs and no workers' rights. And it is absolutely unsustainable.

Recently there was a new law issued, but that ignores the recommendations that were made by ILO because it does not recognize those who are associated under these labor cooperatives. And it doesn't recognize their rights of association, negotiation or to strike and also does not give it sufficient measures to ensure that this is not used as a way to cheat on labor rights and to put at risk the conditions, the working conditions of Colombian workers.

And I will be giving you an annex document with more details. Thank you.

[The statement of Mr. Sanin follows:]

Prepared Statement of José Luciano Sanin Vásquez, Director of the Escuela Nacional Sindical ("National Labor School") of Colombia (English)

Colombia is in the midst of a very serious and unique situation of hostility towards the exercise of labor union rights and freedom of association. A few statistics are sufficient to demonstrate this fact:

1. Violence against labor unions in Colombia

One union worker has been murdered approximately every three days over the past 23 years, which translates into 2,694 murder victims between the first of January of 1986 and December 31, 2008.

Despite the great emphasis the current administration is placing on security, after a few years of declining murder rates, violence against labor unions showed a steep increase in 2008 of 25%, going from 39 murders in 2007 to 49 in 2008. In addition, it is very serious that in 2008, the number of murdered labor union leaders was 16, compared to 10 murdered in all of 2007.

More than 60% of the all murdered unionists in the world are Colombians. The murder rate of unionists in Colombia is five times that of the rest of the countries of the world, including those countries with dictatorships that have banned union activity.

Violence against the union movement in the last 23 years has included 9,911 acts, in violation of the right to life, integrity and freedom of union members, one act of violence everyday. The highlights of these acts include 231 assaults on union leaders and 193 cases of forced disappearance. At least 4,200 unionists have received death threats because of their union activity, and 1,478 have been forced to leave their homes.

VIOLATIONS OF THE RIGHT TO LIFE, LIBERTY AND PHYSICAL INTEGRITY OF UNIONISTS IN COLOMBIA

[January 1, 1986 to December 31, 2008]

Type of Violation	Number of Cases	Percentage
ILLEGAL HOUSE SEARCH	43	0.4
THREATS	4,200	42.4
ASSAULT WITH OR WITHOUT INJURY	231	2.3
DISAPPEARANCE	193	1.9
FORCED DISPLACEMENT	1,478	14.9
ARBITRARY ARREST	587	5.9
MURDER OF A FAMILY MEMBER	3	0.0
MURDERS	2,694	27.2
HARASSMENT	246	2.5
OTHERS	2	0.0
KIDNAPPING	161	1.6
TORTURE	73	0.7
Total	9,911	100

Of the 9,911 violations perpetrated against the life, liberty and physical integrity of unionists in Colombia between January 1, 1986 and December 31, 2008, 3,470, equaling 35%, have occurred during the administration of the current president of Colombia, Alvaro Uribe Vélez.

Of the 2,694 murders of unionists in Colombia during that same historical period, 482, equaling 18%, have occurred during this administration. These figures contradict the administration's assurances to the international community that the problem of violence against labor unions has been overcome, and the government has it under control.

VIOLATIONS OF THE RIGHT TO LIFE, LIBERTY AND PHYSICAL INTEGRITY OF UNIONISTS IN COLOMBIA

[August 7, 2002 to December 31, 2008]

Type of Violation	Number of Cases	Percentage
ILLEGAL HOUSE SEARCH	23	0.7
THREATS	2,083	60.0
ASSAULT WITH OR WITHOUT INJURY	65	1.9
DISAPPEARANCE	30	0.9
FORCED DISPLACEMENT	316	9.1
ARBITRARY ARREST	254	7.3
MURDERS	482	13.9
HARASSMENT	175	5.0
KIDNAPPING	29	0.8
TORTURE	13	0.4
Total	3,470	100

The structural factors that have made violence against labor unions possible are still in place. The increase in murders in 2008 is an indication of that fact, as are the security plans that more than 1,500 union leaders still have in place.

The most worrisome fact is the political exclusion of the labor union movement, which has created widespread anti-union sentiment, fostered and exacerbated by an increasingly common and recurring practice on the part of the President of the Republic and high-level government officials, who make statements that undermine the legitimacy of labor unions by linking them to guerilla groups, or justifying the violence against labor unions as violence between the armed parties to the conflict, thereby, suggesting that labor unions are one of these groups.

The ILO has referred to this situation for several years. Recently, at the 97th Conference (June of 2008), the Committee on the Application of Standards stated: "(* * *) the Committee expressed its concern over an increase in violent acts against trade unionists in the first half of 2008. In view of the commitments made by the Government and referred to above, the Committee urged it to take further steps to reinforce the available protective measures * * * All of these steps were

essential elements to ensure that the trade union movement might finally develop and flourish in a climate that was free from violence (* * *)"

2. Impunity of murders of unionists

The investigation and prosecution of crimes against labor unionists was an obligation of the Colombian government that had been forgotten. The Subdivision of the Public Prosecutor and the judges specializing in this area constitute the government's first effort to respond to the critical situation of human rights and violence against the labor union movement.

However, 2,694 unionists have been murdered in the past 23 years, and the Subdivision of Investigation has only recognized the existence of 1,302 cases to be prosecuted, and has only been able to physically locate the case files of 1,104, which means that 60% of the cases do not exist, or are not the subject of any reported on-going criminal investigation.

The reports issued by the Public Prosecutor led to the conclusion that there are no important results in terms of moving forward with the criminal investigations. According to the January 2009 report of the Public Prosecutor, with regard to the 1,104 cases they are investigating, 654 cases (59.23%) are in preliminary stages. That means that in more than half the cases, no suspect has been identified. Two hundred and eight cases (18.84%) are in the preliminary investigation stage, which is the stage in which a formal investigation of an identified suspect is carried out. In 91 cases (8.24%), the Public Prosecutor has filed charges before the judges.

With regard to the total of 1,104 cases under investigation, the number of convictions was 120. This means that only 10.86% of the cases have made progress in determining the responsibility of the perpetrators of crimes against labor unionists.

With regard to the 185 prioritized cases, the number of convictions covered only 31 victims. That is, with regard to the total number of prioritized cases, there have been convictions in only 16.75% of the victims' cases.

There have been convictions in just 90 cases of murdered unionists. Presuming that there is some progress in terms of impunity for these victims, the percentage of those whose cases remain in impunity is 96.7% of the crimes. According to the January 2009 report, without access to all the information provided in July of 2008, but rather just on the basis of the numbers of convictions by judges, and assuming that each conviction represents one victim, impunity remains at nearly 96%.

Calculating the monthly average output of the judges, between September and December of 2007, an average of 11 convictions were issued per month. This same monthly calculation for all of 2008 and January of 2009 yields 5.9 convictions per month. We can conclude from this quantitative analysis of the work of the subdivision and the judges, that at the rate of 70 convictions handed down annually by the country's judges and the ILO sentencing judges, each one representing one labor unionist victim, it would take the justice system around 37 years to overcome the prevailing impunity, presuming no more murders occur starting today, and the continued existence of the special investigation and prosecution division.

With regard to the convictions handed down, the following matters are cause for grave concern:

1. The convictions have primarily identified the material authors and their intentions. In the majority of cases, the chain of responsibility of those responsible has not been established.

2. In the majority of the convictions, no reference is made to the personal context of the victim, or the union affiliation, or regional context, in which the violence against labor unions occurred.

3. Investigations are carried out on a case-by-case basis, with no comprehensive investigational strategy for cases that are clearly systematic, deliberate and selective, as are the cases of violence against labor unions. The labor union movement has consistently proposed changes to the methods of investigation used. Given that nearly 75% of the violence against labor unions has been committed against 30 labor union organizations in 6 departments of the country, the investigations should be re-organized.

4. The investigations fail to identify all the crimes committed and, therefore, the convictions fail to punish the perpetrators for all of them. In multiple convictions, for example, torture and forced disappearance are not punished, and the perpetrators are sentenced for the murder only. This leaves acts that constitute violence against labor unionists in impunity.

5. There are only convictions at the level of second instance in five cases. That means that of the 108 convictions counted as of July of 2008, 103 could still be reversed by means of appeals the convicted persons may file, and they could, therefore, ultimately be acquitted.

On several occasions, the ILO has referred to the matter of impunity. Recently, during the 97th Conference, June 2008, the Committee on the Application of Standards stated: "(* * *) the Committee urged it (. * * *) to render more efficient and expedient the investigations of murders of trade unionists and the identification of all of its instigators. Such measures should include an enhanced investment of necessary resources in order to combat impunity, including through the nomination of additional judges specifically dedicated to resolving cases of violence against trade unionists. All of these steps were essential elements to ensure that the trade union movement might finally develop and flourish in a climate that was free from violence (* * *)"

3. Limitations and violations of Freedom of Association

In Colombia, we have an institutional design, as well as government and company practices that are contrary to the freedom of association. This places a large number of obstacles in the way of the creation of union organizations, and the free functioning of existing unions. This includes election of representatives, modification of by-laws, collective bargaining, striking, participation in public dialogue, etc. The following figures are evidence of this:

a. Obstacles to Freedom of Association

In Colombia today, there are 18,749,836 workers, of which, fewer than 3 million have the right to join a union. This is because the law specifies that only those workers working under employment contracts can exercise that right. This is in violation of international labor conventions and standing ILO recommendations to the Colombian government. Thus, only 4 of every 100 workers are affiliated with a labor union in Colombia.

The Ministry of Social Protection, in the period of 2002-2007, denied the registration of 515 labor union registry petitions. Of these, 253 were denials of new labor union charters.

Labor Union Charters	Registration of Board of Directors	Creation of Subcommittees	Creation of Committees	Changes to Bylaws	Revocation of Registration	Total
253	189	47	9	7	10	515

This situation has been reported on multiple occasions before the ILO Committee on Freedom of Association, which issued recommendations to register these charters, as it considered these acts to constitute undue government interference. Just by way rulings C-465, C-621 and C-672 of 2008 among others, of the Constitutional Court, the Ministry of Social Protection lost its jurisdiction to deny registration in the labor union registry. This is an advance that partially satisfies ILO conventions.

These rulings address only one problem, that of arbitrary government interference at the time of registration in the registry. However, an additional series of legal limitations of the right of association persist in Colombia, which have not been modified. Laws that impede the right of free association for all types of workers, Art. 5 CST, must be modified or repealed. Likewise, laws that limit the freedom to choose the union structure the workers see fit, Art. 365 CST, must also be modified or repealed. The establishment of an expedited judicial mechanism, that would provide a means of quickly resolving possible conflicts in the registration of labor union charters and other matters related to union representation, is also necessary.

The ILO has repeatedly made comments and recommendations in the area of the right to free labor union association. Recently, during the 97th ILO Conference, the Committee on the Application of Standards stated: "(* * *) it called upon the Government to ensure that all workers, including those in the public service, may form and join the organization of their own choosing, without previous authorization, in accordance with the Convention. In this regard, the Committee called upon the Government not to use discretionary authority to deny trade union registration * * *"

b. Collective Bargaining, a right accorded to few

In Colombia, only 1.2 of every 100 workers benefit from a collective bargaining agreement. If we compare the period of 1996-1997 with the period of 2006-2007, we will find that in the first period, 1,579 collective bargaining agreements were signed, of which 983 were collective contracts, 592 were collective pacts, and 5 were union contracts, covering 462,641 beneficiaries; while in the second period, 925 collective bargaining agreements were signed, of which 639 were collective contracts, 276 were collective pacts, and 10 were union contracts, covering 176,948 beneficiaries. This demonstrates a significant reduction in collective bargaining and its coverage: 285,693 beneficiaries lost their contractual guarantees, approximately 62% of the

beneficiaries of a decade ago are now unprotected. This phenomenon is explained by the enormous legal and practical obstacles to the existence and free operation of workers' organizations, to the lack of promotion of bargaining, to the small number of workers able to bargain, and to the failure of the government to modify its legislation to comply with the labor standards of conventions 87, 98, 151 and 154, ratified by Colombia.

The primary problems are as follows:

• Collective pacts and extralegal benefits plans are permitted, to the detriment of the unions' right to collective bargaining.

• Unionization is hampered, and therefore, so is the signing of collective bargaining agreements for workers with contracts differing from employment contracts, Art. 5 CST. This excludes workers with service contracts, those associated with work cooperatives, those with apprenticeship contracts, the unemployed, workers with a regulatory relationship with the government, and workers in the informal sector, which make up more than 85% of the working population.

• The Ministry of Social Protection exercises poor oversight. It does not investigate or sanction the union-busting practices of employers, nor does it promote the protection of the right of association and bargaining.

• The imposition of obligatory arbitration courts to resolve points not agreed upon in negotiations. This is an intervention by authorities that, in principle, impinges on, and makes collective bargaining more difficult.

• The prohibition of collective bargaining and striking by unions of public employees.

• The lack of bargaining by field or economic activity, and the inability to bargain for different levels.

The right to promote and defend the interests of workers by means of collective bargaining that seeks to improve working conditions is, in current practice, illegal for some and nearly impossible to exercise for others. This is due to legal provisions that limit or prohibit free bargaining between the parties. This is a situation that ILO oversight bodies have identified as contrary to the conventions ratified by Colombia, and whose recommendations have been intentionally ignored by the government, which has failed to take measures to promote bargaining.

c. Right to Strike—its exercise is practically impossible

The right to strike is a fundamental right of all workers, used to defend their labor rights in a peaceful manner. This right is not absolute in nature. The ILO acknowledges that the right to strike can be limited in those services whose interruption may endanger the life, safety or health of a person or a portion of the population, but these limits can only be established for democratic reasons, and those necessary to protect the rights and freedoms of others, and always by way of law.

In the period 2002-2007, 122 petitions of illegality of suspension of activities were submitted to the Ministry of Social Protection, of which, 66 were declared illegal.

Against this backdrop, we can understand why unions stage few strikes in Colombia. The legislative limitations and the actions of the Ministry of Social Protection demonstrate that staging a strike is nearly impossible, because of legislation contrary to the conventions on freedom of association. More so, if we take into account the fact that Art. 450 num. 2 allows employers to fire workers who participate in an illegal strike. In this context, on July 14, the Congress promulgated Law 1210 of 2008, which modifies the provisions that regulate the exercise of the strike in the country. Law 1210 includes only two of the ILO's ten recommendations to Colombia in the area of strike regulation. First, it transfers the jurisdiction the Ministry of Social Protection formerly had, to determine the illegality of a strike to labor jurisdiction. And second, it creates of a voluntary arbitration court, which was formerly obligatory if a strike went beyond 60 days.

On the other hand, in violation of ILO doctrine, article 1, paragraph 2, of this law gave the President of the Republic the authority to order the cessation of strikes "* * * If a strike seriously impairs the health, safety, public order or economy of all or part of the population due to its nature or scope * * *"

The changes introduced by the law are procedural and not substantive. This, being the case, going forward, judges will declare strikes to be illegal for the same reasons the Ministry of Social Protection did so in the past.

The most critical part of Law 1210 of 2008 is not so much what it includes, but rather what it fails to include, given that the exercise of the right to strike is extremely limited in Colombia, when compared to the recommendations of the Committee on Freedom of Association (CFA), and the Committee of Experts on the Application of Conventions and Recommendations (CEACR) of the ILO. The following are the most serious omissions in the law:

1. The Colombian legislation defines the strike as a point in collective bargaining, and not as the fundamental means of defense of workers. It is only permitted in the process of negotiation of a list of demands and in no other case.

2. Contrary to the principles of freedom of association, the prohibition of strikes by federations and confederations, or those staged by unions by field of economic activity was not repealed. This right remains reserved for company unions, which represents a curtailment of the right to strike.

3. It is necessary to define what is meant by essential public service, and to regulate the concept of provision of minimal services. The lack of such definitions results in near total prohibition of the exercise of the strike by workers employed by companies that provide public services.

4. Changes must be made to current strike regulations such that solidarity strikes are not prescribed.

5. The law requires a qualified majority to declare a strike, that is, half plus one of the workers of a company. This makes it nearly impossible to achieve a strike declaration in practice, especially in companies with a large number of workers or when the union is in the minority.

6. The omission regarding strikes for the purpose of resolving a local or section problem must be resolved.

7. The legislation should allow workers with contractual relationships different from employment relationships to exercise their right of association and their right to strike.

8. A declaration of illegality of a strike results in the employer's ability to fire workers, who intervene in or participate in an illegal suspension of activities.

4. The large deficit of good jobs in Colombia—the case of the Associated Work Cooperatives

The labor policies and laws of recent years have been characterized by maintaining the exclusion from social and labor protection of more than two thirds of workers, and by denying and evading the minimum labor rights of 12 million workers. The Colombian government, rather than advancing in terms of minimum labor standards, produces legislation and practices that are contrary to decent work, thereby, leaving nearly 70% of workers in a situation of job insecurity. The Associated Work Cooperatives are evidence of this situation of job insecurity.

The recent strikes of African palm workers and cane cutters, the conflict with the workers of the Port of Buenaventura, as well as the situation of workers in superstores, the apparel industry, floriculture, the health sector, security guards, etc., demonstrate that the so-called associated work cooperatives (AWC), have contributed to the deterioration of the quality of employment in Colombia. The organizations that have been established under the legal definition of the AWC do not, in fact, represent cooperative principles, and they abuse the right to cooperative association, in order to evade workers' rights to the benefit of employers and of those who seek to establish such organizations as fronts for employers. The so-called AWCs are pseudo cooperatives.

The AWCs are used by companies as a form of outsourcing, that has allowed them to transfer company costs and replace or fire workers with employment contracts, and, in many cases, unionized workers with collective bargaining agreements. The hugely lower cost, and an employment relationship with no rights, resulted in the spread of the AWCs as a "new model of labor relations" to the extent that in February of 2008, there were 12,068 registered AWCs. In 2007, it was estimated that there were 4,221,108 [1] AWC members.

In the face of this job insecurity, Law 1233 of 2008 was promulgated, which had its origins in a bill presented by the government, as the North American congress was approaching a vote on the FTA with Colombia. The bill was limited to establishing the obligation to pay parafiscal taxes on the part of the Associated Work Cooperatives (AWC). While this bill was making its way through the Congress of the Republic, there were many debates and proposals, and as a result, the law addresses additional matters as well.

However, the government will not be able to point to this law as an advance in relation to international demands in this area, since the recommendations of the ILO oversight bodies have been clearly ignored. Law 1233 does not recognize the rights of association, bargaining and strike of the affiliates of an AWC, nor does it provide sufficient measures to prevent the AWC from being used as a means of evading labor and union rights. In sum, we can affirm that this law allows the

[1] Statist published on the web site of the superintendency for economic solidarity, accessed February 6, 2009

AWCs to continue to be used as tools for evading labor rights, and creating insecure conditions for workers since it did not resolve crucial matters such as:

1. AWC members do not enjoy the fundamental and essential rights they would have as workers under labor contracts.

2. When hiring AWCs, companies are able to externalize payroll costs and render them not chargeable to the company. The companies are only responsible for what they sign off on in the commercial bid, with no possibility even of suing them for violation of labor rights.

3. In order to avoid the costs of social security contributions, employers prefer to hire AWCs, in which such contributions are wholly the responsibility of the members.

4. The primary activity of the AWC is to act as a labor intermediary. The great majority of the activities of the AWC stem from contracts with companies as labor intermediaries, and in practice, companies replace their workers with AWC members.

5. There is a near complete lack of oversight of AWCs. Thus, only a small fraction of them are currently in compliance with applicable regulations.

6. There is a lack of democratic participation of AWC members. Due to the lack of reasonable limits on the terms of the administrative boards of the AWCs, many members believe that the AWCs have owners instead of administrator, since the commercial bid signed by the company and the AWC is not subject to the approval of a general assembly of the members.

7. There is competition among AWCs to offer the worst and cheapest contracts, which creates a sort of war for pennies among them.

8. The AWCs are used as a tool to weaken and diminish the unions. AWC members do not have the right to unionize, because according to the Ministry of Social Protection, they are not employees, but rather, providers of labor.

The ILO has issued several comments and recommendations regarding Associated Work Cooperatives. Recently, during the 97th Conference (June of 2008), the Committee on the Application of Standards stated: "* * * In particular, the Committee expected that legislation would be adopted rapidly so as to ensure that service contracts, other types of contracts, cooperatives and other measures were not used as a means of undermining trade union rights and collective bargaining * * *"

Prepared Statement of José Luciano Sanin Vásquez (Spanish)

En Colombia se vive una muy particular y grave situación de hostilidad para el ejercicio de los derechos laborales y las libertades sindicales, basta mencionar algunas cifras para demostrar esta situación:

1. Violencia antisindical en Colombia

Aproximadamente cada tres días durante los últimos 23 años ha sido asesinada una trabajadora o un trabajador sindicalizado, lo que se traduce en 2.694 víctimas asesinadas entre el primero de enero de 1986 y el 31 de diciembre de 2008.

Pese al gran énfasis que el actual gobierno hace en la seguridad, la violencia antisindical luego de algunos años de disminución en los homicidios, presento en 2008 un grave incremento del 25%, pasando de 39 homicidios en 2007 a 49 en 2008. Adicionalmente, resulta muy grave que en 2008 los dirigentes asesinados son 16 frente a 10 asesinados durante todo el 2007.

Más del 60% de los sindicalistas asesinados en todo el mundo son colombianos. La tasa de sindicalistas asesinados en Colombia es cinco veces mayor a la del resto de países del mundo incluidos aquellos donde regimenes dictatoriales proscriben el sindicalismo.

La violencia contra le movimiento sindical en lo últimos 23 años ha significado 9911 hechos violatorios del derecho a la vida, la integridad y la libertad personal de las personas sindicalizadas, un hecho de violencia cada día. Entre las que se destacan 231 atentados contra líderes sindicales y 193 casos de desaparición forzada. Por lo menos 4200 sindicalistas han recibido amenazas de muerte por su actividad sindical y 1478 han tenido que desplazarse forzadamente.

VIOLACIONES DEL DERECHO A LA VIDA, A LA LIBERTAD Y A LA INTEGRIDAD FISICA DE SINDICALISTAS EN COLOMBIA

[1 Enero 1986 al 31 Diciembre 2008]

Tipo de Violación	Número Casos	%
ALLANAMIENTO ILEGAL	43	0,4

VIOLACIONES DEL DERECHO A LA VIDA, A LA LIBERTAD Y A LA INTEGRIDAD FISICA DE SINDICALISTAS EN COLOMBIA—Continued

[1 Enero 1986 al 31 Diciembre 2008]

Tipo de Violación	Número Casos	%
AMENAZAS	4200	42,4
ATENTADO CON O SIN LESIONES	231	2,3
DESAPARICION	193	1,9
DESPLAZAMIENTO FORZADO	1478	14,9
DETENCION ARBITRARIA	587	5,9
HOMICIDIO DE FAMILIAR	3	0,0
HOMICIDIOS	2694	27,2
HOSTIGAMIENTO	246	2,5
OTROS	2	0,0
SECUESTRO	161	1,6
TORTURA	73	0,7
Total	9911	100

De las 9.911 violaciones perpetradas contra la vida, libertad e integridad de sindicalistas en Colombia entre el 1 de enero de 1986 y el 31 de diciembre de 2008, 3470 equivalentes al 35% se han presentado durante el gobierno del actual presidente de Colombia Alvaro Uribe Vélez.

De los 2.694 asesinatos de sindicalistas ocurridos en Colombia en ese mismo periodo histórico, 482 equivalentes al 18% se han presentado durante este Gobierno, cifras que contradicen el argumento del Gobierno ante la comunidad internacional, de que la violencia antisindical es un problema superado y está bajo control por parte del Estado.

VIOLACIONES DEL DERECHO A LA VIDA, A LA LIBERTAD Y A LA INTEGRIDAD FISICA DE SINDICALISTAS EN COLOMBIA

[7 Agosto 2002 al 31 Diciembre 2008]

Tipo de Violación	Número Casos	%
ALLANAMIENTO ILEGAL	23	0,7
AMENAZAS	2083	60,0
ATENTADO CON O SIN LESIONES	65	1,9
DESAPARICION	30	0,9
DESPLAZAMIENTO FORZADO	316	9,1
DETENCION ARBITRARIA	254	7,3
HOMICIDIOS	482	13,9
HOSTIGAMIENTO	175	5,0
SECUESTRO	29	0,8
TORTURA	13	0,4
Total	3470	100

Los factores estructurales que han posibilitado la violencia antisindical persisten, el incremento de homicidios en el año 2008 es muestra ello, así como los esquemas de protección que aun tienen más de 1500 dirigentes sindicales.

El facto mas preocupante es el referido al proceso de exclusión política del movimiento sindical que ha generado una profunda cultura antisindical, promovida y agravada por una práctica cada vez más común y recurrente del Presidente de la Republica y de altos funcionarios del gobierno nacional, que realizan declaraciones en contra de la legitimidad del sindicalismo, vinculándolo con los grupos guerrilleros, o justificando la violencia antisindical como una violencia entre los actores armados del conflicto, señalando de paso que el sindicalismo es parte de alguno de ellos.

Desde hace varios años la OIT se ha referido a esta situación, recientemente en la 97 Conferencia (junio de 2008) la Comisión de aplicación de normas señalo: "(* * *) la Comisión expresó su preocupación en relación con el aumento de actos de violencia contra sindicalistas durante la primera mitad del año 2008. En vista de los compromisos asumidos por el Gobierno antes mencionados, la Comisión lo instó a que adopte nuevas acciones para reforzar las medidas de protección disponibles. * * * Todas estas medidas son elementos esenciales para asegurar que

le movimiento sindical pueda finalmente desarrollarse y afirmarse en un clima libre de violencia (* * *)"

2. Impunidad en los homicidios contra sindicalistas

La investigación y juzgamiento de los crímenes contra sindicalistas era una obligación del Estado colombiano echada al olvido. La Subunidad de Fiscalía y los jueces especializados en el tema constituyen el primer esfuerzo del Estado por responder a la crítica situación de derechos humanos y de violencia contra el movimiento sindical.

Sin embargo, 2.694 sindicalistas han sido asesinados en los últimos 23 años y la a Subunidad de investigación ha reconocido tan solo la existencia de 1.302 casos que deben ser llevados y tan sólo han encontrado físicamente los expedientes de 1.104, lo que significa que en el 60% de los casos no existen o no se informa la existencia de investigaciones penales en curso.

De los informes producidos por la Fiscalía se puede concluir que no hay resultados importantes en materia de impulso a las investigaciones penales. Según el informe de la Fiscalía de enero de 2009, respecto de los 1.104 casos que están investigando, 654 casos (59,23%) se encuentran en etapa preliminar, es decir, en más de la mitad de los casos no hay identificación del presunto autor. 208 casos (18,84%) se encuentran en instrucción, etapa en la que se adelanta la investigación formal contra alguna persona identificada. En 91 casos (8,24%) de los casos tienen acusación frente a los jueces por parte de la Fiscalía.

Respecto de la totalidad de los 1.104 casos investigados, las sentencias producidas fueron 120, esto significa que solo el 10,86% de los casos tiene algún tipo de avance en determinación de responsabilidad de los autores de los crímenes contra sindicalistas.

Sobre los 185 casos priorizados el número de sentencias producidas es solo sobre 31 víctimas. Es decir, respecto del total de los casos priorizados sólo el 16,75% de las víctimas llega a obtener sentencia.

Solo sobre 90 sindicalistas asesinados hay sentencias condenatorias. Suponiendo que para esas víctimas haya algún tipo de avance en materia de impunidad, el porcentaje de los que continuarían en ella es del 96,7% de los crímenes. De acuerdo al informe de enero de 2009, sin tener la posibilidad de conocer todos los datos proporcionados en julio de 2008, sino solamente por el dato numérico de las sentencias de los jueces, y asumiendo que cada una de las sentencias contiene una víctima, la impunidad se mantiene en casi el 96%.

Haciendo un promedio mensual del trabajo de los jueces, entre septiembre y diciembre de 2007 se produjeron en promedio 11 sentencias al mes. Ese mismo cálculo mensual durante todo el 2008 y enero de 2009 ha arrojado 5,9 sentencias al mes. Este análisis cuantitativo del trabajo de la subunidad y de los jueces nos permite concluir que al ritmo de unas 70 sentencias anuales emitidas por los jueces del país y los de descongestión de OIT, en las que cada una de ellas se refiriera a una víctima sindicalista, se tomaría la justicia alrededor de 37 años para superar la impunidad, bajo el supuesto de que no ocurran más asesinatos a partir de hoy, y se mantenga la unidad especial de investigación y juzgamiento.

Respecto de las sentencias emitidas, estos aspectos son de honda preocupación:

1. Las sentencias han encontrado fundamentalmente autores materiales y sus intenciones. En la mayoría de los casos no se establece la cadena de responsabilidad de los autores.

2. En la mayoría de las sentencias no existe ninguna referencia al contexto personal de la víctima ni de la organización sindical y/o regional en la que la violencia antisindical ocurre.

3. La investigación se realiza caso a caso sin una estrategia integral de investigación en casos de carácter claramente sistemáticos, deliberados y selectivos como los son los casos de violencia antisindical. El movimiento sindical ha sido insistente en proponer cambios en el método de investigación utilizado, si cerca del 75% de violencia antisindical ha ocurrido contra 30 organizaciones sindicales en 6 departamentos del país, la investigación debería reestructurarse.

4. Las investigaciones omiten la calificación jurídica de todos los delitos cometidos y por tanto, las sentencias no sancionan a los autores por todos ellos. En múltiples sentencias la tortura o la desaparición forzada, por ejemplo, no son sancionadas, condenando exclusivamente por homicidio. Esto deja en la impunidad las acciones que integran la violencia contra sindicalistas.

5. Solo en cinco casos hay sentencia de segunda instancia, es decir que de las 108 sentencias contabilizadas a julio de 2008, en 103 de ellas está pendiente la posibilidad de que la decisión sea cambiada por los recursos que puede interponer el condenado, y por tanto, pasar a tener una absolución.

La OIT en varias ocasiones se ha referido al tema de impunidad, recientemente en la 97 Conferencia junio de 2008) la Comisión de aplicación de normas señalo: "(* * *) la Comisión lo instó a (. * * *) garantizar una mayor eficacia y rapidez de las investigaciones de asesinatos de sindicalistas y la identificación de todos sus instigadores. Tales medidas deberán incluir un aumento de los recursos necesarios para combatir la impunidad, incluido el nombramiento de jueces adicionales especialmente dedicados a resolver los casos de violencia contra sindicalistas. Todas estas medidas son elementos esenciales para asegurar que el movimiento sindical pueda finalmente desarrollarse y afirmarse en un clima libre de violencia (* * *)"

3. Limitaciones y violaciones a las libertades sindicales

En Colombia contamos con un diseño institucional y una práctica gubernamental y empresarial contraria a las libertades sindicales, que impone una gran cantidad de obstáculos para que las organizaciones sindicales puedan ser creadas o para que las existentes puedan funcionar libremente, esto es, elegir sus representantes, modificar sus estatutos, negociar colectivamente, ejercer la huelga, participar de los escenarios de diálogo social, etc. Una muestra de esta situación son las siguientes cifras:

a. Obstáculos a la Asociación sindical

Hoy en Colombia existen 18.749.836 de trabajadores, de los cuales menos de 3 millones tiene derecho a asociarse a una organización sindical, pues la legislación establece que pueden ejercer dicho derecho solo aquellos trabajadores vinculados a través de contratos de trabajo, contrariando con ello los convenios internacionales del trabajo y las recomendaciones realizadas por la OIT de manera permanente al Estado Colombiano. Por ello tan solo 4 de cada 100 trabajadores se encuentran afiliados a una organización sindical en Colombia.

El Ministerio de la Protección Social en el periodo de 2002-2007 negó el registro de 515 actos de registro sindical, de estos 253 fueron negativas a constitución de nuevas organizaciones sindicales.

Constitución de sindicatos	Inscripción de junta directiva	Creación de subdirectivas	Creación de comités	Reformas estatutarias	Revocatorias del registro	Total
253	189	47	9	7	10	515

Esta situación fue denunciada en múltiples ocasiones ante el Comité de Libertad Sindical de OIT, emitiendo este recomendaciones para alcanzar la inscripción de dichos actos por considerarlo una injerencia indebida por parte del Estado. Tan sólo con las sentencias C-465, C-621 y C-672 de 2008 entre otras, de la Corte Constitucional, el Ministerio de Protección Social perdió la competencia para negar la inscripción en el registro sindical, un avance que satisface parcialmente los convenios de OIT.

Estas sentencias abarcan tan sólo un problema, la injerencia arbitraria por parte del Estado al momento de la inscripción en el registro, sin embargo en Colombia persisten otra serie de limitaciones legales al derecho de asociación que no han sido modificadas, se hace necesario derogar o modificar las normas que impiden el derecho de asociación a todo tipo de trabajadores, art. 5 CST, de igual forma derogar o modificar las normas que limitan la libertad de elección de la estructura sindical que los trabajadores estimen convenientes, Art. 365 CST, se hace necesario establecer un mecanismo judicial, y expedito, que permita en corto tiempo solucionar los posibles conflictos en el tramite del registro sindical y otros temas relacionados con la representación sindical.

La OIT de manera reiterada ha señalado observaciones y recomendaciones en materia del derecho de asociación sindical, recientemente en la 97 Conferencia de la OIT, la Comisión de aplicación de normas señalo: "(* * *) solicitó también al Gobierno que se asegure que todos los trabajadores, incluidos aquellos del sector público, puedan formar las organizaciones que estimen convenientes, sin autorización previa, y afiliarse a las mismas de conformidad con el Convenio. A este respecto la Comisión solicitó al Gobierno que no utilice discrecionalmente su autoridad para denegar el registro sindical * * *"

b. Negociación Colectiva un derecho para pocos

En Colombia tan sólo 1,2 de cada 100 trabajadores se beneficia de una convención colectiva, comparando el período 1996-1997 con el periodo 2006-2007, encontramos que en el primero se suscribieron 1579 convenios colectivos, de los cuales 983 eran convenciones colectivas, 592 eran pactos colectivos y 5 contratos sindicales, con una cobertura de 462.641 beneficiarios; mientras que en el segundo período se firmaron 925 convenios colectivos, de los cuales 639 eran convenciones colectivas, 276 pactos

colectivos y 10 contratos sindicales, con una cobertura de 176.948 beneficiarios. Se muestra una significativa caída en la negociación colectiva y su cobertura: 285.693 beneficiarios perdieron sus garantías convencionales, aproximadamente un 62% de los beneficiarios de hace una década hoy están desprotegidos. Este fenómeno encuentra explicación en los enormes obstáculos jurídicos y prácticos que se imponen a las organizaciones de los trabajadores para existir y desenvolverse libremente, a la falta de fomento de la negociación, a los pocos trabajadores que pueden negociar, y al incumplimiento por parte del Estado de modificar su legislación para que cumpla con los estándares laborales de los convenios 87, 98, 151 y 154 ratificados por Colombia.

Los principales problemas son los siguientes:

• Es permitida la celebración de pactos colectivos y planes de beneficios extralegales, en perjuicio del derecho de negociación colectiva de los sindicatos

• Se impide la sindicalización y por tanto la firma de convenciones colectivas de trabajadores con contratos diferentes al laboral, art. 5 CST, excluyendo a quienes tienen contratos de prestación de servicios, asociados a cooperativas de trabajo, los de contrato de aprendizaje, desempleados, trabajadores con una relación reglamentaria con el Estado o trabajadores del sector informal que constituyen mas del 85% de la población ocupada.

• El Ministerio de la Protección Social ejerce un pobre control, no investiga ni sanciona las prácticas antisindicales de los empleadores, ni tampoco promueve la defensa del derecho de asociación y negociación.

• La imposición de tribunales de arbitramento obligatorio para decidir los puntos en los que no se llegue a un acuerdo durante la negociación, es una intervención de la autoridad que en principio vulnera y hace más difícil la negociación colectiva

• La prohibición de la negociación colectiva y de la huelga a los sindicatos de empleados públicos

• La inexistencia de negociación por rama o actividad económica, y la imposibilidad de negociar por diversos niveles

El derecho a fomentar y defender los intereses de los trabajadores por medio de negociaciones colectivas que busquen mejorar las condiciones de empleo, es en la práctica actual, ilegal para algunos o casi imposible de ejercer para otros, esto se debe a disposiciones legales que limitan o prohíben una libre negociación entre las partes, situación que los organismos de control de la OIT han previsto como contrarias a los convenios ratificados por Colombia y cuyas recomendaciones han sido intencionalmente ignoradas por el gobierno, omitiendo tomar medidas que fomenten la negociación.

c. Derecho de Huelga prácticamente imposible su ejercicio

El derecho a la huelga es un derecho fundamental de todos los trabajadores, por medio del cual se busca defender sus derechos laborales de una manera pacifica. Este derecho no tiene carácter de absoluto, es aceptado por OIT que la huelga puede verse limitada en los servicios cuya interrupción pueda poner en riesgo la vida, seguridad o la salud de una persona o parte de la población, pero estos limites sólo pueden establecerse por razones democráticas y necesarias para proteger los derechos y libertades de los demás, siempre a través de la ley.

En el período 2002-2007 se presentaron al Ministerio de la Protección Social 122 solicitudes de ilegalidad de cese de actividades, de los cuales 66 fueron declarados ilegales.

Bajo este panorama se entiende como los sindicatos realizan pocas huelgas en Colombia, las limitaciones legislativas y las actuaciones del Ministerio de Protección Social muestran como ejercer una huelga resulta casi imposible debido a que la legislación es contraria a los convenios de libertad sindical, más si se tiene en cuenta el Art. 450 núm. 2 da la posibilidad para que el empleador despida a los trabajadores que hayan participado en una huelga ilegal, bajo este panorama el Congreso expidió el pasado 14 de julio, la Ley 1210 de 2008, por la cual se modifican disposiciones que regulan el ejercicio de la huelga en el país. Esta Ley 1210 recoge tan solo dos de las diez recomendaciones que la OIT le ha hecho a Colombia en materia de regulación de la huelga, uno, la competencia que tenía el Ministerio de la Protección Social para calificar la ilegalidad de la huelga, la traslada a la jurisdicción laboral y dos, la creación de un tribunal de arbitramento voluntario, que antes era obligatorio, cuando la huelga pasaba de 60 días.

De otro lado contrariando la doctrina de la OIT, esta ley su artículo 1, párrafo 2, le dio la Facultad al Presidente de la Republica de ordenar la cesación de las huelgas "* * * Si una huelga en razón de su naturaleza o magnitud, afecta de manera grave la salud, la seguridad, el orden público o la economía en todo o en parte de la población * * *"

Los cambios introducidos por la ley son procedimentales y no sustanciales, así las cosas los jueces en adelante declararan ilegales las huelgas por las mismas razones que lo hacia antes el Ministerio de la Protección Social.

Lo más crítico de la Ley 1210 de 2008 no es tanto lo que incluye sino lo que le quedó faltando, toda vez que el ejercicio del derecho de huelga en Colombia, cuando se compara con las recomendaciones del Comité de Libertad Sindical (CLS) y la Comisión de Expertos en Aplicación de Convenios y Recomendaciones (CEACR) de la OIT, se encuentra en extremo limitado. Estos son los faltantes más serios de la Ley:

1. En la legislación colombiana se entiende la huelga como un momento de la negociación colectiva y no como el medio esencial de defensa de los trabajadores, permitida solamente en un proceso de negociación de un pliego de peticiones y no en otro caso.
2. Contraria a los principios de libertad sindical, se omitió derogar la prohibición de huelgas a federaciones y confederaciones, o las que hagan sindicatos por rama de actividad económica, derecho que queda reservado a los sindicatos de empresa, lo cual representa un recorte al derecho de huelga.
3. Es necesario definir qué se entiende por servicio público esencial y regular la figura de la prestación de servicios mínimos, pues la falta de dichas definiciones provoca la prohibición casi absoluta para ejercer la huelga a los trabajadores de empresas que prestan servicios públicos.
4. Es necesario realizar cambios en la regulación actual de la huelga de tal forma que no queden proscritas las huelgas de solidaridad.
5. La ley exige una mayoría calificada para declarar la huelga, o sea la mitad más uno de los trabajadores de la empresa, haciendo que en la práctica la declaratoria de las huelgas sea casi imposible de alcanzar, sobretodo en empresas con gran cantidad de trabajadores, o cuando el sindicato sea minoritario.
6. Se hace necesario solucionar la omisión que existe sobre huelgas cuya finalidad sea la solución de una problemática local o seccional.
7. La legislación debe permitir a los trabajadores vinculados con formas contractuales diferentes a la laboral, ejercer su derecho de asociación y su derecho a la huelga.
8. De la declaratoria de ilegalidad de la huelga se sigue como consecuencia la facultad del empleador de despedir a los trabajadores que hubieren intervenido o participado en una suspensión ilegal de actividades.

4. El gran déficit de trabajo decente en Colombia. El caso de las Cooperativas de Trabajo Asociado

Las políticas y leyes de los últimos años en materia laboral se han caracterizado por mantener en la exclusión de la protección social y laboral a más de las dos terceras partes de los trabajadores; por negar y evadir los derechos laborales mínimos a más de 12 millones de trabajadores; el Estado colombiano, antes que avanzar en estándares mínimos laborales, genera legislación y prácticas contrarias al trabajo decente, dejando a casi el 70% de los trabajadores en condiciones de precariedad laboral. Las Cooperativas de Trabajo Asociado son una muestra de esta situación de precariedad laboral

Las recientes huelgas de los trabajadores de la palma africana y de los corteros de caña, el conflicto con los trabajadores del Puerto de Buenaventura, así como la situación de los trabajadores de los hipermercados, las confecciones, la floricultura, el sector de la salud, la vigilancia, etc., evidencian que las llamadas cooperativas de trabajo asociado (CTA), han contribuido a deteriorar la calidad del empleo en Colombia. Las entidades que se han constituido al amparo de la figura legal de las CTA, no responden realmente a los principios cooperativos y hacen uso abusivo del derecho de asociación cooperativa, para burlar los derechos de los trabajadores, en beneficio de los empresarios y de quienes a manera de testaferros de empleadores promueven la creación de las mismas. Las llamadas CTA son seudo cooperativas.

Las CTA son usadas por las empresas como forma de tercerización que han permitido externalizar costos de la propia empresa, y remplazar o despedir trabajadores con contrato laboral y en muchos casos trabajadores sindicalizados con convención colectiva. El costo inmensamente inferior, y una relación laboral sin derechos, produjo que las CTA se extiendan como un "nuevo modelo de relaciones laborales" al punto que en febrero de 2008 existían 12,068 CTA registradas, en 2007 se estimaba que habían 4.221.108 [1] asociados a CTA.

Ante semejante precariedad se expidió la Ley 1233 de 2008 que tuvo como origen un proyecto de ley presentado por el gobierno cuando se aproximaba la decisión del

[1] Estadística publicada en la pagina web de superintendencia de economía solidaria, tomado el 6 de febrero de 2009.

congreso norteamericano sobre el TLC con Colombia; proyecto que se limitaba a crear la obligación del pago de los impuestos parafiscales en las Cooperativas de Trabajo Asociado (CTA). Durante el trámite de este proyecto en el Congreso de la República fueron muchos los debates y propuestas, y por ello el resultado fue una ley que considera otros temas adicionales.

Sin embargo, el Gobierno no podrá presentar esta Ley como un avance en relación con las exigencias internacionales sobre la materia, pues de manera clara se ignoran las recomendaciones realizadas por los órganos de control de la OIT. Esta Ley 1233 no reconoce a los asociados de las CTA los derechos de asociación, negociación y huelga, y tampoco prevé medidas suficientes para impedir que no se utilicen las CTA como forma de defraudación de derechos laborales y sindicales. En suma, podemos afirmar que esta ley les permite a las CTA seguir siendo herramientas para evadir derechos laborales y precarizar las condiciones de vida de los trabajadores pues no resolvió temas cruciales como:

1. Los asociados a las CTA no cuentan con derechos fundamentales y esenciales que sí tendrían como trabajadores vinculados por contrato.
2. Al contratar CTA, las empresas logran que los costos de nómina laboral sean externos y no imputables a ellas. Las empresas únicamente responden por lo que firmen en la oferta mercantil, sin que sea posible siquiera demandarlas por vulneración de derechos laborales.
3. Para evadir los costos por aportes a seguridad social, los empresarios prefieren contratar con CTA, en las que dichos aportes corren, en su totalidad, a cargo de los asociados.
4. La principal actividad de las CTA es la intermediación laboral. La inmensa mayoría de actividades que realizan las CTA se da por contrataciones que hacen las empresas como intermediación laboral, y en la práctica las empresas remplazan sus trabajadores por asociados a CTA.
5. Hay una ausencia casi total de control a las CTA, por lo que un número ínfimo de ellas se encuentra actualmente cumpliendo con la normatividad vigente.
6. Hay ausencia de participación democrática de los asociados de las CTA. Por la inexistencia de límites razonables para el periodo de las juntas de administración de la CTA, son muchos los casos en que los asociados están convencidos de que éstas tienen dueño en vez de gerente, porque la oferta mercantil firmada entre empresa y CTA no esta sujeta a la aprobación de la asamblea de asociados.
7. Hay competencia entre las CTA por ofrecer peores y más baratas formas de contratación, lo que genera una especie de guerra del centavo entre ellas.
8. Las CTA se usan como herramienta para debilitar y disminuir a los sindicatos. Los asociados a CTA no tienen derecho a sindicalizarse porque, según el Ministerio de la Protección Social, no tienen la calidad de trabajadores sino de aportantes de su fuerza de trabajo.

La OIT ha emitido varias observaciones y recomendaciones sobre las Cooperativas de Trabajo Asociado, recientemente en la 97 Conferencia (junio de 2008), la Comisión de aplicación de Normas señalo: "* * * En particular, la Comisión esperó firmemente que se adoptarán sin demora disposiciones legislativas para asegurar que los contratos de servicio o de otro tipo y las cooperativas u otras medidas no sean utilizados como medios para menoscabar los derechos sindicales y la negociación colectiva * * *"

Chairman MILLER. Thank you. Thank you very much. Some of you looked a little perplexed as you hear the whistling here. It is very high winds today. Others have suggested it is not the winds, that it is really the ghost of Chairman Perkins who spoke with a whistle. Whenever he spoke, he also whistled at the same time. You can pick your explanation of it, but apparently the architects have never been able to fix it.

So with that, we will go—Ms. Hoyos, please? Welcome to the committee. And we look forward to your testimony.

STATEMENT OF YESSIKA HOYOS MORALES, BOGOTA, COLOMBIA

Ms. HOYOS [through translator]. I am Yessika Hoyos Morales, the daughter of Jorge Dario Hoyos Franco, one of the 2,694 labor unionists murdered with impunity in Colombia.

Eight years ago, I was living with my mother, my sister and my father in Fusagasuga. My father was a dreamer. He was very committed to the cause of justice, deeply concerned about oppression and poverty. That is why he was committed to the union struggle from the time that he was very young.

He started working with national agrarian organizations, and his leadership led him to the International Federation of Agricultural Workers and then on to the International Federation of Miners.

In our town, my father worked broadly with labor unions, student organizations and women's organizations. He worked to defend the rights of communities, and he was widely recognized and loved by the people for his work. My father was a cheerful, generous man. He was kind to us and showed us love and showed solidarity with others. He was our friend and our hero, the man who gave us advice, who helped us discover the world.

From the time I was very young, I was witness to raids on our house by the police, threats to my father. We got phone calls, funeral prayer cards, funeral wreaths. We were persecuted. That is how I learned that union activity in Colombia is dangerous and that thinking and protesting puts your life at risk.

Still, we were happy until the night of March 3, 2001, when two confessed hit men of the paramilitary, shot my father repeatedly in the face until they killed him. My mother and my sister, who was only 14, found him on the ground with blood running out of his body, having lost his smile and his dreams and the kisses and hugs that he used to give us.

The murderers made good on their threats. My father made good on his word. He never gave in to the demand that he stop fighting for the people. That was the first union death, my father's. But then, the murderers attempted a second and definitive killing, the one that they are trying to impose on us in Colombia, the one that is clad in forget and impunity.

The day of the funeral itself, tragedy took another turn. Threats, harassment and persecution started against the rest of us so that we wouldn't make any reports or claims. And because of that, we were forced to leave our home and hide out in Bogota, where they found us anyway, to the extent that we had to move five times in a single year.

As with the other 2,694 murders of union members, impunity began to be cast the very night of that horrific crime when the perpetrators where caught. They were two young hit men who immediately were visited in their cell by a police officer who told them what to say in their statements. The investigational hypothesis cast by the authorities held that it was a crime caused because my father was involved with another man's wife. This is the typical explanation that Colombian authorities give to cover up the truth.

True to my father and following his example of passion for truth and justice, at 17 I joined the same battle that thousands of young people, widows, parents, brothers and sisters have had to wage in search of truth, justice and reparation, victims' rights that are denied in my country. To this end, I granted power of attorney to the law firm of Jose Alvear Restrepo to represent me in my civil intervention in the government's criminal case.

In 2003, the two hit men were sentenced to 23 years in jail for aggravated homicide of a protected person, since my father was the labor leader. This weak sentence, however, did not overcome impunity because the search for those who ordered the murder only got to the point of linking it, in absentia, to a second police lieutenant by the name of Monroy, who after the crime and using another instrument of impunity, was retroactively relieved of his post in the month of February, 2001 in an attempt to demonstrate that on March 3, 2001, he was no longer an active-duty police officer. Still, the criminal proceedings established that my father's murder had been planned in December of 2000.

Officer Monroy was always a fugitive who was never caught. In August of 2007, he was sentenced to 40 years in prison for homicide of the unionist Jorge Dario Hoyos Franco. This fact was publicized by the Colombian government as a great stride in justice.

And perhaps it would have represented progress if not for the fact that I discovered in December of last year by a simple request for information at vital statistics that Monroy had died on May 3, 2006. In other words, a dead man had been condemned, somebody who was still wanted by the prosecutor's office.

Despite two court decrees in which Colombian judges ruled that my father was murdered for being a labor unionist, the prosecutor's office, in order to continue hiding the truth, continued to maintain that it was a crime of passion up through August of 2008. It took international pressure for the prosecutor's to acknowledge the truth with respect to the motivation of this crime.

I have forgiven my father's killers, but we will continue to demand that the intellectual authors of this crime be investigated because the murder of union members in Colombia is the result of systematic government policy. We know that there is evidence of other guilty parties, including members of the national army. The investigation is still open, but with no follow-up of evidence as requested and no identification of other possible perpetrators.

I continue to look for justice, along with other sons and daughters of those who remember and are against impunity, this organization that sprang from our need to oppose barbarism. We have many brothers and sisters, and we know that we are the children of the dreams of justice and equality of our parents hoping to have a better country in the future where there is life and the right to think, to dissent and to dream.

[The statement of Ms. Hoyos follows:]

Prepared Statement of Yessika Hoyos Morales (English)

I am Yessika Hoyos Morales, daughter of Jorge Darío Hoyos Franco, one of the 2,694 labor unionists murdered with impunity in Colombia.

Eight years ago I was living with my mother, my sister and my father in Fusagasugá. He was a man with dreams; he was very committed to the cause of justice; he was deeply pained by oppression and poverty. That is why he was very committed to the union fight from the time he was very young. He started working with national agrarian organizations, and his leadership took him to the international federation of agricultural workers, and then to the international federation of miners.

In our town, my father worked broadly with the labor unions, student organizations, women's organizations. He worked to defend the rights of communities, he was widely recognized and loved by the people for his work.

My father was a cheerful, generous man. He showed us tenderness, love and solidarity with others. He was our friend and our hero, the man who gave us advice, who helped us discover the world.

From the time I was a little girl, I was witness to raids on our house by police, threats to my father. We received phone calls, funeral prayer cards, funeral wreaths, persecution. That was how I learned that union activity in Colombia is dangerous, and that thinking and protesting puts your life at risk.

However, we were happy until the night of March 3, 2001, when two confessed paramilitary hit men, shot my father repeatedly in the face until he was dead. My mother, and my sister, who was only 14 years old, found him on the ground with blood running down his body, now without his smile, without his dreams, without his kisses and hugs to give us.

The murderers made good on their threats. My father made good on his word—he never gave in to the demand that he stop fighting for the people. That was the first death, the death of a union leader, my father. But then, the murderers attempted a second and definitive killing, the one they are trying to impose on us in Colombia, the one that is clad with forgetting and impunity.

The very day of the funeral, the tragedy took another turn. Threats, harassment, persecution started against us, so that we wouldn't make any denouncements or claims. And because of that we had to leave our home and hide out in Bogotá, where we were found anyway, to the extent that we had to move five times in a single year.

And as with the other 2,694 murders of unionists, impunity began to be cast the very night of that horrific crime, when the perpetrators where caught, two young hit men, who were immediately visited in their cell by a police officer who told them what to say in their statements. The investigational hypothesis cast by the authorities held that it was a crime caused because my father had gotten involved with another man's wife. This is the typical explanation the Colombian authorities give to cover up the truth, to deny that people are murdered there for being labor unionists.

True to my father, following his example of passion for truth and justice, at 17, I joined the same battle that thousands of young people, widows, parents, brothers and sisters have had to wage in the search for TRUTH, JUSTICE AND REDRESS—victims' rights that are denied in my country. To this end, I have granted power of attorney to the law firm of José Alvear Restrepo to represent me in my civil intervention in the government's criminal case.

In 2003, the two hit men were sentenced to 23 years in prison for aggravated homicide of a protected person, since my father was a labor unionist. This weak sentence did not overcome the impunity since the search for those who ordered the murder only got to the point of linking it, in absentia, to a second lieutenant of police by the name of MONROY, who, after the crime, using another instrument of impunity, was retroactively relieved of his post in the month of February, 2001, in an attempt to show that on March 3, 2001, he was no longer an active-duty police officer. However, the criminal proceedings established that my father's murder had been planned in December of 2000.

Officer MONROY was always a fugitive. He was never caught. In August of 2007, he was sentenced to 40 years in prison for homicide against the unionist JORGE DARIO HOYOS FRANCO. This fact was publicized by the Colombian government as a great stride for justice, and perhaps it would have been an advance, if not for the fact that I discovered in December of last year, through a simple information request at the national registry of vital statistics, that MONROY died on May 3, 2006. In other words, a dead man was sentenced—one who is still wanted by the prosecutor's office.

Despite the two sentences, in which the Colombian judges have ruled that my father was murdered for being a labor unionist, the prosecutor's office, in order to continue hiding the truth, maintained the hypothesis of a crime of passion up until August of 2008. It took international pressure for the prosecutor's office to acknowledge the truth with respect to the motive for the crime.

I have forgiven my father's perpetrators, but we will continue to demand that the intellectual authors be investigated, as the murder of unionists in Colombia is the result of a systematic government policy. We know there is evidence of other perpetrators, including members of the national army. The investigation remains open, but with no follow-up of the evidence as requested, and no identification of other possible perpetrators.

I am Yessika Hoyos Morales, one of many daughters of Colombian men and women, who like Jorge Darío Hoyos Franco, were murdered with complete impunity. I am not alone. We are not alone. We are brothers and sisters united by hope, by dreams of justice, truth and freedom. We are Sons and Daughters for Remembering

and Against Impunity, an organization that sprang from our need to oppose barbarism. With the good fortune of love and solidarity, we have found many older brothers and sisters around the world who keep us going on the path of hope with their encouragement and faith. We know that we are the children of the dreams of justice and equality of our parents, and it is for that very reason that we are ethically and morally obligated to build a great country, where there is respect for life, where there is the right to think, to dissent and to dream.

Prepared Statement of Yessika Hoyos Morales (Spanish)

Soy Yessika Hoyos Morales, hija de Jorge Darío Hoyos Franco uno de los 2.690 sindicalistas asesinados impunemente en Colombia.

Ocho años atrás vivía con mi madre, mi hermana y mi padre en Fusagasugá. Él era un hombre soñador, comprometido con las causas justas, a él le dolía en el alma la opresión y la miseria, por eso desde muy joven se decidió por la lucha sindical. Inició con organizaciones agrarias nacionales, y por su liderazgo llegó a la federación internacional de trabajadores agrarios y luego a la federación internacional de mineros.

En nuestro pueblo, mi papi desarrolló una amplía labor social con los sindicatos, con organizaciones estudiantiles, de mujeres, en pos de reivindicar los derechos de las comunidades, labor por la que adquirió reconocimiento y cariño de las personas.

Mi papá era un hombre alegre, generoso, nos enseñó su ternura, su amor, y la solidaridad con la gente; él era nuestro amigo y nuestro héroe, el hombre que nos daba consejos, con el que descubrimos el mundo.

Desde niña fui testigo de allanamientos a la casa por la fuerza pública, de amenazas a mi papi, recibimos llamadas, sufragios, coronas fúnebres, persecuciones, por eso aprendí que la actividad sindical en Colombia es peligrosa y que pensar y protestar pone en riesgo la vida.

Sin embargo, éramos felices hasta la noche del 3 de marzo de 2001, cuando dos sicarios confesos paramilitares dispararon repetidamente en la cara de mi papi hasta quitarle la vida. Mi madre y mi hermana, quien tan solo tenía 14 años, lo encontraron en el suelo, con la sangre corriendo por su cuerpo, ya sin su risa, sin sus sueños, sin el beso y el abrazo para darnos.

Los asesinos cumplieron sus amenazas. Mi papá cumplió con su palabra pues jamás cedió a la exigencia de abandonar la lucha social. Esa fue la primera muerte del líder sindical, mi padre, pero luego los asesinos intentaron una segunda y definitiva muerte, esa que nos quieren imponer en Colombia, la que esta revestida de olvido e impunidad.

El mismo día del funeral, la tragedia tomo otra cara, comenzaron las amenazas, hostigamientos, persecuciones contra nosotras, para que no fuésemos a denunciar, para que no fuésemos a reclamar. Por ello tuvimos que salir desplazadas a escondernos en Bogotá, donde aún así fuimos ubicadas al punto que en un solo año tuvimos que cambiar 5 veces de residencia.

Y cómo en los otros 2.690 homicidios contra sindicalistas la impunidad empezó a fraguarse desde la misma noche de ese horrendo crimen, cuando capturaron a los autores materiales, dos jóvenes sicarios, a quienes de inmediato visitó en su celda un policía quien les advirtió lo que tenían que decir en sus declaraciones. La hipótesis de investigación forjada por las autoridades señaló que era un crimen ocasionado porque mi padre se había involucrado con la mujer de otro hombre. Típica explicación que dan las autoridades colombianas para ocultar la verdad, para negar que allí se asesina a las personas por ser sindicalistas.

Fiel a mi padre, siguiendo su ejemplo y pasión por la verdad y la justicia, a los 17 años inicie la misma batalla que miles de jóvenes, viudas, padres, hermanos han tenido que librar en busca de VERDAD, JUSTICIA Y REPARACION, derechos de las víctimas que son negados en mi país. Por ello otorgue poder a la Corporación Colectivo de Abogados "José Alvear Restrepo" para que me representara como parte civil.

En el año 2003, los dos sicarios fueron condenados a 23 años de prisión, por homicidio agravado en persona protegida por ser mi padre un sindicalista. Esta tenue condena no significó superación de la impunidad, pues la búsqueda de los determinadores solo alcanzó para vincular como persona ausente a un sub teniente de la policía de apellido MONROY, a quien con posterioridad al crimen, utilizando otro mecanismo de impunidad, lo destituyeron retroactivamente en el mes de febrero de 2001, intentando demostrar que para el día 3 marzo de 2001 ya no era policía activo, sin embargo en el proceso penal está demostrado que el homicidio de mi papi, lo planearon desde el mes de diciembre de 2000.

El policía MONROY siempre estuvo prófugo, nunca se le capturo, en el mes de agosto 2007 fue condenado a 40 años de prisión por homicidio contra el sindicalista JORGE DARIO HOYOS FRANCO. Este hecho fue publicitado por el Estado colombiano como un gran logro de justicia, y tal vez hubiese sido un avance si no fuera porque descubrí, en diciembre del año pasado, con un simple derecho de petición a la registraduria nacional del estado civil, que MONROY falleció desde el 03 de mayo de 2006, es decir se condenó a un muerto, al cual todavía la fiscalía busca.

No obstante las dos condenas, donde los jueces colombianos han fallado que a mi papá lo asesinaron por ser sindicalista, la fiscalía, con el fin de seguir ocultando la verdad, hasta agosto de 2008 mantuvo la hipótesis de un crimen pasional, fue necesario la presión internacional para que esta reconociera la verdad en cuanto al móvil del crimen.

He perdonado a los asesinos materiales de mi padre, pero seguimos exigiendo que se investigue a los autores intelectuales pues el asesinato de sindicalistas en Colombia es producto de una sistemática política de Estado. Sabemos que hay pruebas de otros responsables incluyendo miembros del ejército nacional, la investigación sigue abierta pero sin practicar las pruebas solicitadas y sin vincular a otros posibles responsables.

Soy Yessika Hoyos Morales, soy otra hija de hombres y mujeres colombianos que como Jorge Darío Hoyos Franco fueron asesinados en total impunidad. No estoy sola, no estamos solos, somos hermanos unidos por la esperanza por los sueños de justicia, verdad y libertad. Somos Hijos e Hijas por la memoria y contra la impunidad, una organización surgida de la necesidad de oponernos a la barbarie. Por la fortuna del amor y la solidaridad, hemos encontrado en todo el mundo muchos hermanos mayores que con su aliento y su fe nos mantienen vivos y en el camino de la esperanza. Tenemos la certeza de que somos hijos de los sueños de justicia e igualdad de nuestros padres, y que justamente por ello estamos en la obligación ética y moral de construir un país grande en el que se respete la vida, el derecho a pensar, a disentir, a soñar.

Chairman MILLER. Thank you very much.

Judge Sanchez?

STATEMENT OF JOSÉ NIRIO SÁNCHEZ, FORMER COLOMBIAN JUDGE IN SPECIAL COURT FOR LABOR–HOMICIDE CASES, BOGOTA, COLOMBIA

Mr. SANCHEZ [through translator]. I would like to extend a sincere and cordial greeting to all of those present. Thank you for inviting me. My name is Jose Nirio Sanchez, former second criminal judge of the specialized circuit of the Republic of Colombia. I held this post from July 1, 2007 until December 31, 2007. I served the Colombian government for 35 years.

I had national jurisdiction to rule on acts of violence committed against labor union leaders and unionists. During my tenure as judge, I issued eight convictions. And my conclusion from this personal experience and from having read my colleagues' rulings is that there is a clear pattern in all of these investigations.

The public prosecutor formally orders an investigation, but does not carry it out fully. They make mistakes in legal classifications of the crime. And for one reason or another, they misdirect the investigations, and they fail to investigate the intellectual authors.

I want to tell you about the facts and legal outcomes of three of the cases that I ruled on. In the case of the murder of Mr. Dario Hoyos, father of Yessika, who is here with us, the motives that led to the death of this labor union, community and civic leader were his union convictions and battles. The threats were not only aimed at him, but even at his family.

However, the prosecutor developed another hypothesis, arguing that the death was a crime of passion. The evidence did not sup-

port this hypothesis, which was later rejected during the sentencing.

Mr. Monroy, a former police officer, was sentenced to 40 years in prison for this crime. However, several days ago, I discovered that this sentence was in vain since the accused had died more than one year earlier.

This crime, as in other cases, thus remains unpunished. The true intellectual authors were not brought to account. Also, it is disturbing that the prosecutor did not realize that a person with an outstanding arrest warrant was, in fact, deceased. And in this manner, the prosecutor wasted a large amount of physical and human resources that could have been used to clear up other criminal acts and to identify the intellectual authors of the crime.

A second case—in the murder of three unionists in Arauca, Colombia, four Colombian servicemen and one civilian were sentenced to 40 years in prison as material authors because they conspired in their criminal intent. Their objective was to cause the death of the three unionists.

From the moment these acts occurred, both those charged and those who were responsible for the operation, directly or indirectly, allowed the scene of the crime to be concealed, destroyed or changed in order to throw the investigation off course. In fact, the firing test on the person who was said to have fired the weapon came out negative as an inoperable pistol was placed upon that person.

The material authors were convicted, but the officers higher up in the chain of command were not investigated. As far as their conduct, direction and responsibility for the outcome, Colonel Medina Corredor and two other captains never had to explain their behavior. They kept silent. They must at least be held accountable as guarantors, which is why I ordered they be investigated.

I understand that the Inspector General of the nation removed them from their positions and disqualified them from holding official positions for 20 years. However, in this case as well, the prosecutors failed to investigate these officials, officers, even though they could have been tried along with the material authors.

Lastly, in the murder of the unionist Luciano Romero, two material authors were sentenced to 40 years in prison. The deceased was preparing to testify as a witness in the policies of the transnational company, Nestle-Cicolac, at the session of the permanent people's tribunal in Switzerland. Three labor union leaders from the same union as well as employees from the same company were also murdered under similar circumstances.

I ordered an investigation of the case. And as always, verification of attested copies were ordered from the Nestle-Cicolac board in order to investigate the presumed participation in, and/or, determination of the murder of labor union leader Luciano Romero. Mr. Carlos Alberto Vélez, in his capacity as Nestle-Cicolac's chief of security for Latin America, sent a letter to the prosecutor's office warning that if this investigation were to become public, it would seriously affect its reputation and foreign investment.

And as a final conclusion, it is a systematic pattern that in all of these criminal acts, the prosecutor is satisfied with establishing the responsibility of the material authors, leaving out the intellec-

tual authors, who are the most important ones, given that they are the ones who sponsor, order the executions, put up the money, and they always remain in impunity. Thus, these crimes will not stop, since the true perpetrators are not prosecuted.

The investigations are directed off course toward other hypotheses that the judge ultimately debunks in his ruling or accepts with no reservations whatsoever. By then, it is already too late.

The evidence no longer exists and the authors disappear, when the normal thing would be for them to be identified in the initial phase of the investigation. This waste of resources causes an increase in crime and a decrease in the credibility of the institution, which is reflected in the unwillingness of witnesses to testify.

And finally, I would like to say that I love my country very much, and that I am very pained by these murders committed against unionists and labor leaders. And I want to say that you are very brave for fighting for this cause, which is our cause. But this will surely have benefit for the entire international community. Thank you very much.

[The statement of Mr. Sanchez follows:]

Prepared Statement of José Nirio Sánchez (English)

I would like to extend a sincere and cordial greeting to all those present. Thank you for inviting me to help shed light on the truth regarding the criminal acts against Colombian labor union leaders. With my testimony, I hope to contribute to reducing these criminal acts to zero, and to making sure those that have been committed do not remain in impunity.

My name is José Nirio Sánchez, former 2nd criminal judge of the specialized circuit of the Republic of Colombia. I held this post from July 1, 2007 to December 31, 2007, by unanimous designation. I was replaced January 12, 2008 in an election, in which I lost re-election by one vote. I served the Colombian government for 35 years.

I had national jurisdiction to rule on acts of violence committed against labor union leaders and unionists, as part of the program to fight impunity that the national government is pursuing.

During my tenure as judge, I issued 8 convictions. My conclusion from this personal experience and from having read my colleagues' rulings, is that there is a determining pattern in all of these investigations. The Public Prosecutor formally orders an investigation, but does not carry it out. They make mistakes in judicial classification of the crime. For one reason or another, they misdirect the investigations, and they fail to investigate the intellectual authors.

I want to tell you about the facts and legal outcomes of three of the cases I ruled on.

1. For the Murder of Mister Darío Hoyos: The motives that led to the death of this labor union, community and civic leader were his union convictions and battles. The threats were not only directed at him, but even at his family. But the Public Prosecutor developed another hypothesis, arguing that the death was a crime of passion. The evidence did not support this hypothesis, which was later rejected in the sentence.

Mr. Monroy was sentenced to 40 years in prison for this crime. However, several days ago, I discovered that this sentence was in vain, since the accused had died more than one year earlier. This case, like other cases, thus, remains in impunity. The true intellectual authors were not brought to account. Also, it is disturbing that the Public Prosecutor did not realize that a person with an outstanding arrest warrant was in fact deceased. In this manner, the Public Prosecutor wasted a large amount of physical and human resources that could have been used to clear up other criminal acts and to identify the intellectual authors of the crime.

2. For the murder of three unionists in Arauca, Colombia, 4 Colombian servicemen and one civilian were sentenced to 40 years in prison as material authors because they conspired in their criminal intent. Their objective was to cause the death of the three unionists. From the moment these acts occurred, both those charged and those who were responsible for the operation, directly or indirectly, allowed the

scene of the crime to be concealed, destroyed or changed, in order to throw the investigation off course (the firing test on the person who was said to have fired the weapon was negative, an inoperable pistol was placed on him).

The material authors were convicted but the officers up the chain of command were never investigated. With regard to their conduct, direction and responsibility for the outcome, Coronel LUIS FRANCISCO MEDINA CORREDOR, and other officials, Captain HIZNARDO ALBERTO BRAVO ZAMBRANO and Captain LUIS EDUARDO CASTILLO ARBELAEZ, never explained their behavior. They remained silent. They must at least be held accountable as guarantors, which is why it was ordered they be investigated. I understand that the Inspector General of the Nation removed them from their posts, and disqualified them from holding official posts for 20 years. However, in this case as well, the public prosecutors failed to investigate these officials, even though they could have been tried along with the material authors.

3. For the murder of the unionist Luciano Romero, 2 material authors were sentenced to 40 years in prison and other accessory penalties. The deceased was preparing to testify as a witness to the policies of the transnational company, NESTLE-CICOLAC, at the session of the Permanent People's Tribunal, which was to take place October 29 and 30, 2005, in Bern, Switzerland. Three labor union leaders from the Union of Food Industry Workers and former CICOLAC workers were also murdered in similar circumstances: VICTOR MIELES, ALEJANDRO MARTINEZ TORIBIO DE LA HOZ and HARRY LAGUNA. As always, verification of attested copies was ordered from the NESTLE-CICOLAC board, in order to investigate their presumed participation in, and/or, determination of the murder of labor union leader LUCIANO ROMERO. Mr. Carlos Alberto Vélez, in his capacity as Chief of Security for Latin America, sent a letter to the Public Prosecutor, warning that if this investigation were to become public, it would seriously affect its reputation and foreign investment. As I considered the situation serious and abnormal, I ordered an investigation, as I stated earlier.

Final Conclusion

It is a systematic pattern that in all of these criminal acts, the Public Prosecutor is content to determine the responsibility of the material authors, leaving out the intellectual authors, who are the most important, given that they are the ones who sponsor, order the executions, put up the money, and always remain in impunity. Thus, these crimes will not stop, since the true perpetrators are not prosecuted. The investigations are directed off course toward other hypotheses that the judge ultimately debunks in his ruling, or accepts with no reservations whatsoever. Then, it is already too late. The evidence no longer exists and the authors disappear, when the normal thing would be for them to be identified in the initial phase of the investigation. This waste of resources causes an increase in crime and a decrease in the credibility of the institution, which is reflected in the unwillingness of witnesses to testify.

Prepared Statement of José Nirio Sánchez (Spanish)

Un atento y cordial saludo a todos los presentes gracias por invitarme a contribuir al esclarecimiento de la verdad que se relaciona con los actos criminales contra la dirigencia sindical colombiana. Con mi testimonio pretendo que esta criminalidad se reduzca a cero y la existente no quede impune.

Mi nombre es José Nirio Sánchez, Exjuez 2nd. penal del circuito especializado—de la república de Colombia, ejercí el cargo desde el primero de julio de 2007 al 31 de diciembre de 2007, designación por unanimidad. Fui reemplazado en enero 12 de 2008 en elección en la que me faltó un voto para ser reelegido. Presté mis servicios al estado Colombiano por 35 años.

Tenía competencia nacional para fallar los hechos de violencia cometidos contra dirigentes sindicales y sindicalistas, dentro del programa de lucha contra la impunidad que adelanta el gobierno nacional.

Durante el ejercicio como juez dicte 8 fallos condenatorios, mi conclusión de esa experiencia personal y por haber leido los otros fallos de mis colegas, es que en todas estas investigaciones existe un patrón determinante la fiscalía formalmente ordena una investigación pero no la realiza, se equivoca en la calificación jurídica de los hechos, por una u otra razón desvía las investigaciones, y omite investigar los autores intelectuales.

Quiero contarles los hechos y conclusiones jurídicas de tres de los casos en que yo dicte fallos

1- Por el Homicidio del señor Darío Hoyos: Los motivos que condujeron al deceso de este líder sindical, comunitario y cívico fueron sus convicciones y luchas sindicales. Desde un comienzo se estableció que, las amenazas no solamente se cernìan sobre èl sino hasta su familia. Sin embargo, la Fiscalia desarrollò otra hipótesis, que era un crimen pasional. Las pruebas no sustentaron esta hipótesis y esta se rechazo en la sentencia.

El señor Monroy fue sentenciado a 40 años de prisión. Sin embargo, hace unos días me entero que esta sentencia fue en vano puesto que el sentenciado había fallecido hacía mas de un año. Este como otros casos queda entonces en la impunidad. No se responsabilizaron los verdaderos autores intelectuales. Por otra parte, es preocupante que la Fiscalia no se dio cuenta que había fallecido una persona que tenìa orden de captura. De esta manera, la Fiscalia desperdicio recursos fìsicos y humanos que se habrìan podido utilizar en el esclarecimiento de otros hechos delictivos y en la búsqueda de los autores intelectuales del hecho.

2- Por el homicidio de tres sindicalista en Arauca Colombia, fueron sentenciados a 40 años de prisión 4 militares colombianos y un civil en calidad de autores materiales porque convergieron en su voluntad dolosa, su objetivo era causar la muerte a los tres sindicalistas. Desde el primer instante de la ocurrencia de estos hechos, tanto los acusados como las personas que tenían a cargo la operación directa o indirectamente permitieron que se ocultara, destruyera o modificara la escena, para desviar el curso de la investigación (la prueba de disparo resulto negativa a quien le imputaban haber disparado, colocandole una pistola inservible).

Se condenaron los autores materiales pero no se investigaron los oficiales en la cadena de mando. Estos últimos nunca explicaron su comportamiento. Guardaron silencio. En lo que respecta a la conducta del Coronel LUIS FRANCISCO MEDINA CORREDOR, y de otros oficiales Capitán HIZNARDO ALBERTO BRAVO ZAMBRANO, Capitán LUIS EDUARDO CASTILLO ARBELAEZ, la dirección y responsabilidad de su resultado; al menos deben responder como garantes, razón por la que se ordenò investigarlos. Tengo entendido que la procuradurìa general de la Naciòn los destituyò y los inhabilitò para ejercer cargos oficiales durante 20 años. Aquì tambièn la Fiscalìa dejò de investigar a estos oficiales, a pesar de que se les habrìa podido resolver en el mismo fallo con los autores materiales.

3- Por el homicidio del sindicalista Luciano Romero, fueron sentenciados 2 autores materiales a 40 años de prisión y demás accesorias. El occiso se preparaba para ser testigo de la política de la trasnacional NESTLE-CICOLAC, en la sesión del Tribunal Permanente de los Pueblos, que se realizaría los días 29 y 30 de octubre de 2005 en Berna Suiza, en similares circunstancias también fueron asesinados 3 dirigentes sindicales del Sindicato de Trabajadores de la Industria de Alimentos y extrabajadores de CICOLAC: VICTOR MIELES, ALEJANDRO MARTINEZ TORIBIO DE LA HOZ y HARRY LAGUNA, como siempre se dispuso la compulsa de copias contra los directivos de NESTLE-CICOLAC , a efecto de investigar su presunta injerencia y/o determinación en el homicidio del líder sindical LUCIANO ROMERO, y en razòn a una carta que enviara el señor Carlos Alberto Vélez a la Fiscalìa, en su condición de Gerente de Seguridad para América Latina, advirtiendo que de conocerse esta investigación se afectarìa gravemente su reputaciòn y la inversiòn extranjera. Por considerar gráve y anómala la situación ordené se investigara como dije anteriormente.

Conclusión final

Es sistemático que en todas los hechos criminales, la fiscalía se conforme con la responsabilidad de los autores materiales, dejando de un lado los autores intelectuales, quienes son los más importantes por ser quienes auspician, ordenan las ejecuciones, aportan los dineros, quedando siempre en la impunidad. Por consiguiente los crímenes no pararan en razón a que no se judicializa a verdaderos autores. Desvían las investigaciones hacia otras hipótesis que finalmente destruye el juez en el fallo o lo acepta sin reparo alguno, cuando ya es tarde, las pruebas se pierden y los autores desaparecen, siendo lo más normal descubrirlos en la etapa inicial de la investigación. Este desgaste de recursos hace que aumente la criminalidad y disminuya la credibilidad en la institución, fenómeno que se refleja en el rechazo de los testigos en declarar.

Chairman MILLER. Ms. McFarland?

STATEMENT OF MARIA MCFARLAND SÁNCHEZ–MORENO, LATIN AMERICA SPECIALIST, HUMAN RIGHTS WATCH, WASHINGTON, DC

Ms. MCFARLAND. Thank you very much. Colombia has by far the world's highest rate of trade unionist killings. As previously stated, more than 2,600 unionists are reported to have been killed since 1986. And some 4,200 are reported to have received threats.

More than 400 of the killings have happened during the administration of current president Alvaro Uribe. After hitting a peak in the 1990s, the rate of killings dropped for several years. But it has recently risen again to 49 killings in 2008 from 39 in 2007. Also, union members reported receiving 485 threats last year, almost twice the number recorded the previous year.

The overwhelming majority of these cases have never been solved. Colombia's attorney general reports that in the last 8 years there have been 171 convictions for anti-union violence. This number reflects a big jump in convictions starting a couple of years ago when the attorney general's office established a specialized group of prosecutors to reopen many of the uninvestigated cases.

But despite this increase, 96 percent of all the unionist killings remain unsolved. And even at the current rate of conviction with no new killings, it would take 37 years for the prosecutor to get through the backlog.

Also, as we explained in a November letter to Speaker Pelosi, which I would like to submit for the record, there are serious reasons to be concerned about the sustainability of the increasing convictions. For one, the specialized prosecutors are only investigating 1,104 of the total cases of 2,694 killings, 4,200 threats and other acts of violence. And they do not have a clear plan to review the remaining cases.

Second, many of the convictions involve paramilitaries who are participating in what is known as the justice and peace process in which in exchange for their supposed demobilization, they will serve only very short sentences of 5 to 8 years for all of their crimes. These convictions do little to clarify the truth, as in many cases, the convicted paramilitaries simply accept responsibility for the crimes without explaining the circumstances surrounding them, who ordered them or why.

And once the process is over, it is likely the conviction rates will drop again. Finally, in some of the most high profile cases like the investigation of Uribe's former intelligence chief, Jorge Noguera for alleged involvement in union killings, there has been little progress.

While some of the violence is attributable to the military, left wing guerrillas or to common crime, by far the largest share of the killings where perpetrators have been identified are attributable to paramilitary mafias who have deliberately persecuted unionists. So to address anti-union violence effectively, it is crucial that the government dismantle the paramilitary groups that are most responsible for it. But the government has failed to do so.

The Uribe administration claims that the paramilitaries have demobilized. But scores of new groups closely linked to the paramilitaries are operating all over the country engaging in extortions, killings, forced disappearances, forced displacement and drug

trafficking just like their predecessors. I have personally interviewed many of their victims.

The bulk of the threats received by unionists last year have been signed by these groups. The paramilitaries have also infiltrated some of the highest circles of political power, including much of the Colombian congress. Seventy-four members of the congress, nearly all of whom are members of President Uribe's coalition, are under investigation or have been convicted for collaborating with paramilitaries. Unfortunately, as I documented in our latest report, which I would also like to submit for the record, the Uribe administration has often taken steps that would undermine these investigations.

President Uribe has launched personal public attacks against the supreme court justices who have led the investigations. And he has blocked meaningful efforts to reform the congress to eliminate paramilitary influence.

Another problem the government must address is the large number of extrajudicial killings of civilians by the Colombian Army. The attorney general's office is currently investigating cases involving more than 1,000 victims of such killings in recent years. Twenty-two of the union killings in the last few years are believed to have been executions by the military.

It is difficult to take the government's commitments to contain anti-union violence seriously when its security forces appear to be engaged in widespread executions of civilians. It is also difficult when senior government officials, including President Uribe himself, continuously make statements stigmatizing union activity and human rights work as linked to guerrillas like he did just last weekend.

In sum, the Colombian government has a long way to go to make sure that workers in Colombia can exercise their rights. But the Colombian government senses that change has come to Washington and that more progress is expected.

The United States should seize this opportunity by standing firm on the need for fundamental changes in Colombia and providing support to achieve those changes. Thank you very much.

[The statement of Ms. McFarland follows:]

Prepared Statement of Maria McFarland Sánchez-Moreno, Esq., Senior Americas Researcher, Human Rights Watch

Mr. Chairman, Committee members: I am honored to appear before you today. Thank you for your invitation to address the situation of workers' rights and violence against trade unionists in Colombia.

I am the Senior Americas Researcher at Human Rights Watch, where I have been covering Colombia for several years. I frequently travel throughout different regions of the country to conduct research and interviews with a wide array of sources, and I have written numerous reports and public documents about the horrific abuses committed by left-wing guerrillas, paramilitary groups, as well as the armed forces in Colombia.

Despite the rosy picture of the human rights situation that is often painted by Colombian government officials, Colombia to this day presents widespread human rights abuses, including extrajudicial executions of civilians, enforced disappearances, kidnappings, use of child soldiers and antipersonnel landmines, extortion and threats. More than 3 million Colombians are internally displaced, having been forced to flee their homes due to the violence.

Violence against Trade Unionists

One of the issues I monitor closely in Colombia is the plight of Colombia's trade unionists. Over the last couple of decades, Colombia's unions have suffered extreme violence, mostly at the hands of right-wing paramilitary groups that have deliberately targeted unions.

In fact, Colombia has the highest rate of trade unionist killings in the world. According to the National Labor School (Escuela Nacional Sindical or ENS), Colombia's leading organization monitoring labor rights, 2,694 unionists have been killed since 1986, the year the ENS started recording the rate of killings. In addition, some 4,200 unionists have reported receiving threats.

The rate of yearly killings has fluctuated over time, increasing dramatically in the 1990s, when paramilitary groups were rapidly expanding throughout the country, and then dropping again between 2001 and 2007.

This reduction may be explained by many factors, including the consolidation of paramilitary control in many regions of Colombia starting around 2002, as well as the establishment of a protection program—partly funded and supported by the United States—for threatened union leaders.

But according to statistics maintained by ENS after dropping to 39 in 2007, the number of killings of trade unionists has increased once again, to 49 in 2008. This represents a 25% increase in the number of killings compared to 2007. Of those killed in 2008, 16 were union leaders. In addition, the ENS recorded 485 threats against trade unionists in 2008, almost twice the number—246—recorded the previous year.

The national government also recorded a substantial increase in trade unionist killings in 2008, going up from 26 in 2007 to 38 in 2008. The official statistics are lower than the ENS numbers because of differing definitions of who counts as a trade unionist, among other reasons. The Office of the Attorney General of Colombia (the Fiscalía), however, uses numbers that are closer to the ENS's, reporting 42 trade unionist homicides in 2008.

Some commentators—including the Washington Post's editorial page—have sought to downplay the gravity of the problem by arguing that it is safer to be "in a union than to be an ordinary citizen," noting that the rate of unionist killings is lower than the national homicide rate. But this rhetorical claim compares apples and oranges: the supposedly "ordinary" citizen includes many people at unusually high risk of being killed, including drug traffickers, criminals, and people living in combat zones, which skew statistical results. The national homicide rate (33 per 100,000 in 2008) is exactly the same for all these people as it is for civilians in the safest neighborhood in the capital, Bogota.

Such loose comparisons fluctuate easily: for example, as explained recently by Colombian political analyst Claudia López, if instead of looking at the rate of unionist killings, one looks at the rate of killings of union leaders for 2008, one finds that the homicide rate for union leaders in 2008 was approximately 48 per 100,000. In other words, union leaders are about 50% more likely to be killed than the supposedly "ordinary" citizen. López also points out that just looking at raw numbers, one finds that in 2002, 2003, and 2004, more trade unionists than police officers were killed each year in Colombia.

Setting aside the statistical discussion, it's important to bear in mind that trade unionists are not random victims who are being killed accidentally or in crossfire.

While some of the killings are attributable to the military, guerrillas, or common crime, by far the largest share of the killings—based on the information compiled by the Office of the Attorney General as well as analyses by the ENS—are attributable to paramilitaries, who view labor organizing as a threat to their interests, and who stigmatize unionists as guerrilla collaborators. For example, the New York Times described in one article last year how a unionist was forcibly "disappeared," burned with acid and killed after he participated in protests against paramilitary violence in March 2008. Such targeted killings—unlike common crime—have a profound chilling effect on workers' ability to exercise their rights.

Impunity

An important factor perpetuating the violence is the overwhelming impunity in these cases. The Office of the Attorney General reports that from 2001 to this day, there have been 171 convictions in 130 cases of anti-union violence. Of these, 151 convictions are for homicides, while 20 are listed as being for other crimes.

This number reflects a substantial increase in yearly convictions starting in 2007, when the Attorney General's office established a specialized group of prosecutors to reopen many of the uninvestigated cases. Between 2002 and 2006 the rate of convictions fluctuated between 7 and 12 per year. Then, in 2007, they jumped to 44, and they went up again, to 76, in 2008.

Yet as the Colombian Commission of Jurists, a prominent Colombian human rights group, pointed out in a letter to Chairman Miller this week, 96 per cent of all trade unionist killings remain unsolved. At the current rate of convictions, it would take approximately 37 years for the prosecutors to get through the backlog.

Also, as we explained in a November 20, 2008 letter to Speaker Nancy Pelosi (which I would like to submit for the record), there are serious reasons to be concerned about the sustainability of this increase:

1. The specialized prosecutors are not investigating the majority of reported cases.

The Office of the Attorney General reports that as of January 20, 2009 the specialized prosecutors unit is only reviewing a total of 1,302 cases involving 1,544 victims of anti-union violence. They have only located the physical case files in 1,104 of these cases. The cases under review include 610 cases involving the killings of 816 victims, as well as 289 cases involving threats.

In other words, the Attorney General's office is reviewing less than one third of the 2,695 killings reported by the ENS and only a tiny percentage of the threats.

When I met with representatives of the Office of the Attorney General last November, I asked what they planned to do with the thousands of other reported cases of threats and killings. They gave multiple explanations:

First, the Office said that the specialized group was only looking at the cases that had already been reported to the International Labor Organization (ILO) at the time the specialized group was created. But the ENS and trade unions later submitted all information they have on all 2,685 cases recorded as of May 2008 to the ILO. It makes no sense to exclude many cases from investigation just based on the date on which they were reported to the ILO.

Second, the Office said they had decided not to expand the number of cases assigned to the specialized prosecutors simply because they do not have the resources to handle that many cases. Thus, the remaining cases would be assigned to ordinary prosecutors who may be spread out around the country, who will not be focused specifically on anti-union violence and are more vulnerable to pressure or threats. This explanation is surprising in light of the vast resources the US Congress has already assigned to the Human Rights Unit, precisely to strengthen these sorts of investigations. It is also not a good reason to simply exclude more than half the cases from the specialized prosecutors' workload, rather than organizing and prioritizing them in a useful manner.

Third, the Office said that many of the cases had been inaccurately reported as trade unionist killings. According to the Office, in some cases the victims were not union members or had been killed for non-union-related reasons. Yet when Human Rights Watch asked the Office for a list of all the cases that the specialized group was investigating, as well as the list of cases that they had decided not to investigate because they did not really involve unionist killings, they refused to provide such a list. The Office has also refused to provide such lists to union representatives, making it impossible to have a meaningful discussion about the basis on which they are excluding many cases from investigation.

2. Many convictions involve paramilitaries in the Justice and Peace process.

One factor that appears to have contributed to the increase in convictions is that some paramilitary commanders participating in what is known as the "Justice and Peace" process have been accepting responsibility for unionist killings. But this means that once the Justice and Peace process is over, the rate of convictions is likely to quickly drop off. Also, the convictions in these cases often do little to further truth or justice.

Under the "Justice and Peace Law," paramilitaries known to be responsible for atrocities are given an opportunity to admit all their crimes. In exchange, they are set to receive a single reduced sentence of five to eight years, rather than the much longer sentences—up to 40 years, in some cases—that would normally be ordered in individual cases of trade unionist assassinations.

The law began to be applied in 2007, around the same time as the convictions for unionist killings started to go up. Based on Human Rights Watch's review of several of the rulings in these cases, as well as the statements of persons close to the investigations, a substantial share of the convictions in unionist cases are of paramilitaries who are participating in the Justice and Peace Law process. According to the Office of the Attorney General, of the 76 convictions obtained in 2008 (in 57 cases), 50 were reached pursuant to plea bargains. The Office states that six of the convictions were obtained with "information from" the Justice and Peace Law process, but it does not specify how many of the convicted persons are Justice and Peace Law participants. In our review of a portion of the 2008 sentences, we found that a substantially larger number than six were convictions of Justice and Peace Law participants. The Office of the Attorney General also states that it has already prepared plea bargains for 75 individuals in the Justice and Peace Law process.

The statements in these cases are often general. For example, paramilitary commanders like Ever Veloza (also known as "HH") have admitted having commanded responsibility for thousands of killings, including unionist killings. But they often do not describe the circumstances surrounding the killings or identify other accomplices or participants in the crime. As a result, these convictions often do little to establish the truth about the killings.

3. Lack of progress in high-profile cases

In some of the most high-profile cases of unionist killings there has been little progress.

One example is the investigation of the former head of the National Intelligence service, Jorge Noguera. Noguera has been under investigation since 2005 for allegedly cooperating closely with paramilitary groups, including by giving sensitive information about trade unionists and others under government protection to paramilitaries who later targeted and killed some of the protected persons. The Noguera investigations have moved slowly and have repeatedly been delayed due to procedural errors. At this time, Noguera is under arrest pursuant to a December order by the Attorney General that found probable cause to hold him for collaborating with paramilitaries. Investigations for his alleged involvement in trade unionist killings have shown little signs of progress.

Similarly, in the murder of labor leader Luciano Romero, despite a court order to investigate potential involvement of the Nestle Corporation in the killings, the Office of the Attorney General has failed to move any such investigation forward. When I interviewed officials from the Office in November, they told me that they had not pursued the investigation of Nestle because they disagreed with the judge.

Stigmatization of Union Activity

High-level officials continue to stigmatize legitimate union activity as a cover for the abusive left-wing guerrillas. Colombian President Alvaro Uribe has in the past dismissed international concerns over the violence, describing the unionists as "a bunch of criminals dressed up as unionists."

More recently, President Uribe has just last week suggested that those who criticize his government's human rights record abroad, or oppose the US-Colombia Free Trade Agreement, belong to a sort of "intellectual block" of the Revolutionary Armed Forces of Colombia (FARC) guerrillas.

Such statements put unionists and human rights defenders at grave risk, suggesting that the violence against them might be justified and that accountability for the killings may not be a priority for the government.

Paramilitary Violence

Most trade unionist killings have never been investigated, so it is impossible to know exactly who is responsible and why all the killings have been committed. What is clear is that in many cases, the killers have been mafia-like paramilitary groups, who have admitted to deliberately persecuting unions.

As of March 2008, the Office of the Attorney General reported that of all the persons convicted in unionist killings, 73 (the largest share) belonged to paramilitary groups.

As a result, to address the violence against unionists in a sustained manner, it is crucial that the Colombian government effectively dismantle the paramilitary groups that have historically posed the greatest threat to unions.

Uribe administration officials often dismiss concerns about paramilitary violence by claiming that the paramilitaries are now "extinct" thanks to the government's demobilization program. But while more than 30,000 individuals supposedly demobilized, Colombian prosecutors have turned up evidence that many of them were not paramilitaries at all, but civilians recruited to pose as paramilitaries. Law enforcement authorities never investigated most of them.

Meanwhile, scores of "new" groups closely linked to the paramilitaries and composed of thousands of members are operating all over the country.

A recent report by the Colombian organization Nuevo Arco Iris estimates, based on official data, that there are 21 of these armed groups operating in 246 municipalities around the country, and that they could be composed of over 10,000 members.

These groups are engaging in extortion, killings, forced displacement, and drug trafficking—just like their predecessors. Several foreign embassies in Bogota, the Organization of American States' mission verifying the demobilization, and dozens of human rights defenders have reported receiving threats from the new groups since 2007.

In Medellín, where the homicide rate had been dropping substantially for years, violence has shot up, with murders jumping from 771 in 2007 to 1044 in 2008—

a 35% increase, largely due to the activities of these new groups. The former head of the prosecutor's office in the city, who is also the brother of Colombia's Interior and Justice Minister, is now under investigation for alleged links to these groups.

The new groups are also contributing to a rise in internal displacement. In fact, starting in 2004, around the same time paramilitaries supposedly started to demobilize, the rate of internal displacement in the country began steadily rising. The Colombian organization CODHES, which monitors internal displacement, has reported that 270,675 people had become internally displaced in just the first six months of last year—a 41% increase in displacement over the first six months of 2007. It is still collecting data on the second half of 2008. In a large share of these cases, the victims report being displaced by new armed groups that operate in the regions that were historically under paramilitary control.

There are good reasons to believe that these new armed groups pose a serious threat to trade unionists. In fact, the bulk of the threats received by unionists last year have been signed by groups purporting to be paramilitaries, such as the Black Eagles. And the regions where the most cases of anti-union violence were registered in 2008 are the same regions where the new armed groups are most active. These include, for example, Santander, Norte de Santander, Magdalena, and the coffee-growing states of Quindío, Risaralda and Caldas.

Paramilitary Infiltration of Colombia's Democratic Institutions

Colombia's democracy today faces a serious threat due to paramilitary infiltration of key institutions like the Colombian Congress, which is now undergoing a major crisis of legitimacy, one that is unprecedented not only in Colombia but in all of Latin America. Seventy-four members of the Congress—including approximately 35% of the Senate—are under investigation or have been convicted for rigging elections or collaborating with paramilitaries. Nearly all the congresspersons under investigation are members of President Uribe's coalition.

The fact that these investigations are occurring at all is of historic importance. But these gains are still tentative and fragile. They are the result of a fortuitous combination of factors, including the independence and courage of a select group of judges and prosecutors, a Constitutional Court ruling that created incentives for paramilitary commanders to disclose some of the truth about their crimes, the actions of Colombian civil society and a handful of journalists, and international pressure on the Colombian government.

And unfortunately, as we documented in a report we released in October 2008, entitled "Breaking the Grip? Obstacles to Justice for Paramilitary Mafias in Colombia" (which I would like to submit for the record) the administration of President Uribe is squandering much of the opportunity to truly dismantle paramilitaries' mafias. While there has been progress in some areas, some of the administration's actions are undermining the investigations that have the best chance of making a difference.

Of greatest concern, the Uribe administration has repeatedly launched public personal attacks on the Supreme Court and its members in what increasingly looks like a concerted campaign to smear and discredit the Court.

It has also opposed and effectively blocked meaningful efforts to reform the Congress to eliminate paramilitary influence. In particular, Uribe blocked an effort to apply what is known as the "empty chair reform" to current members of Congress. That reform would have sanctioned political parties linked to paramilitaries, barring them from simply replacing the congresspersons who are investigated or convicted with other politicians who were elected in the same manner.

What is at stake here is Colombia's future: whether its institutions will be able to break free of the control of those who have relied on organized crime and often horrific human rights abuses to secure power, and whether they will be able to fulfill their constitutional roles unhindered by fear, violence, and fraud.

Also at stake is the future of labor rights in the country. As long as important Colombian institutions remain under the influence of paramilitaries who have persecuted trade unionists, it will be impossible for union members to freely exercise their rights.

Extrajudicial executions by the Army

In recent years there has been a substantial rise in the number of extrajudicial killings of civilians attributed to the Colombian Army. Under pressure to demonstrate operational results by increasing their body count, army members apparently take civilians from their homes or workplaces, kill them, and then dress them up to claim them as combatants killed in action. The Attorney General's Office is currently investigating cases involving more than a thousand victims of such extrajudicial executions dating back to mid-2003.

While most of these cases do not involve trade unionists, an increasingly significant share of trade unionist killings are believed to be attributable to state actors. Twelve per cent of the killings recorded by the ENS in 2008 were believed to have been committed by state actors.

One significant case involves the military's killing of three trade unionists in the region of Arauca in 2003. Unfortunately, while lower level soldiers have been convicted of the killings, prosecutors appear to have made little progress in investigating the potential responsibility of military officers up the chain of command.

More broadly, the large number of extrajudicial executions being attributed to the Army has contributed to the broader climate of intimidation that severely affects union activity. And the government's commitment to contain anti-union violence cannot be taken seriously so long as its security forces appear to be engaged in widespread executions of civilians.

The Defense Ministry has issued directives indicating that such killings are impermissible. But such directives have been regularly undermined by statements from high government officials, including President Uribe, who until recently accused human rights defenders who reported these killings of colluding with the guerrillas in an orchestrated campaign to discredit the military.

Since October of last year, after a major scandal over the military's alleged execution of several young men from the capital of Bogota, the Uribe administration has started to more explicitly acknowledge the problem and has dismissed several soldiers and officers from some military units in connection with some of the most well known killings. However, it is crucial that these dismissals be followed by effective criminal investigations, prosecution, and punishment of those responsible for executions—including commanding officers who may have allowed or encouraged them—that have been reported on a regular basis all over the country. It is too early at this time to determine whether such punishment will occur.

It is also crucial that the government review and reform military policies, such as its rewards and promotions system, that may be creating incentives to produce false results by executing civilians.

Colombia is not meeting international labor standards

Anti-union violence is so pervasive in Colombia, that it is impossible for workers to fully exercise their rights. This is a fundamental problem that must be confronted head-on if workers' rights are ever to be respected in that country.

But violence is not the only problem affecting labor rights in Colombia. Colombia's labor law itself also falls short of international standards, as reported repeatedly by the International Labor Organization (ILO) in its annual review of Colombia. The Colombian government has attempted to downplay the shortcomings, asserting in a 2008 embassy publication that legal reforms passed in 2000, combined with additional "legislative, regulatory and judicial opinions during the Uribe Administration" have eliminated "most" of the inconsistencies between Colombian labor law and ILO norms. But that same year, the ILO Committee of Experts on the Application of Conventions and Recommendations (Committee of Experts) noted in its own 2008 report that glaring problems remain. The problems criticized by the ILO include obstacles to trade union registration, violations of workers' rights to strike, and the use of cooperatives to undermine workers' right to organize.

Human Rights and the US-Colombia Free Trade Agreement

Human Rights Watch takes no position on free trade per se. But we believe any free trade agreement should be premised on respect for fundamental human rights, especially the rights of the workers producing the goods to be traded. In Colombia, those conditions are far from being met. That's why we have called on Congress to delay consideration of the US-Colombia Free Trade Agreement (FTA) at this time, until Colombia shows concrete and sustained results in addressing the violence against trade unionists, impunity for that violence, and the broader human rights context that makes it difficult for workers to exercise their rights.

Without concrete and sustained results in addressing these basic problems, ongoing anti-union violence, impunity and human rights abuses would, as President Barack Obama has noted, make a "mockery" of labor protections in the agreement. Colombia should be in compliance with such protections before the accord takes effect, as has generally been demanded with FTA commercial provisions.

We believe that the US Congress's decision to delay consideration of the FTA has put pressure on the Colombian government to take some initial steps to address these issues. As previously described, the Office of the Attorney General has established a specialized group of prosecutors to investigate some of the country's thousands of unsolved cases of trade unionist killings, and the group has obtained an increase in convictions. Yet this progress is still fragile and incomplete, and there

are many reasons (as previously described) to be concerned about the sustainability of this effort. And in other areas (such as the rate of violence), Colombia has been sliding back this year. Meanwhile, the government has yet to address the rise of successor groups to the paramilitaries, the influence of these groups in the political system, continuing stigmatization of unionists, and the Army's disturbing practice of extrajudicial executions of civilians.

Among other steps, Colombia should be required to meet concrete benchmarks in the following areas:

• Demonstrating a sustained and meaningful increase in well-grounded convictions of perpetrators of anti-union violence. These should include convictions in a sufficient number of the 2,695 killings of trade unionists reported since 1986 to show a significant shift in the long-term pattern of impunity. The convictions should be based on more than the mere admissions of guilt by paramilitary commanders participating in the "Justice and Peace" process, as these confessions often do little to establish the truth about the killings or accountability for the perpetrators. To achieve this goal, there are many steps Colombia has yet to take. For example, it must ensure that the specialized prosecutors for labor union cases handle all the reported cases, not just the reduced number they are currently investigating.

• Dismantling the paramilitary groups that pose the greatest threat to unions, by holding accountable paramilitaries and their accomplices in the military, political system, and business sectors; confiscating paramilitaries' illegally obtained assets and returning stolen lands to their rightful owners; and actively investigating and confronting new or never demobilized paramilitary groups that have appeared in the wake of the supposed demobilization of the AUC paramilitaries.

• Ensuring accountability for the extrajudicial executions of civilians that the Army has allegedly been committing by the hundreds in recent years. It is crucial that the government response go beyond mere internal investigations and dismissals of officers to also include criminal investigations, prosecutions, and appropriate punishment, as well as the reform of policies that may create incentives for such executions.

In any case, Congress should make clear that, given the serious crisis of legitimacy in the current Colombian Congress, the Free Trade Agreement should not be considered until the Colombian Congress has been meaningfully reformed to remove paramilitary influence, or until after the current Colombian Congress ends its term in 2010. The United States should urge the Uribe administration to promptly take the necessary measures to clean up its political system. Such measures include approving political and electoral reforms to sanction the political parties that have, in past elections, allowed paramilitaries to infiltrate them. In particular, political parties should lose any seats held by congresspersons who are convicted or resign due to investigations for collaborating with paramilitaries. The Uribe administration should provide full support to criminal investigations of public officials, ceasing its attacks on the courts and investigators handling the parapolitics investigations.

The United States can take several additional steps to maximize the effectiveness of this principled approach to the Colombia FTA.

First, it should make clear that the delay in the Colombia FTA does not reflect political or anti-trade agendas. Given Colombia's specific labor rights and human rights situation, the Colombia FTA should not be bundled with the Panama FTA or any other free trade agreement.

Second, the US should substantially increase assistance to the institutions on the front lines of this fight. This means not only supporting the specialized group of prosecutors investigating trade unionist killings, but more broadly increasing aid to institutions—including the Attorney General's Office and Supreme Court—that are conducting investigations of paramilitaries' past crimes and networks (including paramilitaries' accomplices in the military and political system). The United States should also increase aid to institutions and organizations—such as the Ombudsman's Office's Early Warning System, as well as civil society groups—that monitor the actions of armed groups, including the new paramilitary groups, and play a key role in preventing human rights abuses around the country.

Given what is at stake for Colombia—the success or failure of a generational struggle to break the hold of brutal mafias over the country's political life, and in turn the ability of Colombia's workers to exercise their rights without fear of being threatened or killed—and given the Uribe government's reluctance to engage in that struggle except when under pressure to do so, the United States should not seek FTA ratification prematurely or in exchange for partial measures. The Uribe government recognizes that change has come to Washington and senses that it will have to demonstrate greater progress if there is to be any chance for the FTA. The United States should seize this opportunity by standing firm on the need for fundamental changes in Colombia, and providing support to achieve those changes.

Colombia still has a lot of work to do before the FTA should be considered. By continuing to delay the deal's approval, the United States will show that human rights are not just words, but rather basic values that have real consequences for US policy.

[The study, "Breaking the Grip? Obstacles to Justice for Paramilitary Mafias in Colombia," Human Rights Watch, October 2008, may be accessed at the following Internet address:]

http://www.hrw.org/sites/default/files/reports/colombia1008web.pdf

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Chairman MILLER. Mr. Roberts?

STATEMENT OF JAMES ROBERTS, RESEARCH FELLOW, THE HERITAGE FOUNDATION, WASHINGTON, DC

Mr. ROBERTS. Thank you, Mr. Chairman, Mr. Ranking Member. I am here today in my personal capacity. And the title of my testimony states my theme, which is that the best protection for both Colombian and American workers is stronger market-based democratic institutions in Colombia.

Colombia is one of America's best friends in the Caribbean-Andean region. The government is one of the oldest in South America and is solidly committed to its partnership with the United States and is following a similar path toward market-based democracy and rule of law that has made the United States the most prosperous nation on Earth.

A decade ago, Colombia was wracked by violence and seized with fear, drug pins, narco-funded leftists, terrorists and guerrillas, far right paramilitaries and an assortment of other gangsters operated with impunity while government, military and law enforcement officials cowered in their offices and barracks. Today by comparison, Colombia is bustling with people excited to see their homeland growing more prosperous and at last more peaceful.

The majority of Colombians are focused on enhancing their peace and prosperity by accelerating Colombia incorporation into the globalized economy. And it is interesting to note that many pro-globalization Colombians are unionized workers enjoying the prosperity from the hundreds of thousands of jobs created in Colombian export industries.

Progress is explained by several factors. Plan Colombia, the U.S. joint effort with the U.S. government started under former President Bill Clinton. President Alvaro Uribe has been an exceptionally effective president—and a new spirit among the Colombian people. In my written testimony, I outline the historical context the tragic violence that has plagued Colombia for 60 years. Indeed, violence in the entire region from Mexico through the Andes is far too high.

The combination of FARC, drug traffickers and paramilitaries nearly destroyed the Colombian state. The restoration of order and civilian authority with the help of Plan Colombia has allowed President Uribe's free market policies to bear fruit. And economic growth in Colombia has taken off.

Indeed, our recently published index of economic freedom the Heritage Foundation publishes with the Wall Street Journal ranks Colombia's economy as 72nd freest in the world out of 179 coun-

tries. By comparison, in neighboring Venezuela, the score held at the bottom at 174 just ahead of Cuba. And in Ecuador, which is also headed by a populist leftist government, did not do much better at a score of 137.

In addition to Plan Colombia, to stabilize market-based democracy, President Uribe and former President Bush signed the U.S. Colombia Free Trade Agreement in February of 2006. The FTA is much more than just a trade agreement. It would help Colombia and the United States complete a contiguous free trade zone alone the entire Pacific rim. It would further stabilize many Latin nations from Mexico through Central America and into the Andes in their struggles against both extreme poverty in certain segments of the populations and the malignant affects of narco-terror on their societies.

It would also increase U.S. exports to Colombia. Regrettably, the Congress has delayed approval of the U.S./Colombia FTA. Protectionist U.S. labor unions and anti-globalization leftist groups have joined with far left allies in the region to try to block the Colombia FTA. Their main argument, as we have heard this morning, is that the history of violence against leaders of Colombian trade unions and allegations that Colombia has tolerated or sanctioned violence and impunity for extrajudicial killings should disqualify Colombia for an FTA.

I would argue that Congress put the violence and the benefits to Colombia and the United States into context. Stronger democratic institutions in Colombia will reduce violence. It is clear that all of Colombian society has suffered from violence. But when Uribe took office, there were almost 29,000 people murdered every year in Colombia. That rate has dropped.

But the Washington Post reported last year that only .2 percent of victims were members of trade unions. Some of them were members of the household. And union membership in Colombia is just 2 percent of the population.

Plan Colombia has really helped, and Uribe has had, as we have heard, a demobilization program. Thirty thousand AUC and other paramilitaries demobilized, a truth and reconciliation process. Violence is down. Extraditions are up, including key narco-traffickers due to the—strategy of the United States to face prosecution. The murder rate has dropped dramatically by 40 percent. Kidnappings are down 83 percent, terror attacks down 75. Murders of trade unions also dropped 75 percent, although, as was noted, they did increase very slightly in 2008.

There has been also a dramatic drop in extrajudicial killings. And it is not, I don't think, true to allege that impunity is still tolerated, although some AUC and paramilitaries have become common criminals.

Judicial reform has also helped Colombia with help of the USAID going to a U.S. model of accusatory system. The labor standards have been improved. General Barry McAffrey has reported that the human rights record has improved. And, in fact, progress has been made across the board in poverty reduction, education and health in Colombia since 1999.

The U.S./Colombia FTA will lock in these gains for both countries. It will spur additional economic development in Colombia and

push the Colombian government to build up and strengthen institutions and judicial/economic regulation. And a full spectrum of voices across the aisle, Republican and Democrat, have supported its approval. And if it is not approved, we think that it will have serious negative consequences. So I would urge the Congress to approve it. Thank you very much.

[The statement of Mr. Roberts follows:]

Prepared Statement of James M. Roberts, Research Fellow for Economic Freedom and Growth, Center for International Trade and Economics, the Heritage Foundation

My name is Jim Roberts. I am the Research Fellow for Economic Freedom and Growth in the Center for International Trade and Economics at The Heritage Foundation. Prior to joining Heritage in 2007, I served for 25 years as a Foreign Service Officer with the State Department and worked on a variety of economic and political issues in a number of Latin American countries. The views I express in this testimony are my own, and should not be construed as representing any official position of The Heritage Foundation.

Colombia is one of America's best friends in the Caribbean—Andean region. The Colombian government—the oldest democracy in South America—is solidly committed to its partnership with the United States and is following a similar path toward market-based democracy and strong rule of law that has made the United States the most prosperous nation in world history.

A decade ago Colombia was a nation wracked by violence and seized with fear, where drug kingpins, narco-funded leftist terrorists and guerillas, far-right paramilitaries, and an assortment of other gangsters operated with impunity, while government, military, and law enforcement officials cowered in their offices and barracks.

Today, by comparison, Colombia is again bustling with people who are excited to see their homeland growing more prosperous and, at last, more peaceful. The vast majority of Colombians are focused on enhancing their peace and prosperity by accelerating Colombia's incorporation into the globalized economy. Interestingly, many of these pro-globalization Colombians are unionized workers enjoying the prosperity created in recent years by the hundreds of thousands of jobs in Colombian export industries (e.g., cut flowers, mining, petroleum products, coffee, textiles, sugar, and bananas).

In the intervening years, many things changed, but they can be summarized in a few words: Plan Colombia, President Alvaro Uribe, and a new spirit among the Colombian people. Plan Colombia is a bold, multi-year program begun in 1999 by former President Bill Clinton and President Andres Pastrana, Uribe's predecessor. Through this plan, which was continued and strengthened under former President George W. Bush, the two countries began rebuilding the Colombian state. Plan Colombia has helped the Colombian government regain control of territory and extend security to the towns and the countryside. Progress has been especially dramatic since 2002 when President Uribe took office and Congress significantly increased U.S. funding for Plan Colombia.

A History of Violence

Colombia's tragic history of violence in the modern era goes back to at least 1948, when revolutionaries began rioting to protest the assassination of Jorge Eliecer Gaitan, a lawyer and somewhat populist leftist politician who was running for president against the conservative oligarchy then in power.[1]

Thousands perished in the Bogotazo, as the riots came to be known, including Colombian soldiers, revolutionaries, and innocent bystanders. Colombia's major political parties were unable to put a stop to the extreme levels of violence (La Violencia) triggered by the Bogotazo until a decade later in 1958, after more than 200,000 Colombians had been killed. The 1970s and 1980s saw the rise of violent leftist guerilla warfare groups such as the Marxist-oriented Revolutionary Armed Forces of Colombia (FARC), the Colombian Liberation Army (ELN) and M-19 movement. During this insurgency by the FARC and ELN, drug cartels in Cali and Medellin dramatically increased cocaine production and smuggling. Drug traffickers enlisted guerrillas to make direct assaults on the government as occurred in October 1985. By the late 1980s, Pablo Escobar, the notorious leader of the Medellin Cartel, had become the seventh richest man and the most feared terrorist in the world. His power was such that he threatened "to usurp the Colombian state."[2]

Colombians' penchant for resolving disputes through violence has many root causes, including the longstanding existence of criminal and violent narco-terror/trafficking gangs; the Colombian government's lack of effective control in the past over much of its vast territory (the combined size of California and Texas); the fiercely independent and stubborn nature of the average hard scrapple Colombian, who must carve out a living from often rough and inhospitable terrain; and the long history of class warfare that has been stoked, organized, and funded by Marxist revolutionary groups over the past 60 years. Other countries in the region have also been disproportionately affected by violence, for many of the same reasons.

Colombia's Ongoing Struggle for Modernity and Prosperity

The FARC is a long-time enemy of Colombian democracy. Long isolated in the Colombian jungles, FARC leaders are out of touch with the 21st century. They reject market-based democracy, individual freedoms, urban life, and modernity in general. Their visions of Colombia's future would follow in the footsteps of the apostles of revolutionary violence from Mao Zedong to Che Guevara. Colombia government officials say that negotiations with the FARC are very difficult, since there is little the government can offer to them.

FARC continued to pursue the overthrow of the government of Colombia during the 1990s, but more worldly FARC members also turned to the lucrative and fast-growing businesses of drug trafficking, kidnapping, and extortion. The resulting violence led some far-right landowners in Colombia to form paramilitaries to protect their property in the absence of effective governmental authority. The government's negotiations with the FARC ended in 2002 after the FARC turned a safe haven twice the size of El Salvador into a laboratory for violence, misrule, drug trafficking, and kidnapping.[3]

The best known of the paramilitary groups was the United Self-Defense Forces of Colombia (AUC),[4] which waged war against the left and the government in the general chaos generated by the armed left and the drug trade. AUC members engaged in a vicious guerrilla campaign against the FARC and the ELN, drug traffickers, and the Colombian army. Some AUC members were also corrupted by the temptation of easy money from narco-trafficking, and a significant number of large landowners in Colombia who sponsored paramilitaries were the drug lords themselves. The combination of FARC, drug traffickers, and paramilitaries nearly destroyed the Colombian state.

Defending Market-based Democracy in Colombia

The restoration of order and civilian authority has allowed President Uribe's free market policies to bear fruit, and economic growth in Colombia has taken off. The gross domestic product (GDP) has been growing at an increasing rate since Uribe took office, reaching an estimated 7 percent in 2007[5] before falling back slightly last year in the wake of the worldwide economic slowdown. Colombia's economic growth has been spurred by the duty-free access it has enjoyed under the Andean Trade Preference and Drug Eradication Act (ATPDEA), [which] gives Colombia access to the U.S. market as a way to reduce poverty and fight the drug trade."[6]

The 2009 Index of Economic Freedom, which was recently published by The Heritage Foundation and The Wall Street Journal and scored 179 countries worldwide, ranked Colombia's economy at 62.3 out of a possible 100 (with 0 equaling "repressed" and 100 indicating "free"), making it the world's 72nd freest economy. Colombia is ranked 15th out of 29 countries in the Latin America/Caribbean region.[7] By comparison, neighboring Venezuela's score fell all the way to the bottom of the 2009 Index, to 174th place (just ahead of Cuba),[8] while Ecuador was not much higher ranked at 137th out of 179 countries.[9]

For the first time in memory people are enjoying the freedom of safely walking Colombia's once mean streets. Uribe's popularity has soared along with the economy, while the favorable rating of the FARC has plummeted to almost zero.[10]

The U.S.–Colombia Free Trade Agreement

To stabilize market-based democracy, President Uribe and former President George W. Bush negotiated the U.S.–Colombia Free Trade Agreement (FTA), which the two governments signed in February 2006. It is much more than just a simple trade agreement. The Colombia FTA would help the United States complete a contiguous free trade zone along the Pacific Rim from Canada to Chile and further stabilize many Latin nations from Mexico through Central America and into the Andean region in their struggles against both the extreme poverty in segments of their populations and the malignant effects of narco-terror on their societies. Importantly, the FTA would also increase U.S. exports to Colombia and would seal a deeper partnership between two nations that are long-time friends and great defenders of market-based democracy. The FTA would fortify a bulwark against the rising tide of

Chávism that nearly surrounds Columbia and threatens to undermine U.S. hemispheric interests.

Regrettably, Congress has delayed approval of the U.S.–Colombia FTA. Protectionist U.S. labor unions and anti-globalization leftist groups have joined with far-left allies in the region to try to block Congressional approval of the FTA.

On the surface at least, their main argument against the FTA is that a history of violence against leaders of Colombian trade unions and allegations that the Colombian government has tolerated or even sanctioned that violence should disqualify Colombia from further consideration for a FTA with the United States. However, these opponents conspicuously ignore the historical context of the violence (both within Colombia as well as in the region) as well as the considerable progress the Uribe government has made in reducing it.

Stronger Democratic Institutions in Colombia Will Reduce Violence

FTA opponents place heavy emphasis on the tragic history of violence against Colombian labor leaders and the alleged impunity for their government assailants. All of Colombian society, including union members, has clearly suffered from the horrifically high murder rate of the past few decades. However, more than half of all union members are in the Colombian public sector, with teachers comprising the largest union in the public sector. Given the nature of their work and the lack of any direct connection to paramilitaries sponsored by large landowners, most killings of teachers were likely the result of apolitical, "normal" motives (e.g., robbery and crimes of passion).

Over the years certain labor union members and leaders were undeniably targeted for assassination by paramilitaries and others in Colombia. Yet while the AFL-CIO reports the overall toll of violence against teachers and other union members, it fails note that the vast majority of the "2,500 murders of trade unionists since 1986"[11] occurred prior to 2001. According to statistics from the Embassy of Colombia, the number of murders of union members in Colombia has dropped drastically since 2001, one year before Colombian President Alvaro Uribe was sworn into office. In 2001 and 2007, union killings totaled roughly 200 killings annually. The number fell by half in 2003 and has declined since then.[12]

By the time President Uribe took office in 2002, almost 29,000 Colombians were being murdered annually. Many politicians from Uribe's own political party were among the dead. While a few teachers were certainly killed because of their leftist ideology, a large number of the killings should not be included in the AFL-CIO's "union killings" figures. Many of the murders involved persons in union members' households, not the union members themselves. A high percentage of them occurred for reasons unrelated to union affiliation. As The Washington Post recently noted: "There were 17,198 murders in 2007. Of the dead, only 39 (0.226 percent) were even members of trade unions, let alone leaders or activists, according to the Colombian labor movement. (Union members make up just under 2 percent of the Colombian population.)"[13]

Strengthened Colombian Government Institutions Have Reduced Violence

Plan Colombia and a strong, market based economy have helped President Uribe's government to achieve many successes to reduce violence in Colombia.

Demobilization: The Office of the U.S. Trade Representative reports that more than 30,000 AUC and other paramilitaries have been demobilized since 2005, when the Colombian government implemented the Justice and Peace Law, which set the rules for the demobilization process.[14]

Truth and Reconciliation: Under the Justice and Peace Law of 2005, over 1600 bodies of some of the victims of the FARC and the AUC have been recovered and their families have been partially compensated with assets seized for a reparation fund. There are more people now in jail in Colombia for human rights violations that at any other similar (post-conflict) period in the history of any Latin American country.[15]

Violence Down: As the Center for Strategic and International Studies recently noted, the FARC and other drug-traffickers are on the run, and violence is down significantly. The government has "a legitimate state presence in all of Colombia's 1,099 municipalities" and "[t]he guerrillas have been driven out of many areas that they previously dominated and their military capability sapped by the resurgence of state security force."[16]

Extraditions up: Another indicator of the success of Plan Colombia, and a development also very helpful to U.S. law enforcement efforts in the war against drugs, is the dramatic increase in the number of significant narcotics traffickers extradited to face prosecution in the United States since President Uribe took office.

Dropping Murder Rate: When President Uribe assumed power, violence was ripping the very fabric of the Colombian nation. However, the overall murder rate has dropped by 40 percent, kidnappings are down 83 percent, and terror attacks are down 76 percent.[17] Plan Colombia has helped to cut cocaine production and smuggling significantly.[18] The streets of Medellin, once ruled by Pablo Escobar, are now safe enough for visits by senior Bush Administration and congressional officials.[19] The number of murders of trade unionists has dropped by 75 percent.[20] Although the number of trade unionist murders increased very slightly in 2008, to 32, the Uribe government has maintained and accelerated its efforts to reduce the level to zero.[21]

One pro-FTA Colombian union leader's courageous advocacy of the U.S.–Colombia trade agreement apparently cost him his life. Jairo Giraldo Rey was murdered in his hometown of Cali in November 2007, just before he was to travel to Washington with other pro-FTA Colombian union leaders to lobby Congress to pass the agreement. As reporter Monica Showalter noted, "Giraldo's murder not only silenced an unexpected voice for free trade, it also jacked up union killings data to stoke the case in the U.S. against Colombia's pact."[22]

Dramatic Drop in Extrajudicial Killings: A constant refrain heard from U.S. and Colombian leftist NGOs and unions is that the paramilitaries can still act with impunity and are protected by the Colombian government. This allegation is false.

While extrajudicial killings are still occurring, they have been greatly reduced. President Uribe made it clear from the day he took office that his government would not tolerate paramilitary activity and would prosecute criminals in the AUC and other far-right groups. In fact, nearly all of the paramilitaries have been demobilized and disbanded under the Uribe administration.

Furthermore, "[t]he Colombian government has tripled spending on protection for unionists, human rights activists, and other at-risk individuals and established a special unit to prosecute crimes against trade unionists."[23] In 2008, the Colombian government spent US$42 million on this security program to protect at-risk individuals.[24] Of the 9,400 individuals benefiting from individual protection schemes—which range from bodyguards and armored vehicles to cell phone networks—1,959 are unionists, which is an increase from 2006, when unionists accounted for 1,504 of the 6,097 individuals being protected.[25]

The Prosecutor General's office has led the charge in dealing with past killings, resolving 73 cases of union member murder and convicting 156 individuals since 2001. In November 2006, a special labor Sub-unit was created in the Office of the Prosecutor General to focus on labor union killings and has since resolved 40 cases and convicted 67 people.[26] The unit has three specialized judges, 19 prosecutors, 22 additional lawyers, and almost 100 judicial police investigators.[27]

Adoption of U.S. Legal System Model: With technical assistance from the U.S. government, beginning in 2004 Colombia switched from the Napoleonic inquisitorial legal system to the accusatory, open-court criminal trial procedures based upon U.S. and English common law. These reforms will strengthen Colombia's judicial system and make it more efficient with a speedier trial process. The transition to the new system will take time, however, and the first new law school students rained in the new procedures only graduated recently.[28]

Improved Labor Standards: The AFL-CIO alleges that the Colombian government is "not in compliance with International Labor Organization (ILO) core labor standards."[29] Yet a November 2007 ILO report concluded, based on a visit to Colombia, that the labor situation in Colombia is positive and that the government has made significant progress. The ILO report praised the "the cooperation of the Government of Colombia with the ILO officials in their work to conclude the Tripartite Agreement on Freedom of Association and Democracy."[30]

Opponents are also willfully blind to the many successes stemming from a wide variety of substantial USAID programs that are jointly funded with the Colombian government. These programs target development assistance to address the problems that festered during the "lost years" of rampant violence. These programs train all employers—small, medium, and large—in proactively ensuring compliance with all Colombian labor laws on occupational safety, child labor, working hours, and other issues of concern to Colombian workers.

These programs are also intended to bring more workers into formal economy, where they can receive benefits and contribute to the tax base. USAID and the Colombian government are working cooperatively with business owners, but are also establishing protocols to enforce laws with a system of fines and incentives. The Colombian Labor Ministry is also funding programs to increase availability of vocational training programs.[31]

Improved Human Rights Record. Human rights activists opposed to the FTA have faulted the Colombian government's treatment of Internally Displaced Persons

(IDPs).[32] However, some of those persons labeled as IDPs by the left are actually economic migrants who have gravitated to large cities in search of work and a better life, as is common in many developing countries. Furthermore, numerous neutral observers have noted tremendous progress on human rights in recent years. Retired General Barry McCaffrey, former commander of the U.S. Southern Command and Director of the White House Office of National Drug Control Policy, visited Colombia in October 2007 and reported that "[t]he human rights situation has improved immeasurably during the President Uribe tenure."[33]

According to a report from the Colombian government:

Impressive progress has been made in poverty reduction, education and health since 1999. Increased stability has allowed the government to provide more and better services to the country's poor.

- Social spending represents 40 percent of the national budget
- Poverty levels have decreased since 1999 from 55 percent to 45 percent
- Programs have been developed to improve infant nutrition and health, encourage school enrollment, empower women, and provide food for millions of children
- More than 20 million of the country's poor receive full or partial health coverage
- Infant and child mortality have decreased
- Child immunizations have steadily increased
- Student completion of elementary school has increased to almost 100 percent, while the number of completing secondary school has also significantly risen.[34]

The U.S.–Colombia FTA Will Lock-in Gains for Both Countries

My colleague at Heritage, Dr. Ray Walser, has noted that former Bolivian president Jorge Quiroga recently observed the irony that two key "commodity exports" (oil and cocaine) are entering the U.S. duty free from several countries in Latin America, while the U.S. Congress debates the duty-free entry of legal products from pro-American Colombia (which already has duty-free access to the U.S. market for most of its products through ATPDEA).[35]

The FTA will spur additional economic development in Colombia and, just as importantly, push the Colombian government to build up and strengthen government institutions and judicial and economic regulation to ensure that continued economic progress will not depend on any particular political personalities.

As Dr. Walser has already reported to Congress, a full spectrum of the wisest voices—U.S. and Latin American presidents, former senior officials, both Democratic and Republican—and the Council on Foreign Relations, the Brookings Institute, the American Enterprise Institute, The Heritage Foundation, to name a few, as well as mainstream-media editorials are unanimous in urging swift passage of pending agreements with Colombia and Panama.[36] Colombia will certainly be willing to work with the Obama Administration and Congress to accommodate additional reasonable measures aimed at protecting labor and environmental standards.

If the Congress votes down the Colombia FTA, it will deliver a major psychological victory to the FARC, the narco-traffickers that the U.S. has battled for decades in Colombia, and other enemies of market-based democracy in the region. It will seriously risk the progress and momentum made by the Plan Colombia war on drugs on which the U.S. has spent hundreds of millions of dollars during the Clinton and Bush Administrations.

Iinflicting economic punishment on a U.S. ally in the Andean region by defeating the FTA is not in the U.S. interests. Left-wing populism is fueled by poverty and lack of opportunities, as seen in Venezuela, Ecuador, and Bolivia. To counter this possibility in Colombia, the development of strong democratic institutions must be accompanied by continued economic development and growth.[37]

A defeated FTA might also force Colombia reluctantly into closer ties with a very eager and suddenly conciliatory Venezuela, which is already Colombia's second largest export market after the U.S., and Colombia cannot afford to ignore it. Chávez's dangling of petroleum carrots will not be ignored by the Colombians. If Colombia is spurned by the U.S., it will continue to seek trade agreements with many other countries (e.g., Canada and Mexico) and trading blocs, such as the EU, the European Free Trade Association (EFTA), and MERCOSUR (Southern Common Market). This would only further isolate the U.S.

A failed FTA will lead Colombia and other Latin American countries to conclude that the U.S. is not a reliable partner. It will also fuel a return to narco-trafficking and other illicit activity by the urban and rural poor, who would not benefit from the many jobs that would be created by the legitimate alternative economic development that will be created by the Colombia FTA.

Congress should quickly approve the pending trade agreements with Colombia and Panama. These actions will send a strong signal that the new Congress and the Obama Administration will be adopting a forward-looking trade policy agenda

that emphasizes the creation of new U.S. jobs through expanded export opportunities.

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Chairman MILLER. Thank you

And thank you to all of the witnesses for your testimony.

Mr. Sanin, I would like to ask you a question. And then I would like to have Judge Sanchez comment on the question.

The question is to Mr. Sanin, in your written testimony, you state that almost 75 percent of the violence against union members and leaders is concentrated against just 30 labor unions that are in six of Colombia's departments, suggesting that those unions have experienced most of the violence. And you raised the question that, given this fact, and what appear to be the targets of much of the violence, that the attorney general's office might rethink how they are prosecuting the cases, especially if you were trying to get to the intellectual authors of that violence.

And then I would like to have Judge Sanchez comment on this question and the answer also since he has raised the same question about how do you move the prosecution to the intellectual authors.

Mr. SANIN [through translator]. Yes, thank you very much. What we would like to bring up here is that the method that the attorney general's office uses is a case by case methodology. It is something that allows them to see the trees but they can't see the forest of anti-union violence.

What we are saying is that we need to be clear in the investigations, that the concentration of these cases against 30 unions and in six departments has a very unique character. And we need to talk about having a systematic way of investigating this as a global problem.

In this way, we would get not only the actual perpetrators of these crimes, but also the intellectual authors. And more importantly, we need to get behind to what their motivation is, what the reasons are and who benefits from these crimes. That is it. I will let the judge comment now.

Chairman MILLER. Thank you.

Mr. SANCHEZ [through translator]. Thank you for letting me use the floor. I suppose we could present a potential solution here, which is that of institutional and political commitment from the government of Colombia. However, there is one more aspect. And that is a personal, deeply rooted commitment, both from the prosecutors and the judges. First from the prosecutors, they must be willing to investigate so that the judge is then able to rule.

However, the problem is that for both judges and prosecutors, sometimes they see these incidents as one more case file, a simple, routine number to be filed and dealt with. But there is no desire to go in-depth to get to the intellectual authors behind these crimes. It is the intellectual authors that generate the violence.

So there is nothing that can be done if we don't get a personal commitment from prosecutors and judges and from the Colombian government. We need to get political will from them. It is that simple.

Chairman MILLER. Thank you.

Ms. Hoyos, you have also made an effort to try and identify the intellectual authors of the murder of your father. Can you tell us what that entails?

Ms. HOYOS [through translator]. It has been a real struggle for me to try to identify the intellectual authors of my father's murder. The fact is that nobody shows the will to identify those people. In fact, the fact is there is a state policy to do away with and eliminate all of these union people.

This hasn't been easy for me. It has been hurtful, painful because it is the state, the government that should be investigating these things. But I have had to face this pain of interrogating the material actors of these crimes. I have had a face-to-face interview with the man who killed my father in my attempt to try to find out who the intellectual authors are behind this crime.

And although I have made some progress, I keep running up against the brick wall of impunity in Colombia. There really is no will to investigate these cases.

Chairman MILLER. Thank you. My time has expired.

I will turn to Mr. Souder.

Mr. SOUDER. Thank you, Mr. Chairman. I listened to all the statements in the anteroom and read through all the documents.

I have a question, Mr. Miller. I am sorry I missed the start. Did you insert into the record the correspondence with the Colombian embassy?

Chairman MILLER. Yes, yes.

Mr. SOUDER. Okay, good, thank you. There are obviously different perspectives here. And one of my frustrations—I have worked the narcotics area since I was first elected to Congress and have been to Colombia at least 12 times or more. That the American people already are struggling with a mislabeling of Colombia. It is for one a beautiful country. And it would be nice if when people come in with criticism that they would remind the American people what a beautiful country it is rather than just criticizing their country because all America hears is criticizing Colombia.

That Congressman Frank and I have sponsored legislation and worked to try to open up the cruise ships. In the Cartagena, as we

saw the violence go down, there has been an incredible drop in violence in the nation of Colombia.

A lot of people think of Colombia solely as cocaine or maybe coffee or maybe emeralds. But it is a very diversified economy. Most of the flowers in America—you can go to the huge areas on Medellin as well as Bogota and throughout the country, and they will be all the way to Indiana in 48 hours coming in overnight into Miami and spreading around. I think, 67 percent of cut flowers in America come from Colombia.

The cement industry, the coal industry, the huge coal mines that are open again—you were once our eighth largest supplier of oil until FARC cut the lines and cut the rails, which are now mostly getting reopened. But it is a country that, unlike most of Latin America where you have 2 or 3 percent of the people having all the wealth, is arguably the biggest middle class.

Yes, there are still rich families. Those rich families still dominate. But compared to the rest of Latin America, is an extraordinary story of a middle-class development, of a spread society that has still great poverty, as there is all over Latin America. But it is an extraordinary success story and becoming more of a success story.

Killing Pablo is not all of Colombia. Nor is this terrible violence. Anyone who has a family member killed, any person who is killed is a tremendous tragedy. And it is really sad that prosecutions aren't going fully forth in every country in the world where that happens, including in Colombia.

But we need to get this in perspective because there was really minimal perspective here, that violence—Colombia is also the oldest democracy in Latin America, by the way, and successful democracy—that narcotics, mostly because of problems in the United States as well as in Europe, have driven an incredible problem of violence throughout the country. There was always violence. It has gone up and down.

But the incredible problem of violence—to put it in perspective, whether you believe it is 42 or slightly higher to 80 homicides in the trade union movement, we are talking about basically last year, which was an improved year, homicides totaling 17,000. And we are debating whether it is 40 or 80 in a country where there is 17,000, which, by the way, is a drop from 27,000 that when I first went to Colombia in my first term about 12 years, 11 years ago, I guess it was, when we actually went in.

After a period of time where you couldn't even move anywhere, we could just go in for 3 hours. Then we could stay overnight. The last few times I have been into Medellin, you could wander around if you needed to. If you wanted to walk, you could walk. Up where the coal mine was, where the railroads had been cut and they are no longer cut, at one point, somewhere near 80 percent of the mayors and councils in the country were unoccupied because the leaders had been assassinated. There has been an incredible turnaround in Colombia.

We need to make sure that the judicial system progresses. We have poured money into making the judicial system try to progress. But, you know, there is only so much the United States can do to tell countries when we say follow the rule of law, you have to do

it our way or the highway. And that we have seen improvements. We need to make more improvements.

But this selective, what I believe is reliving the 1980s, the FARC may have started like the Sandinistas or Guatemala or Salvador. But it has turned into drug thugs. Then the business groups, admittedly probably anti-union as well, formed paramilitaries that communicated violence throughout the country. Then those paramilitaries went off on their own and became drug thugs. And that some of those people then were interrelated. And as they try to clean up, their parties are going to be interrelated, some of them. Medellin is a classic example of the struggle there with that.

But to not stress the progress and only highlight a small sector of the country is a terrible disservice to the nation of Colombia, to this government that is working hard to do it, to a president of their country who had his father assassinated, a vice president who was kidnapped, who has taken on his own area where the paramilitaries in Medellin and tried to work with them. It is not as easy as it is made sound.

And I would like to hear in general some praise of Colombia for their progress, not just harp, harp, harp, criticize. Human Rights Watch when I met with them the first time—I was sent there because I was favorable to trying to deal with Human Rights Watch. Robin Kirk has written a good book that shows some of the trouble.

But Human Rights Watch has had selective vision on what they say in Colombia and has become, in my opinion, a discredited flack and that your numbers when you tried to relate in your testimony that the Bogota versus the general population assassination rate, without saying that most union members were not in Bogota and that Bogota has, in fact, changed, that the mere presentation that you made to this Congress and some of the others are so academically flawed as to be seen as partisan, not really trying to help the United States deal with a very difficult problem.

And that is how do we, in fact, if we do a free trade agreement, work with your government to protect union rights. I agree with the premise. It is terrible what happened to this lady's father and anybody else who gets killed, whether they are union members or others in Colombia.

I yield back.

Chairman MILLER. Thank the gentleman.

Mr. Hare?

Mr. HARE. Well, I don't know where to start. To my friend who, you know, was talking about the flowers. I had an opportunity with several other members of Congress to meet some women who came from Colombia and worked in the flower industry. And I saw what their hands looked like. I saw and heard the hours that they had to work, the treatment that they were subjected to—would not be tolerated in this country.

I can't for the life of me believe that—with Valentine's Day coming up I can tell you I am not sending my wife flowers. And I am doing so because for those people who are having to go through that type of a situation every day. I will do the candy route, and they can bag the flowers.

I will tell you, Mr. Roberts, I could not disagree with you more. You have brought a wonderful paint brush for our country and tell-

ing us just how great things are. Yet I am looking at numbers that 2,694 murders, 96 percent of them unsolved, people who lose their father and aren't prosecuted. And if they are, the prosecutions are a sham.

You talk about a trade agreement. You mentioned trade unionists, which I happen to be one. And I take great pride in that. So I thank you for that compliment.

But I have to tell you if we are supposed to pass a trade agreement at some point with the country, I would think that it would be inherent upon this Congress and upon all Americans to want to trade with a country who has basic fundamental rights and respects them. And with all due respect to the numbers that you have given to us today, you know, I don't think that is going to happen. And I don't think it ought to happen until the act is cleaned up.

It may have been reduced. But I can tell you that wouldn't be tolerated in this country. And we are supposed to look at a trade deal when this young woman's father and this judge was fired simply because he had the unmitigated gall to prosecute people. So, you know, with all due respect to your facts and your figures, I find it appalling that this is still going on and the numbers are going up.

And while some people say, well, maybe it has gone from only 39 to 49, these are human beings. They are fathers. They are mothers. They are sons. They are daughters.

You have young people getting together trying to—have to find out because the government won't do it and they are covering it up. And everybody in this room knows it. And, you know, I just—with all due respect, you know—you also mentioned the term protectionist. And then I will ask Dr. Sanchez a question.

If protectionist means to me protecting the lives of people who want to have and work in an industry, whatever that industry is, protecting their lives so that they don't have to go home and have their sons and daughters see them shot before their very eyes and then be harassed at the funeral of their father—if that is protectionism, then, again, I will wear that as a badge of honor.

Let me just say, Judge Sanchez, you presided over a case that Representative Grijalva and I circulated a dear colleague letter on Juan Carlos Ramirez Ray. And you also ordered the Colombian attorney general's office to conduct an investigation into the role of the prison director and the prison supervisor in his killing. Do you know if the attorney general ever pursued anyone beyond the hired guns in this case?

In other words, we have heard a lot about the intellectual authors. And let me ask you two other quick questions because I know my time is going to run out. Do you see the government undertaking any real effort to fully investigate cases? Or is it content in most cases to just convict the gunman but not follow the evidence to the intellectual authors?

Mr. SANCHEZ [through translator]. Thank you. Regarding the case of Juan Carlos Ramirez, he was, in fact, murdered in front of his mother. No one gave him any help. And he was killed by members of the AUC, the self-defense forces in Colombia.

Unfortunately, the prosecutors did not investigate the intellectual authors of the crime, and they investigated only some of the material authors of the crime. In fact, they dropped an investigation versus a sergeant who was indirectly involved in order to avoid a total impunity. However, we later found out that this sergeant was having a love affair with the director of the prison. So I ordered an investigation of that prison official as a possible participant as an intellectual author.

To date we have no information at all on the outcome of that investigation of that case. And that is what we need. We need reporting in order to tell the community what happens with these investigations and what are the outcomes.

Going back to the case of Juan Carlos Ramirez, he was a young man who was murdered along with others because of his unionist beliefs. He was a young man of about 25 years of age or so. And he lived with his mother. And basically he was a person who fought for the rights of others.

This particular murder took place when he was made fun of in front of a formation. He was threatened by prison officials. He was told that he would be murdered by the AUC. And, in fact, the AUC did back up that threat. It was a member of the AUC who ended up killing him.

For me this is a shameful situation as a Colombian. It pains me to see this taking place in my country. And that is why I am here. I am here to try to put an end to these murders. It is precisely because my country is beautiful that I am here, that I want to put an end to this so that it can be a more beautiful country, so that all of you can go visit there without any major risk. Thank you.

Chairman MILLER. Thank you.

Mr. McKeon?

Mr. MCKEON. Thank you, Mr. Chairman [speaking Spanish].

Mr. Roberts, I had a delegation from Colombia in my office several months ago, union leaders and business leaders. And they were really wanting us to do the Colombia Free Trade Agreement, wondering why we couldn't move forward on this because they really wanted it for the betterment of their businesses, their unions, their family situation and their country.

As you know, our economy has been experiencing severe hardships. Can you explain how a continued delay of passage of the Colombia Free Trade Agreement impairs our economy and holds back American workers?

Mr. ROBERTS. Thank you, sir. Yes, I agree that there are—our research has indicated many unionized workers in Colombia, as I stated, as I testified, as in favor of the Colombia Free Trade Agreement. And I also met with the leaders of some of those unions. And they understand that Colombia's future is in a globalized economy and that they will benefit and their children will benefit where they will have more prosperity if they go that route rather than try to go backwards into a system of autarchy and socialism.

I would compare Colombia's situation with Mexico's in that whereas Mexico has benefited from having the NAFTA in place now for more than 10 years and has had a substantial increase in the middle class jobs, Mexico is currently suffering from a terrible problem with narco-terrorists, especially in the Northern part of

the country. Whereas in Colombia, they need that FTA to catch up to where Mexico is in terms of institution building. But they also need—whereas Plan Colombia has been more successful counterinsurgency at this point than the Merida Initiative, which we also support expanding and funding.

In terms of U.S. jobs, clearly, the last count I saw was that U.S. manufacturers and people—United States companies selling to Colombia had to pay $1 billion in tariffs every year. That makes us less competitive.

That means jobs at Caterpillar and other places are not there because we are not able to sell into a country like Colombia where they do have a vibrant economy, where they do need tremendous investment in infrastructure that can only be done if the country has jobs and is producing tax revenues. And that will come with the continuation of the globalization process, I think, in Colombia. Thank you, sir.

Mr. MCKEON. What provisions specifically are contained within the Colombia Free Trade Agreement to specifically address violence towards Colombian labor? Because the agreement has not been passed, is it fair to say that Colombian workers are worse off than they otherwise might be due to congressional inaction?

Mr. ROBERTS. I don't have the agreement in front of me. I do know that after the Speaker Pelosi and the Democrats took over in 2006, there were provisions added about labor environment, which we would support as long as they don't disrupt too much private investment.

However, the fact that—I think it is the process that strengthens the government and the institutions. It is the constant meeting with hundreds and thousands of private sector people and government people that go along with having a free trade agreement, negotiating one and then having one in place. That is what strengthens a government. And that is what will, as has already been the case. As we have seen, there has been progress made since 2002, since Colombia launched on the path toward modernizing and doing free trade agreements.

And I would note that it is not just free trade agreements with the United States. But Colombia has negotiated free trade agreements with a lot of our competitors up and down the Western hemisphere and in Europe. And so, the United States, really, I think, needs to get onboard here. And we need a Pacific rim trade area so that we can be more competitive with our colleagues in Asia and Europe.

Mr. MCKEON. Less than 2 years ago the Democratically controlled Congress ratified the Peru Trade Promotion Agreement with overwhelmingly bipartisan support. How similar are the labor provisions that are contained in the Colombia agreement to the Peru agreement?

Mr. ROBERTS. As far as I know, there is virtually no difference. And it is befuddling to me, sir, why the Congress would have approved the deal with Peru and not with Colombia because they are very much almost two sides of the same coin in terms of the problems that they face, their resources, their commitment of their governments to moving forward with globalization. So I don't understand why there would be a delay.

Mr. MCKEON. Thank you very much.

Chairman MILLER. Thank you.

Mr. Andrews?

Mr. ANDREWS. Thank you, Mr. Chairman.

I thank the witnesses for their testimony. And I apologize for not being present throughout the time. But I have read and understand, tried to understand what you are saying.

Mr. Roberts, on page nine of your testimony, you highlight the fact that the prosecutor general's office in Colombia has resolved 73 cases of union member murder and convicted 156 individuals since 2001. How many open cases are there in Colombia with respect to alleged murders of union officials?

Mr. ROBERTS. I know there are a number, sir. I would have to get back to you with the specific number.

Mr. ANDREWS. Well, I think from the prior testimony, the number is at least 1,032 cases that have been under prosecution. Now, let me say that that is probably a number that is understated. Since there are some number of cases where there are files that can't be located. There are 1,104 cases that were initiated, but only 1,032 files can be identified. And there were, at least by the accounts of one witness, 2,694 murders.

So first of all, it looks like a minority of the murders have any kind of prosecution. But let us look at the ones that the government itself says there have been prosecutions for, which is 1,032.

What kind of record do you think it is, 73 resolutions out of 1,032 cases? Do you think that is pretty good prosecutorial batting average?

Mr. ROBERTS. Clearly, sir, that would be unacceptable. And as I have testified, the Colombian government has taken many steps to deal with that, including the setting up of a special unit. One of the former judges is here with us.

I have also noted in my written testimony that a number of these murders occurred before 2001, probably the vast majority. Record keeping being what it is in a developing country like Colombia, I think it is understandable that there would be some problems.

Mr. ANDREWS. Well, of course, I would note that the judge who testified is a former judge. And the reasons he is a former judge are somewhat interesting. But, I mean, one of the arguments implicitly in your testimony is that the great progress that has been made by the Colombian government should be rewarded in whatever fashion by the United States. Yes, I find these numbers to be disturbing that where you have the number of over 1,000 open cases—here is the breakdown, as I understand it, from the earlier testimony.

One hundred and twenty convictions, little over 10 percent; 208 cases where a suspect has been identified but there has not been yet a resolution of the case; and 654 cases, 59 percent of the cases, where there is no suspect that has been identified, which indicates either a very preliminary form of investigation or a very ineffective form of investigation. And I am not asking you to commit to the truth of this statement, but hypothetically that if these data would indicate a government that is at best incompetent when it comes to prosecutions and at worst, indifferent or complicit, do you think

it should be the policy of this country to reward such a government or not?

Mr. ROBERTS. Well, sir, as I have tried to put it in my case is you have to put this in context. All of these governments in the region have been historically weak. We know that the government of Colombia in Bogota—its reach to that extent throughout the whole country, which is the size of California and Texas put together. There were areas that were basically lawless. That explains why there were these mercenary groups formed by landowners.

Mr. ANDREWS. Well, but with all due respect, do the other countries in the region have the record of labor murder that Colombia does? My understanding is 60 percent of the reported labor murders in the world came from Colombia. I mean, do the other countries have this sort of problem?

Mr. ROBERTS. I am not sure of exact comparisons. I know that other countries do have problems.

Mr. ANDREWS. Of this magnitude?

Mr. ROBERTS. Right now in Colombia there are more people in jail for human rights violations after an episode of post-conflict period than in any other country in Latin America in history. So the government has taken steps.

And I think in terms of the United States leverage, it is with a free trade agreement, with international——

Mr. ANDREWS. But those steps have been, in my view, shockingly ineffective. Over 1,000 prosecutions, out of a universe of 2,700, by the way, but 1,000 or so prosecutions and, according to our records, 120 convictions. And 60 percent of the cases have not been followed through to the point where there is a suspect identified.

I mean, at the very least that raises a presumption of incompetence. It may raise a presumption of something worse than that, of complicity on behalf of the organization that is involved.

And when we hear the former judge's testimony, it would tend to lend one's thought to the complicity. So I think this is a dismal track record of prosecution. And I think any decision we make has to be framed in that regard.

I would yield back the balance of my time.

Chairman MILLER. The gentleman yields back.

Mr. Kildee?

Mr. KILDEE. Thank you, Mr. Chairman.

Ms. Edwards would appreciate your help with my brief opening statement [speaking Spanish].

A little translation?

Ms. EDWARDS. Yes. Last summer I spoke to a priest who told me that I cannot go to Heaven unless I speak Spanish. And I do want to go to Heaven, and therefore, I am speaking Spanish. However, I don't want to go today, so I am going to go back to speaking English.

Mr. KILDEE. Thank you.

I understand, Mr. Sanin, that the Colombian government recently passed a law that gives the president the right to declare any strike illegal if it affects the economy. Don't all strikes affect the economy, at least some small part? Is this law consistent with ILO standards? What changes do you believe should be made to

this particular law? And what additional ways have Colombia's laws regarding the right to strike been criticized by the ILO?

Mr. SANIN [through translator]. What I can say is that there was a new law that was implemented, law number 1210 of 2008, which is supposed to regulate the issue of strikes. And I would say it addresses and resolves two of the 10 issues brought up by the ILO. The big problem is that the—the problem that persists is that there is still presidential authority to declare strikes illegal.

And as far as what ILO has recommended, the problem with this law is that there is actually no change in substance. The only thing that it has addressed is a change in authority. That is the authority to declare the illegal has passed from the ministry to the judges. But there is nothing substantively different in this law.

So therefore, strikes continue to be illegal. And this problem persists in Colombia. I can give you numbers.

In the past 6 years, 62 strikes were declared illegal. And what this implies for workers also is that their employers can fire them with impunity. So in sum, I can say that this law has given us no substantive changes in procedures.

Mr. KILDEE. Thank you. Go with God.

Ms. WOOLSEY. I think you make us all look like fools, Mr. Kildee.

Thank you, witnesses. You have been wonderful. And you have been brave. And you have been appropriately outspoken, I believe.

It is obvious that most of us here are actually appalled hearing your testimony about how slow worker protections are coming about in Colombia. It is not good enough to be this slow. Nor is it good enough for us as individuals to be outraged sitting up here.

So what I would like to ask you, Dr. Sanchez and Ms. McFarland is—and then the rest of you, if there is time. What can we in the United States, what can the international community do to protect trade unionists in Colombia and to protect workers in general? What would be your suggestions?

Why don't we start with you, Ms. McFarland?

Ms. MCFARLAND. Thank you. I think the U.S. has a very powerful tool at its disposal, which is the U.S./Colombia Free Trade Agreement. And unfortunately, I don't think these issues can be addressed through the agreement. It is not like anti-union violence or killings are going to be reduced because, you know, there is language in the agreement that says that the right to strike will be respected.

Instead, the changes have to happen beforehand. The U.S. should press Colombia to meet benchmarks, meet conditions before the agreement is entered into. President Obama himself noted that without real change in addressing human rights abuses he would make a mockery of the labor protections in the agreement.

And we have a lot of ideas about what specific steps Colombia needs to take. In the first place, Colombia needs to significantly increase the number of convictions for trade unionist killings and other violence. This means that they need to investigate the whole universe of cases of trade unionist killings, not just the 1,000 they have open.

They need to create a systematic plan to investigate these cases and not just one by one, as has been described here. They need to go after intellectual authors.

The other thing that they need to do is go after the paramilitary groups. Sure, the Colombian government says that they have demobilized the paramilitaries. But as I have described, even though 30,000 individuals went through this demobilization process and turned in weapons and went through ceremonies, there is lots of evidence that many of those people weren't even paramilitaries.

They were civilians recruited to pose as paramilitaries for purposes of these ceremonies. And now scores of groups are all over the country. They are estimated to have tens of thousands of members. And they are committing the same abuses that the paramilitaries were committing in the past.

The congress of Colombia is heavily infiltrated, apparently, by these groups, if you go by the supreme court investigation. And unfortunately, the Colombian government has not supported the investigation. It has not taken seriously the claims that there are new paramilitary groups out there. And until it starts doing that, you are not going to make progress in anti-union violence.

Ms. WOOLSEY. All right.

Dr. Sanchez?

Thank you, Ms. McFarland.

Mr. SANCHEZ [through translator]. Thank you. Your question is what can the United States do in order to help protect unionists. And the answer is you must do everything you can. You must spare no effort. However, in principle what needs to happen is that the judicial apparatus needs to be strengthened. It must come before the military apparatus.

As far as prosecutors and judges, in the schools where they are trained, we must raise awareness among them that they need to investigate, not only the material authors, but also the intellectual authors. Because as I said before, they are the ones behind all of this. And only by stopping them can we end this scourge. And if we do not do that, this problem will go on and on and on. Thank you.

Ms. WOOLSEY. Thank you, Mr. Chairman.

Chairman MILLER. Congresswoman Titus?

Ms. TITUS. Thank you, Mr. Chairman.

And thank all of you for your testimony, especially Ms. Hoyos. That must be very difficult to speak personally about your father.

We have heard from Mr. Roberts and others who defend President Uribe and things that have happened recently as having gotten much better. They paint a rosy picture, even, of the situation since the demobilization of 2006. They seem to argue that the paramilitary groups no longer exist and they refer to them, and I quote, as emerging gangs or criminal bands.

A number of human rights organizations, though, and scholars like Gustavo Duncan at the University of the Andes have taken the opposite position. They seem to say that groups like the New General and the Brack Eagles, especially have taken the place of these old paramilitary groups. And they are doing the exact same things and that these union deaths and the displacement of so many Colombians from the rural part of the country, a problem we haven't even addressed but that is getting more and more serious, can stem from their activities.

I wonder if you would just address in more detail these organizations, who the members are, who is financing them, if they do still have ties with the old AUC and then conclude and tell me if perhaps maybe it is time for a truth commission and international courts to start to look at this problem. Thank you.

Ms. MCFARLAND. Thank you. Well, these new groups are connected to the paramilitaries. A lot of their leaders are never demobilized mid-level commanders of the paramilitaries. They are operating in the same regions as the old paramilitaries. And they are engaging in extortion, threats, displacement of civilians, killings and drug trafficking, just like the old paramilitaries. They have inherited their drug trafficking routes.

There are about 22 of them. Their command structure is less clear perhaps than with the old groups. And that is one distinction.

But whether they are paramilitaries or emerging criminal gangs is primarily a matter of semantics. It is not about the substance. And they are having a serious humanitarian impact.

The rate of displacement in Colombia has not been going down in recent years. It has been going up since 2004. Last year in the first 6 months of the year, according to the main organization monitoring displacement, there were 270,000 people who were internally displaced just in 6 months. And that was the highest rate in 23 years, a lot of that because of the new armed groups.

In Medellin, which has been touted here as this example of security now, last year there was a 35 percent increase in homicides, also because of these new groups, apparently. So these are serious threats. And they are a threat to trade unionists as well. Most of the trade unionist killings that happened in the last year or two have happened in the regions where these groups are active.

So I would say it is a very serious problem that needs to be addressed. And the government by calling them emerging criminal gangs and dismissing them is refusing to deal with it.

Chairman MILLER. Mr. Sanin?

Mr. SANIN [through translator]. Okay, what I can say is I have here—I was talking about some of the threats and some of the numbers. And I would be glad to share the numbers with you. Most of the crimes that have occurred against union members in the last few years have been done by these groups. They go by different names, but the problem is the same. It hasn't changed.

And the threat to trade unions exists because the trade unions exist because they exist to defend workers' rights. And although I can't tell you what the size of these new groups might be or what their names are, we feel their threat every day daily. We have threats and we have—we are harassed by these people.

I can tell you that Monday of this week the cooperative in the city of Antioca received a threat. The threats have not stopped. And I can also give you another number, which is that 1,500 union members are protected by this federal government. And they are protected because the federal government has determined that they are at risk. And that risk is determined by an investigation that is carried out by the state. And the state has found that those people at risk are at risk precisely because they are threatened by these groups that have all emanated from the previous auto-defense groups.

Chairman MILLER. Thank you.

Mr. Cassidy?

Mr. CASSIDY. Yes, thank you.

I guess I direct my question more to Ms. McFarland than to Mr. Roberts for your comments on that. I am struck that through history when there is more trade, an economy becomes more open. As the economy becomes more open, typically workers' rights improve.

And I think about the role of multi-nationals in South Africa in which the South Africans under apartheid did not have—had a second-rate health care, unless they worked for a multi-national. And then the multi-national basically demanded that they be put into a private hospital with the same kind of protections.

Similarly, I think of how when Nike went to China, there are allegations that they weren't treating their workers right. And indeed, Nike brought in Western style of how you treat workers because of domestic pressure, if you will, United States pressure, upon their business structure.

So when I hear—Ms. McFarland, I am very sympathetic to eliminating these paramilitary groups if they exist. Except for the question of facts, both sides saying different things. I think the real issue is how do we bring workers' rights.

Now, as I look through history, the more closed a society, the more likely there is abuse of workers. The more open the society, the less likely.

And so, I actually wonder if we are not—if we oppose the Colombian Free Trade Agreement that we are not actually condemning the workers, if you will, just accepting for a second the argument that there is a problem, condemning the workers to a prolonged kind of absence of rights. And if we open it up and our guys walk in and Nike comes in and brings those kind of human rights and says we are not going to tolerate abuses of our unionized workers, et cetera, et cetera, if that wouldn't be an independent force for change, a very powerful force for change if we look at history.

I remember there used to be similar arguments about Korea. Don't give them free trade until they open up their economy and open up their political system. We did it anyway, and now they are one of the most open governments in the Far East. So it almost seems like the paradigm is allow trade and trade brings in workers' rights.

How would you respond to that, Ms. McFarland?

Ms. MCFARLAND. Well, my understanding is that the academic record is very mixed on that question of whether trade actually improves rights or not. But in any case, in Colombia's situation, when U.S. corporations have been present, that hasn't necessarily reduced anti-union violence.

In fact, Chiquita brand operated actively in the Uraba region in Colombia in probably the worst period of anti-union violence in that country for years and is now—you know, has recently accepted having been paying paramilitary groups there. I don't think necessarily investment and allowing access to markets and all that will improve the situation of violence, which is very particular, by the way.

It is not just about, you know, changing the laws or changing the rules and how you are treating workers. We are talking about

killings. And if you are living under fear that you will be killed, you are not going to be able to exercise your rights freely.

Mr. CASSIDY. I am not familiar with the Chiquita brand, but I am willing to accept that. okay? But the very fact that Chiquita brand will stop doing that now that there is the light of U.S.-kind of, my gosh, am I going to buy their bananas or not in my store at Harris Teeter. Actually, Chiquita is going to change their ways.

Whereas if there were a domestic industry, domestic to Colombia, there would be no such pressure upon them. The fact that they are an American brand bringing their bananas in through Biloxi, Mississippi distributed across the United States means that Chiquita is more likely to change. That almost makes my argument.

Ms. MCFARLAND. I think that is purely speculative. We don't know that Chiquita is likely to change. All we know is what it did.

Mr. CASSIDY. I suspect——

Ms. MCFARLAND. It spent several years paying paramilitaries.

Mr. CASSIDY. I just say that because if we look at the example of Nike, we can expect that they would.

Ms. MCFARLAND. Why? Was Nike charged with——

Mr. CASSIDY. Nike was allegedly—did not have workers' rights in the plants, I think, in China. And they went back and they made sure they corrected it.

Ms. MCFARLAND. As I understand in Nike's case, there have been campaigns to get it to change.

Mr. CASSIDY. Yes. Isn't that great? And that is because free trade made them subject—and they are a moral—I am not knocking them. I am not knocking Nike. In fact, I am kind of praising them for being responsive. But also saying that they have been a positive instrument for change in the countries in which they were operating.

Ms. MCFARLAND. And what I am saying is that in the country where trade unionists are getting killed in large numbers, it is just as likely that foreign corporations coming in will be sucked into that situation.

Mr. CASSIDY. Well, I am not sure I agree with that.

Mr. Roberts, what are your thoughts?

Mr. ROBERTS. Well, it should not come as a surprise that I agree with you, sir. And I think you have stated an excellent case. I think you should be a guest contributor to our index next year, actually. And I think you are right that this globalization effect is positive for workers and for consumers and citizens alike. And there are unique cases.

I know that Chiquita had some problems. But in general, I don't think we need to be this speculative. I think we can look at the facts.

We can look at how the data shakes out that when you have stronger rule of law, when you have clear access to property rights and a transparent and non-corrupt judicial system, when you have rules of the road, a level playing field for investors, for businesses, you have private capital that you have many more actors than just a government, that you have wealth disbursed with many power centers. You do tend to have this affect of more openness of more of a push for rights and for rule of law than if you were in a closed system.

You know, I would say, to use the Nike term for the U.S./Colombia Free Trade Agreement, just do it. And let us enjoy these benefits.

Mr. CASSIDY. You know, I think also to be philosophical, Michael Novak in the spirit of democratic capitalism as a Catholic theologian looked at that and found that, my gosh, capitalism actually does tend to bring in a freer society.

So I yield back. Thank you.

Chairman MILLER. The gentleman yields back.

Mr. Payne?

Mr. PAYNE. Thank you very much. I thought they were two great examples of great corporate citizens, Nike with the charge of what they pay in China and what they charge for those sneakers, you know, in our cities and little kids pressuring their parents to buy Nike sneakers because they play basketball and that is about all they look up to, these basketball players. And so, these parents are almost extorted by their kids saying we have got to have these Nike sneakers or I am not in with the group.

So I don't want to get started on Nike as a great corporate citizen or even Chiquita banana that had the U.S., you know, put a charge against the lomay countries that were getting banana preferences from Great Britain. One thing Great Britain did was to say our former colonies could sell us their bananas because we felt a responsibility to their trade. And we don't grow bananas in the United States.

But Chiquita and their Mr. Cantor, our trade ambassador, sued the European countries who were assisting the Caribbean countries. And now the banana business is gone, and drugs have replaced the employment of people who used to grow bananas. You know that Chiquita has pretty fancy bananas. And the poor Caribbean countries were unable to compete.

But they were two great examples of how this globalization, if you look at the other side of the picture, hasn't presented a very positive picture for countries that are struggling as I indicated, especially in the Caribbean where they have no more banana industry. And they are almost out of the way. But that wasn't what I was going to ask.

I just wanted to—so it is interesting how we can look at the same set of circumstances and have a totally different position. Certainly, I have traveled through Colombia in 2007, my last trip to Bogota and to Quito out in Soachaa. And, of course, I agree, Cotahana is a beautiful place.

But I would instruct people to go out to Soacha and to some of the other areas where Afro-Colombians and indigenous people, who we hear very little about—many of the indigenous people really have been eliminated over the years. And the Afro-Colombians who live in very squalor conditions, virtually no rights—I have met several times with President Uribe who says he really wants to improve things. And he has. He has done better than the previous persons, but, you know, when you compare what they did, absolutely nothing, any little bit is a little bit better, I think, than nothing.

But the situation that I saw was very depressing. And the fact that labor leaders—we have seen the numbers that have been

killed. I know my specific question, I guess, would deal with the Colombian government's claim that it has taken steps to improve labor rights in Colombia by passing in 2008 in June a new law on labor cooperatives.

Last fall, thousands of sugar cane cutters, many of whom are African-Colombians, Afro-Colombians, protested over 50 days due to poor labor conditions experienced under the labor cooperatives model. Afro-Colombian sugar cane cutters claim that these cooperatives do not provide them with benefits, do not allow them to organize unions, bargain collectively for wages and protect their labor rights. The labor cooperative model is used by the sugar cane and the oil palm industry, which employs many Afro-Colombians.

And I just might ask you, Mr. Sanin, what is your opinion of this model. And in your opinion, is there a trend in sectors that employ Afro-Colombians to discourage Afro-Colombians from organizing into trade unions? And is the Afro-Colombian—is the Colombian government in general addressing, in your opinion, the basic concerns of Afro-Colombian workers in that country?

Mr. SANIN [through translator]. Thanks very much for your question. On this issue of the cooperative labor organizations is very, very sensitive in Colombia. There are 4 million workers who work under these conditions. And they have absolutely no rights. They are a very low-cost labor.

They are not allowed to unionize. And they are barred also from striking. The ILO has clearly said that these rights—that this goes against everything that has to do with workers' rights. The new law that Colombia enacted in 2008 is no solution to these problems.

So we have a model now in Colombia where we have no workers' rights, no right to unionize, no right to collective bargaining. And that is why these workers went on a spontaneous strike. And it did involve the palm workers, the sugar cane cutters as well as port workers. And as you rightly said, many of these workers are Afro-Colombian. And they find themselves in a situation of extremely precarious work conditions. And again, I repeat. This new law has not resolved any of these problems.

Mr. PAYNE. Well, thank you very much. I appreciate that. And we will continue to press that issue.

And the palm workers—many of the Afro-Colombians don't want to deal with the palm industry in the first place. And as I mentioned before, the Chiquita—that was the WTO that the suit went in against the Caribbean islands that, of course, Chiquita won, and the Caribbean islands lost. And the WTO and, like I said, are struggling now to exist with no commodities to sell.

Thank you, Mr. Chairman.

Chairman MILLER. Thank you, Mr. Payne. Before I recognize Congressman Polis, I would—Congressman McKeon has asked that I insert in the record as part of this hearing the Washington Post editorial from Saturday, April 19, 2008 called Colombia's Case. And without objection, it will be done.

[The information follows:]

[From the Washington Post, April 19, 2008]

Colombia's Case: The intellectual poverty of a free-trade deal's opponents

House Speaker Nancy Pelosi (D-Calif.) says the Bush administration's free-trade agreement with Colombia may not be dead, even though she has postponed a vote

on it indefinitely. If the White House doesn't "jam it down the throat of Congress," she said, she might negotiate. Ms. Pelosi wants an "economic agenda that gives some sense of security to American workers and businesses * * * that somebody is looking out for them"—though she was vague as to what that entails. Nor did she specify how anyone could "jam" through a measure on which the administration has already briefed Congress many, many times.

Still, in the hope that Ms. Pelosi might in fact schedule a vote, it may be worth examining once more the arguments against this tariff-slashing deal. Perhaps we should say "argument," because there is really only one left: namely, that Colombia is "the most dangerous place in the world to be a trade unionist" and that the government of President Alvaro Uribe is to blame. As AFL-CIO President John Sweeney put it in an April 14 Post op-ed, union workers in Colombia "face an implicit death sentence."

Colombia is, indeed, violent—though homicide has dramatically declined under Mr. Uribe. There were 17,198 murders in 2007. Of the dead, only 39—or 0.226 percent—were even members of trade unions, let alone leaders or activists, according to the Colombian labor movement. (Union members make up just under 2 percent of the Colombian population.)

This hardly suggests a campaign of anti-union terrorism in Colombia. Moreover, the number of trade unionists killed has fallen from a rate of about 200 per year before Mr. Uribe took office in 2002, despite a reported uptick in the past few months. (Arrests have already been made in three of this year's cases, according to Bogota.) And evidence is sparse that all, or even most, of the union dead were killed because of their labor organizing. As Mr. Sweeney and other critics note, precious few cases have been solved, which is hardly surprising given that Colombia's judicial system has been under attack from left-wing guerrillas, drug traffickers and right-wing death squads—a war, we repeat, that Mr. Uribe has greatly contained. But in cases that have been prosecuted, the victims' union activity or presumed support for guerrillas has been the motive in fewer than half of the killings.

An April 10 letter to the editor from Tom Malinowski of Human Rights Watch suggested that we would not make such arguments "if death squads with ties to the U.S. government were targeting Post reporters for assassination." We like to think that our criticism would be energetic but fair, especially if the government was responding aggressively to such a campaign and the number of killings was declining. No fair-minded person can fail to note that Colombian unionists are far safer today than they used to be.

There are two important countries at the north of South America. One, Colombia, has a democratic government that, with strong support from the Clinton and Bush administrations, has bravely sought to defeat brutal militias of the left and right and to safeguard human rights. The other, Venezuela, has a repressive government that has undermined media freedoms, forcibly nationalized industries, rallied opposition to the United States and, recent evidence suggests, supported terrorist groups inside Colombia. That U.S. unions, human rights groups and now Democrats would focus their criticism and advocacy on the former, to the benefit of the latter, shows how far they have departed from their own declared principles.

Congressman Polis?

Mr. POLIS. Thank you, Mr. Chairman [speaking Spanish].

First, thank everybody for coming, especially Yessika Hoyos. It is very difficult to open her heart and share. And we deeply appreciate that.

My question is for Dr. Sanchez [speaking Spanish].

The question is how does the justice system function in Colombia with regard to labor issues and the prosecution of those who attack labor leaders compared to other forms of crimes and how the labor system functions, corruption or prosecution of right wing radicals who attack others.

Mr. SANCHEZ [through translator]. Yes, this is considered a more serious crime in Colombia. I am referring to killing someone who is protected by international law, by international agreements as unions are. There is a harsher sentence. The fact is it is a more serious crime to commit against the life of this person.

And could you please repeat the second part of your question?

Mr. POLIS [speaking Spanish].

I can in English. Is the implementation of the law more highly flawed with regard to prosecuting the crimes of labor leaders, not compared to a perfect model, but compared to in reality the prosecution of other crimes?

Mr. SANCHEZ [through translator]. Yes, it is about——

Mr. POLIS [speaking Spanish].

Mr. SANCHEZ [speaking Spanish].

Mr. POLIS. Mr. Chair, if I can address, it looks like the other gentleman would like to address the question as well.

Mr. SANCHEZ [through translator]. The law is enforced equally to all persons in Colombia, whether they be citizens or not. The law applies the same. And investigations are carried out the same.

That in some cases, in fact, the intellectual authors behind a crime are not investigated. That depends on the judge behind that investigation. But in the law, per se, it is applied equally to all.

Mr. SANIN [through translator]. The problem that we have is that we have very few prosecutors and very few investigators for this kind of crime. There is a tremendous imbalance in the system.

We have, for example, lots and lots of prosecutors for intellectual property rights, for example. There is no equilibrium here. There is no balance in the two. The institutional design of the country is not balanced.

We have lots of protections and lots of prosecutions for crimes against property, for example, against business, but very, very little protection or prosecution of cases that have to do with workers' rights. For example, I can give you just one number. The crimes that affects trade unions.

Anything that is done against trade unions is a crime. And yet we have not one single case that has been prosecuted against people who are guilty of operating against trade unions. And as we said before, we have a 96 percent rate of cases that have not been solved.

Chairman MILLER. Thank you.

Mr. Sestak?

Mr. SESTAK. Thanks, Mr. Chairman.

Mr. Sanin, could you let me know what you think would be the prospects for improved unionization and for protection of unionists if the treaty, the Colombian treaty, is not passed as compared to if it is?

Mr. SANIN [through translator]. Okay, thank you very much for the question. The issue is that Colombian society is different from any other society. It is not like Central America. It is not like Peru. It is not even like any of the other Andean community countries.

We have to bear in mind that 60 percent of unionized workers killed worldwide are killed in Colombia. The whole structure of the law and the practice of the law in Colombia goes against basic ILO standards. More than 50 percent of Colombian workers are not protected.

So this makes us a very vulnerable society for the issue of trade integration. However, I would like to point out that this discussion that is being held in the U.S., this debate can possibly help. It may help push Colombia to make this a priority issue and to get it resolved. Thank you.

Mr. SESTAK. Ms. McFarland, may I ask you the same question? You have watched this and have an historical perspective. There is things in the treaty like our own unions are able to go to the labor department and now under this treaty make a representation by the treaty that something is amiss. And then if the labor department finds it is amiss, they can report to our trade representative.

Agnostically, my question is the same. If this treaty is not passed, what are the prospects for the improvement of unionization and their protection of unionists as compared to if it is passed?

Ms. MCFARLAND. I think the question is really under what conditions can it be passed. I mean, at least at Human Rights Watch we are not anti-trade. We are not pro-trade. We are agnostic on that issue. What we do think——

Mr. SESTAK. That is why I decided you would be the second one just from your perspective on unionization, improvement or not with the passage.

Ms. MCFARLAND. What we do think is, what I do think is that with the passage of the free trade agreement you are not going to solve the problem of anti-union violence, which is the most serious problem affecting union rights in Colombia. And with conditions on the agreement, preconditions that problem can be addressed. A lot of progress could be made. And that is why we are calling for delay in the consideration of the agreement.

Mr. SESTAK. Mr. Sanchez?

I mean, we just might have to deal with the treaty as it is.

Dr. Sanchez, that same question. The treaty as it is—will unionization prospects be improved by the passage and protection of unionists be improved if this treaty were passed or as compared to if it is not passed?

Mr. SANCHEZ [through translator]. This issue is really one for the experts in trade. I am a criminologist, and I can't really say if this agreement is going to be a good thing or a bad thing. It should really be addressed by someone who is more informed on that issue.

Mr. SESTAK. Thank you. I appreciate your input. I do believe that whether it is 36 or 54 murders and assassinations in 2007 out of the 17,900 and some, whether it is systemic or not is really the question, not just the magnitude.

But for me the real question on this treaty, having voted for the Peru treaty, is are unionists aided, abetted in making this less systemic because the potential leverage we may then have as compared to us potentially having a different political dynamic in that country, particularly in view of what you said this administration has now changed in having this passed this. Are we better or not better for addressing that systemic issue by the passing of this treaty? Thank you very much.

I yield back the balance of my time.

Chairman MILLER. Mr. Wu?

Mr. WU. Thank you, Mr. Chairman.

I understand that this hearing was convened, not expressly to talk about trade treaties, but since we are on that topic, I have spent a good amount of time drafting some provisions to be added to a bill which was submitted in the last Congress to put human rights on a par with environmental; provisions and with labor pro-

visions and other fundamental provisions of the trade agreement so that they are subject to the same kind of scrutiny and review after the fact and similar enforcement mechanisms.

Now, I understand that, and I am a believer in asking folks to meet certain preconditions before trade treaties are signed or ratified. But I want to also hear whether these in-treaty mechanisms, if they can be incorporated in treaties and if they can be enforced, whether that would be helpful to the human rights and organizing regimes going forward post-treaty.

Chairman MILLER. If I just might, the gentleman is quite correct. These witnesses did not come here to testify on the free trade agreements or treaties or what have you. They are free to comment on your question, but I just want them to know that they are also free not to comment because they did not come here to testify on that subject matter.

Mr. WU. Absolutely. I just wanted to follow up on—particularly our witness from Human Rights Watch since she seemed to have some opinions on this topic.

Ms. MCFARLAND. Yes, I think it would be a great thing to start looking at ways in which human rights can be incorporated into trade agreements. However, I don't think that that is the way to solve the problem in Colombia.

Getting Colombia to do anything about the anti-union violence and impunity has been like pulling teeth. And it has only been with the possibility of non-ratification of the free trade agreement on the table that they have established this special prosecutors unit that is starting to make a little bit of progress. I think now we have the possibility of moving them a little further on that now that there is change in Washington.

But it is not something that you are going to achieve through a side agreement once the agreement has been ratified. I mean, what is really motivating the Colombian government and moving things forward right now is its desire to have the agreement ratified. Once it is in place, you know, you can get little things, maybe, but it won't be the same.

Mr. WU. Okay, thank you for that comment. I want to make clear that I agree with you that it is important to make major strides so that the human rights environment is roughly proportional pre-treaty. But what I have in mind is not a side agreement, but to have something integral to the agreement with strong enforcement mechanisms so that post-agreement there is an enforcement mechanism and leverage, not just on issues of tariff or non-tariff barriers, but also for enforceable provisions for environmental concerns, labor concerns and human rights concerns.

Ms. MCFARLAND. I think we would certainly welcome the opportunity to work with you on developing such language. I just think that, as I said before, the situation in Colombia is very particular.

Mr. WU. Yes.

Ms. MCFARLAND. And——

Mr. WU. They tend to be in each particular country.

But, Mr. Chairman, I also was not prepared to address this topic with this panel today. But since we are on this subject and we have a good panel, for anyone who is interested in the language as drafted, I would like to get that to you before the end of the hearing.

And I would very much appreciate your comments to the extent that you have helpful suggestions going forward.

Thank you very much, Mr. Chairman.

Chairman MILLER. Thank you.

Ms. McFarland, if I might—and we are going to wrap this hearing up. I have questions now, and then Mr. Hare has questions, and that will be the end of the inquiry here.

It has now been a couple of years since the former intelligence chief, Jorge Noguera was arrested and indicted. Can you bring us up to date what is taking place with respect to this case?

Ms. MCFARLAND. Sure. Mr. Noguera came under investigation for widespread collaboration with paramilitaries within the intelligence service while he was the chief of the intelligence service. He has been charged with, not only cooperating with the paramilitaries, but also providing them—well, he is under investigation for allegedly providing paramilitary groups with lists of trade unionists who are under the protection of the intelligence service and some of whom were later killed by the paramilitaries.

Unfortunately, the investigation of that piece, his alleged involvement in the homicides of trade unionists, has not really moved forward. And the entire case has suffered lots of delays basically because of procedural problems with the attorney general's office.

The attorney general was supposed to assume direct responsibility for the investigation. He decided to delegate it to another prosecutor. One court told him he couldn't do that. He decided to ignore that decision based on the opinion of his deputy attorney general.

And so, the supreme court finally had to tell him last year you can't delegate, you have to do this yourself. And Noguera has been arrested, released, arrested, released a few times. He was recently rearrested for the charges involving collaboration with the paramilitaries. But the part about trade unionist homicides is sort of floating with no clear direction.

Chairman MILLER. Thank you.

Ms. Hoyos, I wonder if you might comment on what it is you hope to achieve with your new organization.

Ms. HOYOS [through translator]. My organization, the sons and daughters, children of people who are victims of human rights violations, people who have been killed, who have disappeared. We are a generation that are dreaming of a new country. And we are stigmatized because we have this dream of a new country.

I love Colombia. I am not here because I don't love Colombia. I am here because I do love Colombia. I am here because we are looking for the truth, because we don't want a repeat of these crimes. We don't want these crimes to be forgotten. We don't want impunity. And we don't want any more young people to suffer what we suffered through.

Just last year, I met a young woman, a 24-year-old—21-year-old, excuse me, the daughter of Guillermo Rivera, who was assassinated also in this manner. And I met her only because she found herself in the same circumstance that I had found myself in.

We don't want other people to suffer what we have suffered through. We want a country that respects us, that respects life,

that respects our dreams and that does not pursue us and does not condemn us because we have those dreams and those thoughts.

Chairman MILLER. Well, thank you very much. And obviously we wish you well with your organization.

I had the opportunity a month ago to view the video that you and your sister made in tribute to your father and also in pursuit of justice. And it is really quite remarkable. And he must have been quite a remarkable and important person in his community and certainly to his family. So thank you for doing that to share with others who are concerned with this issue.

Mr. Hare?

Mr. HARE. Thank you, Mr. Chairman.

And, Ms. Hoyos, let me first of all tell you how sorry I am about your father. Just from listening he was obviously a wonderful man. And I am sure he is very proud of you.

You said that you have, you know, forgiven the two people who did this, the assassins. What do you know about—I mean, what led them to become hired assassins, that you know? And how did you come to the decision to forgive them, which is an incredible thing for you to be able to do?

Ms. HOYOS [through translator]. I forgave these two young men precisely because they are very young men. And in Colombia, unfortunately, many young men turn to violence because of lack of opportunities to do anything else. I forgave them because they are young, because they are just two young people.

That doesn't mean that I have given up on finding out the truth. I want the truth. I want to know who is behind these two young men. I want to know who the intellectual authors of this crime are because I know that those people are still free and perhaps are still committing more crimes.

Mr. HARE. Okay.

And then my last question would be to you, Dr. Sanchez. Why do you think that the killers see union leaders as such a threat? Or maybe if anybody would like to take a crack at that.

I mean, why do they see this as such a threat to Colombia?

Mr. SANCHEZ [through translator]. Labor unions in Colombia have always been labeled as sympathizers of the left or of the guerrillas. But the fact is that unionists are killed by both the guerrillas as well as the AUC. In other words, they are killed by the left as well as by the right and in some cases, even by common criminals simply because these people do not agree with the beliefs of the unions.

However, there is also a climate of intolerance in Colombia. People in Colombia and people in the world seem to sometimes forget that it is thanks to the labor movement that we have days off, that we have an 8-hour work day, that we have Social Security. It is thanks to their commitment that we have that.

And it is because of that dissent expressed by labor unions. That dissent is sometimes seen by some as a threat to the system. It is used as an excuse.

However, not all murders are institutional in nature or against the institution of labor. Some people simply feel that it is okay. There was, in fact, a time in Colombia in my country when a lawyer said that it was no crime to kill the indigenous. It was that ex-

treme attitude that we are facing then and that we have to work against. Thank you.

Chairman MILLER. Thank you. I want to again thank, certainly, all the members of the committee for their participation.

And I want to thank our panelists for traveling here today to share your expertise and your knowledge of this situation. And I appreciate your courage in coming forth.

It was referred to a number of times here about the beauty of the country of Colombia. And for those who have visited Colombia it would not take more than a few seconds to realize why people say that because of the spectacular nature of the country and its natural assets and, of course, when you meet its people.

But that is not a substitute for serious inquiry into human rights. I can remember standing at the American embassy with the American ambassador at the height of violence in Chile and him telling me that this is a beautiful country, and that I really should go to Valparaiso and enjoy the beaches and see the people who use the beaches, and I should go shopping and enjoy the people who are shopping, and that my concerns were misplaced because it is such a beautiful country. My concerns weren't misplaced.

It took almost 30 years, but we brought Mr. Pinochet to justice. And the world now knows the history of what was taking place while people were suggesting it is a beautiful country.

I had the same treatment from then President Dabusan, that I should go walk and enjoy the rivers of Salvador because it is such a beautiful place. And we all know the history of violence by that government against its people.

People will vote, and members of Congress, I mean, will vote, and people will consider pro or con the free trade agreement. This inquiry by this committee is independent of the consideration of that agreement. I hope what we do will be helpful to members of Congress should that agreement be put back forth in front of the Congress. That is a decision for the new president of the United States and for the Congress.

But I laid out in my letter to President Uribe the purposes of this investigation in my September 12th letter of 2008 when there was going to be an opportunity for us to meet with one another. And I made it very clear.

I said I would like to discuss with him at that time, but I have said this as we embarked on this inquiring using the committee resources that my goals and purposes were, one, an effective and sustainable and transparent Colombian system of justice to protect the rights of working people and to vindicate the lives of the victims of the anti-labor violence; two, further investigation and prosecution of the intellectual authors who planned the attacks and the killings of labor union leaders in Colombia; and three, additional reforms to bring Colombia labor laws up to the minimum core labor standards set by the International Labor Organization and cited by both the U.S. State Department and the U.S. Department of Labor.

That is the intent of this inquiry. This inquiry will continue until those results are achieved. That is the purpose of this inquiry.

I had the opportunity to travel and to meet with Judge Sanchez at that time when I was in Colombia and with the other judges, with the prosecutors and believed—and the Fiscalia's office—and

believed that these assets should be strengthened and encouraged by this government. And this Congress spoke to that issue by redirecting some money from Plan Colombia to the Fiscalia's office to strengthen the prosecutions. In an explicable fashion, that money was not sent for a year.

So in a quest to achieve a sustainable and transparent Colombian system of justice with respect to this issue, we lost almost a year's time in strengthening that office. That was tragedy. I don't know what the Bush administration was thinking when that money was not forwarded in a timely fashion. And hopefully we will get into that when we get back into the appropriations process in this Congress.

But I want people to be very clear about the intent of this inquiry and the expected results of this inquiry and the sustainability of the ability of this committee to continue this. I have been involved in very, very long human rights inquiries in many parts of the world. And we expect to see this one through to a satisfactory conclusion with respect to the protection of human rights of workers and their families and others, in this case, in the country of Colombia.

And again, I want to express my appreciation for the cooperation that we have received from the government of Colombia as we have tried to sort through this subject matter. So again, thank you so very much for your contribution to the effort of this committee. And I hope that we will be able to continue to call upon you as a resource for our future discussions.

And with that, the members of Congress will have 14 days to submit additional materials for the hearing record. It may be that some members of Congress will submit follow-up questions that we will forward to you. And we would hope that you would be able to answer them in a timely fashion.

And with that, the committee stands adjourned. Thank you.

[The statement of Mr. Altmire follows:]

Prepared Statement of Hon. Jason Altmire, a Representative in Congress From the State of Pennsylvania

Thank you, Chairman Miller, for holding this hearing on workers' rights and violence against union leaders in Colombia.

As the Chairman said, over the past twenty years, Colombia has been the most dangerous place in the world to belong to a labor union. There have been more labor killings in Colombia than in all other nations of the world combined over the past few years, and according to a leading Colombian think-tank, the National Labor School, almost 2,700 trade union members have been killed in Colombia over the past two decades. I appreciate all of the witnesses here today lending us their time to examine this situation in Colombia. I hope that through this hearing, we can shed light on the atrocities that are ongoing in Colombia.

Thank you again, Chairman Miller, for holding this hearing. I yield back the balance of my time.

[Additional submissions by Mr. Miller follow:]

AFL–CIO EXECUTIVE COUNCIL,
Washington, DC, February 26,2009.

Hon. GEORGE MILLER, *Chairman,*
Committee on Education and Labor, U.S.House of Representatives, Washington, DC.

DEAR CHAIRMAN MILLER: Please find attached the AFL–CIO's latest fact sheet on violence, impunity and labor law in Colombia. We wish to submit this information to be included in the record of the hearing held by the House Committee on Edu-

cation and Labor on February 12 entitled, "Examining Workers' Rights and Violence Against Labor Union Leaders in Colombia."

ATTACHMENT

Colombia: Continued Violence, Impunity, Flawed Labor Laws and Non-Enforcement of the Law Eclipse the Colombian Government's Few Accomplishments

February 2009 Update

Violence Against Trade Unionists On The Rise

The National Labor School (ENS) now reports that 49 trade unionists were murdered in Colombia in 2008, a 25% increase over the number of trade unionists murdered in 2007—39. Even the Colombian government's statistics show an increase in assassinations.[1] Of note, sixteen trade union leaders were assassinated last year, for example, Guillermo Rivera Fuquene, President of the Union of Public Service Workers of Bogota (SINSERVPUB), Carlos Burbano, Vice-President of the Hospital Workers Union (ANTHOC), Leonidas Gomez Roso, officer of the National Bank Workers' Union (UNEB), and William Rubio Ortiz, officer of the Union of National Environmental System Workers (SINTRAMBIENTE). This too represents an increase over 2007, when 10 leaders were murdered.

Because of the flawed demobilization process, thousands of "demobilized" and never-demobilized paramilitaries are creating new and dangerous organizations. The OAS Mission to Support the Peace Process in Colombia (MAPP/OEA) has noted the resurgence of several new groups with thousands in their ranks. Many of the 157 individual and collective death threats against trade unionists in 2008 were issued by such groups, including Aguilas Negras Bloque Norte de Colombia, Nueva Generacion Aguilas Negras de Santander, Aguilas Negras Bloque Sena de Colombia, Comando Carlos Castano Vive, Campesinos Embejucaos de Colombia and Aguilas Negras Comando No Paheces.

There is no question that the continued murders and death threats have a chilling effect on union activity. Today, workers continue to have good reason to fear for their lives when they exercise their fundamental labor rights—especially the crucial rights to organize, bargain collectively, and strike. They know that 2,694 union members have been murdered in Colombia since 1986, with 482 of those murdered during the Administration of President Alvaro Uribe.

The Colombian government claims that union members are killed at no greater rate than the overall population. It is simply not meaningful to compare random crime statistics to targeted assassinations. Clearly, trade unionists who are engaged in industrial disputes, or who are active in human rights activities, are targeted precisely for their work. In Colombia, trade unionists continue to be assassinated precisely for exercising freedom of association and collective bargaining rights and other forms of trade union advocacy, and account for a preponderance of all labor leaders killed throughout the world.

Persistent Impunity

The Fiscalia General reports that it has secured 171 sentences in 131 cases related to violence against trade unionists.[2] Further, the government has obtained sentences in 31 of the 185 priority cases, or 16.75%. The recent increase in prosecutions, the vast majority of which were carried out in 2007 and 2008 (and following significant international pressure for results), is an improvement over past neglect by the current and previous administrations. However, behind these statistics are several troubling realities. First, nineteen of the sentences handed down were not for murder, but to a lesser charge, so do not address the impunity rate for homicides. In roughly 35% of the sentences, the person found responsible for the crime was tried in absentia or is otherwise not in custody and thus potentially still at large. And in the majority of cases, the person convicted of the crime is not the intellectual author, but rather the foot soldier that carried out the order to kill. For these reasons, the Uribe Administration still has a long way to go to end impunity in Colombia. Even if one reads the statistics in the light most favorable to the government, the rate of impunity still hovers around 96 percent.

Of note, the Office of the Attorney General is not even attempting to investigate all outstanding unsolved murder cases, but rather only the subset of cases that have been previously presented to the ILO and new murder cases from 2006 onward. Thus, the Attorney General is charged with investigating about 1,302 cases, which accounts for less than half of all union murder cases since 1986.

The government has claimed that the recent rulings show that in most cases, the crimes bear no relation to trade union activity. However, the information that the Attorney General used to provide regarding motives in cases of anti-union violence

does not necessarily represent the determinations of the sentencing judges. In one report, the Attorney General claimed that the motive in 38 sentences was "alleged membership in subversion," implying that the perpetrator of the crime believed that the victim was a member of the guerrilla forces. However, in Colombia, legitimate human rights advocates, community leaders, and union members are accused of being "guerillas" simply for advocating on behalf of their constituency. Further, these statistics reflect the state of mind of the gunmen (who may have been told to kill someone on the false pretense that the target is a guerilla), not the people actually responsible for planning the crimes, and thus do not necessarily reflect the true criminal intent.

For example, in the case of Luciano Enrique Romero, a former Nestle worker and member of Sinaltrainal, the Attorney General writes, "If it is true that he was a unionist, it is also true that he was an informant of the 6th Front of the ELN, according to the testimonies gathered in the process, that he was very close to Comandante Tulio, and that he was known by the alias 'PEPE.'" This definitive statement is directly contradicted by the judge in the case. After viewing all of the evidence, Judge Jose Nirio Sanchez wrote that "the supposed guerrilla military affiliation of the deceased was not proven, though his ideology of defending human and labor rights was frequently noted * * * It can be inferred that the deceased, Luciano Enrique Romero Molina, had no military status nor could he be characterized as a combatant." He goes on to say that the alias "Pepe" belonged to another person entirely and that the initial claims, which had been cited in the Attorney General's documentation, were unfounded.

This is but one of the numerous examples where the statistics of the Attorney General and the sentences of the specialized judges diverged. Of note, the Attorney General, as of December 2008, is no longer reporting motives in its statistical updates.

Judiciary Politicized

In 2007, the government named three special judges to preside over cases related to violence against trade unionists. However, the judiciary has removed one highly qualified judge, Judge Sanchez, for unexplained reasons. It was this judge who, in addition to contradicting the Attorney General in the Luciano Romero case, sentenced officers of the 18th Brigade of the Colombian Army for murdering three union leaders in the department of Arauca. The judge found that these officers had planted guns in the hands of the unionists to make it appear that the victims were members of the guerrilla organization, ELN. This decision put the judge directly at odds with President Uribe, who continues to accuse these and other unionists of being guerrillas.

The six-month term of these judicial posts came under criticism as undermining the government's commitment to investigating and prosecuting the thousands of unsolved homicide cases. However, after intense international pressure, the government announced on March 28, 2008, that it had approved the budget to create and fund three permanent specialized courts. However, a new decree from the judiciary, issued on July 11, 2008, merely assigns three judges to adjudicate these cases for one more year. Under the decree, the cases will be transferred to the new 10th and 11th benches of the special criminal circuit and the 56th bench of the criminal circuit of Bogota. The government once again failed to demonstrate long-term commitment to the process, favoring instead short-term extensions of judicial authority to review these important cases.

Finally, significant questions remain as to whether these judges will be able to perform their important jobs without interference from the Uribe Administration. For example, President Uribe has attempted to intimidate the Colombian Supreme Court on numerous occasions by publicly attacking the lead justice handling the parapolitics investigation, which led to the threat of mass resignation by the other justices last year. In August 2008, in an effort to further undermine the Supreme Court, the Uribe Administration proposed a constitutional amendment that would remove all investigations into members of Congress from the jurisdiction of the Supreme Court and move them to a local court in Bogotμ. The amendment is a clear effort to put an end into the investigations of these congressmen, the vast majority of which belong to President Uribe's governing coalition.

Failed Demobilization Contributes to More Anti-Union Violence

The flawed demobilization process has also contributed to thousands of "demobilized" and never-demobilized paramilitaries creating new and dangerous organizations. The regular reports of the OAS Mission to Support the Peace Process in Colombia (MAPP/OEA) have noted the resurgence of several new groups with thousands in their ranks. Although they have assumed distinct organizational frame-

works, many of these groups are associated to powerful local or regional economic and political interests, and continue the violent legacy of the paramilitaries, including narcotics trafficking and targeted assassinations. Groups such as the "Aguilas Negras" (Black Eagles) are responsible for some of the death threats leveled against trade unionists in 2007-08. This year, the Aguilas Negras have issued death threats against members of SINALTRAINAL, the trade union representing food and beverage workers in Colombia, and members and leaders of the Union Sindical Obrera (USO), which represents workers in the oil industry. The Aguilas Negras also issued a gruesome warning to the organizations responsible for organizing the March 6 Peace March, some of which were in fact murdered shortly thereafter.[3]

Labor Law Reform

In response to years of intense domestic and international pressure, the government recently approved legislation that would reform the labor code with regard to the right to strike and on the administration of labor cooperatives. However, these new laws create new problems as they attempt to resolve old ones.

Strikes

Article 2 of Law 1210 of 2008 responds to one persistent ILO criticism by transferring the authority to determine the legality of a strike from the Ministry of Social Protection (MSP) to the Labor Chamber of the Superior District Court. The reason why this decision should lie with the courts, not the government, is that it is far less likely that a court will issue a decision based on political, rather than legal, grounds. However, the new law maintains a substantial role for the MSP. Under Article 4, the MSP can on its own initiative file a complaint with the court contesting the legality of the strike. Indeed, the MSP may file a complaint even if none of the parties, such as the employer, chooses to file a complaint. The fact that the MSP may unilaterally intervene in the judicial process may substantially limit the effectiveness of this legal reform.[4]

The government also approved a new law on compulsory arbitration, which partially addresses the ILO's concerns. Before, the MSP had the authority to suspend a strike and refer a dispute to mandatory arbitration when the strike exceeded 60 days. The ILO criticized compulsory arbitration because, in most cases, compulsory arbitration robs unions of their leverage in a labor conflict, as the employer can simply decide to wait out the strike knowing that the government will eventually bring it to and end. Article 1 of the Law 1210 provides that, sixty days after the initiation of a strike, the employer and union should spend three days trying to resolve their differences by whatever mechanism they choose. If the parties are unable to reach an agreement during this time, the government or a party can petition for the intervention of the sub-commission of the Wage and Labor Policies Commission. This sub-commission will attempt to mediate the conflict for up to five days. If there still is no resolution, then both parties together may request the establishment of an arbitration tribunal from the MSP. If the parties opt for arbitration, the workers are obligated to return to work within 3 days.

However, Article 1(2) now provides that the President may order the cessation of any strike that, "with regard to its nature or magnitude, affects the health, security, public order or the economy, in whole or in part, of the population." This language very loosely tracks the ILO's "essential service" proviso, but differs in important ways. The ILO has held that strikes may be prohibited in essential services, with the term "essential service" meaning "those services whose interruption would endanger the life, personal safety or health of the whole or part of the population."[5] The ILO definition is different from Law 1210 in significant ways. First, a strike's impact on the "economy" is not relevant under ILO jurisprudence. Indeed, if a strike could be prohibited merely because it affects the economy, almost no strike would ever be legal. An otherwise legal strike may also affect the "public order," loosely defined. The term "security" or "public order" may be legitimate only if those terms are read to be synonymous with "personal safety." Second, the ILO requires that the interruption of a service "endanger" the life, personal safety or health of the population. The Colombian law provides that a strike need only "affect" health, security, public order or the economy, which is a far lower standard than "endanger."

Finally, these two reforms leave many of the obstacles with regard to the right to strike in place. For example, there is still a total prohibition on the calling of strikes by federations and confederations. The law also bans strikes in several sectors of the economy that are not properly considered "essential services" under international law, such as transportations, civil service, and the oil industry. Further, the law allows for the dismissal of union members that have participated in a strike in an industry that is not properly deemed an essential service under international law.

Cooperatives

In theory, a labor cooperative is a voluntary association of workers, is democratically self-managed and equitably distributes the gains realized by the economic activities of its members. However, it is quite the opposite for Colombian workers. Today, several hundred thousand workers are routinely exploited in management-created and/or dominated associated labor cooperatives in Colombia. One of the central problems associated with these cooperatives is that those who work for them are classified as "associates" rather than "employees" and thus excluded from the coverage of the nation's labor laws. This means that workers in cooperatives cannot form a union, bargain collectively or strike. It also means that maximum hour and overtime pay provision are not applied to them.

This situation has led to very low wages, few benefits, and, particularly in the rural sector, extreme forms of exploitation. This does not just affect low-skilled labor. Indeed, many health care professionals have been affected. As public hospitals and health centers were privatized in recent years, the successor private employer dismissed the workers and rehired them, non-union, through a cooperative or temporary service agency at much lower wages and for much longer hours.

The government recently issued a new law on labor cooperatives, Law 1233, which, with few exceptions, largely restates many of the provisions found in Decree 4588 of 2006. Importantly, the new law does absolutely nothing to bring workers employed in these cooperatives under the coverage of the nation's labor laws—maintaining a permanent underclass of workers without access to the basic labor guarantees that are to be enjoyed by all workers. As the ILO Committee on Freedom of Association recently observed, "workers associated in cooperatives should have the right to establish and join organizations of their own choosing."[6]

The new decree does require labor cooperatives to make contributions to three government benefits programs (National Apprenticeship Service—SENA, Colombian Institute for Family Wellbeing—ICBF, and the Family Equalization Fund) as well as the social security system, which covers health care and retirement. The decree also requires the labor cooperative to pay the monthly minimum wage for the class of work performed. In 2008, the monthly minimum wage in Colombia is 461,500 pesos, or roughly $265. If enforced, this provision does establish a floor on wages, albeit low, that did not previously exist. However, as the U.S. State Department has observed, "The national minimum wage did not provide sufficient income to purchase the basic market basket of goods for a family of four."[7] According to DANE, the cost of the basic basket of goods in 2008 is 955,990 pesos, roughly double the minimum wage.

The decree does state that labor cooperatives are prohibited from "intermediation," meaning the hiring out of a cooperative associate to a third party like a temp worker. If this provision is violated, the decree provides that the third party and the cooperative are jointly responsible for any wages and benefits owed to the worker. This prohibition is nothing new and is essentially a restatement of a largely unenforced provision of Decree 4588 of 2006. The new law also does not prohibit third-party contracting altogether. Like Decree 4588, the law allows for cooperatives to engage in third-party contracting to produce goods and services, so long as the purpose is to produce or perform a specific object or task.

It is almost certain that employers will continue to use these cooperatives as a means to evade the formation of unions, collective bargaining, and other such responsibilities they would normally face if the workers employed in cooperatives were simply treated as workers. Indeed, one of the largest labor conflicts with regard to cooperative workers occurred after this new law was issued.

Roughly 20,000 people work in Colombia's lucrative sugar industry—planting, harvesting and processing sugarcane. Most of these workers have been hired through associated labor cooperatives. In the sugar industry, workers often perform this backbreaking work in excess of seventy hours a week and, for this, do not even receive the minimum wage. Further, without adequate protective equipment, or no equipment in many cases, workers sustain serious occupational injuries, some of which are disabling. On August 25, 2008, thousands of sugarcane workers held an assembly in Candelaria, Valle, where they then authorized a "strike" over the failure of the owners of the sugar industry to negotiate with the workers over a list of basic demands submitted on July 14, 2008. The strike began on September 15, 2008, as the employers had completely refused to negotiate.

In response, the sugar mills were largely militarized and several workers had been threatened with death or have received threatening calls since the strike began. Other workers have been fired simply for holding meetings with fellow workers. Rather than trying to mediate the conflict, Minister of Labor, Diego Palacio, has denounced the strike and accused the strikers of being manipulated by forces "outside of the labor movement"—a very thinly veiled reference to the guerillas.

Due to intense international pressure, the sugar mill owners finally capitulated and accepted some of the workers demands. The union won an average 15% wage increase, a limitation on the working day of 8 hours plus a maximum of two hours overtime (replacing the 12-14 hours previously worked daily), employer contributions to sick pay, and employer commitments to housing, education and social security for workers and their families. Stricter controls are to be placed on the weighing of harvested cane, a procedure through which workers have in the past been routinely robbed. However, the union was not able to win direct employment contracts to replace the system of cooperatives that has allowed the mill owners to evade responsibility for collective bargaining and health and retirement benefits.

Finally, these reforms in no way address all of the concerns raised by the ILO. First, the application of the labor law is limited to less than three million people, of a working population of nearly nineteen million. As most workers do not have a direct contract of employment, they are deemed outside the scope of the law. Colombian labor law also continues to present serious obstacles to the full exercise of the right to freely associate, to bargain collectively and to strike.[8] The refusal to register new unions, described below, was also a serious issue. These factors explain in part why only 4 out of 100 workers are in unions today, and why far fewer are covered by a collective barraging agreement.

Denial of Union Registration

The ILO has provided that a government may establish registration requirements that are solely a mere formality. If conditions for granting registration were tantamount to obtaining previous authorization from the authorities for the establishment of a union, this would constitute an infringement of ILO Convention 87.[9] In Colombia, the government has in fact applied the regulations to arbitrarily deny unions their registration. According to ENS, 253 new union organizations were denied registration by the Ministry of the Social Protection between 2002 and 2007. It is important to note that the denial of union registration skyrocketed under the current administration. In 2000-2002, only four union registrations had been denied. In 2003 alone, the first full year of the Uribe Administration, the number soared to 70.

The ILO has taken note. In June 2008, the Committee on the Application of Standards "called upon [Colombia] to ensure that all workers, including those in the public service, may form and join the organization of their own choosing, without previous authorization, in accordance with the Convention. In this regard, the Committee called upon the Government not to use discretionary authority to deny trade union registration."[10]

Recently, the Colombian Supreme Court issued a series of rulings in late-2008 which divested the Ministry of Social Protection of the ability to deny registration to new unions, changes in union statutes, or new boards of directors. However, new regulations putting into effect this ruling have yet to be issued. And, it remains to be seen what will be done in all of those cases over the last several years where workers were illegally denied the right to form a union.

The ILO "Blacklist"

The GOC has repeatedly asserted that the ILO has given it a clean, or at least cleaner, bill of health, because Colombia was not included on a non-existent ILO "blacklist." In fact, Colombia continues to be subject to the scrutiny of the ILO system because its violations of Convention 87 and 98 are so egregious. Indeed, Colombia continues to be under the review of the ILO Committee on Freedom of Association, the ILO Committee of Experts, and, the ILO Conference Committee on the Application of International Labor Standards.

There is simply no ILO "blacklist." Governments are invited to appear before the Committee on Standards to address the concerns raised in the annual report of the Committee of Experts, based on an agreed-to list between the Employers and Workers Groups. Although the Employers Group unjustifiably vetoed the Workers Group demand to include Colombia on the list of governments for review during the June 2008 session, Colombia agreed to appear before the Committee. During that session, the Committee on Standards found that the sharp increase in trade union murders in 2008 was particularly disturbing and signified a major problem with respect to ending impunity. Moreover, the Committee unequivocally concluded that the proposed changes in the labor law were inadequate in reversing the effective violations of freedom of association and collective bargaining rights due to the creation of cooperatives, the use of temporary employees, and other legal ruses.

The GOC's assertion that it has been removed from an ILO blacklist due to its voluntary agreement to appear before the Committee on the Application of Inter-

national Labor Standards at the ILO conference in Geneva in June of 2008 is a distortion of fact and of ILO reality.

Para-Politics Scandal Widens, Calling into Question Legitimacy of Colombian Congress

Today, over 60 members of Congress, roughly 20%, have come under criminal investigation for collaborating with paramilitaries. More than 30 of them are already under arrest. Nearly all of these individuals are members of President Uribe's inner circle. This circle includes his cousin and ally, Senator Mario Uribe, who recently attempted to evade arrest by unsuccessfully seeking refuge in the Embassy of Costa Rica in Bogota. President Uribe has attempted to take credit for the housecleaning, and has invoked the recent arrests as an example of his administration's adherence to the rule of law. However, the investigations would most likely not have happened but for the efforts of the independent Supreme Court. Indeed, President Uribe's proposal to let all of the implicated politicians avoid prison contradicts this assertion. Most recently, President Uribe blocked a bill that would bar political parties linked to paramilitaries from holding onto the seats of those members who are convicted of paramilitary collaboration. If the bill were implemented, President Uribe would lose his majority in Congress.

Without questions, the government's direct ties with the paramilitaries preclude it from being able to effectively end impunity from trade union violence and to pass the necessary reforms in Congress to assure compliance with core labor standards.

ENDNOTES

[1] The Fiscalia General de la Nacion (Office of the Attorney General of Colombia), registered 42 murdered unionists in 41 cases in 2008, up from 27 murdered trade unionists in 26 cases. This is a 50% increase according to the government.

[2] As stated in the report of the Fiscalia General dated January 20, 2009.

[3] The threat, which bore the image of a human skull with black wings, warned: "Death to the leaders of the March for Peace and guerillas and supporters who disguise themselves as displaced persons but are guerillas and for this we declare them military objectives of the Black Eagles and also such NGOS, associations and foundations * * * You used the march of March 6 this year to diminish us further and to put the people against us, we will start to kill you one by one, we are going to be implacable. We will not leave any loose ends."

[4] In the U.S., for example, an employer may file a charge with the NLRB to seek a determination as to whether the strike constitutes an unfair labor practice. In some cases, an employer may also seek an injunction with a court. However, the government has no independent right to file a complaint concerning the legality of a strike.

[5] ILO Committee on Freedom of Association (CFA), Digest of Decisions 2006 ¶ 576.

[6] CFA Digest of Decisions 2006 ¶ 262.

[7] U.S. State Department, Human Rights Country Practice Report (Colombia), March 11, 2008.

[8] For a list of those concerns, see pp. 12-15 of Workers' Rights, Violence and Impunity in Colombia, available online at *www.aflcio.org/issues/jobseconomy/globaleconomy/upload/colombia—briefing.pdf.*

[9] See, e.g., Digest ¶ 294.

[10] See also, ILO CEACR, Individual Observation Concerning Freedom of Association and Protection of the Right to Organize Convention No. 87, Colombia (2008).

EMBASSY OF COLOMBIA, WASHINGTON DC

2174

Wednesday, November 5, 2008

The Honorable
GEORGE MILLER
Chairman, Committee on Education and Labor
United States House of Representatives
Washington, D.C.

Dear Chairman Miller:

We appreciate your interest in Colombia, and your willingness to work together to improve the security, justice and labor conditions in our country. President Uribe regrets that your schedules did not allow a meeting to take place during his most recent trip to Washington, and hopes to be able to meet with you in the very near future.

We share the belief in the importance of having an effective, sustainable, and transparent judicial system, as well as a positive labor climate in Colombia. These objectives have been an integral part of the Uribe Government since its beginning, and although the progress shown in the last six years is considerable by any objective measurement, we acknowledge there are challenges that we must overcome to consolidate the progress made and continue with new improvements.

Your letter raises three general areas of concern for further focus: (1) improvements to our criminal justice system (2) more investigations and effective prosecution for crimes against union leaders; and (3) additional reforms of Colombian labor laws with reference to ILO standards.

In order to respond to your concerns in the most comprehensive and accurate manner possible, we have requested information from many sources. These include: the Office of Prosecutor General, the Superior Judicial Council (*Consejo Superior de la Judicatura*), the Constitutional Court, trade union confederations, the ILO and its Representative office in Colombia, and the Organization of American States Mission for Support of the Peace Process (MAPP-OAS). We have also worked closely with the following agencies of the government to

develop the information necessary to respond to your concerns. These include: the Presidential Program for Human Rights and International Humanitarian Law, the Human Rights Observatory of the Office of the Vice President, the Ministry of Justice and the Interior, the Ministry of Finance, the National Planning Department, the High Office for Reintegration, and the Ministry of Social Protection, among others. We have consolidated information from these various offices and organizations in this letter, and would be very pleased to further discuss in detail any of the topics addressed.

It is important to recall that many of the issues raised in your letter cover state responsibilities outside the jurisdiction of the executive branch. In particular, the Office of the Prosecutor General in Colombia is part of the independent judicial branch and not the executive branch, and while we include information from the judicial branch as provided to us, it is important to recall that they are independent in their decisions and policy making, and that the separation of powers in Colombia between the judicial and executive branch is strictly defined.

Let me now briefly summarize some of our key initiatives that respond to the concerns you raise and then provide additional detail in the full text of letter below.

Criminal Justice Reform: From his first day in office, President Uribe's highest priority has been to reduce violence and put an end to impunity – this can only be realized through an effective criminal justice system. This program was outlined in the Democratic Security Policy announced by President Uribe on taking office in 2002.

On this overall foundation, our government has developed and implemented other key initiatives to improve our judicial process to effectively prosecute crimes against trade union members.

From his first day in office, one of President Uribe's main objectives has been to reduce violence and put an end to impunity. Among the initiatives that have strengthened our criminal justice system is the law passed in 2004 which transformed the system from a closed-door inquisitory system, to an open-court accusatory one. Cases now move much more quickly through our courts. At the same time, the government has invested significantly in our court system, and spending on The "plan which dramatically improves the speed of investigations and convictions," mentioned in your letter, has been implemented during the past six years as part of the battle against impunity. This policy seeks to generate a strong and effective institutional framework, and includes measures as decisive as the implementation of an accusatory criminal system; the dramatic increase in

the investment in the judicial branch grew 142% in five years. Part of the overall strategy also involves a comprehensive program to strengthen the Prosecutor General´s Office under the National Development Plan 2006-2010, which allowed for the creation of 2,166 new positions in January 2008; and increased salaries for judges, prosecutors, and other judicial branch employees.

Prosecutions of Crimes Against Trade Union Leaders: Our government has taken decisive action in close consultation with the trade union confederations of Colombia, to make clear that crimes against labor leaders will be prosecuted and punished. Most importantly in this regard, in 2006 a special Sub-Unit for Crimes Against Labor Unions was established within the Office of the Prosecutor General. In addition the government worked with Colombia's judicial branch to appoint three judges dedicated exclusively to resolving cases of crimes against union members, and they will be kept in place as long as it is necessary. Moreover, the government has significantly increased budget and reformed the operation of the protection program that provides security to any labor leader under threat, and in 2008 we have implemented a rewards system for information leading to the arrest of those responsible for acts of violence or that prevent such acts against a union member.

We believe the results of our efforts to provide security are being seen, both for the Colombian people overall and trade unionists in particular. Homicides of union members has decreased by over 80 percent since 2002, and the decrease in homicides for the population in general has been cut over 40 percent during the same period.

And as we provide resources to the criminal justice system to better protect union members and prosecute the crimes committed against them, we have also taken steps to improve and expand the avenues for dialogue and confidence-building between trade union, employers and government officials. Indeed, President Uribe, a former official of Colombia's Ministry of Labor, lends his personal authority to such efforts by hosting regular meetings with the leadership of Colombia's trade union confederations. And while they may have differences on many issues of policy and politics, President Uribe is personally committed to such dialogue as a positive development for Colombian society.

This policy to build confidence and dialogue and mutual commitment to better defend the rights of Colombia's workers and to protect them from violent attack, is also given content by the **Tripartite Agreement for the Freedom of Association and Democracy** signed in 2006 at the ILO by trade union, employer and government officials. This Tripartite Agreement provides the

blueprint to promote the fundamental rights of workers, foster social dialogue, and implement programs to combat both violence against workers and impunity.

In addition, Colombia financed the establishment of an **ILO representative office**, which started operations in 2007, and has already received US $3.5 million in funding of the US$ 4 million pledged by the Government of Colombia. These funds finance programs that support the objectives contained in the Tripartite Agreement.

Labor Law Framework Reforms: The Uribe government has also built upon the progress made by prior governments in resolving outstanding issues at the ILO with regard to Colombia's labor law framework. Indeed, the Uribe government has established a robust record in making progress on the remaining issues. Specifically, in 2008 laws were passed to strengthen the supervision and legal framework of cooperatives (Law 1233 of 2008); and the decision to transfer the power to determine the legality of strikes from the executive branch to the judiciary (Law 1210 of 2008), and moving the authority of the executive to impose arbitration in cases of strikes (Law 1210 of 2008).. Other major reforms passed by the Uribe Administration include the adoption of a new labor code for minors and adolescents (Law 1098 of 2006), and the creation of an oral procedure for labor justice cases (Law 906 of 2004). Most recently, concerns about the union registration procedure law in Colombia have been resolved by the Constitutional Court (Ruling 695 of 2008) which prevents discretion by the Ministry of Social Protection in whether to register a union that has filed its by-laws. Our government is also in the process of developing a major reform of the labor inspectorate function.

The Fight Against Impunity

High levels of violence, coupled with structural deficiencies in the Colombian justice system were responsible for high levels of impunity in the past.

The commitment to **end violence** has been the cornerstone of Colombia's policy of Democratic Security, which strives for the creation of opportunities for all Colombians – including union members. **Addressing deficiencies in the justice system** is making an impact. Nonetheless, we are moving forward on these objectives within a very complex climate and an ongoing armed confrontation with criminal organizations involved in the illegal drug trade and other forms of organized crime.

Reducing Violence and Strengthening Criminal Accountability

Since August of 2002, the Colombian government has implemented the policy of Democratic Security, seeking to recover and restore institutional and public order, and to guarantee the exercise of fundamental rights for all Colombians. The accomplishments are encouraging.

With regard to homicides, nationwide, there were 28,837 homicides in 2002, a rate of 66 homicides per 100,000 inhabitants. The year 2007 ended with 17,198 homicides, a rate of 36.2 per 100,000, and a reduction of 45.2 percent. Mass homicides decreased even more dramatically, from 115 cases involving 680 victims in 2002, to 26 cases with 128 victims in 2007, a reduction of 77.4 percent in the number of such cases, and of 81.2 percent in the total number of victims.

More, terrorist attacks dropped from 1,645 in 2002, to 387 in 2007, a reduction of 76.5 percent. Extortive kidnappings, perpetrated mainly by FARC and ELN rebels, dropped 87 percent in the same five year period, from 1,708 in 2002, to 226 in 2007. In general terms, the decreases in these key indicators of violence have been progressive and consistent, and the result has not only relieved the Colombian people from intolerable and brutal crimes, but also contributed to economic growth, increased social investment, and the creation of formal and productive employment

The existence of illegally armed left and right wing narco-terrorists groups was and remains at the core of the levels of violence in Colombia. Besides the program to strengthen security and improve the judicial system, President Uribe undertook the initiation of a peace process. This process, based on principles of truth, accountability before the courts, full confessions for all crimes, and reparations for victims, has resulted in the demobilization of 31,192 combatants of paramilitary groups, as well as 17,161 men and women belonging to guerilla groups (80 percent from FARC) since 2003. These former combatants and militia must turn in their weapons, demobilize, confess in full to their crimes (known as "*versiones libres*"), provide the information necessary to dismantle the criminal organization with which they were associated, and turn over illegally obtained assets to be applied to reparations for victims.

With the Peace and Justice Law (Law 975 of 2005), our country took on the challenge of searching for peace while offering the option of demobilization for members of illegal armed groups, which for over 50 years have threatened our society and our democracy.

Law 975 has resulted in over 2,000 men and women being imprisoned. This means that there are more people in jail in Colombia for human rights violations than has occurred in all other post-conflict and post-dictatorship situations combined for all the countries of Latin American.

This process has contributed greatly to the reduction of impunity, not only by reducing the number of violent actors in Colombia, but also because confessions by demobilized combatants and militias have become an important source for solving hundreds of crimes. To date, 1,176 confessions (Attachment 1) have been heard and 329 are under way. In these depositions, over 11,000 criminal acts have been catalogued with over 14,500 victims. Over 1,600 bodies have been exhumed and as of September 2008, 223 of the victims have been identified and their remains returned to their families. Of the victims mentioned in these confessions, 166 have been identified as union members – with 142 of these having been fully identified. (Attachment 2). The Attorney General's office is currently investigating and verifying the identity of the remaining 24 victims.

A renewed confidence in our legal institutions has led to an increase in cooperation by the victims of crimes – who may have previously been afraid to come forward – and facilitated the processing of cases.

The reparations provided to the victims of the violence also constitute a fundamental part of the strengthening of justice in Colombia. Law 975 of 2005 created the program for victim reparation. As of today, the Registry of Victims of the Office of the Attorney General has recorded 161,737 victims. The total cost of reparation could reach US$5 billion[1], of which US$274 million has been appropriated in the 2009 budget. So far, the demobilized have surrendered 4,619 property assets to the reparation fund.

Of the 3,341 persons participating in the Peace and Justice Law process, 14 ex-commanders were extradited to the United States on May 13 of this year. The U.S. and Colombian authorities involved have agreed that any assets turned over by these defendants will be used for reparation of the victims in Colombia (as is done with those in the Justice and Peace process who remain in the country). Additionally, the US Department of Justice is closely cooperating with the Colombian authorities to promote the active and continued participation of these former leaders in the Justice and Peace process, and to assure their return to Colombia once they have finished their sentences in the United States.

[1] The exchange rate of the Colombian peso vs. the US dollar in this document is COP$2004.58 for US$1, the same exchange rate used in the labor progress reports that the Embassy of Colombia has shared with Members of the U.S. Congress over the past 2 years.

The confessions of the demobilized and the renewed willingness and confidence of the victims to participate in the process has also helped expand the investigations throughout all aspects of Colombian society that may have been involved with the criminal activities of these armed groups. At the moment there are 68 members of the Colombian Congress and six mayors under investigation. To date, five Congressmen, two ex--Congressmen, and one Governor have been convicted. At the same time, 100 businessmen are also being investigated for past crimes. These ties from the past remain of great concern. The Justice System has taken independent and effective actions, and for the first time in the history of the country is investigating criminal links – not only with the paramilitary movements, but with all the illegal armed groups.

In this context, it is important to understand that in criminal proceedings, Members of Congress in Colombia are currently tried exclusively by the Supreme Court of Justice. Recognizing the problems inherent in a system where Members of Congress are investigated, prosecuted and judged solely by the Supreme Court, the Government proposed a reform to the system in order to provide Members of Congress a right of appeal consistent with norms of due process. In addition, the proposal was also made to separate the functions between the investigation and prosecution and the judges that must reach a verdict. These proposed reforms – far from undermining the Court as some have suggested– attempt to address the current anomaly in the Colombian judicial process for members of congress and would provide due process.

Justice Sector Reform and Institutional Strengthening

The Uribe government initiated a constitutional reform of the judiciary and passed Law 906 of 2004, which implemented an accusatory system, based on an expedited, more transparent and effective system of oral depositions and public confrontation of evidence, replacing the traditional inquisitorial style written system. Beginning on January 1, 2005, a rollout of these significant reforms began in different regions of the country. This changed the way prosecutors, judges, defense attorneys, investigators and all judicial operators learned and practiced criminal law in Colombia. In fact, the country has yet to see the first group of law school graduates (a five year program in Colombia) who have been educated in the new system from the first day of college.

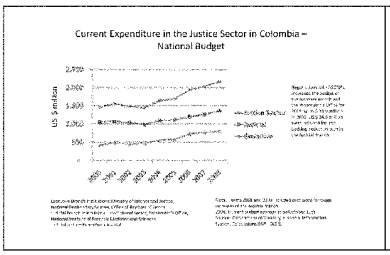
Today, the new judicial system is operating throughout most of Colombia. Results have been very favorable. The reduction in average processing time for a case varies from 39 to 87 percent, depending on the type of crime investigated. Greater public confidence in the criminal justice system is reflected in the

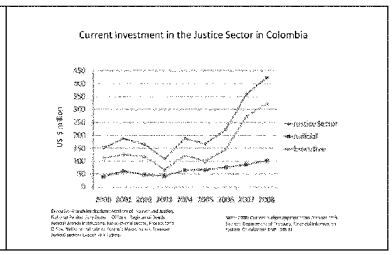
significantly increased numbers of complaints and witnesses who are coming forward to offer evidence in new and old cases. Plea bargaining and plea agreements have provided greater flexibility to the system and an important source of information to expand investigations in criminal cases. The public and press can observe proceedings, including the presentation of evidence, arguments and decisions of prosecutors, defense attorneys and judges. This was not possible under the old system.

This historic transition is taking place at the same time as a peace process and subsequent reintegration of over 40,000 persons is under way, as armed confrontation with terrorists and criminal organizations continues, and the fight against drug trafficking is waged. All these elements put additional pressure on the justice system.

The United States has been supportive of this new criminal justice system in many ways, including training in the accusatory system in areas such as trial advocacy for prosecutors, court proceedings for judges, investigator-as-a-witness training for police, expert witness training for forensic scientists, recognition of evidence in the crime scene, interview techniques and other training for judicial personnel.

To manage and implement all of these reforms and demands expenditure in the judicial branch has been drastically increased. Between 2003 and 2008, government current expenditure in the judicial branch increased by 71 percent, while investment expenditure increased by 266 percent.





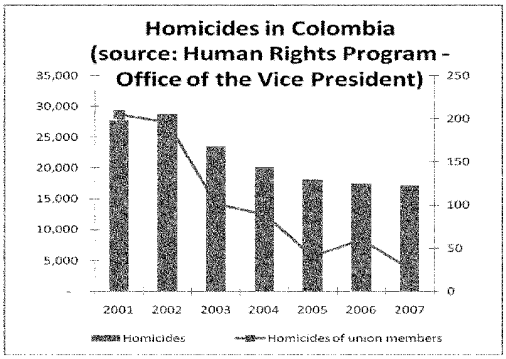
The commitment to the justice system is also included as a clear priority of the National Development plan for 2006-2010, which foresees a four year investment of US$1.3 billion to strengthen the Judiciary. In addition, in 2008 two multilateral loans will be signed to further support the justice system. The first initiative with the World Bank will dedicate US $40 million for increasing management

capabilities for the administration of justice, development of human resources in the judiciary, and steps to further facilitate access to justice. The second initiative with the Inter American Development Bank commits US $25 million for strengthening high courts, improving service to citizens, and optimizing judicial operations.

Meanwhile, resources and personnel have also been greatly expanded for the Office of the Prosecutor General. Most recently, a decree issued by President Uribe in January 2008 created some 2,166[2] new positions in the Prosecutor General's Office, with an increase of 753 employees for the Peace and Justice Unit, and an increase of 303 employees for the Human Rights Unit.

Protection and Justice for Trade Union Members

The violence in Colombia during the last 50 years affected all Colombians, including the members of union movements. The efforts pointed out above have had positive effects, and the overall violent crime rates have been reduced dramatically since 2002, when President Uribe took office, and show an even more pronounced decline for trade union members.



[2] 418 prosecutors, 545 investigators, and 1,203 support and administrative staff for the Justice and Peace Unit, the Human Rights and International Humanitarian Law Unit, the Money Laundering and Asset Siezure Units, the Protection Program and the Las of Infancy and Adolescence.

When considering the statistics presented by the National Union School, which estimates that 1 million Colombians are affiliated with unions, the annual rate of homicides for this population has declined from 20 per 100,000 in 2002 (versus 66 per 100,000 inhabitants for the general population) to 2.6 per 100,000 in 2007 (versus 36.2 per 100,000 for the general population).

In addition to the measures described in the previous section to fight impunity, the Government has also taken important steps aimed specifically to protect union members and to push for accelerated investigations, prosecutions, and trials of the historic cases of violence against union members.

On October 31, 2006 the **Sub-Unit for crimes against union members** was created within the National Unit for Human Rights of the Office of the Prosecutor General. The Sub-Unit initiated its activities with 8 regional public prosecutors, and 5 public prosecutors in Bogotá, all with the exclusive mission to review human rights cases. Today, the Sub-Unit has doubled in size to include 10 regional public prosecutors and 9 public prosecutors in Bogotá who review cases of human rights violations, including those of union members. As of October 20, 2008, the Sub-Unit has the support of 43 investigators of the CTI, 53 investigators of the DIJIN, 19 assistant public prosecutors, and 13 lawyers.

The creation of the Sub-Unit was the result of commitments included under the June 2006 Tripartite Agreement for the Freedom of Association and Democracy signed by the Government and Colombia's trade union confederations and employer associations. The Sub-Unit used as its starting point for investigations the crimes and violations reported by Colombia's unions to the ILO and incorporated under ILO Committee on Freedom of Association Case 1787.

Based on a review done by the Ministry of Social Protection of the complaints reported to the ILO under Case 1787 (Attachment 3), at the end of 2006 the crimes alleged against trade union members over the last two decades involve some 845 homicides, 31 attempted homicides, 80 detentions, six illegal searches, 104 kidnappings or disappearances, 270 threats, and 74 cases of other types of crimes.

Altogether, the work of the Sub-Unit began with this listing of 1,410 acts of violence as referenced under ILO Case 1787 that have since gone through a process of verification, identification, and confirmation of identities and crimes. Further, on the basis of the 2006 Tripartite Agreement and on the basis of consultations with Colombia's trade union confederations, agreement was reached on a list of crimes from these cases that were to be designated as

priorities for investigation and prosecution (Attachment 11), and routine consultations on progress involving these cases is also provided to Colombia's trade union confederations.

In undertaking its work and identifying the cases to be prosecuted, the Office of the Prosecutor General has undertaken a comparison of three lists of victims (homicides, kidnapping, extortion, etc.):

1. MSP: The Ministry of Social Protection – MSP – consolidated the victims reported under ILO Case 1787. This list had 1,302 victims
2. SCAUM: The list of victims in the National Human Rights and International Humanitarian Law Unit's Subunit for Crimes against Union Members of the Office of the Prosecutor General
3. ENS: The list provided by the *Escuela Nacional Sindical* (ENS).

The Office of the Prosecutor General reports that:

- There are 455 victims that are both on the MSP and SCAUM lists
- 847 victims on the MSP list (derived from ILO Case 1787) are not in the SCAUM list
- 221 of the 847 victims on the MSP list but not on the SCAUM list are on the ENS list.

Therefore, 676 (455+221) victims have been positively verified to date and are under the jurisdiction of the SCAUM. Of the remaining 626 victims, 455 are being investigated by prosecutors not in the SCAUM. There is not sufficient information on the remaining 171 victims to make a positive identification, and more information is being sought. The process of identifying all of the individual cases is ongoing between the Ministry of Social Protection and Colombian unions. In parallel, the MSP and the Office of the Prosecutor General are also comparing information to try to achieve a single consolidated list of victims of crimes against union members in the near future.

The listing of 2,669 homicides and forced disappearance that we think you are referring to in your letter was sent by the three union confederations CUT, CGT and CTC to the ILO the 12 of June of 2008, and received by the Mission of Colombia to the ILO in Geneva on June 13, 2008 (Attachment 4). The Ministry of Social Protection is now cross-referencing this new list with the one it had consolidated of case 1787 to identify any new victims. Until this new list was developed by the ENS, the Ministry has given priority to the list of victims in ILO Case 1787 and it has been considered the fundamental reference for the work of the Sub-Unit of the Office of the Attorney General. Of course, appropriate

attention and review will be given to the new list provided to the Colombian authorities as work continues on the priority cases already developed based upon the existing caseload.

The results of the Sub-Unit's work have been noteworthy. Annexed to this document is the Sub-Unit's report of October 20, 2008, which indicates that of the 147 sentences issued since the year 2000 (Attachment 5), 66 percent (97) have been issued since the creation of the Sub-Unit, and 98 percent since President Uribe was elected in 2002. These judicial decisions include convictions of both **material and intellectual perpetrators** of crimes against union members, and have led to the arrest of 148 persons. The Government is committed to finding not just material authors of the crimes against union members, but the intellectual perpetrators as well. In this regard, the confessions that have been received in the Justice and Peace process which I described earlier have already revealed the intellectual authors of 166 cases of crimes against union members, and we expect this number to increase as the process continues.

Further, you mention three specific criminal cases in your letter, and I would like to give you an update based on information received from the Office of the Prosecutor General. The Office of the Prosecutor General continues its investigation in the case against Jorge Noguera, and the most recent procedure in the case occurred in August. In the case of Luciano Enrique Romero Molina, there are two persons currently under investigation, besides the two convictions already obtained. Finally, in the case of Jairo Dario Hoyos Franco, as you point out there is an outstanding arrest warrant for Carlos Alberto Monroy, and the authorities are actively searching for him.

As you noted, the judicial decisions are important not only from the legal standpoint, but also in providing peace of mind for the relatives of the victims. It is important to note that the judicial decisions are available to the public upon request by any citizen.

Moreover, the issue of disseminating the case results has been discussed on a tripartite basis and it has been agreed that the court decisions will be published on the website linked to the on-going ILO Project for the Strengthening of Social Dialogue, Fundamental Rights in the Workplace and Labor Inspection. Copies of almost all the 147 decisions are now available, and they will be posted in the coming weeks. This will make them easily accessible for any interested person. Those concerned about the cases, including the judge's findings of motive, can now go directly to the decisions themselves.

In addition to this endeavor, Mr. Jose Niro Sanchez, who was a judge specializing in violence against union members, has joined the ILO's Project for the Strengthening of Social Dialogue as a consultant. His task will be the creation of an office to monitor criminal cases against union members and industrialists, which is described in more detail below.

The Human Rights Division of the Office of Prosecutor General has been a key tool in strengthening the capacity of the Colombian state to respond to human rights and labor rights crimes. Building on this success, a process has begun to establish similar expertise among all the local and regional public prosecutor offices in the country, with the goal of having knowledgeable prosecutors and investigators specializing in human rights throughout such offices nationwide. This project is in its preliminary stage and, given the technical and financial requirements involved; it will take some time to implement.

As previously mentioned and noting your interest in this matter, you will recall that in July of 2008 the Superior Council of the Judicature created three **specialized courts** for cases of violence against union members. With respect to your concern about the temporary nature of these judges, annexed to this document is the communication received from Dr. Hernando Torres, President of the Superior Council of the Judicature (CSJ) (Attachment 7), which is the responsible organization on the tenure of judges. In particular, the CSJ stipulates that the courts are permanent, and will be supported consistent with the on-going need for their service. Therefore, there will be no interruption in the processes, and the court's exclusive designation for cases of union members will continue as long as there is a necessity.

It is worth noting that despite the judicial strike that paralyzed justice in Colombia for 44 days, and which ended on October 14, these three courts operated without interruption as of September 15, 2008. This agreement appears in the transcripts of the conciliation meeting held on September 12, 2008 (Attachment 8). It reflects the commitment of both the judicial and the executive branches in their fight against violence and impunity. The strike was lifted when ASONAL accepted the offer made by the Government, including salary adjustments worth US$55 million, and new negotiations in May 2009.

Just as the government has invested in a judicial process to end impunity for crimes against trade union members, we have also made significant investments in their protection..In 2008 there were 1,433 union members participating in the Government's protection program. It is worth noting that the record for this

program is encouraging and no union members that have sought its protection have been killed. The resources dedicated to trade union protection represents 30 percent of the budget for the entire program to protect vulnerable populations. The budget for this program has grown by almost 300 percent since 2002, and amounted to U.S. $ 42 million in 2008. Currently there are 463 people assigned to protect trade unionists, including 19 bodyguards of the DAS, 432 bodyguards hired by the Ministry of Interior and Justice, and 12 escort agents of the National Police.

Additionally, the Government has implemented a program of rewards for information leading to the capture of perpetrators of acts of violence against trade unionists, as well as information to prevent these acts.

Recently, the Government presented a bill to Congress (PL 308 of 2008) that would increase penalties for homicides of union members. Currently sentences can range from 17 to 37 years, and the bill would provide for sentences that would range from 33 to 60 years of prison for the homicide of a union member.

The Inter-institutional Commission for Human Rights for Workers meets periodically. The members of this Commission include representatives from the Superior Judicial Council, the Prosecutor General's Office, the Human Rights Office of the Vice-President's office, the Ministry of Interior, the three labor confederations, as well as the ILO representative in Colombia and the three specialized labor judges who exclusively hear labor violence cases. This group discusses the most effective measures to move the investigation of labor cases moving forward and ways to provide ever more effective protection to union members and leaders.

Despite the efforts outlined, in the first half of 2008 there was an increase in murders of trade unionists compared with the previous year. The Office of the Prosecutor General and the Judicial Police have achieved progress in some of these investigations. Three cases (Omar Ariza, Favier Dario Pelaez Cataño and Luis Enrique Gutierrez) have been resolved. The outstanding cases are actively being investigated.

On July 16, a meeting was held to assess the situation. The Minister of Interior and Justice, the Minister of Social Protection, the presidents of the CUT and CTC, the Secretary General of the CGT, the Acting Director of the Office of the Prosecutor General, the Director of DAS and the delegate of the Director of the National Police took part in the meeting and agreed on the following action items in response:

- strengthen the group of prosecutors who investigate crimes against trade unionists;
- develop a campaign in the media defending the rights of trade unionists;
- convene a meeting of employers, union leaders and government to establish a joint mechanism to support freedom of association and take measures to punish those who violate this right;
- optimize the mechanism for early warning and reinforce the prevention protocol to identify critical cases of threats;
- create a Communications Network to address warnings of threats in real time;
- report by the Police Department commanders regarding the risk and protection of trade unionists in their jurisdictions;
- offer rewards for information leading to the capture and conviction of those guilty of crimes against trade unionists.

We believe that these additional policies, along with the other on-going efforts are having an impact. Fifty percent (16 of 33) of the homicides which have occurred during the first 10 months of 2008 happened in the first quarter of the year. It is also worth pointing out that none of the 2008 victims had applied for protection or had reported threats to the authorities.

We are confident that with the initiatives described above, the huge amount of information that is being uncovered in the Justice and Peace process, and the increased willingness of victims to come forward, Colombia is well on the road to maintaining security for trade union members, increasing the level of convictions for crimes against them, and strengthening the justice system and democratic institutions. The Office of the Prosecutor General and the state agencies involved are completely committed to identifying, capturing and convicting the perpetrators of these crimes. The full implementation of the accusatory criminal system, which was previously outlined, and is still in its first years, will undoubtedly also contribute to this end.

Colombians are anxious to discover the truth behind the violence that has plagued our nation for so many years – yet we know the violence of half a century will not be erased in a few years. The process of reconciliation and truth has only just begun, and it will take time. We acknowledge that there are cases where we may never know the full truth. Nevertheless, we are committed to continuing to work to resolve all cases. The constant support of allies such as the United States has been fundamental in the fight against impunity, and maintaining this cooperation will be an important factor in continuing on the road to peace and security.

The labor environment

The creation of an environment of dialogue and cooperation among the three pillars of labor relations – workers, employers and government – has been a priority since the beginning of the Uribe Administration. The Tripartite Agreement on Freedom of Association and Democracy, signed in 2006 in Geneva, Switzerland, marked an important development.

As mentioned, the agreement led to the establishment of the Sub-Unit for cases of violence against union members, in the Office of the Prosecutor General, the opening of an ILO representative office in Colombia and various technical assistance projects being initiated with the support of the ILO. The Agreement has also served as a consultative mechanism for legislative changes.

In addition, other bodies with shared missions to protect trade union members and to improve the labor relations climate in Colombia include the Commission for Conflict Resolution, the Inter-Institutional Commission on Human Rights, and the Inter-Sectoral Commission for the Formalization of Public Employment.

The ILO representative office has been financed by the Government of Colombia. The GOC has contributed over $3 million of the $4 million it had pledged. The GOC and the ILO representative are actively searching for new sources of financing in the international community to strengthen the cooperation projects that it is undertaking.

The ILO cooperation projects in Colombia involve four themes:

1. Project for the Strengthening of Social Dialogue, focuses on fundamental rights in the workplace and the inspection, oversight and control of the workplace.
2. Project on generation of employment for poor women and heads of household.
3. Entrepreneurial technical cooperation project for 2,000 young adults.
4. Training project for the development and strengthening of capacities for the promotion of local economic development.

The Project for the Strengthening of Social Dialogue focuses on fundamental rights in the workplace and labor inspection. Among the activities carried out within this Project is the establishment of an observatory that will document and follow progress in criminal cases and threats against union members and their families, as well as against employers. This is the project headed by Mr. Jose

Nirio Sanchez, the former judge specializing in labor violence issues. The initiative seeks to support the work of judges, and prosecutors in this area. Specifically, the work entails the analysis of information related to crimes against union members and the resulting product is expected to be an instrument that can support the work of the judicial branch. The compiled information will constitute an academic and journalistic source at a national level.

Labor Law Developments

Colombia has a strong labor framework, which it continues to strengthen. This year Congress approved several laws that address ILO concerns and that strengthen the labor framework even further. The most recent changes include:

- Law 1210, July 14, 2008. The original bill was presented by the Government on November 23, 2007.
    - Before this law, the Ministry of Social Protection could determine whether a **strike was legal or not**. Law 1210 of 2008 transfers this authority to the judicial branch;
    - Before this law, the Ministry of Social Protection could call for mandatory **arbitration** between the parties in a strike. This law transfers the right to seek arbitration to the parties in the strike.

- Law 1233, July 22, 2008. The bill was presented by the Government to Congress on September 25, 2007. It responded to a concern that **cooperatives** had a de-facto financial incentive that could weaken worker rights due to the fact that they were not required to pay certain payroll taxes that employers had to pay for an under the labor code. The new law establishes the requirement that all workers in a cooperative must pay these social security contributions (covering health, retirement, loans for housing, training, family support and recreation). The Law also requires that workers of a cooperative receive compensation no lower than the minimum wage set by law.

As you can see, the work cooperatives law is very recent, and we have to allow some time for it to work and then assess its results. Cooperatives are a hiring form endorsed by the recommendation R193 on the promotion of the cooperative work issued by the General Conference of the ILO in 2002 and they constitute a positive work framework in many developing countries. We believe that the recent changes will remove any economic incentives to utilize cooperatives to avoid labor contracts, and we are committed to exercise strict oversight of the operation of cooperatives throughout Colombia.

Regarding your concern about the difficulties in the **registration of trade unions** in Colombia, it should be noted that on July 9, 2008, the Constitutional Court issued ruling C-695 (Attachment 9), establishing that the registration of the bylaws before the Ministry of Social Protection is automatic, therefore the Ministry cannot exercise control over the content of the bylaws and documentation. The Ministry has issued new guidelines to ensure the prompt and efficient implementation of this decision, which are now being applied. With this ruling, we believe any basis for continued concerns expressed about the difficulties of registration of trade unions has been removed by Colombia's courts.

On the modernization of **Labor Inspection, Oversight and Control System**: The government plans to begin a phased expansion of its personnel in the area of inspection, monitoring and control within the Ministry of Social Protection in the later part of 2009. This expansion will include 207 new workers in the Ministry tasked with upgrading the quality of labor inspections throughout the country. Of these, 135 are inspectors and the remainder is support staff. This initiative has been developed over two years with the broad backing of Colombian trade union organizations and the support of the ILO representative and the United States Agency for International Development (USAID).

The project to modernize the inspection system will be implemented in three phases, and the Government will invest over US$ 4.4 million for salary costs, and almost US$622,000 to improve infrastructure.

It is worth highlighting the cooperation received from institutions and international programs such as USAID project-Midas and the ILO itself, which have supported the Government in developing the new workplace inspection system. Among other benefits, these new tools will allow for a closer relationship with organized labor and workers, the creation of a culture of peaceful conflict resolution, an improvement in the quality and suitability of the services offered, an increase in the coverage of these services, greater availability of human resources, and increased proficiency by Inspectors and Conciliators. Attached you will find a fact sheet of USAID support in labor areas, including this one (Attachment 10).

Similarly, Law 1049 of 2007 was enacted as part of a process to reform and expedite the administration of justice, guaranteeing the rights of workers and employers through the implementation of **oral procedures in labor rights cases**. US$ 52 million have been allocated to implement the new oral procedure law for labor courts, of which US$ 12.7 million were appropriated for 2007 and 2008. The implementation of oral procedures in labor processes will take a

maximum of 4 years from January 1, 2008, when it began. The courts already using oral procedures in labor cases show a reduction of 66 percent in conflict resolution periods - thereby contributing to an improved work environment.

The improvement and progress in Colombia has been unprecedented in the history of our country and the region. This success is due to the extensive commitment of the Government to restore security throughout the country, strengthen institutions and create better conditions for the development of its citizens.

Colombia is approaching a post-conflict stage which puts us at a critical crossroads. The generation of jobs and the promotion of a healthy economy are vital if we are to ensure that the progress achieved to date is sustained and expanded, and so we can adequately meet the challenges that lie ahead. Our government will persist in its fight against the criminal actors and illegal armed groups that have disrupted our society for far too long. We will also continue in our efforts to create meaningful social investment programs to benefit all of our people.

The uncertainty facing the approval of the proposed U.S.-Colombia Free Trade Agreement limits the potential for economic growth. Each day of delay in the implementation of the free trade agreement embodies a lost opportunity to generate economic activity, which is the most effective contribution to building a safe, stable society at peace and seeking reconciliation among its citizens after decades of conflict.

We appreciate and share the concerns expressed regarding the legacy of violence and impunity we still confront and our efforts to better secure labor conditions in Colombia. I can only again assure you that these issues continue to be addressed as fundamental priorities of the government of President Uribe, and clearly, dramatic improvements have been made since 2002.

The absence of the Free Trade Agreement with Colombia hampers Colombia's economic and social development and our efforts to expand investment, create new and better jobs, and grow our middle class in the context of a strong democracy. Most of the countries in this hemisphere's Pacific Rim have agreements with the United States, and can offer stable and predictable market access conditions to your market. Without the FTA, Colombia is at a competitive disadvantage vis-à-vis these countries.

EMBASSY OF COLOMBIA, WASHINGTON DC

The issues raised in your letter are serious and complex, and cannot be fully solved from one day to another, but we are convinced that we are on the right track, and that strengthened and predictable economic ties with the United States, a critical ally for Colombia, will contribute to achieving the goals faster.

We also believe the FTA provides reciprocal economic benefits for the United States. The agreement will remove duties and restrictions on U.S. exports to South America's fourth largest economy. This access benefits not only major U.S. companies and agricultural interests, but mostly small and medium enterprises that export over $2 billion annually to Colombia. The FTA will open new opportunities for traditional U.S. suppliers to Colombia as well as open opportunities for new ones who will become more competitive from duty free access to our market.

While the economic argument for an FTA is very important, there can be no doubt that this Agreement has very significant implications for regional relations and can be of great support in reinforcing our shared goals for further positive institutional and economic development in Colombia.

I hope that you find this information useful. Please do not hesitate to contact me to look over any of these issues with greater detail or if you would like to discuss any of them personally.

Sincerely,

Caroline Barco

Carolina Barco
Ambassador

EMBASSY OF COLOMBIA, WASHINGTON DC

Attachments
Letter to Congressman George Miller from Ambassador Carolina Barco

1. Table with the 1,176 names of the demobilized paramilitaries who have given "*versiones libres*".
2. Table with the 142 reported victims identified as union members by demobilized paramilitaries and guerrillas
3. Review of the complaints reported to the ILO under case 1787 undertaken by the Ministry of Social Protection
4. Letter sent by the three union confederations CUT, CGT and CTC to the ILO on June 12 of 2008, received by the Mission of Colombia to the ILO in Geneva on June 13th, 2008.
5. Report of October 20, 2008, Subunit for Crimes against Union Members.
6. Sentences issued against union members since the creation of the Subunit for Crimes Against Union Members in the Office of the Prosecutor General
7. Letter from Dr. Hernando Torres, President of the Superior Council of de Judiciary, October 10, 2008.
8. Commitments of the conciliation meeting regarding the strike in the judicial sector in Colombia, held on September 12, 2008
9. Constitutional Court Ruling C – 695/2008.
10. Fact sheet of USAID support in labor areas.
11. 187 prioritized cases of crimes against union members
12. Letter from Congressman George Miller to President Alvaro Uribe, September 12, 2008

21

U.S. CONGRESS,
Washington, DC, September 12, 2008.

President ALVARO URIBE VÉLEZ,
Presidency of the Republic of Colombia, Bogotá, Colombia.

DEAR PRESIDENT URIBE: I was very pleased to learn that you will travel to Washington, D.C. next week to meet with Congressional leaders, and I look forward to

discussing our mutual concern over the historical and ongoing violence against Colombians who are labor leaders, labor organizers, or simply members of labor unions. As you know, I traveled to your beautiful country earlier this year and met with your Vice President and Attorney General, as well as various leaders from Colombian labor unions, human rights organizations, and the specialized labor judges that handle the significant backlog of labor-homicide cases. I am sorry that your travel schedule and mine prevented us from meeting last January during my stay in Bogotá, but I look forward to meeting with you and welcoming you to the United States.

Since I visited your country, I have written two letters to the Colombian government and sent my Committee staff on a return trip to Colombia to further investigate various labor issues, including the still-unexplained decision to remove Judge José Nirio Sánchez from his position as a specialized labor judge. I agree with the assessment of many Colombian observers—including your own Vice President Francisco Santos—that Sánchez was an excellent judge who was diligently working on Colombia's enormous backlog of labor-homicide cases. Nevertheless, in January 2008, the Consejo Superior de la Judicatura decided by a contentious split vote of 12 to 11 to remove Judge Sánchez from his position in the middle of open criminal cases pending before him. Unfortunately, I do not think we will ever know whether Sánchez was removed in retaliation for his politically-sensitive legal rulings that convicted high-profile defendants such as the violent right-wing paramilitary leader Salvatore Mancuso, several soldiers from the Colombian Army, and implicated the multinational Nestle Corporation in anti-labor killings. Because we may never know why Judge Sánchez was removed from his position on the bench, I believe it is now time to look forward. Our two ally nations should work together to help Colombia improve its labor laws, decrease the ongoing violence, and finally put an end to the impunity enjoyed by those who have perpetrated thousands of anti-labor killings.

These challenges have taken on heightened significance this year as the violence in Colombia has escalated. Even according to the statistics kept by the Government of Colombia, 2008 has already been a more violent year than all of 2007 in terms of labor-homicides. During only the first eight months of this year, the assassins have made more threats, caused more bloodshed, and taken more lives of labor leaders than they did in all twelve months of last year. Given this troubling context, I would like to discuss with you the urgent need for:

1) an effective, sustainable, and transparent Colombian system of justice to protect the rights of working people and vindicate the lives of the victims of anti-labor violence;

2) further investigation and prosecution of the intellectual authors who planned the attacks and killings of labor union leaders in Colombia; and

3) additional reforms to bring Colombian labor laws up to the minimum core labor standards set by the International Labor Organization (ILO) and cited by both the U.S. State Department and U.S. Department of Labor.

Indeed, the Democratic Majority in our Congress already recognized these exact challenges in Colombia by appropriating millions of dollars last year to help Colombia further develop the rule of law, prosecute human rights cases, and improve labor conditions. My colleagues in the Congress and I are quite proud that last year we improved on Plan Colombia by appropriating more funds to help Colombia address its very serious problems related to the issues of the ongoing anti-labor violence and weak labor standards. As you know, the ILO has issued repeated proclamations—as recently as June 2008—expressing serious concern over various deficiencies in Colombian labor law.

Thus, many members of our Congress are currently very disappointed that the Bush Administration has not yet even transferred to the Colombian Attorney General's Office the funds that we appropriated last year. If the Bush Administration had not created these inexplicable delays, the Government of Colombia could have already hired even more investigators and prosecutors, and Colombia might by now be several steps closer to creating an effective and sustainable system of justice to address the grave problem of anti-labor violence. However, I am hopeful that the next Administration will work more closely with the Government of Colombia to bring about improvements in Colombian labor laws and human rights, increased trade, and an even stronger relationship between our two ally nations.

In the meantime, I believe the United States Congress must continue to examine these issues and search for solutions. Indeed, one advantage stemming from our Congress' decision to postpone the vote regarding the proposed Colombia Free Trade Agreement is that it has given my colleagues and me additional time needed to assess whether or not Colombia has in fact created an effective and sustainable system of justice to combat anti-labor violence. In my capacity as Chairman of the Committee on Education and Labor, my staff and I have taken advantage of that

time by meeting regularly with Colombian human rights advocates and many Colombian government officials. I hope that this ongoing fact-finding work will allow Congress to provide helpful recommendations to the next Administration in the United States over how we can further strengthen our nation's relationship with Colombia in such a way that promotes increased trade and higher labor standards. As a first step in this process, please consider the following concerns about labor rights in Colombia.

I. The Need for an Effective, Sustainable, and Transparent System of Justice That Will Protect the Rights of Working People and Vindicate the Lives of Slain Labor Union Leaders in Colombia

According to the Escuela Nacional Sindical (ENS), almost 2,700 Colombian union leaders or union members have been murdered since 1986. The overwhelming majority of these killings remain uninvestigated and un-prosecuted by the Colombian Attorney General's Office. Moreover, at Colombia's current and disappointing pace of investigations and indictments, it would take the Attorney General's Office several decades to get through its entire backlog.

In the past months, various Colombian human rights attorneys have conveyed to me and my Committee staff the serious problems that still hinder Colombia's judicial system for addressing anti-labor killings. I have not created an exhaustive list, but I do respectfully ask that you please consider addressing the following problems so that Colombia's judicial system becomes more effective, sustainable, and transparent.

A) The temporary nature of the specialized labor judges.

Colombian Vice President Santos wrote to me on March 28, 2008, reporting that the Executive Branch had approved the budget for the Judicial Branch to create three permanent specialized courts to adjudicate the criminal cases stemming from anti-union homicides. However, in June and July 2008, the Colombian Judicial Branch approved two new decrees that still do not actually accomplish this goal. The first decree created three new permanent judicial positions, but without any mention of what type of cases those judges will hear. See Agreement No. 4924 (dated June 25, 2008). The second decree assigned those three permanent judges to exclusively hear labor-homicide cases, but only for a one-year period. See Agreement No. 4959 (dated July 11, 2008). Thus, when read together, these two decrees clearly demonstrate that the three specialized judges' assignments to hear labor-homicide cases will expire yet again in July 2009.

The Colombian Judicial Branch has already once allowed the expiration of the mandate of these three judges to cause disruptions in ongoing legal proceedings. As you will remember, these three judicial positions were allowed to expire for the first time on December 31, 2007. By the time I met with the three judges in Bogotá on January 12, 2008, they had been out of work for almost two weeks, had been forced to cancel January hearings for pending criminal trials, and they did not even know whether they would be allowed to ever return to work on the labor-homicide cases. Two of the three judges were eventually reinstated, and I understand that many of the January hearings were eventually rescheduled for the following month. Nevertheless, the expiration of these three judicial positions caused unnecessary disruption and delay, and I imagine we can both agree that the repeat of such a scenario should be avoided if at all possible.

Thus, I am reassured that some members of the Uribe Administration have recently expressed concern about the still-temporary nature of the position of the specialized labor judges. On August 23, 2008, the Colombian Ministry of Social Protection wrote informally to the Colombian Judicial Branch to inquire whether further changes would be made so that the three judicial slots would be guaranteed for labor-homicide cases not just through July 2009, but rather until the entire backlog of such cases has been fully adjudicated. (My Committee staff has a copy of the written inquiry on file). I ask that you please inform me of any response that the Ministry of Social Protection receives regarding its inquiry to the Judicial Branch. In addition, I would like to discuss with you whether the Government of Colombia will pledge publicly to continue the mandate for these three judicial slots to handle labor-homicide cases beyond July 2009 and until the entire backlog of labor-homicide cases has been completed.

B) The fact that the written judicial opinions in labor-homicide cases are not easily accessible by the relatives of victims, human rights attorneys, or the public.

When my Committee staff traveled to Colombia last month, we requested a copy of each of the 123 written judicial opinions corresponding to the 100 labor-homicide cases that have been adjudicated thus far. (Some murder cases result in more than one written sentence because the case may have multiple defendants). However, the Attorney General's Office told my Committee staff that it would be exceedingly dif-

ficult to provide a copy of all 123 of the written opinions because they are not stored by the Colombian government in one central location, but rather scattered throughout many government buildings in several different cities. The Attorney General's Office also explained that some of the 123 sentences may have gone missing due to bureaucratic complexities, and that in general, the Colombian government does not have sufficient resources to find and keep a central inventory of the written judicial opinions.

My Committee staff also made the same request to the head administrator of the Consejo Superior de la Judicatura, who seemed slightly more optimistic that it might be possible to eventually provide a copy of each of the 123 written opinions. However, we are still waiting for the Judicial Branch to respond definitively.

I imagine that you and I both agree on the importance of allowing the sons and daughters or spouses of slain labor leaders to easily access and read the judicial opinion that either convicts or acquits the person accused of killing their deceased family member. For those Colombians who have lost a loved-one to such senseless violence, the judicial record of the case against the killer is one small part of achieving justice. In addition, these written judicial opinions serve as important learning tools for human rights attorneys who plan on litigating similar labor rights cases in the future. While the decisions do not create binding legal precedent because they are issued by trial court judges rather than the Colombian Supreme Court, those written opinions nevertheless create a written record of an important and concerning part of Colombia's history. For all of those reasons, Colombian human rights attorneys have asked my help in persuading the Government of Colombia to make public and easily accessible all of the written judicial opinions, including all new decisions that are issued going forward.

Therefore, I would like to discuss with you whether the U.S. Congress should consider appropriating funds to help Colombia centralize and make public these judicial opinions as part of the next set of appropriations for Plan Colombia. As you know, under the leadership of Chairman David Obey and Chairwoman Nita Lowey of the Committee on Appropriations, last year the Democratic Majority improved on Plan Colombia by allocating greater amounts of funds dedicated to Colombia's efforts to develop the rule of law and improve labor conditions. It strikes me that any efforts to make public the judicial opinions in Colombian labor-homicide cases falls squarely within that goal of promoting the rule of law. In fact, the federal trial courts in the United States often publish their written judicial opinions on the internet within hours of the judge's final decision. Thus, I am interested in helping Colombia create such an internet-based system that will allow the Colombian public—and the families of victims in particular—to acquire easier access to the written judicial opinions in labor-homicide cases.

C) The secrecy by the Attorney General's Office as to the contents of its full backlog list of labor-homicide cases yet to be investigated and adjudicated.

According to the Colombian Attorney General's Office, approximately 1,300 union leaders or union members have been murdered or faced serious acts of violence in Colombia since the mid-1980's. However, this figure is only half the number of the approximately 2,700 murders for the same time period as chronicled by the Escuela Nacional Sindical (ENS). The ENS is Colombia's leading non-profit labor think-tank, and it has been cited by the U.S. State Department in its human rights reports related to labor violence. I am concerned that we cannot begin to compare and reconcile the names on the two lists because the Colombian Attorney General's Office refuses to release its list of names. Indeed, it will be impossible to know the true scope of the killings, and thus the scope of the work that lies ahead, until this is done. Recently, the leading Colombian labor union federations submitted a petition to the ILO complaining over the fact that the Colombian government refuses to share this information with them. To the contrary, the ENS has proven willing to subject itself to transparency and public scrutiny, having published and shared its complete list of approximately 2,700 union killings with the Colombian government, labor unions, human rights attorneys, and even my Committee staff. I therefore respectfully encourage the Office of the Attorney General to make this information available as soon as practicable.

D) The ongoing inaccuracies in the Attorney General's published statistics about the defendants' motives in completed judicial decisions in labor-homicide cases.

Colombian human rights advocates have expressed their concern that the Attorney General's Office may be publishing inaccurate summaries about the judicial determinations of the motives of the killers in labor-homicide cases. These summaries are created by the Attorney General's Office once per month, and they tally how many fully-adjudicated cases to date were found by the judge to have had various different possible motives. For example, a judge may find that the assassin's motive for killing the union leader was the deceased's pro-union activity. In the alternative,

the judge may find that the motive of the assassin who murdered the union leader was not the deceased's union-activity, but rather any number of other motives such as "personal issues" or "political activity." In order to create these documents, the prosecutors in the Attorney General's Office read each judicial opinion, decide what the prosecutors believe was the ruling of the judge, and then add up the number of cases that fall into each category. For example, the Attorney General's summary for July 2008 states that 21 murders had "union activity" as the motive, as compared to 8 cases with "personal problems" and 1 case with "political activity" as the motive.

The problem with these summaries, however, is that the statistics seem to fluctuate dramatically and illogically from month to month. For example, when I traveled to Colombia in early January 2008, the Attorney General's Office gave me the summary for December 2007, which claimed that as of that time the judges had found the "personal problems" motive in 10 total cases since the prosecutions began. However, as I just noted above, the July 2008 summary claims that there now are only 8 total cases in which "personal problems" was the motive. It is simply illogical that as the total number of judicial decisions has increased from last December to this July, that somehow the number of those cases in which the motive was found by a judge to be "personal problems" has somehow decreased. This irregularity leads me to believe that either the prior statistics were inaccurate, or in the alternative, the current statistics are the problem.

Unfortunately, because the Attorney General's Office does not place footnotes in these summary documents in order to explain which specific cases it considers to fall into each category, the public cannot verify the claims made in those summaries. I hope that in the future the Attorney General's Office will exhibit more precision when creating the summaries it distributes to members of the U.S. Congress and the public.

Finally, I want to note how much personal anguish the misclassification of the motive in a labor-homicide case can cause to the families of the victims of that violence. Please consider the example of Colombian labor leader Jorge Dario Hoyos Franco, who was tragically gunned-down by two assassins in the year 2001. When the Attorney General's Office began to investigate the case, the prosecutors' original theory was that the defendant—a Colombian Police Officer named Monroy—had wanted to kill Hoyos Franco as a "crime of passion" due to an alleged adulterous affair in which Hoyos was supposedly engaged. However, after this case went to trial in 2007, Judge José Nirio Sánchez rejected this original theory, finding that it had "fallen by its own weight" because the woman in question testified under oath that she did not even know Hoyos Franco. (Criminal Sentence against defendant Carlos Alberto Monroy, dated Aug. 14, 2007.) Therefore, Judge Sánchez ruled that the evidence in the case: demonstrates that the motive of the HOYOS FRANCO murder was not about a love affair, as was the focus of the investigation in the beginning, but rather [as demonstrated] by the statement made by the defendant [Monroy] to the previously mentioned illegal armed organization [known as the AUC], which during that time * * * drew up a list of union, civic, popular and communal leaders that in their estimation were military targets * * * [and because the] activities [in favor of labor unions by] the murder victim [Hoyos Franco] had [been] undertaken for several years and for that precise reason he was killed.

(Id.) This binding legal decision by a Colombian judge should have definitively settled the matter of the motive behind the killing of Jorge Dario Hoyos Franco. However, more than three months after the judicial opinion, the Attorney General's Office released a November 2007 document that still listed the Hoyos Franco case as one with the "personal problems" motive. (This document is on file with my Committee staff.) I am told that the young daughters and widow of the deceased union leader were pained that their own government continued to publicize the lie that their father and husband had allegedly committed an adulterous affair even after that theory had been discredited in a Colombian court of law. I understand that the family repeatedly petitioned the Attorney General's Office to revise the document and accurately classify the case, but that change was apparently not made until only recently.

E) The fact that the Attorney General's Office has not publicly committed to a work-plan for completing the entire backlog of the thousands of labor-homicide cases.

The Colombian Office of the Attorney General has made some modest progress in the last year in securing convictions in labor-homicide cases, especially compared to the situation only a few years ago when there were hundreds of labor-homicides per year and virtually no convictions whatsoever. As I understand it, there are now convictions in 100 labor-murder cases, and a corresponding 123 judicial sentences because some of those 100 cases have more than one defendant. Thus, if one takes the Attorney General's statistics of approximately 1,300 total cases, then Colombia

has secured convictions in only 7.6% of cases. If one takes the ENS statistics of approximately 2,700 murders, then Colombia has secured convictions in only 3.7 % of cases. In either event, the modest progress of the past year still leaves a highly troubling level of impunity for the perpetrators of these killings. Well over 90% of the murderers have escaped justice.

The Bush Administration has done far too little to help Colombia improve its labor laws and combat anti-labor violence. In fact, it was not until the leadership of the Democratic Majority that last year our Congress significantly increased the funds in Plan Colombia that are dedicated specifically to fostering the rule of law and prosecuting human rights cases. Almost nine months have passed, and disappointingly the Bush Administration has still not actually transferred those funds to the Colombian Attorney General's Office. I cannot think of a plausible reason for this delay, but I do wonder whether the Colombian Attorney General's Office might have investigated and brought more killers to justice if the Bush Administration had only exercised greater diligence and concern for these important labor issues. I hope that the next Administration will work much more closely with the Government of Colombia to help implement a plan that will eventually investigate, prosecute, and adjudicate every last remaining labor-homicide case. The family members of the slain union leaders deserve nothing less.

As I noted above, at Colombia's current pace of investigations and indictments, it would take the Attorney General's Office several decades to get through its backlog. Therefore, I urge the Government of Colombia—and the Attorney General's Office in particular—to publicly commit to a plan that will dramatically improve the pace of investigations and indictments, and thus assure members of the U.S. Congress that Colombia will achieve the goal of prosecuting every murder on the entire backlog list of labor-homicide cases.

II. The Need for Further Investigation and Prosecution of the Intellectual Authors Who Planned the Attacks and Killings of Labor Union Leaders in Colombia

Of the modest number of convictions that the Attorney General's Office has begun to win in the past few years, the vast majority of the cases have been against the "material authors" of the crimes (i.e. the man who pulled the trigger of the gun, or the man who stabbed the union leader to death with a machete). Such convictions are, of course, extremely important. I commend the Attorney General's Office for creating a special unit for prosecuting these labor cases, and I am hopeful that these specialized prosecutors will eventually bring indictments in the large number of murder cases that remain uninvestigated.

However, impunity will persist unless the Government of Colombia does more to investigate and prosecute the "intellectual authors" who ordered, planned, or paid for the low-level assassin to perpetrate the killing. For example, serious allegations have been leveled against a cabinet-level official in the Uribe Administration, high-level military officers in the Colombian Army, top right-wing paramilitary leaders, and even some multinational corporations. In some of these cases, the Colombian specialized labor judges have issued Court Orders requiring the Attorney General's Office to investigate such alleged intellectual authors. But to this date, very few such investigations and prosecutions have gone forward. Therefore, I want to mention three emblematic cases in which the Colombian government's efforts to investigate, prosecute, or imprison the alleged intellectual author of the anti-union homicides have thus far failed.

A) Jorge Noguera of the Uribe Administration.

As you know, Colombia's former intelligence chief—Jorge Noguera—was arrested in February 2007 and indicted for helping violent right-wing paramilitaries to infiltrate the highest levels of the Colombian government. Mr. Noguera—who reported directly to the President as the director of the DAS ("Departamento Administrativo de Seguridad")—allegedly facilitated Colombian government cooperation with several paramilitary groups, particularly the "Northern Block" led by the violent narcotrafficker "Jorge 40." Sadly, Noguera is not the only high-level Colombian government official caught up in this "Para-Politics Scandal." Indeed, the Colombian Supreme Court has recently indicted almost 30 members of the Colombian Congress for colluding with the right-wing "AUC" paramilitary organization, which the U.S. State Department has officially classified as a Foreign Terrorist Organization. The Colombian Supreme Court has also launched formal investigations into another 30 members of the Colombian Congress. In response, the Uribe Administration has recently proposed stripping the Supreme Court of its long-standing jurisdiction on this matter, which would quash any further investigations.

I raise this complicated and troubling issue because the allegations against Noguera are directly related to the labor issues that constitute the focus of this letter. Specifically, Noguera is accused of compiling lists of the union leaders under

government protection and then giving those lists to the paramilitaries so the union leaders could be targeted for death. Several of those very union leaders were reportedly threatened or killed. If the Colombian Attorney General eventually proves this allegation in court, the Noguera case will constitute perhaps the most dramatic of several examples of direct Colombian government participation in anti-labor violence and killings.

Unfortunately, more than eighteen months have passed since the original indictment was filed in February 2007, and the case against Noguera has completely stalled due to procedural mistakes made by the Attorney General's Office. The Colombian Supreme Court has found that the evidence and allegations against Noguera are legally valid, but the Court has rejected the case for procedural reasons on two consecutive occasions. As a result of these ongoing prosecutorial mistakes, Noguera was released from prison in June 2008 and he currently remains at large. I understand that the Attorney General is now preparing to re-file his case.

Several Colombian human rights attorneys have expressed their concern to me and my Committee staff that the continual procedural defects and corresponding delays are not typical. Thus, these Colombian observers worry that the politically-connected Noguera will ultimately go free without even facing a trial. Therefore, I would like to discuss this case with you when we meet. In particular, I would like to hear your thoughts about whether your Attorney General's Office will ever bring the Noguera case to trial.

B) The murder of labor leader Luciano Enrique Romero Molina, and the Colombian Court Order to investigate the Nestle Corporation.

In late 2007, Judge José Nirio Sánchez issued a 110-page legal ruling in a case stemming from the brutal murder of a Colombian labor leader named Luciano Enrique Romero Molina. As Judge Sánchez explained in his decision, in late 2005—months after passage of the "Justice and Peace" Law—Molina was scheduled to testify before an international human rights tribunal in Switzerland regarding the labor conditions at a Colombian factory of the multinational Nestle Corporation. However, just weeks before his scheduled testimony, Molina was abducted and tortured by paramilitaries. When Molina refused to give them information about his complaints against the Nestle Corporation, the paramilitaries stabbed him to death with more than fifty strikes of a machete.

Judge Sánchez convicted the individual defendant who was directly responsible for the killing, but significantly, he also ordered an investigation into whether the Nestle Corporation was in any way responsible for ordering the killing. While courts outside of Colombia——such as the Inter-American Court for Justice and the federal courts in the United Status—have dealt with cases in which multinational corporations have been accused of playing a role in anti-union violence in Colombia, Judge Sánchez's ruling appears to be groundbreaking for the Colombian courts. According to human rights observers in Colombia, this was the first judicial decision since the backlog process began in which one of the three Colombian specialized labor judges called for an investigation of the possible role a multinational corporation in the assassination of a Colombian labor leader.

Last month, my Committee staff inquired about the status of this investigation while visiting the Attorney General's Office in Bogotá. We were told that the prosecutor and investigator assigned to the Nestle case had not done anything whatsoever to advance the investigation because they did not feel there was sufficient evidence to warrant any further efforts. According to their own admission, the prosecutors in the Attorney General's Office have apparently decided not even to interview or take the depositions of the management of the Nestle workplace or of any of the deceased's former coworkers. I would like to discuss whether you believe the Attorney General's Office should abide by the Court Order of the now-displaced Judge José Nirio Sánchez and conduct an actual investigation into this serious matter.

C) The Colombian Police Officer who planned the assassination of labor leader Jorge Dario Hoyos Franco has been convicted in absentia, and therefore has not served a single day of his 40-year sentence.

As discussed in Section One of this letter, the well-known Colombian labor leader Jorge Dario Hoyos Franco was gunned-down by two young assassins who drove by him on a motorcycle late at night in March 2001. Prior to his murder, Hoyos Franco had been receiving regular death threats related to his union leadership. He had even faced several unsuccessful attempts to kidnap him. Within a few years of Hoyos Franco's murder, the Attorney General's Office had successfully convicted the two material authors who were paid to shoot him. However, the intellectual authors of this crime still remain at large to this day.

Several years after the first trial convicting the two young assassins, the Attorney General's Office began to investigate one of the alleged intellectual authors. The investigation focused on a man named Carlos Alberto Monroy, who had served as a

Colombian Police Officer at the time of Hoyos Franco's assassination. The Attorney General's Office decided to prosecute Monroy in absentia, as is allowed pursuant to Colombian law. Judge José Nirio Sánchez presided over the trial and heard testimony that Officer Monroy had provided the assassins with their motorcycle and firearms, and that he had paid and directed the young men to perpetrate the murder. Judge Sánchez convicted Monroy and sentenced him to 40 years in prison. However, Monroy is still at large and has not served a single day of his prison sentence.

The family of Jorge Dario Hoyos Franco has urged the Attorney General's Office to find, capture, and incarcerate Monroy, but thus far these efforts have not proven successful. In addition, the family has urged the Attorney General's Office to continue investigating the additional alleged intellectual authors of this one assassination. Until those two things happen in this case, impunity will persist.

III. The Need to Reform Colombian Labor Laws to Reach the Minimum Core Labor Standards Set by the International Labor Organization and Cited by both the U.S. State Department and U.S. Department of Labor

Before the U.S. Congress took up a vote on the Peru Free Trade Agreement last year, Peru undertook measures aimed at bringing its legal regime fully into compliance with the core international labor standards. In contrast, Colombia has still not completed such measures. Therefore, it is my sincere hope that the next Administration in the United States and the U.S. Congress will work cooperatively with the Government of Colombia to help further improve Colombian labor laws.

Indeed, this work is critical because the ILO, the U.S. State Department, the U.S. Department of Labor, and other international labor advocates have all identified a large number of areas in which Colombia's labor laws are non-compliant with the core international labor standards. I will not list all of them below, but I do want to mention at least some of the problematic areas of law that Colombian workers and labor advocates most often raised with me during my Committee trip to Bogotá.

A) "Workers' Cooperatives" that create a legal fiction that misclassifies workers as "self-employed" and thus robs them of their right to join unions and bargain collectively.

When I was in Colombia earlier this year, I met with workers and labor advocates in numerous sectors of the economy—from the flower industry to manufacturing to health care—who told me that the legal arrangements called "Cooperativas de Trabajo Asociado"—or "Workers' Cooperatives"—were preventing them from exercising their fundamental labor rights. Under this controversial labor arrangement, an employer can hire a worker, but nevertheless deem that worker to be "self-employed" so that the worker loses the legal right to join a union or bargain collectively.

According to the most recent U.S. State Department Human Rights Report on Colombia, "[t]he continued growth and prevalence of workers' cooperatives further diminished collective bargaining." (U.S. State Department Report, dated March 11, 2008.) In fact, the State Department acknowledged that many Colombian employers inappropriately utilize Worker's Cooperatives to create a legal fiction that harms workers: "Most cooperatives engaged in subcontracting, and in some cases, private sector employers forced workers to form cooperatives and were themselves managing the cooperatives' daily operations." (Id.)

In July 2008, the Colombian Congress passed a modest reform that changes some small aspects of these legal arrangements known as Workers' Cooperatives. For example, under the new law, Workers' Cooperatives can no longer operate without making tax payments to the government for national programs for social services. However, it remains unclear whether the recent legislation actually addresses the real problem raised by the ILO, the U.S. State Department, and other labor organizations.

In August 2008, Colombian labor law attorneys who represent the main Colombian labor federations submitted a legal petition regarding this and various other labor issues to the Committee of Experts at the ILO. According to the legal analysis of these attorneys, even after the recent reform, "the Workers' Cooperatives that comply with this law will still be able to continue operating as tools to evade labor rights and prejudice the labor conditions of workers." (Legal observations submitted by the Colombian Commission of Jurists, dated Aug. 25, 2008.) As I understand it, the Committee of Experts of the ILO will now review the recent Colombian labor law reforms over the period of months spanning from this fall to next spring. The ILO Committee of Experts will then report its findings in June 2009 to the full ILO. I look forward to reading the ILO's findings.

I have also instructed the attorneys on my Committee staff to remain in contact with other legal experts—from the U.S. Government as well as various Colombian human rights groups—to continue gathering information regarding the issue of

Workers' Cooperatives so that we can eventually determine whether the recent reform brings Colombia into compliance with internationally-recognized core labor standards. In addition, I look forward to reading the conclusions of the Committee on Ways and Means, which is performing a comprehensive review of Colombia's labor laws.

B) Even considering the one other new Colombian labor law regarding judicial determinations for strikes, the recent reforms still leave unchanged entire areas of Colombian labor law that have been criticized by the ILO, the U.S. State Department, and other labor organizations.

The Colombian Congress also recently passed a second labor law reform that moves the power to declare the legality or illegality of a strike from the Executive Branch to the Judicial Branch. Colombian labor attorneys have told my Committee staff that this one reform constitutes a step forward. However, much work remains. There are additional entire areas of law where Colombia has been criticized by the ILO and U.S. State Department, but Colombia still has not passed any labor law reforms whatsoever in those additional areas.

These remaining issues range from Colombia's overly broad list of "essential public services" to the problematic labor arrangements called "Pactos Colectivos."

In fact, my Committee staff has learned from employees of the U.S. State Department that the Colombian Ministry of Social Protection recently asked the U.S. Agency for International Development (U.S. AID) to conduct a comprehensive study related to the additional improvements that Colombia could make to comply with the internationally recognized core labor standards. I understand this request to be—at least implicitly—an admission by the Colombian government that even after the two most recent labor law reforms, Colombian law remains non-compliant with internationally recognized core labor standards. I am hopeful that the Government of Colombia's request for this study signifies that Colombia is willing to eventually make the additional needed changes to bring its labor laws into compliance with international standards. I wish the Bush Administration would have begun the negotiations on these labor law reform issues years ago, and as stated above, I hope the next Administration in the United States will take these issues more seriously.

C) Colombian legal procedures for union registration still have vague and subjective standards that lead to improper denials and delays in the recognition of labor unions.

When I was in Colombia in January, I traveled outside of Bogotá to a small town called Facatativá, which is in the flower-producing region of the country. There I met with a group of Colombian workers who had been struggling to organize a union at the flower farm where they work so that they could improve their wages and working conditions. However, these workers had been waiting many months for the Ministry of Social Protection to merely register their union, whereas that process should only take a number of days. I have since learned that the delays experienced by these particular workers—unfortunately—are far too common in Colombia.

In fact, the ILO has issued repeated proclamations expressing serious concern that Colombian workers have been improperly prevented from forming and joining labor unions because of the Ministry of Social Protection's mandatory prior registration requirements that give undue discretion to the Ministry's bureaucrats in charge of granting union recognition. For example, the ILO Committee of Experts released a 2008 report on the application of ILO Convention 87 in Colombia and noted: "[t]he arbitrary refusal to register new trade union organizations, new trade union rules or the executive committee of a trade union at the discretion of the authorities for reasons that go beyond the express provision of the legislation." In addition, the ILO's concerns over arbitrary denials of union registration in Colombia have also been cited in a recent report by the U.S. Department of Labor. (2008 U.S. DOL Bureau of International Labor Affairs Report on Colombia, at 11). The representatives of the ILO Office in Bogotá have told my Committee staff that the Government of Colombia could address this serious problem if it would only re-write its labor laws to replace the vague and subjective standards for union registration with more objective concrete rules. The ILO has also suggested that the Colombian government could better train the Ministry of Social Protection bureaucrats charged with applying those standards. Therefore, I hope that you and I can discuss the changes necessary to accomplish these goals.

The issues raised above are numerous, though they are not exhaustive. These issues take on heightened urgency at this particular moment in Colombia's history as the violence in 2008 has escalated above 2007 levels. Indeed, during only the first eight months of this year, the assassins have made more threats, caused more bloodshed, and taken more lives of labor leaders than they did in all twelve months

of last year. However, I remain optimistic that Colombia can overcome these significant problems. I am also hopeful that the next Administration in the United States will work more cooperatively with the Government of Colombia to bring about improvements in labor laws and human rights, increased trade, and an even stronger relationship between our two ally nations. I will continue to work on these issues in my capacity as the Chairman of the Committee on Education and Labor, and I look forward to working with you and your government to promote greater respect for labor rights.

Sincerely,

GEORGE MILLER, *Chairman.*

HUMAN RIGHTS WATCH,
350 FIFTH AVENUE, 34TH FLOOR
New York, NY, November 20, 2008.

Hon. NANCY PELOSI, *Speaker,*
Hon. GEORGE MILLER, *Chairman, Committee on Education and Labor,*
Hon. CHARLES RANGEL, *Chairman, Committee on Ways and Means,*
U.S. House of Representatives, Washington, DC.

DEAR SPEAKER PELOSI, CHAIRMAN MILLER AND CHAIRMAN RANGEL: I write to thank you for the leadership you have shown on human rights in Colombia in connection with the debate over the US-Colombia Free Trade Agreement (FTA), and to follow up on concerns you have raised about the plight of Colombian trade unionists.

Human Rights Watch agrees with the position that the Speaker set out last year: before Congress considers the FTA, Colombia must show "concrete and sustained" results in addressing ongoing violence against trade unionists, impunity, and the role of paramilitary groups in that violence.

Free trade should be premised on fundamental respect for human rights, especially the rights of the workers producing the goods to be traded. In Colombia, workers cannot exercise their rights without fear of being threatened or killed. Without concrete and sustained results in addressing this basic problem, ongoing anti-union violence and impunity would, as President-elect Barack Obama has noted, make a "mockery" of labor protections in the agreement. We believe that Colombia should be in compliance with such protections before the accord takes effect, as has generally been demanded with FTA commercial provisions.

In fact, under US pressure related to the FTA, Colombia has started to take some positive steps on impunity for anti-union violence. But those steps are limited and incomplete, and in other areas (such as the rate of violence), Colombia has been sliding back this year. Also, the progress made on impunity has been won only with the possibility of FTA rejection on the table. If Congress were to prematurely approve the FTA, the progress made could rapidly be undone. Nor would the threat of fines or sanctions for violating FTA labor requirements provide anywhere near the incentive for change as the fear of accord denial.

In a September 12 letter to President Alvaro Uribe of Colombia, Chairman Miller highlighted a number of significant problems affecting Colombian trade unionists' ability to exercise their rights. Yet, as explained below, more than two months later the Colombian government has yet to remedy many of those problems and continues to fall short in other areas that should be addressed before FTA ratification.

1. Ongoing violence against trade unionists

As you know, Colombia has the highest rate of trade unionist killings in the world. According to the National Labor School (Escuela Nacional Sindical or ENS), Colombia's leading organization monitoring labor rights, 2,685 unionists have been killed since 1986. In addition, more than 3,700 unionists have reported receiving threats.

The rate of yearly killings has fluctuated over time, dropping between 2001 and 2006. This reduction may be explained by many factors, including the establishment of a protection program—partly funded and supported by the United States—for threatened union leaders. Nonetheless, even with the protection program in place, in 2006 the National Labor School registered 76 killings of unionists, adding up to more than half of the total number of unionists killed in the whole world that year.

After dropping to 39 last year, the number of killings has increased once again in 2008. Through October, 41 trade unionists have been reported killed, compared with 33 through October 2007. More than 150 unionists have reported being threatened so far this year.

2. Widespread impunity for anti-union violence

Last year Colombia's Attorney General established a specialized group of prosecutors to reopen many of the uninvestigated cases of threats against and killing of trade unionists. Since then, the group reports that it has obtained 96 convictions. This is an important achievement that can be directly traced to US pressure in relation to the FTA. Yet, as Chairman Miller pointed out in September, at the current rate of convictions, it would take decades for the prosecutors to get through the backlog. Also, there are serious reasons to be concerned about the sustainability of this effort:

• The specialized prosecutors are not investigating the majority of reported cases.

The Office of the Attorney General reports that as of October 20, the specialized prosecutors unit is only reviewing a total of 1,272 cases involving anti-union violence—including both threats and killings (even though nearly all the 2,685 reported killings and more than 3,700 threats remain unsolved). When Human Rights Watch asked representatives of the Office of the Attorney General what they planned to do with the thousands of other reported cases of threats and killings, she gave multiple explanations:

First, the Office said that the specialized group was only looking at the cases that had already been reported to the International Labor Organization (ILO) when the specialized group was created. But the ENS and trade unions later submitted all information they have on all 2,685 registered killings to the ILO. It makes no sense to exclude many cases from investigation just based on the date on which they were reported to the ILO.

Second, the Office said they had decided not to expand the number of cases assigned to the specialized prosecutors simply because they do not have the resources to handle that many cases. Thus, the remaining cases would be assigned to ordinary prosecutors who may be spread out around the country, who will not be focused specifically on antiunion violence and are more vulnerable to pressure or threats. This explanation is surprising in light of the vast resources the US Congress has already assigned to the Human Rights Unit, precisely to strengthen these sorts of investigations. It is also not a good reason to simply exclude more than half the cases from the specialized prosecutors' workload, rather than organizing and prioritizing them in a useful manner.

Third, the Office said that many of the cases had been inaccurately reported as trade unionist killings, claiming that the victims were not union members or had been killed for non-union-related reasons. Yet when Human Rights Watch asked her for a list of all the cases that the specialized group was investigating, as well as the list of cases that they had decided not to investigate because they did not really involve unionist killings, she refused to provide such a list. The Office of the Attorney General has also refused to provide such lists to union representatives, making it impossible to have a meaningful discussion about the basis on which they are excluding many cases from investigation.

• The specialized labor judges have only been appointed through July 2009.

As Chairman Miller pointed out in September, the latest resolution of the Superior Council of the Magistracy (Consejo Superior de la Judicatura) naming three specialized judges to handle the trade unionist cases provides that their appointments expire in July 2009. There is no guarantee that the judges will have their appointments renewed.

• Many convictions involve paramilitaries in the Justice and Peace process.

An important factor that has led to the increase in convictions is that some paramilitary commanders participating in what is known as the "Justice and Peace" process have been taking responsibility for unionist killings. But this means that once the Justice and Peace process is over, the rate of convictions is likely to quickly drop off. Also, the convictions in these cases often do little to further truth or justice.

Under the "Justice and Peace Law" paramilitaries known to be responsible for atrocities are given an opportunity to admit all their crimes. In exchange, they are set toreceive a single reduced sentence of five to eight years, rather than the much longer sentences—up to 40 years, in some cases—ordered in individual cases of trade unionist assassinations.

The law began to be applied last year, around the same time as the convictions for unionist killings started to go up. Based on Human Rights Watch's review of several of the rulings in these cases, as well as the statements of persons close to the investigations, a substantial share of the 96 convictions in unionist cases are based primarily on the statements given by paramilitaries under the Justice and Peace Law.

The statements in these cases are often general, however, paramilitary commanders like Ever Veloza (also known as "HH") have admitted having command responsibility for thousands of killings, including unionist killings. But they often do

not describe the circumstances surrounding the killings or identify other accomplices or participants in the crime. As a result, these convictions often do little to establish the truth about the killings.

Finally, since the Colombian government extradited many of the most important paramilitary commanders to the United States, these commanders have ceased cooperating with the Colombian investigations. As a result, even the minimal statements of responsibility that might have been available under the Justice and Peace Law may now be out of reach in cases for which these commanders bear responsibility.

• Lack of progress in high-profile cases

In some of the most high-profile cases of unionist killings that Chairman Miller highlighted in his September letter there has been little progress. For example, in the case of intelligence chief Jorge Noguera, who allegedly gave sensitive information about trade unionists to the killers, investigations have moved inexplicably slowly or have been hampered by procedural errors. Similarly, in the murder of labor leader Luciano Romero, despite a court order to investigate potential involvement of Nestle Corporation in the killings, the Office of the Attorney General has failed to move any such investigation forward. And, as Chairman Miller noted in his letter, a Colombian Police officer who was convicted in absentia of the killing of labor leader Jorge Dario Hoyos has yet to be caught or arrested.

In another significant case involving the military's killing of three trade unionists in Arauca in 2003, while lower level soldiers have been convicted of the killings, prosecutors appear to have made little progress in investigating the potential responsibility of military officers up the chain of command.

3. Stigmatization of unionists High-level officials continue to stigmatize legitimate union activity as a cover for the abusive left-wing guerrillas

Colombian President Alvaro Uribe recently dismissed international concerns over the violence, describing the unionists as "a bunch of criminals dressed up as unionists." Such statements put unionists at greater risk, suggesting that the violence against them might be justified and that accountability for the killings may not be a priority for the government.

4. The rise of successor groups to the paramilitaries

Because most trade unionist killings have never been investigated, it is impossible to know exactly who is responsible and why all the killings were committed. Nonetheless, it is clear that in many cases, the killers are paramilitaries, who have admitted to deliberately persecuting unions. In fact, as of March 2008, the Office of the Attorney General reported that of all the persons convicted in unionist killings, 73 (the largest share) belonged to paramilitary groups.

As a result, to address the violence against unionists in a sustained manner, it is crucial that the Colombian government effectively dismantle the paramilitary groups that pose the greatest threat to unions.

The Uribe administration claims that paramilitaries no longer exist thanks to a demobilization program it has implemented in recent years. But while more than 30,000 individuals supposedly demobilized, Colombian prosecutors have turned up evidence that many of them were not paramilitaries at all, but civilians recruited to pose as paramilitaries. Law enforcement authorities never investigated most of them.

Meanwhile, new armed groups often led by mid-level paramilitary commanders have cropped up all over the country. The Organization of American States (OAS) Mission verifying the demobilizations has identified 22 such groups, totaling thousands of members. The groups are actively recruiting new troops and are committing widespread abuses, including extortion, threats, killings, and forced displacement. In Medellín, for example, after a steady decline in official indicators of violence, there has been a surge in homicides, apparently committed by these groups. The bulk of the 150 threats received by unionists this year have been signed by groups purporting to be paramilitaries.

5. Extrajudicial executions

Another recent threat to unionists is posed by the Colombian Armed Forces. In recent years there has been a substantial rise in the number of extrajudicial killings of civilians attributed to the Colombian Army. Under pressure to demonstrate operational results by increasing their body count, army members apparently take civilians from their homes or workplaces, kill them, and then dress them up to claim them as combatants killed in action. The killings of the three trade unionists in Arauca in 2003 fit this general pattern.

The Attorney General's Office is currently investigating cases involving more than a thousand victims of extrajudicial executions dating back to mid-2003. The Defense

Ministry has issued directives indicating that such killings are impermissible. But such directives have been regularly undermined by statements from high government officials, including President Uribe, who until recently accused human rights defenders who reported these killing of colluding with the guerrillas in an orchestrated campaign to discredit the military.

Since October, the Uribe administration has started to more explicitly acknowledge the problem and has dismissed several soldiers and officers from some military units in connection with some of the most well known killings. However, it is crucial that these dismissals be followed by effective criminal investigations, prosecution, and punishment of those responsible for executions—including commanding officers who may have allowed or encouraged them—that have been reported on a regular basis all over the country. It is too early at this time to determine whether such punishment will occur.

Once again, I would like to thank you for having taken a firm position in defense of human rights in connection with the FTA. As I hope this letter makes clear, Colombia still has a lot of work to do before the FTA should be considered. By continuing to delay the deal's approval, the United States will show that human rights are not just words, but rather basic values that have real consequences for US policy. Please do not hesitate to contact us if we can be of any assistance on this or other matters.

Sincerely,

KENNETH ROTH,
Executive Director.

Bogotá, 10 de febrero de 2009.

Señor GEORGE MILLER,
Congresista Cámara Baja, Washington D.C., Estados Unidos.

RESPETADO SEÑOR MILLER: Hemos conocido de la celebración de una audiencia en el Congreso Norteamericano sobre derechos de los trabajadores y violencia contra sindicalistas en Colombia, "Examining Workers' Rights and Violence against Labor Union Leaders in Colombia", que se llevará a cabo la próxima semana en la ciudad de Washington. Por esta razón, la Comisión Colombiana de Juristas (CCJ) que es una organización de derechos humanos con estatus consultivo ante Naciones Unidas, quiere entregar a usted un informe sobre la situación de impunidad en la que se encuentran los casos en los que son víctimas las y los sindicalistas colombianos. La información allí contenida es producto del seguimiento que la CCJ hace a los informes de la Fiscalía General de la Nación y los jueces de casos de sindicalistas.

En esta ocasión queremos resaltar para su consideración, tres aspectos importantes que encontrará dentro del documento anunciado:

1. El porcentaje de impunidad en los casos de homicidio contra sindicalistas sigue siendo del 96%.

2. Un análisis cuantitativo del trabajo de la subunidad y de los jueces que nos permite concluir que al ritmo de unas 70 sentencias anuales emitidas por los jueces del país y los de descongestión de OIT, en las que en cada una de ellas se refiriera a una víctima sindicalista, la justicia tomaría 37 años para superar la impunidad, bajo el supuesto de que no ocurran más asesinatos a partir de hoy, y se mantenga la unidad especial de investigación y juzgamiento.

3. Siendo la violencia antisindical en Colombia es una violencia sistemática, deliberada y selectiva, el método de investigación utilizado por la Fiscalía no permite una investigación integral.

4. Las razones de la violencia que, la Fiscalía incluye en sus informes como supuestos resultados de las sentencias, denotan precipitación de la Fiscalía por concluir que no se trata de casos de violencia antisindical.

Quedamos atentos a cualquier inquietud o aclaración que usted tenga.

Cordialmente,

GUSTAVO GALLÓN GIRALDO,
LINA PAOLA MALAGÓN DÍAZ,
Director Abogada Protección Jurídica Sistema Universal.

[Whereupon, at 12:51 p.m., the committee was adjourned.]

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