



# International Labor Rights Forum

2001 S Street NW, Suite 420, Washington, DC 20009

## **Labor Considerations Regarding the US-Colombia Free Trade Agreement**

**May 12, 2009**

The Obama Administration and US Trade Representative Kirk's intentions to consider the US-Colombia Free Trade Agreement in the near future is of great concern to the International Labor Rights Forum. President Obama's requirement that the Colombian government meet a set of benchmarks to curb trade union murders and otherwise address serious labor rights violations before entering into an agreement, assumes that Colombia's government is on a path toward ending such systematic violence. Such a consideration overlooks the Colombian government's structural deficits reflected in its ongoing failures to uphold the rule of law, progress towards civilian control of society, eliminate government corruption and create an unbiased, functional criminal justice system. The Administration should not make the mistake of assuming that the immense problems of Colombia can be changed within the period of one Congress -- two years. Indications of serious change in controlling the factors that lead to labor homicides must be measured over a sustained period of time through verifiable evidence. The ILRF cautions that moving forward to promote trade in a country such as Colombia without such evidence firmly in place signals that US commercial interests are more important than ending Colombia's egregious human rights violations.

### **Violence Against Union Leaders**

Uribe defenders point to the decline in the number of trade unionists murdered in Colombia, dropping from 94 killed in 2003 (Uribe's first full year in office) to 39 in 2007. But trade union murders rose again to 49 in 2008 and less than four months into 2009, 17 trade unionists have already been murdered, raising questions over the measure of progress over the last 3 years.<sup>1</sup> *The reality is that since Uribe took office, more trade unionists have been murdered in Colombia than in the rest of the world combined.*<sup>2</sup> Paramilitary groups, many with ties to former Colombian Government and military officials, have largely been responsible for such murders.

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<sup>1</sup> USLEAP, "Colombia Fact Sheet" March 2009, <http://www.usleap.org/files/Impunity%20Fact%20Sheet.pdf>, "Assassinations Continue in Colombia," ITUC Press Release, May 12, 2009

<sup>2</sup> USLEAP, "Colombia Fact Sheet", April 2008, *Violaciones a los Derechos Humanos de las y los Sindicalistas Colombianos, January 1 to December 31, 2007*, Escuela Nacional Sindical (ENS), March 2008, p. 30, and *Annual Surveys of Violations of Trade Union Rights*, International Trade Union Confederation (ITUC). ITUC annual surveys are available online at <http://survey07.ituc-csi.org/getcontinent.php?IDContinent=0&IDLang=EN>.

In addition, beyond debates over the sheer number of murders, other forms of violence and threats on the workers rights to organize have increased. According to the *Escuela Nacional Sindical*, a prominent Colombian organization dedicated to researching trade union issues, *after 2003, “there was a strategic change in the forms of violence against unionized workers, which can be principally characterized by a decrease in homicides, the accelerated increase in detentions, the increase in violations of the human rights of women unionists, the powerful restrictions to union freedoms, a significant increase in death threats, the increase in crimes committed by State actors, and the use of a variety of strategies to disguise the magnitude of the violence.”*<sup>3</sup>

### **Corruption and Impunity**

In addition to current violence, little progress has been made in addressing the impunity enjoyed by the perpetrators of past and present labor homicides. The majority of the 2,700 labor homicides that have occurred since 1986 have gone unprosecuted and uninvestigated. The impunity rate remains at 96.7% and not a single intellectual author of a trade union homicide has been convicted.<sup>4</sup> Impunity will persist unless the Government of Colombia prioritizes the investigation and prosecution of those who ordered, planned, or paid for the hired assassins responsible for the physical acts of violence .

In February 2007, Jorge Noguera, Colombia’s former intelligence chief, was indicted for helping violent right-wing paramilitaries to infiltrate high levels of the Colombian Government. In September, 2008, General Mario Montoya Uribe, the leader of Colombia’s army was accused in legal testimony of working closely with paramilitaries and funneling weapons to key paramilitary commanders.<sup>5</sup> In late April 2009, a retired lieutenant colonel and seven other soldiers were arrested for the killings of two civilians who they allegedly presented as guerrillas slain in combat to inflate rebel body counts.<sup>6</sup> None of these cases have yet been resolved within Colombia’s judicial system. These are just a few examples of the strong ties existing between Colombia’s military personnel and the paramilitaries responsible for murdering thousands of trade unionists.

In a notorious “Parapolitics” scandal, the Colombian Supreme Court indicted almost 30 members of the Colombian Congress for colluding with the right-wing “AUC” paramilitary group, considered to be a terrorist organization by the US Department of State. Again there is not yet sufficient evidence to indicate how Colombia’s judicial system will handle such cases. Continued investigation and prosecution of such cases

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<sup>3</sup> *5* “*Cuaderno de Derechos Humanos No. 19*, 2515 Or that Sinister Ease to Forget: 21 Years of Systematic and Selective Assassinations (1986-2006).” 2007 p 54, <http://www.ens.org.co/publicacion.htm?x=20152686>

<sup>4</sup> Human Rights Watch quoting Colombian Commission of Jurists (CCJ) records at Feb. 12, 2009 House hearing.

<sup>5</sup> See USLEAP, “Colombia Fact Sheet”, March 2009 <http://www.usleap.org/files/Impunity%20Fact%20Sheet.pdf>

<sup>6</sup> “Colombia soldiers charged in civilians' killings,” May 1, 2009, Associated Press

will take far more than the two years or less Obama has suggested for Colombia to meet human rights benchmarks.

The Uribe administration through much of its tenure, showed little interest in prosecuting human rights violations. According to Human Rights Watch's 2009 report, "Until very recently, not only the paramilitaries, but also their accomplices, have consistently been able to avoid investigation, prosecution, and punishment. many of the cases [taken up by the special Human Rights Unit] were stalled or closed after the appointment in 2001 of Attorney General Luis Camilo Osorio, who purged the office of officials who had worked on sensitive human rights cases and sent a clear message to those who remained that efforts to prosecute human rights violations committed by army officers would not be welcome."<sup>7</sup>

According to a Human Rights Watch, the Uribe Administration has also attempted to strip the Supreme Court of its jurisdiction over such "parapolitics" cases involving indicted members of Congress.. "[Uribe] 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..opposed and effectively blocked meaningful efforts to reform the Congress to eliminate paramilitary influence...and proposed constitutional reforms that would remove the "parapolitics" investigations from the jurisdiction of the Supreme Court."<sup>8</sup> In addition, the specialized criminal judge, José Nirio Sánchez, who was appointed to prosecute many of the above "parapolitics" cases was pushed out by the Uribe Administration and replaced in January 12, 2008 after serving the Colombian government for 35 years.<sup>9</sup> Such behavior by the Uribe Administration reflects a lack of political will to bring the material and intellectual authors of labor homicides to justice.

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After both Human Rights Watch issued a reports in November 2008 about the human rights situation in Colombia, President Uribe publicly accused José Miguel Vivanco, Americas director at Human Rights Watch, of being a "supporter" and an "accomplice" of the Revolutionary Armed Forces of Colombia (FARC) guerrillas. .<sup>10</sup>

### **Military Aid**

A US-Colombia Free Trade Agreement should not be considered separately from Plan Colombia, the multi-billion dollar US military aid package allocated to Colombia to combat narco-trafficking. While indigenous and Afro-Colombian groups are being

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<sup>7</sup> Human Rights Watch, "Breaking the Grip?," November, 2008

<sup>8</sup> Human Rights Watch, "Breaking the Grip?," November, 2008

<sup>9</sup> Statement by José Nirio Sánchez, House Committee on Education and Labor Hearing, February 12, 2009

<sup>10</sup> Amnesty International, "Colombia: Stop false accusations against human rights groups, government should address reported abuses," November 19, 2008

displaced by the hundreds of thousands, drug eradication has made little progress under the plan. There is substantial evidence to show that the Colombian army has close ties with the paramilitaries assaulting trade unionists. General Montoya Uribe, mentioned above as being accused of working closely with paramilitaries, was the man responsible for managing the hundreds of millions of dollars of US military aid sent to Colombia annually.

### **Pre-Conditions to the Consideration of a Trade Agreement**

While much of the debate to date has centered around labor conditionality, Colombia raises serious questions as to whether the US can even enter into negotiations over conditionality with governments that do not exercise effective control over the country's military and/ or paramilitary or guerilla forces. There is already precedent for preconditions concerning labor rights and human rights, reflected in the US trade preferences for Africa (Africa Growth and Opportunity Act) requiring governments to demonstrate their ability to implement the rule of law. Similar preconditions must be present and integral to any consideration of any Colombia FTA and other future FTAs. The US Administration and US Congress should be clear, when such considerations cannot be met, that conditionality within the agreement itself will be impossible to implement.

*A Colombian FTA should only be considered when the Colombian government demonstrates a serious political will to sustain reductions in violence and other assaults on trade union rights. Only when civilian authorities take serious control of the country and paramilitaries, and when the military is stripped of any ability to involve itself in labor relations, can Colombia be considered as a trading partner capable of implementing labor conditionality. Reducing union murders alone would not sufficiently address the fundamental problem of unchecked paramilitary and military involvement in civil society.*

*Military aid and trade policies must be integrated with a goal to curb paramilitary power. The US must become actively engaged in assisting Colombia to negotiate a peaceful settlement to the civil war to truly stop the human and labor rights violations plaguing that country. Again, this process must be underway before there is consideration of the FTA.*

*The US must, as Human Rights Watch has urged, investigate the links between US companies, major beneficiaries of the agreement, and paramilitaries and punish those with such links.<sup>11</sup> These same paramilitaries must be probed for what they know about recent and current links between the Colombian government/military and the paramilitaries.*

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<sup>11</sup> See, <http://www.hrw.org/en/reports/2008/10/16/breaking-grip-0>

## **Labor Conditionality**

In and of itself, implementation of labor conditionality or labor benchmarks does not demonstrate that civilian authorities in Colombia possess sufficient control over military and paramilitary forces, over collusion between corporations and paramilitary, or over police and judiciary to implement rule of law. In the event sufficient change on these subjects occurs, however, there are still important benchmarks to be met to demonstrate progress on labor rights conditionality.

*In order to address Colombia's systematic labor rights violations, Colombia must honor and enforce the recommendations of the ILO for Colombia.* Colombia must grant the right to unionize, the right to collectively bargain and the right to strike to public service sector workers, temporary workers, contract employees, and workers who are employed by worker cooperatives. The right to strike must be granted to employees in "essential services" such as the oil and energy sector and Colombia must outlaw direct bargaining through "collective pacts" with nonunion employees. The Colombian government must permit industry-wide bargaining and bargaining over pensions and the blacklisting of employees involved in unions and strike activity must end.

The ILRF would not consider supporting the passage of the US-Colombia FTA until at a minimum, the Colombian government demonstrates a sustained end to military and paramilitary violence against unionists and social activists, stronger enforcement of labor standards, a stronger labor code and an effective justice system. Even when these conditions are met, the concerns and calls for reform from civil society groups in both Colombia and the US should be fully considered. ILRF supports the calls of civil society in both countries for further input in, and possible renegotiation of, the agreement in its entirety.