

American Federation of Labor and Congress of Industrial Organizations



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November 8, 2007

Dear Senator:

On March 15, I wrote to you expressing the AFL-CIO's concerns regarding abuses of labor rights and human rights in Colombia. Since that time, we have continued to monitor the situation in Colombia closely, and my staff has recently visited the country to interview representatives of the trade union confederations, the government, and the office of the International Labor Organization (ILO).

Although we were glad to have the opportunity to hear a wide variety of governmental and non-governmental perspectives, the information we gathered did not give us confidence that workers in Colombia are now able to freely exercise their fundamental labor rights without legitimate and well-founded fear for their safety and for the safety of their families. Furthermore, we are not convinced that the government's recent actions in response to external criticism are sufficient to adequately address the very deeply rooted problems of violence, impunity for the perpetrators of that violence, and abuse of workers' rights that exist in Colombia. Therefore, the AFL-CIO remains unalterably opposed to passage of the U.S.-Colombia Free Trade Agreement.

Indeed, two trade union leaders were murdered in Colombia within the last week. We were deeply saddened to learn of the deaths of Leonidas Silva Castro, a local union president of the Asociación Sindical de Institutores Nortesantandereanos (Teachers Union of Norte de Santander), and Jairo Giraldo, President of Sinaltrafrut (a union that represents fruit and agro-industry sector workers). These murders are only the most recent and tragic reminders of the danger experienced by our Colombian brothers and sisters. We call on Congress to insist that the Colombian government immediately launch thorough investigations into these murders and take every step possible to bring the perpetrators to justice.

More troubling, the vast majority of those responsible for the over 2,200 murders of trade unionists since 1991 are still at large and face no criminal charges. Even with the recent convictions, the impunity rate remains over 97 percent. Furthermore, human rights organizations have reported that many of the "demobilized" paramilitary members (who were responsible for many of the murders of trade unionists) are forming new criminal organizations and, in many cases, continuing to target union and community activists.

I am enclosing a short summary of the issues that most concern us with regard to labor rights. I urge you to take this information into consideration. Shortly, the AFL-CIO will be sending you detailed fact sheets on each of these issues.

In sum, the Colombian government needs to make considerable changes to fully address our concerns. This will no doubt take some time, and it appears to us highly unlikely that all of the needed changes can happen in the next twelve months. However, we strongly believe that it is worth the wait. Under current conditions, we have little hope that workers, who are simply unable to exercise their basic rights in the existing hostile environment, would benefit from any potential expansion of trade or investment. Furthermore, passing the U.S.-Colombia Free Trade Agreement at this time would cost the United States considerable leverage over Colombia to encourage continued progress on human rights.

You have a unique opportunity to stand for the promotion of human rights, against impunity, and for a better life for Colombian workers. Ratifying the U.S.-Colombia Free Trade Agreement at this time would not achieve these goals.

Sincerely,


John J. Sweeney
President

JJS/WS/mrt
Enclosure

Summary of Current Situation in Colombia

November 8, 2007

1. Crimes Against Trade Unionists

The number of trade unionists murdered has decreased this year relative to last year. However, there are still more murders of trade unionists in Colombia than in any other country. Indeed, the respected Colombian non-governmental organization, the National Labor School (known by its Spanish initials - ENS), reports that 27 trade unionists have been murdered so far this year, and this number, of course, is still too high. What is infrequently cited is the alarming number of death threats against trade unionists. ENS has registered 244 death threats against trade unionists in 2006 alone. These threats severely chill trade union activity, particularly given that 2,262 trade unionists were murdered between 1991 and 2006. In the end, if trade unionists fear for their lives, they will be unable to freely exercise their internationally recognized labor rights, particularly the right to organize and bargain collectively.

2. Impunity

As to the investigation and prosecution of crimes against unionists, the government has established a special sub-unit within the human rights unit of the Office of the Attorney General to address a list of priority cases.¹ In all, 13 prosecutors have been assigned to this sub-unit, although, at this time, according to the Attorney General's office, all 5 of the Bogotá-based prosecutors are only assigned to the unit part-time. According to the statistics provided by this sub-unit, it has succeeded in securing convictions in eight cases on the priority list, and five others that are not on the priority list.² Even with these recent prosecutions, the rate of impunity for the murder of trade unionists during the period from 1991-2007 remains between 97 and 98%.

In July 2007, the government also assigned three judges to adjudicate more than 1,000 cases related to crimes against trade unionists that are to be investigated and prosecuted by the special sub-unit. In some cases, the judges have undertaken the dangerous work of sentencing some of the most notorious paramilitary members in Colombia. However, it is our understanding that the judges are not offered any protection by the government – which should be remedied immediately. In those cases where a demobilized paramilitary member is found guilty, the judge's sentence unfortunately cannot be enforced. Even though the judge may issue a maximum sentence of 40 years in prison, the paramilitary member may subsequently confess to the crime and serve a maximum of only 5-8 years under the Justice and Peace law. However,

¹ For the Attorney General's Office, the priority list includes 187 select cases and all 2006-2007 cases. This is derived from a larger list of 1,194 cases (which includes murder, torture, kidnapping, forced displacement) that were previously brought by the unions to the attention to the ILO. However, the total universe of crimes is much higher. The ENS has recorded 2,262 homicides alone from 1991-2006.

² The Ministry of Social Protection also claims eight additional cases ending in sentences that were carried out by other entities. However, not all of those found guilty were sentenced for homicide. In the case of Orlando José Benítez Palencia, for example, the prosecutors were unable to establish a motive for the homicide, and the accused were sentenced for conspiracy.

because some are eligible for further sentence reductions and because the government counts 18 months of the time spent negotiating the demobilization law as time served, the actual maximum sentence could be as little as 2 ½ years.³ Finally, some perpetrators have been sentenced in absentia and thus are still at large. To date, the government has been unable to provide us with the figures as to how many of the current convictions involve perpetrators who are not in government custody.

Social Dialogue

The government asserts that it has long maintained social dialogue mechanisms with the unions. In some cases, however, mechanisms for dialogue were long dormant and began to function again only recently when external criticism mounted. Colombian unions are rightly skeptical about the long-term commitment to social dialogue, when interest in such dialogue came largely from external pressure. These newly reactivated commissions have not yet achieved concrete results in the resolution of long-standing conflicts or much-needed improvement in labor law or labor relations.

Further, while we are supportive of the ILO Office in Colombia, we are concerned that it is unable to deal assertively with the serious and persistent problems in the country. Indeed, it appears to suffer both from a lack of political support from the government and sufficient resources to carry out its mission. Unions assert, for example, that the mandate of the ILO Office has been interpreted narrowly by the government, such that the office has been prevented from engaging in the verification or protection of labor rights, even though the scope of the accord explicitly lists the promotion and defense of fundamental labor rights as integral to the mission. Further, the ILO Office is under-staffed, with only one full-time representative and one secretary.

Although an agreement establishing the ILO Office in Colombia was signed in mid-2006, only one of the four technical cooperation projects to be undertaken by the ILO Office, on social dialogue and fundamental rights, has been fully funded and is ready to commence. The long-delayed funding is only sufficient for the payment of one experienced project coordinator. More technical capacity is sorely needed to fully carry out this and other relevant programs.

Finally, the mandate of the ILO Office will expire in October 2008. It is essential that the mandate be extended if the Office is to have any long-term impact.

³ In theory, the maximum sentence available under the Justice and Peace Law is 5-8 years. However, under a decree by President Uribe, the government is counting 18 months of the time spent negotiating the demobilization law as time served (reducing the maximum sentence from 3 1/2 to 6 1/2 years). Also, demobilized paramilitaries are eligible for reductions under ordinary detention rules, for the time they spend studying and working. This allows their sentences to drop by another third (from 2 1/2 to 4 1/2 years). Further, President Uribe has suggested that once the accused are actually sentenced, they will be moved to agricultural colonies (i.e. ranches) to serve out the remainder of their terms. Currently, 17 paramilitary leaders are serving time with special privileges (access to the prison by their associates, laptops and cell phones, etc). Only about 2,800 of the roughly 31,000 demobilized paramilitaries are enrolled under the Justice and Peace Law. The government is actively seeking to pardon those not in the demobilization program, without a full investigation as to whether they are responsible for any crimes.

Labor Laws

The ILO has repeatedly noted that several of Colombia's labor laws are not in compliance with the ILO core labor standards – considered the *minimum* set of rights that are to be guaranteed by all countries regardless of level of development. Further, the ILO's Committee on Freedom of Association has routinely criticized the government for failing to enforce its own laws, or international labor standards. A review of just a few of the cases decided in 2006-2007 finds that the government and/or employers: refused to bargain collectively and/or violated existing collective agreements, illegally fired union members, invoked ILO-inconsistent laws to declare a strike illegal and to punish those involved, and liquidated a unionized public enterprise and hired the workers back under contracts that prohibited them from forming a union.

The government also claims to have recognized many new unions within the last five years. However, reports by Colombian unions and by workers attempting to form new unions contradict those claims. The AFL-CIO has identified several landmark cases where unions were either refused recognition by the Ministry of Social Protection on spurious grounds or had their initial union registrations revoked at the request of employers who opposed the presence of unionized workers in their workplaces. Over the last decade, unions in Colombia have also suffered a drastic decrease in their ability to represent the interests of workers through collective bargaining. The number of workers covered under new collective bargaining agreements has dropped to a fraction of its previous number, falling from 260,000 in 1996 to 47,000 in 2006.⁴

⁴ Escuela Nacional Sindical, *La Coyuntura Laboral y Sindical 2006-2007 en Cifras* (2007), citing data from the Ministry of Social Protection.