

Congress of the United States
Washington, DC 20515

September 15, 2009

Mr. Ron Kirk, U.S. Trade Representative
Office of the United States Trade Representative
600 17th Street, N.W.
Washington, DC 20508

RE: Docket Number USTR-2009-0021

Dear Ambassador Kirk:

As members of the House Trade Working Group and International Workers Rights Caucus, we thank you for the opportunity to comment on the Free Trade Agreement (FTA) with the Republic of Colombia.

We have serious concerns about the Bush-negotiated FTA with Colombia. First, the agreement itself contains – often word-for-word – many of the most damaging provisions of the North American Free Trade Agreement (NAFTA) and the Dominican Republic-Central American Free Trade Agreement (DR-CAFTA) that has incentivized the outsourcing of millions of good-paying American jobs, decimated the U.S. manufacturing industry, created downward pressure on U.S. wage levels, drastically increased our trade deficit, and undermined environmental and labor protections in our country and those of our trading partners.

The changes made to the NAFTA/DR-CAFTA model trade agreements negotiated by President Bush with Colombia (as well as Panama, Peru and South Korea) in 2007 did not alter these pacts' extremely damaging NAFTA/DR-CAFTA replicating provisions in the investment, procurement, financial service deregulation and other chapters. In fact, the potential improvements that these changes could have affected were gutted by the inclusion of the pernicious footnote in the labor chapter that explicitly excludes reference to the binding provisions or jurisprudence of the International Labor Organization's (ILO) Conventions with respect to defining the labor standards obligations of the FTAs.

Second, even if the Colombia FTA's language was remedied, it would remain inappropriate for the Obama administration to seek Congressional approval or implementation of any FTA with Colombia unless and until conditions in Colombia with respect to labor and other human rights were improved. We believe that no FTA with Colombia is prudent until the following conditions are met:

- Assassinations of labor unionists, indigenous and Afro-Colombian leaders, journalists and others seeking to exercise their basic rights cease. We want to be 100 percent clear: commitments by the Colombian government to improve conditions are not an acceptable basis for measuring improvements of Colombia's human rights situation. We must see changes in practice, not on paper.

- A sustained period of time – no less than three years – without a resumption of such violence against those seeking to exercise their human rights must be documented by outside monitors, such as international human rights organizations.
- The Colombian government must lawfully prosecute the vast list of individuals and groups accused of past labor, and other civic leader assassinations thus ending the reign of impunity still prevalent in Colombia today.

According to the International Trade Union Confederation's 2009 *Annual Survey of Violations of Trade Union Rights*, Colombia remained the most dangerous country in the world for trade unionists in 2008 with a disturbing 25% rise in cases of anti-union violence. That same year, a total of 49 trade unionists were assassinated, of whom 16 were trade union leaders. Attacks, disappearances and death threats continued. The number of attempted killings doubled, and there was an increase in the number of forced removals, illegal raids and arbitrary arrests. It should also be stressed that the assassinations and death threats often targeted relatives, not just as a means of impeding trade union work but also as a way of restricting the number of violations registered as "attacks on trade unionists."

Although more than 30,000 paramilitaries have been "demobilized" in the last three years under a controversial government scheme, there is convincing evidence that they are continuing to threaten, assassinate and abduct trade unionists, sometimes with the collusion of the security forces. Although amendments were made to the Law on Justice and Peace, which governs this so-called "demobilization," there is continued concern that it will extend the rate of impunity.¹

Furthermore, Afro-Colombia and indigenous community leaders, human rights activists and members of the political opposition are regularly murdered after receiving ominous threats related to their political or human rights activities.

The Colombian government has not been a neutral actor in Colombia's human rights nightmare. Current President Álvaro Uribe's former intelligence chief, Jorge Noguera, is under investigation for providing lists to paramilitaries of union leaders and other left-wing figures that were singled out for assassination.² Last spring, human rights groups held a peaceful rally in Bogota against paramilitary violence. In the lead-up to the march, Uribe's principal advisor José Obdulio Gaviria responded in a national radio broadcast by labeling these protestors as supporters of the terrorist organization, Revolutionary Armed Forces of Colombia (FARC). On March 11, 2008, a paramilitary gang called the Black Eagles sent out death threats to 28 of the human rights defenders collectively denounced by Gaviria. Four trade unionists associated with the march were assassinated, as were other civil society leaders, and many more have been threatened, beaten and harassed.³

¹ "Annual Survey of Violations of Trade Union Rights," *International Trade Union Confederation*, 2008.

² Simon Romero, "Union Killings Peril Trade Pact With Colombia," *The New York Times*, April 14, 2008.

³ Letter from 63 House members to President Álvaro Uribe, dated April 16, 2008; Letter from 24 human rights leaders to President Uribe, dated March 26, 2008. According to testimony from Virgelina Chará of Asomujer y Trabajo on May 6, 2008 in Washington, D.C., 16 individuals who were targeted by the Black Eagles letter were killed. According to the Oxfam staff that coordinated Chará's testimony, this may include individuals who worked for organizations targeted by the Black Eagles, rather than individuals targeted in the letter per se. Gaviria's background is detailed in G. Guillen, "Un juicio que despierta a los viejos temores de Colombia," *El Nuevo Herald* (Fla.), July 3, 2006.

Human rights groups have also documented an increasing trend of extrajudicial killings of civilians by the Colombian military, who then plant FARC paraphernalia on the victims' bodies to pass them off as guerrillas. According to the *Los Angeles Times*, "A macabre facet of a general increase in 'extrajudicial killings' by the military, 'false positives' are a result of intense pressure to show progress in Colombia's U.S.-funded war against leftist insurgents... The killings have increased in recent years amid an emphasis on rebel death tolls as the leading indicator of military success... Even Colombian officials acknowledge that soldiers and their commanders have been given cash and promotions for upping their units' body counts."⁴ This human rights disaster was initially revealed last year and has escalated into a full scale scandal as evidence of such abuses became more pervasive.

Below please find specific comments in response to the questions outlined in the USTR's notice and request for comments concerning the FTA with the Republic of Colombia.

(1) Are there gaps in Colombia's labor law regime, including its enforcement mechanisms, with respect to providing for the fundamental labor rights of its citizens? If there are gaps, please identify them and provide specific suggestions for improvement.

Yes. Beyond the violence and impunity, Colombian unionists face equally daunting daily legal challenges to their rights to organize and bargain collectively – challenges that would threaten the existence of the Colombian labor movement even if its leaders were not the steady targets of right-wing assassins.

Union density in Colombia today is less than five percent. Because of wide gaps in current Colombian labor law with respect to the inclusion of categories of workers, less than one percent of Colombian workers are covered by collective bargaining agreements – down from 15 percent twenty years ago. Mass firings and privatization of large segments of the public sector have put bargaining rights out of reach for most workers, making Colombia the country with the worst collective bargaining coverage in the western hemisphere.⁵ In fact, according to deeply flawed Colombian labor law, only 2 million – or one in nine workers – even fall within the legal classification of employees; all other workers are categorized as contractors working for "collectives" or "cooperatives," denying them employee-status and subsequent access to fundamental workers' rights.

According to the AFL-CIO's executive summary of the 2008 report, *Workers' Rights, Violence and Impunity in Colombia*, the ILO has repeatedly noted that several of Colombia's labor laws are not in compliance with the ILO core labor standards – freedom of association and recognition of the right to collective bargaining; the elimination of all forms of forced or compulsory labor; the effective abolition of child labor; and the elimination of discrimination in respect of employment and occupation – which are considered the minimum set of rights to be guaranteed

⁴ The 'false positives' scandal first was exposed in the United States last year; Chris Kraul, "Extrajudicial slayings on the rise in Colombia," *Los Angeles Times*, March 21, 2008. The issue of extrajudicial killings was highlighted further by José Nirio Sánchez, former 2nd criminal judge of the Specialized Circuit of the Republic of Colombia during the House Education and Labor Committee hearing, "Examining Workers' Rights and Violence against Labor Union Leaders in Colombia," February 12, 2009.

⁵ "No Free Trade with Colombia Until Workers' Rights are Respected," *American Federation of Labor & Congress of Industrial Organizations (AFL-CIO) Executive Council Statement*, March 4, 2008, pg 1.

by all countries. Further, the ILO's Committee on Freedom of Association has criticized the Colombian government for failing to enforce its own labor laws.⁶

In February 2008, a U.S. delegation of labor leaders from the AFL-CIO, Communication Workers of America, and the United Steelworkers led a fact-finding mission to Bogotá, Colombia. While there, the delegation met with trade unionists from all over the country and from dozens of sectors, hearing first-hand the struggles workers experienced when trying to form unions. The workers told of death threats they received for their union activity, the assassination of friends, family and colleagues, mass firings of union leaders, and the government's failure to hold law-breaking employers accountable.

The delegation also met with President Uribe, several cabinet members, the attorney general, Constitutional Court judges, representatives of the ILO, and leading members of Congress. President Uribe argued that his administration had taken extraordinary steps to counter the violence against trade unionists and had devoted substantial new resources to bringing perpetrators of the violence to justice through the allocation of three judges to address labor cases and additional funding to the attorney general's office for investigation and prosecution.

However, one of the three judges assigned to prosecuting labor cases, who ruled that officers of the 18th Brigade of the Colombian army had interfered with the crime scene of slain union leaders, was removed without explanation, leading to questions of whether political influence caused his dismissal.⁷

Furthermore, the government officials did not have an explanation for continued reports of extra-judicial murders by the Colombian army, or the government's failure to reform the country's labor laws to comply with ILO conventions, or its poor record of enforcing laws against anti-union discrimination. All of these practices call into question the Colombian government's commitment to genuinely protect the rights of workers to freely form unions and bargain collectively. We refer you to the attached testimony of Mr. Larry Cohen, President of the Communications Workers of American, who participated in last year's fact finding mission.

As for suggestions for improvement, we believe the United States should be working with the international community to put more pressure on Colombia to comply with core ILO labor conventions, as well as clearly and regularly report and monitor the progress on the criteria outlined at the beginning of our statement. We must see a sustained period that can be confirmed by international labor monitoring organizations during which the current extreme human-rights violations against unionists and other civil society activists have ceased.

As explained in the Human Rights Watch's October 2008 report, *A Way Forward for Workers' Rights in U.S. Free Trade Agreements*, to facilitate compliance with labor laws, the United States should raise worker' rights-related concerns with its potential trading partners at the beginning of trade negotiations and make clear that it will not conclude an agreement until such concerns are satisfactorily addressed.

⁶ "Workers' Rights, Violence and Impunity in Colombia," *American Federation of Labor & Congress of Industrial Organizations (AFL-CIO)*, January 9, 2008, pg 3.

⁷ "No Free Trade with Colombia Until Workers' Rights are Respected," *American Federation of Labor & Congress of Industrial Organizations (AFL-CIO) Executive Council Statement*, March 4, 2008, pg 2.

A last-minute approach to identifying labor-rights-related deficiencies can lead to imperfect and incomplete solutions, as potential U.S. trading partners “scramble to remedy their failings” before their accords are sent to Congress.⁸ In the case of the U.S.-Colombia accord, instead of working closely with Colombia on its workers’ rights problems from the start of trade talks in November 2003, the U.S. government is now seeking to identify quick and easy fixes, rather than long-term, sophisticated solutions that Colombia’s entrenched and complex problems demand.

Before heading to the negotiating table to work out a new agreement with Colombia, the U.S. Department of Labor should prepare a “Meaningful Labor Rights Report” for the U.S. trade negotiating team and relevant committees of the U.S. Congress. This report should focus on the areas in which Colombia’s labor laws and enforcement fall short of what is required by the ILO Conventions and what is expected of U.S. trading partners. The report should also set forth recommendations for improvement that can lead to the status we have described above: cessation of unionist assassinations which is sustained over an extended period of time, and the prosecution of the backlog of such cases.

In addition, it is critical that the U.S. government make clear its expectation that before there can be a closer association with Colombia through a trade agreement, the Colombian government must:

- Sever all ties with paramilitary organizations and international criminal networks;
- Provide effective protection for unions, trade unionists and other threatened civil society leaders in the Afro-Colombian and indigenous communities;
- Bring Colombia’s labor laws into conformity with core ILO conventions; and
- Support the ILO office in Colombia to monitor labor rights compliance and investigate cases of assassinations of trade unionists.

Finally, the United States should provide Colombia with technical assistance and needed capacity building, including financial assistance, to facilitate compliance with the recommendations and benchmarks on effective labor law enforcement. To ensure that such assistance is effectively and appropriately utilized, the U.S. Departments of State and Labor along with the USTR must work together and have multi-year spending authority to distribute needed aid. Each disbursement of aid must be contingent upon regular demonstrations by the Colombian government of measurable workers’-rights-related improvements.

(2) Is the Colombian government taking adequate steps to protect Colombia’s workers from acts of intimidation or violence that impede the exercise of their fundamental labor rights? If there are gaps, please identify them and provide specific suggestions for improvement.

No. The National Labor School (ENS), the respected Colombian human rights group, reports that 38 trade unionists were assassinated in Colombia in 2007, and 49 killed in 2008; a nearly 30 percent increase. The ENS also registered 246 death threats against trade unionists in 2007,

⁸ “A Way Forward for Workers’ Rights in US Free Trade Accords,” *Human Rights Watch*, October 2008, ISBN: 1-56432-387-0, pg 14.

which more than doubled in 2008 to 497. Given that this deterioration in human rights conditions occurred during the period when the U.S. Congress was most closely scrutinizing Colombia in connection with the Uribe government's lobbying campaign in Washington to pass the FTA, it is rather damning evidence – the upward trend of unionist assassinations, various new human rights scandals from the Uribe government's 'false positives,' and civilian spying outrages – of a movement toward worsening, not improved labor rights and human rights conditions.

Again according to ENS, by mid-June of this year, another 21 unionists were murdered. This amounts to a total of 108 killed since January 2007. In the majority of these cases where a motive for the murder could be identified, the trade unionist was killed because of his or her union activity.

The Colombian government has worked to contradict the National Labor School unionist assassination reporting data. It has cooked up outlandish stories about how a murder victim's status as a labor leader is coincidental to his or her assassination. Yet, even as the Uribe government seeks to muddy the data with respect to the numbers of unionists killed, it cannot – and does not attempt – to deny the fact that individuals are murdered for exercising their fundamental labor rights in Colombia.

Additionally, the combination of ongoing assassinations, death threats and violence against family members creates a climate of fear for trade unionists that makes it impossible for them to fully and confidently exercise their rights to organize, bargain collectively, go on strike or criticize the government. The United States of America under the leadership of President Obama must not closely associate itself via a trade agreement with a human rights pariah government such as that of Colombia.

(3) Has the government of Colombia made sufficient progress in its efforts to prosecute the perpetrators of violence and intimidation against unionists exercising their fundamental labor rights? If there are gaps, please identify them and provide specific suggestions for improvement.

No. Although the Colombian government has established a special sub-unit within the human rights unit of the Office of the Attorney General to step up the investigation and prosecution of crimes against unionists, in reality these bodies have delivered few results. The impunity rate in Colombia remains at nearly 97 percent. In fact, of the more than 2,700 murders of trade unionists since 1986, only about 90 cases – around three percent – have resulted in convictions.⁹ According to a report released by Colombia's four national labor centrals and the National Labor School, the majority of union murders is linked to labor conflicts and is part of "strategic and systematic actions obeying specific interests and seeking to weaken union efforts to demand and defend labor rights."

In addition, demobilized paramilitary members are eligible for greatly reduced sentences under the government's Justice and Peace Program, meaning some may serve sentences as short as two and a half years even if convicted of murder.

⁹ Statement by José Luciano Sanin Vásquez, Director of the *Escuela Nacional Sindical* ("National Labor School") of Colombia, House Education and Labor Hearing, "Examining Workers' Rights and Violence against Labor Union Leaders in Colombia," February 12, 2009.

Moreover, the judges who do prosecute unionist killings are often removed from their posts without explanation, leading to questions of whether political influence is the cause of their dismissal. For example, last year, Judge José Nirio Sánchez was dismissed from his position as a specialized labor judge. Many Colombian observers agreed – including Uribe’s own Vice President Francisco Santos – that Sánchez was an excellent judge who was diligently working on Colombia’s enormous backlog of labor-homicide cases.¹⁰

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. Judge Sánchez is known 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 for anti-labor killings. We still do not have an explanation for why Judge Sánchez was removed and it is unclear whether or not it was in retaliation to his rulings.¹¹

Please refer to the AFL-CIO’s report, *Workers’ Rights, Violence and Impunity in Colombia*, (http://www.aflcio.org/issues/jobseconomy/globaleconomy/upload/colombia_briefing.pdf) which confirms the findings of previous reports on Colombia by the U.S. Labor Education in the Americas Project (USLEAP) and the International Trade Union Confederation (ITUC) on murder and abuse of union leaders and union-affiliated workers.

We, along with many respected labor, human rights, development and religious organizations are adamantly opposed to the United States implementing any trade agreement with the Colombian government until and unless the attack on Colombia’s labor movement and the fundamental labor rights of its workers ceases. It must be made clear to Colombian authorities that the United States seeks fundamental changes in the current labor and human rights conditions in Colombia and that the attack on unions and workers – both through legal channels and through violence, intimidation and harassment – must stop. The benchmarks we set forth at the beginning of our statement and the items on page 5 signifying additional areas of improvement must be met before we can consider any trade agreement with Colombia.

In addition to demanding real changes in Colombia’s horrific human rights conditions, we also have a unique opportunity to reform U.S. trade policies to ensure that Americans enjoy the benefits of expanded trade and to remedy the negative consequences on the American economy, environment, and public health and safety that have resulted from the current globalization model. We hope you will consider our concerns and work with us to establish a new trade framework, such as that described in the TRADE Act of 2009 (H.R. 3012), which upholds the promise to workers that their rights will be a priority in the global marketplace.

¹⁰ Letter from Congressman George Miller (CA-07), Chairman of the House Education and Labor Committee, to President Álvaro Uribe, dated September 12, 2008.

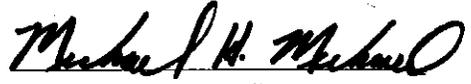
¹¹ Ibid.

Again, we appreciate the opportunity to express our views and look forward to working with you to replace the NAFTA/DR-CAFTA trade model pursued by the past administration, and to fight for improved labor and human rights conditions in Colombia and around the world.

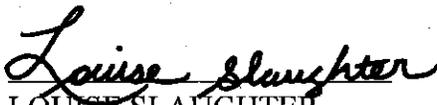
Sincerely,



PHIL HARE
Member of Congress



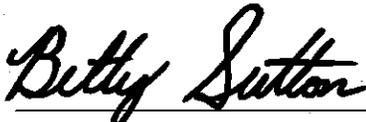
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