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United States Trade Representatives
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Re: Request for Comments Concerning the Free Trade Agreement with the Republic of Colombia.
Docket # USTR-2009-0021

The International Labor Rights Forum hereby files these comments pursuant to the United States Trade Representative's Request for Comments Concerning the Free Trade Agreement with the Republic of Colombia in the Federal Register Volume 74 No. 144 posted on July 29, 2009.

I. Introduction

Trade unions and the workers who form them are vital partners in the effort to ensure strong, broad-based economic growth. Unions are vital for promoting social and economic empowerment, equitable economic growth, and the democratic reforms needed to ensure a fair and equitable trading partnership. However, Colombia remains one of the world's most difficult environments for workers to establish and join unions. Union leaders are assassinated, attacked, or threatened at alarming rates. Leaders of paramilitary forces, who are accused of orchestrating the brutal murders of workers and labor leaders, enjoy broad impunity. Also, Colombian workers' are being threatened by expanding forms of labor contracting in violation of the workers' right to organize and bargain collectively. As a result, union density remains low in Colombia. In 2008, barely 4 percent of workers were union members and only 1.2 percent of workers worked under an employer-employee negotiated collective bargaining agreement.¹

Rather than protecting the rights of workers, the Colombian Government has instead supported illegal paramilitary organizations and allowed them to enjoy impunity. The Colombian Government has failed to make meaningful progress in ending the violence against union leaders. Paramilitary organizations, like the AUC (or United Self Defense Forces of Colombia), many with ties high-level Colombian government officials and U.S. corporations, continue to hold significant political and economic power. Also, the Colombian Government has promoted the widespread use of labor contracting which denies hundreds of thousands of workers the right to freedom of association. In short, the Colombian government is fundamentally unprepared to enter into an FTA with the United States.

¹ 2009 International Trade Union Confederation Survey of violations of trade union rights found at <http://survey09.ituc-csi.org/survey.php?IDContinent=2&IDCountry=GTM&Lang=EN>

II. The US Government must require the successful implementation of preconditions to ensure that Colombian workers can freely exercise their right to freedom of association.

Before the US enters into a Free Trade Agreement with Colombia, the US Government must ensure that the Colombian government implements strict labor-related preconditions to address the underlying factors that have led to serious violation of the right to freedom of association, including the murder of labor activists and the widespread impunity enjoyed by those responsible. **(1)** It must fully dismantle the paramilitary forces that commit labor homicides, **(2)** end impunity for all of those who responsible for labor murders and other threats to workers, and **(3)** ensure that courts can act in an independent and unbiased manner. Additionally, **(4)** the U.S. Department of Justice must work with the Colombian government to fully investigate and prosecute those responsible for the murder of trade union leaders, including U.S.-based multi-national corporations who are alleged to have aided in the many of the murders. Finally, **(5)** The Colombian government must also effectively enforce laws and policies that ban labor “cooperatives” and reduce, rather than promote, contractual forms of employment in Colombia, as recommended by the ILO.

The Colombian Government’s commitment to reform cannot be adequately measured by any set of benchmarks built into the agreement.² As Guatemala has demonstrated, when civilian authorities cannot effectively control the military, paramilitary or other armed groups, labor leaders will continue to be routinely attacked and killed with impunity. Despite the labor conditions negotiated into DR-CAFTA³, and the capacity building funds that accompanied the agreement, Guatemalan labor leaders continue to suffer. Only *preconditions* measured over a sustained period of time will provide adequate assurances that Colombia is serious about implementing needed reforms to protect labor organizers and ensure that all workers can form and join trade unions.

(1) – (3). The Colombian government must bring an end the political and economic power enjoyed by paramilitary groups, prosecute those responsible for labor homicides, and ensure an independent, unbiased judiciary.

(1) Paramilitary groups continue to kill labor leaders with impunity.

The AUC, which was designated a terrorist organization by the Department of State on October 5, 2001⁴ under the Patriot Act, and other paramilitary organizations have been engaged in an all out war against trade unionists, often with the assistance of U.S.-based multinationals corporations or the Colombian government.⁵ New paramilitary groups responsible for labor homicides continue to emerge. As a result, nearly 500 unionists have been killed since 2002 when current President Alvaro Uribe was elected.⁶ In 2008

² Benchmarks would only create temporary incentives for the Colombian Government to decrease union murders but would not address the Colombian Government’s political will to fully dismantle paramilitary forces, end impunity in order to guarantee all workers the right to freely associate.

³ 2009 International Trade Union Confederation Survey of violations of trade union rights found at <http://survey09.ituc-csi.org/survey.php?IDContinent=2&IDCountry=GTM&Lang=EN>

⁴ U.S. Department of State, Office of the Coordinator for Counterterrorism “2001 Report on Foreign Terrorist Organizations,” October 5, 2001

⁵ For decades, illegal paramilitary groups such as the AUC have carried out a campaign of terror throughout Colombia against anyone it suspected of aiding or sympathizing with the FARC and ELN guerrillas.

⁶ Between Uribe’s inauguration on August 7th 2002 and December 31st 2008, there were 482 documented cases of trade union murders in Colombia according to the *Escuela Nacional Sindical’s* (ENS) records. (The ENS is an independent non-governmental organization in Colombia whose information is frequently cited by the U.S.government and used by the ILO.) See USLEAP “Colombia Fact Sheet,” found online at <http://www.usleap.org/files/Impunity%20Fact%20Sheet.pdf>.

alone, 49 union leaders were killed, which is a 25% increase in labor homicides from 2007. Already this year, 27 unionists have been murdered.⁷ Death threats, arrests and other violations continue were 72% higher than in 2007.⁸

Yet, the Colombian Government has failed to make any meaningful effort disarm and prosecute the paramilitary leaders and others responsible for labor homicides. The Colombian Government has failed to effectively investigate and prosecute the 2,700 labor homicide cases that have occurred since 1986. The impunity rate remains at 96.7% and the Colombian Prosecutor General's Subdivision on of Investigation only recognizes 40% of the union murder cases committed in the last 23 years.⁹ A very low percentage of the investigations reach courts and result in the conviction of those responsible.¹⁰ Also, the Prosecutor General's office has not even created a work plan for investigating the enormous backlog of labor homicide cases, further undermining the Colombian Government's credibility in dealing with pervasive impunity.

(2) Paramilitary groups operate with the tacit support of Colombian government officials.

Recently, former Colombian government officials have been alleged to be working with paramilitary organizations. Over the last two years, members of both the Uribe Administration and the Colombian Congress have come under heavy scrutiny for having close ties with paramilitary forces responsible for labor homicides. In one of many examples, Jorge Noguera, Colombia's former intelligence chief, was indicted in February of 2007 for helping violent right-wing paramilitaries to infiltrate high levels of the Colombian Government. Additionally, in September 2008, General Mario Montoya Uribe, the leader of Colombia's army was accused of working closely with paramilitaries and funneling weapons to key paramilitary commanders.¹¹ In the recent notorious "Parapolitics" scandal, the Colombian Supreme Court implicated a number of high-ranking government officials, including 60 congressional representatives aligned with Uribe in collaborating with paramilitaries and shielding paramilitaries from justice.¹²

(3) Colombian judges face tremendous pressure to ensure continued impunity.

Colombian courts also face significant pressure to ensure impunity for the intellectual authors of crimes against union leaders. For example, specially appointed labor Judge Jose Nirio Sanchez, who

⁷ Ibid

⁸ 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, principally characterized by 1) the accelerated increase in detentions 2) the increase in violations of the human rights of women unionists 3) powerful restrictions to union freedoms, a significant increase in death threats, the increase in crimes committed by State actors 4) the use of a variety of strategies to disguise the magnitude of the violence." See, "*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>

⁹ Escuela Nacional Sindical, "*Examining Workers' Rights and Violence against Labor Union Leaders in Colombia*" February 12, 2009, House Committee on Education and Labor Hearing.

¹⁰ International Labor Organization, Committee of Experts on the Application of Conventions and Recommendations, Individual Observation concerning Freedom of Association and Protection of the Right to Organise Convention (87), Colombia Published: 2009 pg. 2

¹¹ See USLEAP, "Colombia Fact Sheet," March 2009, Human Rights Watch quoting Colombian Commission of Jurists (CCJ) records at Feb. 12, 2009 House hearing, See <http://www.usleap.org/files/Impunity%20Fact%20Sheet.pdf>.

¹² JUANA PEREZ 1-51/JUAN PEREZ 5E-50 v. DOLE FOOD COMPANY, INC. (Legal complaint against Dole Food Company). filed on April 28, 2009 by attorneys of CONRAD & SCHERER, LLP. See <http://www.iradvocates.org/4.27.09%20Dole%20Complaint%20FINAL.pdf>

implicated the Nestle Corporation's involvement in the murder of one of its labor leaders, was removed from his judicial post in a controversial, split decision by the Colombian Superior Court. Judge Sanchez's removal suggests that judges who entertain controversial cases, risk their jobs.¹³ Unsurprisingly, the Colombian courts have failed to sentence the "intellectual authors" of union related murders, (with the exception of one) in other words, the entities/people that instigate, plan, order or finance labor related murders.¹⁴

Before the US agrees to an FTA, (1) the Colombian Government must dismantle and prosecute the paramilitary forces and bring an end the political and economic power they enjoy today. (2) The Government must conduct a full, transparent investigation and prosecution of all government officials and companies suspected of having ties with paramilitary groups. (3) The Government must ensure that courts can act in an independent and unbiased manner.¹⁵ If not, violence against unionists will persist. Workers will continue to live in constant fear of death knowing that paramilitary forces are able to kill them with impunity. Workers will be unable to effectively seek better working conditions and the freedom to exercise their rights.

(4) The U.S. Department of Justice must investigate U.S. Corporations suspected of complicity with labor homicides.

Strong evidence demonstrates that U.S. corporations have financially supported illegal terrorist organizations, such as the AUC, which has directly led to the murder of dozens of labor leaders.¹⁶ Public testimony given by demobilized AUC leaders like Salvatore Mancuso stating unequivocally that Dole and other banana companies made regular payments to the AUC in exchange for "security services."¹⁷ US-based multinationals Chiquita admitted to financially supporting the AUC, which led to the killing of dozens of labor leaders. In the case implicating Alabama based Drummond Coal, while recent civil claims against Drummond were dismissed, strong evidence implicates Drummond in the financing of the murder of its union leaders. While the triggerman was recently sentenced, Drummond's involvement remains uninvestigated despite recent evidence from Colombian witnesses that Drummond paid paramilitaries to perform the murders. To this day, these corporations continue to enjoy impunity for allegedly financing the labor homicides.¹⁸

¹³ Ibid

¹⁴ According to Judge Sanchez, "It is a systematic pattern that in all of these criminal acts [labor homicide cases], 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." See Statement by José Nirio Sánchez House Committee on Education and Labor "Examining Workers' Rights and Violence against Labor Union Leaders in Colombia," February 12, 2009

¹⁵ On 22 June 2005 the Congress adopted the Law on Justice and Peace, which the government claimed was designed to promote reconciliation and the fight against impunity. In July 2006, the Constitutional Court of Colombia, the highest legal instance in the country, found that many aspects of the Law were in breach of the Constitution and amongst other violations, exclude investigation of many of the illegal paramilitary groups responsible for labor homicides. See: <http://survey09.ituc-csi.org/survey.php?IDContinent=2&IDCountry=COL&Lang=EN> for more

¹⁶ Supra, n. 12, available at <http://www.iradvocates.org/>

¹⁷ The testimony has implicated Dole in financially enabling the AUC from 1997 -2008 as a main contributor, along with Del Monte and Chiquita, despite warnings from the State Department. See [www.iradvocates](http://www.iradvocates.org/) for complaints.

¹⁸ See "Murdered Convicted of Killing Drummond Trade Union Leader, August 24, 2009, <http://www.icem.org/en/78-ICEM-InBrief/3361-Murderer-Convicted-of-Killing-Colombian-Drummond-Trade-Unionists>

While Chiquita Brand International and its executives were able to escape any serious criminal liability for hiring an illegal terrorist organization which killed dozens of its workers by agreeing to pay a \$25 million fine, Dole Food Company has been enjoying full impunity for its role in similar murders.¹⁹ In total, ²⁰ more than 70 Colombians have filed a suit against Dole Foods with evidence showing that union activists or union members were systematically hunted down and killed by paramilitary units. Many of the Dole workers who were assassinated had unresolved labor disputes pending with their employers, were in the midst of collective bargaining negotiations with Dole, or were owed work related injury compensation. Evidence indicates that Dole had a financial interest in the murder of its unionists and may have paid paramilitaries to commit the homicides. Yet, Dole Foods and its executives have not yet been investigated by either the US Department of Justice or the Colombian Government.

U.S. corporations will ultimately be major beneficiaries of a free trade agreement and should not be rewarded for aiding and abetting illegal violent acts performed by paramilitaries against union leaders. Therefore, as a precondition to ratification of a free trade agreement, the U.S. Department of Justice must work with its counterparts in Colombia and conduct a full investigation and prosecution of US-based companies who have aided or been complicit in the murder of labor organizers and leaders.

(5) The Colombian Government antipathy for workers' fundamental rights is further demonstrated by its denial of the right to freedom of association for contractual workers

Colombian labor law and labor policy fail to meet internationally recognized standards on freedom of association as large portions of the Colombian workforce are denied the right to join or establish unions, according to the ILO.²¹ In particular, companies operating in Colombia, many that are owned or controlled by U.S. corporations, have profited from systematic abuse and overuse of subcontracted and short-term contract labor that has increasingly replaced permanent, direct forms of employment.²² “Cooperatives” and temporary work agencies are generally set up by employers seeking to evade regular employer obligations under the Labor Code by denying workers a direct and permanent employment relationship. “Cooperative” associates cannot legally join or establish unions.²³

Since 2002, when Uribe took office, 1,923 new “associative labor cooperatives” formed converting more than 350,000 positions into jobs that deny workers the right to freedom of association. As of February 2008 Colombia sustained 12,068 registered labor cooperatives and in 2007, it was estimated that there were 4,221,1081 cooperative members.²⁴ Contractual work arrangements overall have also increased exponentially

¹⁹ Statement from Bob Perillo on May 6, 2009, contractor for the International Rights Advocates, re: legal complaint against Dole Food Company and Chiquita

²⁰ JUANA PEREZ 1-51/JUAN PEREZ 5E-50 v. DOLE FOOD COMPANY, INC. (Legal complaint against Dole Food Company). filed on April 28, 2009 by attorneys of CONRAD & SCHERER, LLP.

²¹ The Colombian labor code fails to grant workers' the right to freely associate and collectively bargain in a host of other ways that have not been addressed in this document according to the ILO and the ITUC. At the last ILO Convention, the ILO Committee of Experts on the Application of Conventions and Recommendations have made 19 observations of Colombia's incompliance with ILO Convention 87 on freedom of association. See International Labor Organization, Report of the Committee on the Application of Standards, ILC 98: Geneva, 2009, No. 16 (Part II) Pg. 23

²² Additionally, many subcontracted workers are denied government and union social security and health benefits, the minimum wage and they are left in constant job insecurity.

²³ Labor “cooperatives” differ from worker owned cooperatives since they are not democratically run by workers themselves. “Cooperative” associates cannot legally join or establish unions.

²⁴ See Statement by José Luciano Sanin Vásquez, Director of the *Escuela Nacional Sindical* (“National Labor School”) of Colombia, House Committee on Education and Labor Hearing, “Examining Workers' Rights and Violence against Labor Union Leaders in Colombia” February 12, 2009. According to the International Trade Union Confederation's 2009 Annual

since 2002: over 500,000 workers are still denied the right to associate based on their status as contract or “cooperative” workers.²⁵ Between 1992 and 2006 there was a 40% reduction in the number of permanent workers in the industrial sector while temporary contracts increased by 192% in the same period.²⁶

People don’t freely choose to join “cooperatives” or become “contract” workers. Rather, companies are requiring workers, many who are full-time employees, to agree to new contracting arrangements. Any full-time employees who leaves or is fired is replaced by contractual workers.²⁷

In export industries and those industries dominated by U.S.-based multinational corporations, companies have been increasingly forcing workers into labor subcontracting arrangements preventing them from exercising many of their rights at work. For example, at Coca-Cola bottling plants in Colombia workers have systematically been moved from direct employment to contractual employment, undermining their right to freedom of association. In June 2008, an ILO High Level Mission investigating labor rights violations at Coca-Cola bottling plants in Colombia found that Coke’s bottlers were outsourcing most of its labor through contracts, service providers, and temporary employment agencies and associated work cooperatives. 70-85% of the distribution and operating staff was outsourced. According to the report, “a significant number of the workers employed in these tasks had until fairly recently been direct employees of the company.”²⁸

Similarly, sugar-cane workers, who have difficult working conditions and are also required to bring their children to work²⁹, are also required to work through labor “cooperatives” and are denied freedom to join a union. In the fall of 2008, over 10,000 sugar cane cutters resorted to a 56 day strike to protest sub-minimum wages, lack of benefits, shifts of 12-16 hours a day in the sun and the fact that they are denied the right to union recognition which would establish formal labor relations with their employers.³⁰ During the strike which was considered illegal by the Colombian government, workers were beaten by the State police and received threats from illegal paramilitary groups. Ultimately, workers were able to win better wages as a result of the strike, but are still denied a formal employment relationship, which would mandate that their employers engage with them in formal collective bargaining over working conditions, wages, and benefits.³¹ Their children continue to face the likelihood of having to work alongside their parents to support their parents.

survey of Trade Union Rights Violations, labor law and policy still exclude more than two thirds of workers from social and worker protection measures, by denying basic workers’ rights to over 12 million people.

²⁵ International Labor Organization, Report of the Committee on the Application of Standards, ILC 98: Geneva, 2009, No. 16 (Part II) Pg. 23

²⁶ See Plataforma Colombiana de Derechos Humanos, Democracia y Desarrollo,, Informe Alterno se la sociedad civil al Comite de Derechos Economicos y culturales, pg. 3.

²⁷ See Corporacion Cactus, “Cooperativas de Trabajo Asociado: Regulacion y Realidad,” 2007

²⁸ International Labor Organization, “Report: Evaluation Mission Coca-Cola Bottling Plants in Colombia (June-July 2008)”

²⁹ Sugar cane from Colombia is on the recent Department of Labor List of Goods Produced with Child or Forced Labor. See, <http://www.dol.gov/ilab/programs/ocft/PDF/2009TVPRA.pdf>

³⁰ Before taking action to improve wages, they once received a wage that was 45% lower than those hired directly by the sugarcane firms and face horrendous working conditions. See, Mario Pérez Rincón, Paula Álvarez Roa “Social and environmental debt from the sugarcane business in Colombia.” Corporate Social Responsibility and implicit subsidies in the sugarcane industry,” 2009

³¹ Witness for Peace, “Los Corteros: The Plight of Colombian Sugarcane Cutters” found at <http://www.witnessforpeace.org/article.php?id=587>

The cut-flower industry has also become characterized by an increase in various types of contract arrangements including³² fixed term contracts, generally no more than 4 months, contracts based on production, for example based on the number of flowers cut , subcontracting through individuals or temporary employment agencies and subcontracting through labor “cooperatives,” undermining freedom of association throughout the industry. For example, just this past week the Benilda Plantations shut down its operations and laid off the remaining 500 permanent workers so that they could restart operations using only subcontracted labor.³³

Recently, the Colombian government has taken some measures to reform the labor code to regulate labor “cooperatives”. For example, in 2006, the Colombian government issued a legislative Decree in 2006 purportedly barring employers’ from using cooperatives for acquiring their labor.³⁴ Additionally, cooperative members were granted additional social security and minimum wage protections under recently enacted laws.³⁵ However, those measures fell short of granting workers the right to join or establish unions and are only window dressing to avoid having to address the ILO’s concerns.³⁶ In fact, we have seen little evidence that the ban on labor cooperatives has been implemented. Because the Government has failed to make any meaningful reforms extending the freedom of association to contractual workers, including those belonging to labor “cooperatives”, the ILO said in its 2009 report, “The Committee requests the [Colombian] Government to take the necessary measures to guarantee explicitly that all workers, without distinction, including workers in cooperatives and those covered by other forms of contracts, irrespective of the existence of a labor relationship, enjoys the Guarantees afforded by the Convention [Convention 87 on the right to freedom of association.]”³⁷

To ensure that the benefits of trade will be broadly shared and ultimately lead to long-term sustainable economic development, workers must be empowered to organize union and bargain for good wages and working conditions, and enjoy the benefits of stable employment; not be forced into labor subcontracting arrangements. Therefore, before the US Government agrees to an FTA, the Colombian government must effectively enforce laws and policies that ban labor “cooperatives” and reduce, rather than promote, contractual forms of employment in Colombia, as recommended by the ILO.

³² According to the “2008 Report on the Colombian Flower Sector: Labor conditions and the crisis in the sector” by Colombian NGO Corporacion Cactus, 35% of workers at surveyed at plantations were employed through some type of contractual arrangement. ILRF has also received numerous reports that large numbers of cut-flower workers were replaced by subcontracted workers on many plantations.

³³ Untraflores (Union of Flower Workers in Colombia) Press Release, “Huelga en empresa floricultora Benilda,” September 9, 2009

³⁴ On July 22, 2008 the Colombian Congress approved Act No.1233 which regulates the activities of “cooperatives,” See the ILO Committee of Experts on the Application of Conventions and Recommendations, Individual Observation concerning Freedom of Association and Protection of the Right to Organise Convention (87), Colombia Published: 2009

³⁵ International Labor Organization, Report of the Committee on the Application of Standards, ILC 98: Geneva, 2009, No. 16 (Part II) Pg. 23.

³⁶ See ILO, Report of the Committee on the Application of Standards, ILC 98: Geneva, 2009, No. 16 (Part II) Pg. 23

³⁷ International Labor Organization, Committee of Experts on the Application of Conventions and Recommendations, Individual Observation concerning Freedom of Association and Protection of the Right to Organise Convention (87), Colombia Published: 2009 pg. 4

III. Conclusion

Prior to entering into an FTA with Colombia, the US Government must require that the Colombian government achieve certain preconditions that will ensure that all workers can freely exercise their right to freedom of association.

- (1) The Colombian Government must fully dismantle the paramilitary forces that commit labor homicides;
- (2) The Colombian Government must end impunity for all of those who responsible for labor murders and other threats to workers;
- (3) The Colombian Government must ensure that courts can act in an independent and unbiased manner;
- (4) The U.S. Government through the Department of Justice must work with the Colombian government to fully investigate and prosecute those who are responsible for the murder of trade union leaders, including U.S.-based multi-national corporations who are alleged to have aided in the many of the murders; and
- (5) The Colombian Government must also effectively enforce laws and policies that ban labor “cooperatives” and reduce, rather than promote, contractual forms of employment in Colombia, as recommended by the ILO.