

DATE: March 17, 2011

TO: The Honorable Barack Obama
President of the United States

FROM: Representative James P. McGovern
Representative George Miller
Representative Rosa L. DeLauro
Representative Michael H. Michaud
Representative Jan Schakowsky
Representative Linda T. Sánchez

SUBJECT: Advancing Colombian Labor and Human Rights and Congressional Consideration
of the U.S.-Colombia Free Trade Agreement

For the past several years, the proposed U.S.-Colombia Free Trade Agreement (FTA) has not advanced in the U.S. Congress because of labor rights and human rights abuses in Colombia. A chief concern has been the plight of Colombia's trade unionists, who defend the rights of workers producing the goods to be traded with the United States, and who continue to be threatened, attacked and killed. Colombian workers also lack the basic rights to organize unions, bargain collectively, strike or otherwise engage in public protest aimed at improving their standard of living. Internationally, Colombia, in particular, is set apart by its long history of murder and threats against labor unionists and the deprivation of the most basic worker rights.

Colombia continues to be ranked by the International Trade Union Confederation as the single most dangerous country in the world for unionists, with the annual number of union murders in Colombia often equal to or exceeding the total murders of unionists in all other countries combined. Violence against Colombian trade unionists continues unabated, and in most cases, no one has been held accountable. The International Labor Organization (ILO) has repeatedly reported that the Colombian government has failed to provide in law and practice the most fundamental rights of workers and has failed to effectively enforce those laws, including in the recent conclusions and recommendations issued by the ILO High-Level Tripartite Mission to Colombia following its February 14-18, 2011 meetings and consultations in Colombia.

Anti-union violence has not only taken the lives of thousands of men and women belonging to labor and union organizations, it has also affected the labor movement as a whole. Collectively, the Colombian labor movement has been adversely affected by stigmatization, a reduction in the number of affiliates, and the weakening of its capacity for action, mobilization and participation in Colombian democracy.

The attacks, murders and death threats against trade unionists are manifestations of much larger threats to the rule of law in Colombia, especially the continued power that illegal armed groups exercise over many of Colombia's regions and political structures. Among these groups are the successor organizations to the paramilitaries that only partially demobilized in 2005. Several regions of the country are dominated by a combination of these paramilitary structures, organized crime, and their accomplices among local politicians, landowners, and sectors of the security forces. In addition to trade unionists, these illegal successor groups threaten and attack

sectors of the population, particularly Afro-Colombian and indigenous communities. They target human rights defenders, victims seeking return of stolen land, and religious and community leaders who, like trade unionists, advocate for fundamental rights.

Further, members of Colombia's own military and security forces collaborate with these illegal groups. According to its 2010 Annual Report, publicly released on February 24, 2011, the U.N. High Commissioner for Human Rights (UNHCHR) in Colombia estimates that more than 3,000 persons may have been victims of extrajudicial murders, primarily attributed to the Army. Most occurred over the past six years, and the majority remain unresolved. In particular, for those murders carried out by the Colombian military that took place during the period of 2004-2008, a verdict has been reached in only 6% of the cases.

Despite this problematic landscape of violence and rights abuses, we believe there is a window of opportunity for the United States and Colombia to advance the rule of law and the rights and security of trade unionists – and by extension, of all civil society. President Juan Manuel Santos has established a welcome tone for civil discourse by asserting the legitimacy of human rights defenders and their work; improving relations with the Supreme Court and Constitutional Court and recognizing their independence; submitting to the Colombian Congress laws on land restitution and victims' rights; directing the security forces to more forcefully target and arrest leaders of successor groups to paramilitaries; and announcing a commitment to address poverty and inequity and to modernize the Colombian state. While these proposed policies would help to align the government with the victims of violence rather than its perpetrators, they have not yet been implemented and face powerful opposition from armed groups and their political supporters and benefactors.

It is incumbent upon the United States, along with its European and Canadian counterparts, to support the Colombian government in these efforts so that concrete and sustained results can be achieved in addressing violence against trade unionists and its larger causes, and creating a climate in which workers can exercise their fundamental labor rights without fear.

We understand that it might take years for many of these ongoing problems, some with deep historical roots, to be fully addressed and resolved. Nonetheless, we believe concrete measures can be taken -- decrees issued and robustly carried out, laws adopted and implemented, policies enforced, and relevant government agencies strengthened – that would demonstrate over time that Colombia is engaged in irreversible change.

After consulting with labor and human rights organizations in Colombia and the United States, and carefully reviewing recent reports by the ILO, United Nations and others on the labor and human rights situation in Colombia, **we believe, at this time, that the conditions on the ground in Colombia do not allow for consideration of the FTA. It is our belief that the U.S. – Colombia FTA should *not* be brought before the Congress, Mr. President, until you can assure and demonstrate to Congress that the changes outlined in this memo have occurred.** We recommend that responsible officials in your Administration interfacing with Colombia use the good offices of the Bureau of International Labor Affairs (ILAB) in the U.S. Department of Labor when making such a determination. We view as insufficient superficial gains that fail to create an environment in which workers can exercise their fundamental rights, do not decrease substantially the level of violence and threat targeted at unionists and other rights defenders, and do little to end impunity.

With these challenges in mind, we provide you these measures for realizing sustainable change and ask you to support and work with Colombian government efforts dedicated to achieving them in three major categories:

- Ending Violence Against Trade Unionists and Other Human Rights Defenders;
- Strengthening Investigation, Prosecution and Breaking the Culture of Impunity; and
- Strengthening Fundamental Worker Rights.

I. Ending Violence Against Trade Unionists and Other Human Rights Defenders

From 1986 to the present, the *Escuela Nacional Sindical* (ENS), Colombia's most prominent NGO monitoring labor rights, has recorded the murder of over 2,800 unionists. The number of assassinations of unionists per year remains shocking, with 149 unionists murdered over the past 3 years alone – 51 in 2008, 47 in 2009 and 51 in 2010. New murders of unionists have already occurred in 2011, including the killings of three teachers. Other forms of violence also remain at crisis levels, including death threats, forced disappearances, kidnappings, attempted murders, arbitrary detentions, torture, forced displacement and illegal break-ins targeted at trade unionists. These facts horrify. As the February 2011 ILO Mission to Colombia recognized in its conclusions, “the only acceptable situation is one in which all acts of violence have ceased and there is need to act with determination to bring this about.” The challenge is how to effectively and sustainably reduce sharply and ultimately end the level of violence and threat against unionists, target the source(s) of that violence, dismantle the structures that support and benefit the perpetrators of violence, bring to justice those engaged in murdering and threatening unionists along with their collaborators, and increase the State's ability to provide effective protection to unionists and others who live under a state of constant threat and violence.

In 2003-2006, Colombia instituted a demobilization process aimed at the coalition of right-wing armed paramilitary organizations known as the AUC. Almost immediately, after the seriously flawed process had ended, new groups cropped up all over the country, taking the reins of the criminal operations that the AUC leadership previously ran. These groups – often led by mid-level commanders of demobilized paramilitary organizations – are committing widespread abuses, including massacres, killings, rapes and forced displacement. They have taken on roles similar to the defunct AUC, such as murdering and issuing threats against labor, Afro-Colombian, indigenous, religious, human rights and community leaders. For example, according to the Colombian Commission of Jurists, 14 human rights defenders were killed in 2010. And on March 7th, the Inter-American Commission on Human Rights (IACHR/OAS) condemned the continuing threats, harassment, and murders of family members of human rights defenders in Medellín, charging the State with having failed to provide effective measures for protection. On February 24, 2011, with the release of its 2010 Annual Report, the UNHCHR-Colombia stated that criminal organizations linked to former paramilitary groups drove a dramatic increase (34%) in massacres in 2010, and killed human rights activists, trade unionists, public officials and other civilians. In January 2011, Colombian National Police Director Oscar Naranjo acknowledged that successor groups to paramilitaries are responsible for the majority of violence in Colombia.

The emergence and increasing consolidation of these successor groups is largely due to the Colombian government's failure to thoroughly investigate and dismantle the military, financial and political networks of the AUC; effectively identify and recover the illegally seized

property that provides a material and economic base for the new groups' on-going activities and recruitment of new members; or bring to justice the majority of paramilitary gunmen, sponsors and beneficiaries. In many regions, Colombian military, police, political and judicial officials have been collaborators with these armed actors, or at a minimum, tolerated and turned a blind eye to their violence, threats, abuses, murders and criminal activities. The result has been continuing and increased violence in those regions where these groups hold sway. In some cases, U.S. corporations and investors with operations within Colombia have made extortion payments to these groups for so-called "protection." In effect, they provided funds for criminal groups engaged in violence against the civilian population, including labor activists employed by the U.S. corporations.

If the Santos Administration is to have success in carrying out its land restitution and victims' rights initiatives, it will need to confront this challenge head on, providing greater protections to labor and rights activists, and to those who represent families and communities dispossessed of their lands who are now being asked to return. The government will need to work forcefully and effectively to dismantle the structures that support and benefit from these paramilitary and criminal organizations. It is encouraging that the Santos Administration has recently announced a new strategy to combat successor groups, but the implementation and results of this policy remain to be seen. Success must be measured in terms of reduction of abuses against the civilian population, well-founded prosecutions of members of successor groups and their accomplices, and the dismantling of organizational structures.

Recommended Measures

With these challenges in mind, **the Colombian government must:**

- Demonstrate a dramatic and sustained decrease from current levels in murders and attacks against trade unionists and rights defenders, with the clearly-defined goal and recognition that the only acceptable situation is one where all murders have ceased;
- Ensure that members of state security forces do not engage in extrajudicial executions or other serious abuses against civilians, or collaborate with paramilitary successor groups and other illegal groups; and
- Demonstrate a substantial reduction in abuses committed by successor groups to the paramilitaries, and significant progress in dismantling their organizational structures.

To achieve these goals the Colombian government must, among other steps:

- 1) Establish and enforce a "zero tolerance" policy on extrajudicial killings by Colombia's military, police and other State actors, including immediate suspension from duties and ending any incentives that may encourage such abuses.
- 2) Establish and enforce a "zero tolerance" policy on collaboration with abuses carried out by guerrillas, paramilitaries or other illegal armed groups and criminal networks by Colombian military, police or other State actors, including immediate suspension from duties.
- 3) Substantially strengthen the presence of professionally trained police in areas where successor groups to the paramilitaries are present, particularly in rural areas where police

often are not present, ensuring full compliance with the zero tolerance policies and practices stated above.

- 4) Strengthen the Early Warning System of the Ombudsman's Office (*Defensoría*), so that it has the necessary resources and stability to continuously monitor potential threats to civilians posed by successor groups. Ensure that the system's risk reports are made public and that other State agencies take necessary actions to respond to these reports, protect the population and address the threats, including taking actions to sanction State agents who fail to carry out such duties.
- 5) Ensure that protection programs and measures for trade unionists, rights defenders and other community leaders receive adequate and sustainable resources so that no one at risk or under threat who requires protection fails to receive it. In addition, the State should not delegate its responsibility to protect its citizens, and should abide by the recommendations described in the March 2010 Mission to Colombia Report of the U.N. Special Rapporteur on the Situation of Human Rights Defenders, namely that protection measures offered under Colombia's Protection Program should not be privatized.
- 6) Ensure the removal from national intelligence files of references to unionists and union organizations that were included in the files because of their union activity.
- 7) In coordination with union organizations, carry out a multi-year national campaign to promote the legitimacy of union organizations in Colombian society.
- 8) Dismantle organizational structures and substantially reduce abuses by paramilitary successor groups by establishing and effectively enforcing a mechanism to identify land and illegal assets that paramilitaries, members of successor groups or their accomplices may be holding, and ensure their recovery and restitution to victims. Importantly, this needs to include measures and funding that effectively protect the safety of those returning to their former lands. It also needs to include return of land to Afro-Colombian and indigenous communities in a manner that respects their Constitutionally-protected rights, including the right of prior consultation.

II. Strengthening Investigation, Prosecution and Breaking the Culture of Impunity

The history of impunity in Colombia has made it difficult for the Colombian people, victims of abuse, and the international community to have confidence in the judicial system. While there have been modest advances over the past decade, the Attorney General's Office (*Fiscalía*) is still largely ineffective in investigating and prosecuting even high profile crimes and abuses, due to a variety of structural, financial, technical, logistical, and political deficiencies. While the Government of Colombia has created new structures and made modest progress prosecuting those responsible for committing various crimes against unionists, the overwhelming majority of violent crimes against unionists remain in impunity. According to the Colombian Commission of Jurists, the *Fiscalía* is only investigating 25.5% of union killings since 1986, and no one has been held accountable in 98% of crimes against unionists. Even the limited number of convictions reached has been marred by serious flaws in the methodologies authorities employ to investigate anti-union violence.

The problems confronting investigations, prosecutions and breaking the culture of impunity are intimately tied with the challenges in providing protection and ending the violence, murders, threats and stigmatization against trade unionists, other rights defenders and vulnerable populations. It is impunity – the ability to literally get away with violence and murder unpunished – that results in and encourages further violence, threats and abuses.

The Santos government has demonstrated that when the political will exists, investigations and arrests of State and non-State perpetrators of violence, including the intellectual authors, can occur in a swift and professional manner. The arrests of members of security forces accused of the rape and murders of children in Tame, Arauca and the arrests of those responsible for the murders of two Universidad de los Andes students are recent examples of the government's capacity when a mandate and appropriate resources are provided. This same mandate and political will must be demonstrated, at a minimum, in *new* cases of violence, murder and threats perpetrated against trade unionists and rights defenders.

Recommended Measures

With these challenges in mind, **the Government of Colombia must demonstrate a dramatic increase from current levels in the rate and significant improvement in the quality of criminal investigations and prosecutions of:**

- Perpetrators of anti-union violence, including convictions in a significant number of the more than 2,800 killings of trade unionists reported since 1986;
- Perpetrators of violence against other rights defenders, including Afro-Colombian and indigenous leaders;
- Members of paramilitary successor groups and their accomplices;
- State actors responsible for extrajudicial killings; and
- State actors who have collaborated with, benefited from, or tolerated the criminal acts of paramilitaries or their successor groups.

To achieve these goals, the Colombian government must, among other steps:

- 1) **Develop a new strategy for investigating and prosecuting cases of anti-union violence**, drawing upon the expertise of union and human rights organization through direct consultation on such a strategy, and including the following measures:
 - Staff the Attorney General's special sub-unit for crimes against union members with prosecutors with expertise in the subject area and reassign all other cases unrelated to trade union violence. (When the sub-unit was created, it pooled prosecutors from unrelated divisions and added the union cases onto their workload.)
 - Ensure investigations examine the context of these crimes rather than treating them as isolated cases. The failure to do so means that connections are not made that could lead to the identification of other perpetrators, intellectual authors or beneficiaries. Every effort must be made to identify and prosecute intellectual authors.

- Ensure prosecutors follow up on credible evidence that implicates members of the armed forces, politicians or business leaders. If the evidence points towards State actors, prosecutions should continue up the chain of command to those responsible.
- Ensure that the accused and convicted be in custody, as trials in absentia do not adequately end impunity. Far too many of the sentences are unenforceable because the accused is not in custody.
- Ensure that convictions are based on more than the mere admissions of guilt by paramilitaries participating in the Justice and Peace process. Prosecutors should follow all lines of inquiry in order to establish full truth about crimes and acquire information to identify intellectual authors and who benefited from the murder.
- Ensure that the special prosecutors for labor union cases handle all the reported cases, not just the reduced number they are currently investigating. Assess the universe of murder cases found in the database of the *Escuela Nacional Sindical* (ENS), not the subset currently under review by the *Fiscalía*. Issue a plan for overcoming impunity that establishes a credible process for investigating and prosecuting this caseload, with annual benchmarks and the financial and institutional resources required to accomplish those benchmarks. (Colombian labor organizations have suggested designing a 10-year plan to achieve this goal.) Special attention should be given to the 12 departments and 25 unions that account for 85% of the homicides against unionists and investigations should prioritize the murders of the 737 union leaders killed since 1986.

Further, the Colombian government must, among other steps:

- 2) Ensure that all criminal cases involving human rights abuses by State actors, including members of the military and security forces, are handled by civilian authorities.
- 3) Strengthen and increase the size of the specialized unit of prosecutors in the Attorney General's Office charged with investigating successor groups and assign them sufficient resources to carry out their work effectively.
- 4) Ensure that the National Unit for Human Rights and International Humanitarian Law of the Attorney General's Office, including its Sub-Unit for Crimes Against Union Members and the sub-units charged with investigating extrajudicial killings and violence against rights defenders, have sufficient resources and staff to effectively carry out their work.
- 5) Conduct thorough investigations not only of individual members of successor groups, but of their criminal networks, including financial backers and collaborators within the State.
- 6) Provide the mandate and resources to vigorously arrest, investigate and prosecute the perpetrators of *new* cases of violence against trade unionists and rights defenders so that violence and murder with impunity are no longer the norm.

- 7) Increase funding for the Attorney General's witness protection program for human rights cases, especially those involving violence against trade unionists and other rights defenders, so that the program has sufficient resources to ensure that all witnesses requiring it in fact receive appropriate, timely and effective protection measures.
- 8) Establish and implement a robust system to effectively investigate threats against trade unionists and other rights defenders and bring to justice the perpetrators. Threats have a chilling effect on trade union activity and human rights advocacy and amplify the ability of perpetrators of violence to operate with impunity.
- 9) Develop a State policy that establishes collective reparations for the union movement, including collective reparations within the Draft Law on Reparations for Victims of Violence, as expressed in the conclusions of the February 2011 ILO Mission in Colombia.

III. Strengthening Fundamental Worker Rights

Although Colombia has ratified all of the eight core ILO conventions, its laws and regulations fail to comply with the minimum obligations set forth in these conventions. Moreover, even the laws that are currently on the books are not effectively enforced. In industry after industry, Colombian workers, many of whom make goods for export to the U.S. market, are unable to exercise their fundamental labor rights. Further, the development of industries that potentially compete with American workers – mining, agriculture, alternative fuels and transportation – have been expanded through the seizure and violent forced displacement of *campesino*, Afro-Colombian and indigenous communities.

Colombian employers and authorities have created and/or permitted the use of a series of schemes to undermine or disguise direct employment relationships in order to deny workers the rights they would normally be due under law or collective bargaining agreements. These include, but are not limited to, the practice of forcing employees into involuntary “cooperatives” functionally controlled by the employer (CTAs), hiring workers under commercial rather than employment contracts, and employing workers through temporary service companies, among others. Additionally, workers face a number of other hurdles such as: the institution of *pactos colectivos* – contracts often unilaterally imposed by employers on unorganized workers; restrictions on the right to bargain or strike; the blanket prohibition on public employees and apprentices from collective bargaining; and the denial of national-level union organizations the right to negotiate for industry-wide agreements. Through these and other strategies, millions of Colombian employees have been denied even the most basic labor rights. According to the conclusions of the February 2011 ILO High-Level Tripartite Mission to Colombia, the level of trade union density in Colombia remains very low, variously estimated between 4% and 7%, and collective bargaining lower still, marking a steep decline from the 15% who enjoyed collective bargaining coverage in 1990.

Colombia has also failed to uphold international standards concerning child labor. According to government statistics, an estimated 1.6 million Colombian children are currently working in violation of child labor laws, including significant numbers in trade-related industries such as agriculture and mining.

Beyond child labor violations in the mining industry, Colombian miners are exposed to dangerous conditions, including preventable coal dust explosions caused by primitive mine safety laws. Miners receive scant protections because Colombia has failed to provide more than a handful of inspectors for some 2,000 mines. Further, mining companies are hamstrung because the government-controlled enterprise, *Industria Militar* (INDUMIL), has blocked the import of special “permissible” safe explosives designed for mining to reduce mine explosions. These matters have received attention inside Colombia due to mining accidents and deaths over the past few months.

Article 63 of the recent Law on Formalization and Generation of Employment (Law 1429 of 2010) is a modest step forward in combating involuntary “cooperatives” by substantially increasing the penalties for employers who violate the prohibition on using involuntary “cooperatives” to hire workers to perform the core functions of an enterprise (as defined by the employer), and which were largely already prohibited by law but rarely enforced. We remain concerned, however, that the law does not actually outlaw involuntary “cooperatives.” The law also does not adequately address the many other forms of indirect employment that, like involuntary “cooperatives,” deny workers the rights to unionize and negotiate directly with their employers.

Indeed, along with specific requests to be carried out by the Colombian government between April and September of this year, the February 2011 ILO High-Level Tripartite Mission to Colombia identified three key areas where *urgent* action is needed:

- “Renewed legislative and enforcement measures to put an end to the labor intermediary activities of cooperatives (CTAs), and to all other legal and practical obstacles to freedom of association and collective bargaining;
- Additional effective legal and practical action to ensure that collective accords concluded by employers with non-union workers are not used against the exercise of freedom of association and collective bargaining; and
- A major effort to strengthen labor inspection, enforcement and effective sanctions so that acts of anti-union discrimination, including dismissals and intimidation, are prevented, or addressed through expeditious, accessible, and effective procedures and remedy.”

Recommended Measures

With these challenges in mind, **the Colombian government must take immediate measures to address these concerns:**

- 1) Colombian labor law must explicitly provide for the full range of rights contained in the ILO Declaration on Fundamental Principles and Rights at Work and in the eight core ILO conventions that Colombia has ratified (see page 12), as required under the terms of the FTA, although little has been done to do so since Colombia formally approved the FTA in 2007. These include, but are not limited to: the rights of all workers, both public and private, to freedom of association and to collectively bargain over their terms and conditions of employment; revising the legal definition of “essential services” in which employees are banned from striking in conformity with ILO definitions and

jurisprudence; explicitly permitting parties to engage in industry-wide bargaining; and recognizing the fundamental right to strike. Particular attention must be given to advancing the absolute prohibition of acts of anti-union discrimination and other obstacles to the exercise of freedom of association and collective bargaining presented by the use of associated work cooperatives (CTAs), as well as collective accords in enterprises with non-unionized workers (*pactos colectivos*). The president should ensure legal conformity with these rights through the promulgation of decrees, executive orders, regulations and directives to relevant ministries; by proposing to and gaining the approval of the Colombian Congress of changes to current labor law and the labor code; and by robustly implementing the resulting laws and policies.

- 2) As recommended by the February 2011 ILO Mission, the Colombian government must ensure changes to Colombian labor law and legislative action are vigorously pursued in a timely and expeditious manner. These measures should be submitted for consultation, at a minimum, to the appropriate ILO mechanisms set up to work with Colombia on these matters, Colombian labor organizations, and the National Commission on Social Policy and Salaries prior to their submission to Congress.
- 3) The Ministry of Labor should be reconstituted, as announced by the Santos government, and provided consistent and sufficient funding to carry out its functions, including the necessary funds and personnel to carry out labor inspections and enforce employment policy. It should draw upon the technical assistance offered by the ILO Office, be designed to conform with internationally-recognized ILO standards, and as recommended by the February 2011 ILO Mission to Colombia, facilitate national dialogue that results in agreements between the government, union organizations and the private sector.
- 4) In addition to strengthened inspection enforcement that occurs through a reconstituted Ministry of Labor, working through the Ministry of Mining and Energy, the Director of Mines, and the Director of INGEOMINAS (mine safety enforcement, mine rescue, etc.) the Colombian government should codify new mine safety rules that will prevent mine explosions and fires, eliminate non-tariff trade barriers so that mining companies can import safe explosives designed for mining, and provide the necessary resources to expand the number of mine inspectors with qualified staff in order to ensure mines are regularly inspected for compliance.
- 5) The Colombian government must demonstrate and increase confidence in its ability and commitment to guarantee the rights of freedom of association and collective bargaining. In order to do so, it should issue decrees and regulations that allow workers to contract directly with their employers in industry sectors where such relationships existed in the past and/or where agreements were negotiated but not implemented. These include, but are not limited to, ensuring that:
 - The port workers contract directly with the Port Societies, eliminating all subcontractors in port-related employment and allowing 100% direct contracting between labor (employees) and the Port Society (employer). The President should direct the Ministry of Labor and provide it with the necessary support to remove subcontractors in all port-related employment, transition employees into the formal workforce with direct contracts, and ensure compliance with international labor rights

and standards. The President should provide port workers protection during this transition period.

- The sugarcane workers contract directly with refineries, eliminating use of third party sub-contractors, including the Associative Labor Cooperatives (CTAs). The President should direct the Ministry of Labor and provide it with the support necessary to remove the CTAs, transition employees into the formal workforce with direct contracts, and ensure compliance with international labor rights and standards. The President should provide the sugarcane workers with protection during the transition period.
- The telecommunications workers contract directly with telecom companies, eliminating the use of cooperatives (CTAs). The President should direct the Ministry of Labor and provide it with the necessary support to remove the CTAs, transition employees into the formal workforce with direct contracts, and ensure compliance with international labor rights and standards. The President should provide the telecom workers with protection during the transition period.

IV. Conclusions and Final Recommendations

We believe these are credible and achievable measures. We intend that they provide you with a meaningful basis for discussions between yourself and President Santos and decisions you must take on how the Colombian government must demonstrate that it has achieved concrete results in protecting and upholding the rights and security of workers in Colombia.

As stated above, we believe there is a window of opportunity to move forward these fundamental labor rights and human rights issues. These are matters of grave concern to Colombians, and the Santos government has announced initiatives under consideration on some of the measures noted here, although most have yet to be implemented. Pronouncements are welcome first steps, but they are not change. Any serious undertaking will require much more than a matter of days or weeks to achieve genuine change, although some, like demonstrating the political will, commitment and mandate could happen immediately. Others, like bringing Colombian labor law into conformity with ILO standards and conventions, might take months. Still others, such as substantially reducing the level of violence against unionists, rights defenders and civil society leaders, breaking the culture of impunity, and dismantling the structures of those most responsible for violence against unionists require time to implement and mature before sustainable results on the ground are realized.

We emphasize, therefore, that the U.S. – Colombia FTA should *not* be brought before the Congress, Mr. President, until you can assure and demonstrate to Congress that these changes have occurred, as current conditions on the ground do not now warrant its consideration.

The question remains of how to evaluate and determine whether the situation on the ground in Colombia has improved substantially with respect to guaranteeing basic labor rights for Colombia's workers and dramatically diminishing the level of violence carried out with impunity against unionists and rights defenders. **We believe that in order to make such a determination it is essential to ask those most affected by the lack of rights and the threat**

of violence. As Members of Congress, we will consult and speak directly with Colombian trade unionists, rights defenders, Afro-Colombian and indigenous leaders, and rely upon the analysis of Colombian organizations such as the *Escuela Nacional Sindical* and others, to determine the situation on the ground and whether substantial, sustainable and irreversible change is genuinely occurring. We recommend in the strongest possible terms that you and the responsible officials in your Administration interfacing with Colombia use the good offices of ILAB in the U.S. Department of Labor to do the same.

We believe it is essential that your Administration, under the direction of ILAB, establish immediate direct consultation with the sectors inside Colombia cited above that have been most affected by the lack of rights, violence and threats and create jointly a formal mechanism to monitor and determine the status of union rights and security currently and over the longer term. Such joint consultation and the resulting formal mechanism should also identify and determine how the U.S. would respond and sanction Colombian commercial interests and/or the government should there be a dramatic deterioration in the situation of labor rights, security and protections in the future.

We recognize that it might be difficult for the Colombian government to achieve some of these measures without additional targeted financial, technical, logistical and other assistance from the United States, Canada, the European Union and other international parties. **We strongly recommend that the U.S. government take the lead in ensuring those resources are available.** Over the past decade, the U.S. has invested substantial sums in strengthening rule of law and the ability of the Attorney General's Office to bring to justice those State and non-State actors responsible for carrying out acts of violence and murder against trade unionists, rights defenders and other civil society leaders. As these recommended measures make clear, the task is far from done. We should not squander these prior investments by failing now to provide the resources needed to strengthen the *Fiscalía's* professional quality, staffing, and its investigative capacity and infrastructure. **If the Santos government commits itself to carrying out these measures, then the United States must provide the necessary resources so that they can be implemented expeditiously.**

Mr. President, we trust that these measures will receive your most serious attention. Should you have any questions or desire additional information, we would welcome the opportunity to discuss them further with you.

Addendum:

The Eight Core ILO Conventions Signed and Ratified by Colombia:

- 29 — Forced Labor Convention
- 87 — Freedom of Association and Protection of the Right to Organize Convention
- 98 — Right to Organize and Collective Bargaining Convention
- 100 — Equal Remuneration Convention
- 105 — Abolition of Forced Labor Convention
- 111 — Discrimination (Employment and Occupation) Convention
- 138 — Minimum Age Convention
- 182 — Worst Forms of Child Labor Convention