

**TESTIMONY OF**  
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**CONGRESS OF INDUSTRIAL ORGANIZATIONS**  
  
**BEFORE THE SENATE FINANCE COMMITTEE**  
  
**HEARING ON THE U.S.-COLOMBIA FREE TRADE AGREEMENT**  
  
**MAY 11, 2010**

Ever since trade negotiations began between the United States and Colombia in 2004, the AFL-CIO has repeatedly raised serious, well-documented concerns with regard to the horrifying levels of labor and human rights violations in the country. And, since the conclusion of those negotiations, we have consistently opposed consideration of the trade agreement largely on the basis of those continuing violations. As explained in detail in this testimony, we do not believe conditions for Colombian workers have yet changed in any meaningful way. Therefore, any move to ratify the agreement or to have it enter into force before there are verified sustained and meaningful changes on the ground will meet our continued and vigorous opposition.

Today, Colombia is characterized by a major deficit of decent work. This is due to a long-standing and systemic exclusion of workers and unions by means of unimaginable levels of violence and near total impunity for those responsible for those crimes; labor law and policy that by design undermine the free exercise of fundamental labor rights; the absence of meaningful social dialogue and the failure to adopt policies aimed at job creation and social protection. As a result, fewer than 5% of Colombian workers today are in a union and fewer than 2% of workers are covered by a collective bargaining agreement. The majority of Colombian workers, 58%, toil in the informal sector performing low-skilled jobs that provide no hope of building a secure future. The vast majority are also poor - about 75% of workers earn less than two monthly minimum wages and half earn less than the minimum wage.

Anti-union violence still remains at alarming levels. In 2010, 52 trade unionists were murdered and 21 were the objects of unsuccessful attempts on their lives. This is an increase from 2009, when 47 trade unionists were murdered. In 2011, another seven trade unionists have been killed.<sup>1</sup> Each year, hundreds of trade unionists also receive explicit death threats, which are often effective in chilling union activity. Workers know all too well that such threats, if unheeded, are often carried out. In the last 25 years, the Escuela Nacional Sindical (ENS) has recorded close to 2,900 assassinations. As the ILO High Level Mission stated on February 18, 2011, “the only acceptable situation is one in

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<sup>1</sup> During the Santos Administration, there have been 23 trade unionists assassinated and 133 death threats issued, among several other human rights violations.

which all acts of violence have ceased and ... there is a need to act with determination to bring this about.”

The ILO High Level Mission also observed that “impunity has prevailed in Colombia for a long period and has caused immense damage to the country and suffering to its people” and that “the great majority of homicide cases remained unresolved.” In part, this is due to a lack of full-time investigators and prosecutors dedicated to the backlog of murder cases. However, the deeply flawed methodology used by investigators and prosecutors also all but ensured that justice was unlikely to be obtained in most cases. Cases are not usually investigated in context but rather as individual, isolated cases. The failure to investigate related crimes together means that important connections are not made that could lead to identification of other perpetrators as well as intellectual authors and beneficiaries. Prosecutors have often also failed to follow up on credible evidence that implicates members of the armed forces, politicians or business leaders. And, all too often, when a trade unionist is murdered, investigators have proceeded under a theory that the murder occurred for some reason other than the victim’s union activity. As a result, the impunity rate for murder as of mid-2010 was estimated at 96%, and even higher for other crimes committed against trade unionists. The actual rate of impunity is even higher when one considers the numerous defects with those sentences and the fact that many of those sentenced are not in custody.

The country’s labor laws also do not meet minimum international norms in a number of key areas, as the International Labor Organization (ILO) has repeatedly observed. Compliance with existing laws remains poor. Indeed, the ILO High Level Mission expressed “deep concern” about anti-union discrimination, “as well as the failure to take action to stop it.” Of particular concern are the over one million workers employed in associated labor cooperatives. These workers have been for years largely excluded from the protections of the labor code and thus work in conditions of extreme exploitation. Similarly, about 900,000 workers are employed through temporary service companies, where strict legal limits on the use of temporary work are rarely respected in practice – undermining the exercise of these workers’ fundamental rights.

However, there is some room to be hopeful. The Santos Administration has abandoned the heated, anti-union rhetoric of the Uribe Administration, which repeatedly equated labor leaders with terrorists or traitors. The change in the public discourse is welcome. Further, the Santos Administration signed, on April 7, 2011, a Labor Action Plan that contains several provisions that the Colombian trade unions have long fought for, and which we have supported. And, prior to the launch of the Labor Action Plan, on March 31, 2011, President Santos met with the trade union confederations and made several commitments, including a promise to extending bargaining rights for public sector workers. If fully implemented and effectively enforced, the Labor Action Plan, together with the additional presidential commitments and follow-up on the several recommendations of the ILO High Level Mission, could help to put Colombia on a new path. However, this will not be easy and will no doubt take considerable effort and time by all involved, in Colombia and internationally, to help undo the profound damage done and to build a new labor relations system founded on the basis of decent work.

Again, the Labor Action Plan contains several useful provisions. However, we have four fundamental concerns that we will address below.<sup>2</sup>

First, while we hope and expect that the proposed expansion of the protection program and the anticipated increase in the quantity and quality of prosecutions, if they occur, will have the effect of reducing anti-union violence, we are concerned by the lack of any specific commitments in the Labor Action Plan with regard to the dismantling of new, illegal armed groups, which are responsible for much of the continuing anti-union violence in Colombia.

Second, the Labor Action Plan commits the government of Colombia to issue new laws and regulations, create new institutions, issue reports, improve processes and hire additional personnel by dates certain. It does not, however, require Colombia to actually establish a meaningful record of enforcement of these commitments prior to the implementation of the FTA. It is important to have these new tools, but we need to make sure they are being used and are effective in reducing murders and threats, bringing down the rate of impunity, and creating a labor relations system in which workers can freely exercise their fundamental labor rights without fear. Given the appalling history in Colombia, it is essential that there be meaningful and sustained results on the ground prior to certification and entry into force. Our experience in other countries with which the United States has negotiated free trade agreements, particularly in Central America, further underscores our concern.

We were also troubled to discover that Colombia had failed to fully comply with the nineteen “April 22nd” commitments under the Labor Action Plan. By May 1, Colombia had still failed to fully complete several commitments – most of them related to the issuing of reports or dissemination of information to stakeholders. For example, the Fiscalía had failed to meet with ENS to begin the process of reconciling the government’s list of murder cases with those in the ENS’s database – a necessary step to expanding the universe of murder cases under investigation and thus to bring down the rate of impunity for those crimes. After this failure was brought to the attention of the U.S. government, the Fiscalía then sent an invitation letter to ENS, which was received on the afternoon of May 4. Further, we understand that while the hotline and website for the receipt of complaints has been established, neither unions nor workers have received any information as to how to access these tools, making them of little present value.

Third, the Labor Action Plan is not part of the trade agreement and is not subject to any dispute settlement mechanisms should the government of Colombia fail to fully comply with the plan (especially with regard to those commitments that extend years into the future). It is true that the failure to follow through on most of the commitments may also be a violation of the labor chapter of the FTA; however, it remains unclear whether every commitment is fully subject to consultation and, if necessary, arbitration under the agreement. It is also unclear whether the dispute settlement mechanisms of the FTA, which are untested, will be effective in vindicating workers’ rights in a timely manner. Even given the substantial (and appreciated) efforts undertaken by the Obama

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<sup>2</sup> A section-by-section analysis of the Labor Action Plan follows the testimony as Attachment I.

Administration with regard to the worker rights complaint against Guatemala under the Central America Free Trade Agreement (CAFTA), the complaint has still not moved beyond cooperative consultations - the first step - after over three years. Guatemalan workers also report little if any change with respect to the enforcement of their basic rights at work.

Finally, the Labor Action Plan falls short in a number of important substantive areas. The failure to include commitments with regard to collective bargaining in the public sector, collective bargaining above the enterprise level or collective bargaining over pensions ignores major concerns of both the trade unions and the ILO (though it appears that the Colombian government may separately address public sector bargaining). Further, the Labor Action Plan contains two provisions, with regard to collective pacts and essential public services, which are on their face inconsistent with the clear and unequivocal observations of the International Labor Organization (ILO). Colombia will thus not be in full compliance with its commitments under Chapter 17 of the FTA even if it adopts the measures agreed to in the Labor Action Plan.

Each of these flaws – violence, implementation, enforceability and scope -- with the action plan must be addressed.

Of course, we also remain deeply concerned about the trade agreement template used in the Colombia FTA. The current trade model, we believe, provides enhanced rights and privileges to corporations at the expense of workers, consumers and the environment. Thus, while the FTA may have the effect of slightly increasing the bilateral trade flow between our two countries, we believe that this will likely only benefit a small minority in both countries. Further, as a job creation strategy, the U.S.-Colombia FTA will do nothing to improve the U.S. employment picture - as the U.S. International Trade Commission report on the FTA makes quite clear.

A better agreement with Colombia is both desirable and possible. Such an agreement would include strong and effective mechanisms for the protection of labor, environment, fair rules on investment, services and agricultural trade and robust compensatory policies for those who will bear the brunt of the losses. Further, domestic policies oriented towards infrastructure development, lifelong workforce education and training, strong social protection measures and collective bargaining are also absolutely necessary for both our countries are to grow with equity.

For the reasons set forth in this testimony, the AFL-CIO opposes the U.S.-Colombia FTA. Any move to ratify the agreement or to have it enter into force before sustained and meaningful changes on the ground is premature and will meet our continued and vigorous opposition.

## ATTACHMENT I

### COLOMBIAN ACTION PLAN RELATED TO LABOR RIGHTS ANNOTAEED

**April 7, 2011**

The Colombian Government has confirmed its ongoing commitment to protect internationally recognized labor rights, prevent violence against labor leaders, and prosecute the perpetrators of such violence. In furtherance of this commitment, the Government of Colombia and the Government of the United States agree that the following measures have been taken, or will be taken in the time frames indicated below:

#### **I. LABOR MINISTRY (Currently the Ministry of Social Protection (MSP))**

The U.S. Government welcomes the creation of a specialized Labor Ministry as the appropriate institutional vehicle to implement a broader and more effective regime to protect labor rights. This decision can provide the framework for the Colombian Government to mobilize resources and strengthen enforcement.

The Colombian Government will plan and budget for the hiring of 480 new labor inspectors under the civil service system over a four-year period, including the hiring of at least 100 new labor inspectors during 2011. The Finance Ministry will approve a budget reallocation by April 15, 2011, to fund the hiring of the first 100 inspectors. The MSP will issue the hiring decree by April 22, 2011, and complete the hiring and training of these inspectors by December 15, 2011. The Colombian Government will ensure that funding for at least an additional 100 labor inspectors is included in the 2012 budget to be prepared by May 30, 2011, with final approval expected in October 2011.

The MSP will improve the system for citizens to file complaints, anonymously or otherwise, concerning labor rights violations. This improved system will include both a toll-free telephone hotline and a new web-based mechanism for registering complaints. The MSP will conduct outreach to promote awareness of these complaint mechanisms. The MSP will establish the telephone hotline and web-based mechanism by April 22, 2011, and begin publicizing the new complaint mechanisms immediately thereafter.

The Colombian Government will establish a plan to improve the MSP's mediation and conflict resolution system in all 32 Departments (states) by assigning specialized resources to the MSP's regional offices, training workers and employers in conflict resolution, and conducting outreach. The MSP will prepare a plan for workshops on conciliation and Alternative Dispute Resolution mechanisms for labor inspectors by April 22, 2011, begin the workshops by June 15, 2011, and complete an initial phase of training by December 15, 2011. The MSP will also start conducting outreach to the public, employers, and workers through TV programs and printed material by June 15, 2011.

*AFL-CIO: The reconstitution of the Ministry of Labor has been debated for some time, and we are pleased to see this finally come about. As to the structure of the new Ministry of Labor, it is important that the government engage in a tri-partite dialogue as to its mission, structure and leadership. For example, trade unions have long called for any new Ministry of Labor to formulate and lead policies on employment creation, social security and job training, in addition to labor inspection. The proper mandate and sufficient resources will be necessary to ensure that the Ministry of Labor is an effective institution.*

*The addition of nearly 500 new inspectors is very important; however, the parties need to avoid problems seen in many other countries in the region. For example, labor inspectors will need to be well-trained in law and inspection methodology and a corps should be trained as specialists for certain types of inspections (e.g., safety and health). Inspectors should be civil service employees and be paid fairly so as to remove incentives for corruption, which is common in the region and indeed around the world. Inspectors must also possess the materials necessary to perform their normal duties; all too often inspectors are not provided the materials necessary, such as transportation, equipment or lodging, to do their work. It is also likely that even the doubling of the cadre of inspectors will not be enough. There should be an evaluation to determine whether the inspectors hired are sufficient to adequately inspect Colombian workplaces.*

*Finally, the parties should be guided by the observations and recommendations of the ILO with regard to Colombia's compliance with Conventions 81 and 129 (on labor inspection).*

## **II. CRIMINAL CODE REFORM**

The Colombian Government has submitted to the Colombian Congress legislation to reform the Criminal Code by establishing criminal penalties for employers that undermine the right to organize and bargain collectively. This reform encompasses a wide range of practices that could adversely affect fundamental labor rights. The new article in the Criminal Code will penalize this conduct with up to five years of imprisonment. The Colombian Government will seek to have this legislation enacted by the Colombian Congress by June 15, 2011.

*AFL-CIO: This is a positive development. The government should be sure to consult with the trade unions as the legislation is being crafted.*

## **III. COOPERATIVES**

The Colombian Government has submitted legislation to amend the effective date of the provisions contained in Article 63 of the 2010 Law of Formalization and First Employment so that the provisions are effective immediately upon passage of the Development Plan legislation, rather than on July 1, 2013. Article 63 prohibits the misuse of cooperatives or any other kind of relationship that affects labor rights, and imposes significant fines for violations. The Colombian Government has introduced this

amendment in the Development Plan Bill. The Colombian Congress will vote on the bill by the end of May 2011.

The MSP will dedicate 100 labor inspectors exclusively to address cases involving cooperatives. The MSP decree referenced in Section I above will authorize the hiring of 100 new labor inspectors for the MSP's regional offices, and indicate that 50 of these labor inspectors will be assigned exclusively to cases involving cooperatives. As noted in Section I, the MSP will issue the hiring decree by April 22, 2011, and complete the hiring and training of these inspectors by December 15, 2011. The second group of 50 labor inspectors specializing in cooperatives will be hired during 2012.

The MSP will establish as priority sectors for labor inspections: palm oil, sugar, mines, ports, and flowers. These sectors will be identified as priorities in the MSP decree authorizing the hiring of the 100 new labor inspectors. The MSP will confirm to the U.S. Government by April 22, 2011, that it has begun conducting, and will continue to conduct, preventive inspections in these sectors.

The Colombian Government will issue regulations implementing the 2010 cooperatives law by June 15, 2011. These regulations will, inter alia, clarify earlier cooperatives laws, ensure coherence among these laws and the new 2010 cooperatives law, and:

- a) Set forth clear and sufficiently broad definitions of “permanent core function” and “intermediation” to adequately address abuses;
- b) In cases where the MSP has found that companies have denied worker rights through abuse of the provisions of these laws, promote compliance by the companies through a strategy of offering to waive fines, wholly or in part, when the employer agrees to create and maintain a direct employment relationship with the affected workers;
- c) Establish fine levels that are higher for repeat offenders and large-scale violators; and
- d) Establish that a cooperative should presumptively be considered to be engaged in violating the relevant laws if it does not exhibit financial independence, if its members do not have autonomy in conducting the work done by the cooperative, if the members were in any way coerced to join a cooperative in order to remain employed, if the cooperative is involved in any form of labor intermediation, if the workers do not have access to the economic proceeds of the cooperative or if the workers do not objectively own the capital, methods of production, and assets of the cooperative.

The MSP is preparing a draft of these regulations, and will work with the U.S. Government to ensure that the agreed issues are addressed. The MSP will provide a draft to the U.S. Government by April 22, 2011.

The MSP and the Superintendencia de Economía Solidaria will also strictly apply and enforce the requirements that cooperatives be autonomous and self-governing.

The MSP will develop and conduct through the “Subcomisiones Departamentales de Concertación Laboral,” among other mechanisms, an outreach program to inform and advise workers of:

- a) Their rights under the laws and regulations governing cooperatives;
  - b) The remedies and courses of action available to workers through the courts in order to enforce recognition of a direct employment relationship, particularly when an MSP labor inspector has made a finding that such a relationship exists; and
  - c) The existence of criminal penalties for employers who are responsible for undermining the right to organize and bargain collectively, once the reforms to the Criminal Code referenced in Section II above are adopted by the Colombian Congress.
- The initial phase of the outreach program will start by June 15, 2011. The program will be permanent and budgeted fully for 2012 and beyond. The MSP will:

- a) Share with the U.S. Government a plan for these outreach efforts by April 22, 2011;
- b) Work with the U.S. Government to ensure that the agreed objectives are addressed; and
- c) Launch the program shortly thereafter.

The Colombian Government will provide quarterly reports on its enforcement results to all interested parties.

*AFL-CIO: Employers will now face steep sanctions if using a cooperative for intermediation to perform the permanent core functions of the enterprise. Cooperatives will only be permitted to legally provide services if: a) the cooperative is worker-owned and self-governed, that the profits are divided among its members, and that the cooperative and its members possesses the capital, skills, tools and materials necessary to do the work and b) the work performed by the cooperative is not the permanent, core work of the third-party. Cooperatives engaging in intermediation for ancillary services also will be sanctioned. If effectively implemented, this could be a substantial gain for Colombian workers.*

*Great care must be taken to ensure that terms such as “permanent core functions” are defined very broadly so as to prevent employers from continuing to hire cooperatives to perform a majority of the work of the enterprise. Similarly, the regulations must give full effect to Article 63 in not only prohibiting intermediation by cooperatives but also to eliminate as much as possible other forms of contracting which are meant to disguise what is otherwise a direct employment relationship. The use of commercial contracts in the place of employment contracts, or the imposition of lease agreements on rural workers in the place of employment agreements are common ways to hire workers outside of the protection of the labor laws.*

*With regard to both the crafting of any regulation and the development of any inspection strategy for of the new cadre of inspectors, this should be undertaken in close consultation with the trade union confederations. Further, it should be noted that a substantial number of cooperatives are in the public sector; the government itself should move immediately to dismantle labor cooperatives.*

#### **IV. TEMPORARY SERVICE AGENCIES**

The Colombian Government will implement a regime to prevent the use of temporary service agencies to circumvent labor rights. The regime will include such actions as improving the inspection process, designing a new training program for labor inspectors to raise their awareness of this issue, and building databases to identify regions and sectors where there has been abuse.

In addition, the robust enforcement regime will include a monitoring and reporting mechanism by which all interested parties can verify progress and compliance with labor laws. As a first step in building this mechanism, the MSP will issue quarterly reports for interested parties that include the results of the different measures, such as preventive inspections, penalties, fines, the cancellation of licenses and permits, and the list of those agencies found to be in violation. The first report will be issued by April 22, 2011.

The MSP will:

- a) Share a draft of the enforcement plan with the U.S. Government by April 22, 2011;
- b) Work with the U.S. Government to ensure that the agreed upon objectives are addressed;
- c) Conduct a series of preventive inspections by June 15, 2011; and
- d) Fully implement the enforcement plan by December 15, 2011.

*AFL-CIO: In addition to these actions, it will be important to ensure that workers who are working in temporary services companies that are operating illegally are hired directly by the primary employer.*

#### **V. COLLECTIVE PACTS**

The Colombian Government has included in the bill to amend the Criminal Code referenced in Section II above a provision stating that it is a crime, subject to imprisonment, to use collective pacts to undermine the right to organize and bargain collectively by extending better conditions to non-union workers in such pacts.

The MSP will conduct a public outreach campaign to promote awareness of the illegality of using collective pacts to undermine the right to organize and bargain collectively. The campaign should be ready to launch by June 15, 2011, by which date it is expected that the Criminal Code reform will be approved. The MSP will launch the campaign

immediately upon approval of the Criminal Code reform, and will continue the campaign through 2011. The Colombian Government will budget additional resources for the campaign for 2012.

The MSP will implement a robust enforcement regime, including preventive inspections and use of the anonymous labor complaint mechanisms referenced in Section I above to detect and prosecute violations. The Colombian Government will share quarterly reports of the preventive inspections with interested parties.

The Colombian Government will seek ILO technical assistance to monitor the use of collective pacts as part of a broader request for cooperation, as described in Section VII below.

The Colombian Government will develop a plan and timeline for the public outreach campaigns and for implementation of the robust enforcement regime, as well as its request for ILO technical assistance, all to be shared with the U.S. Government by April 22, 2011, and will work with the U.S. Government to ensure that the agreed objectives are addressed.

*AFL-CIO: The ILO Committee of Experts has repeatedly voiced its concern that the negotiation of collective accords could undermine the position of trade union organizations and has called on the government to amend the legislation so that direct negotiations with workers should only be possible in the absence of trade union organizations. The Action Plan still allows for an employer to negotiate directly with non-union workers, even where a union is present, so long as the collective pact is not superior to the collective bargaining agreement. This is facially inconsistent with international norms. If workers know that they can get a deal that is equal to what the union has (which may be difficult in practice to ascertain unless the agreement is actually the same), there is no incentive to join a union – thus undercutting the existing union in the enterprise. Colombia must amend its legislation so that direct negotiations with workers are only possible in the absence of trade union organizations. Further, collective pacts, when negotiated, must be treated as individual contracts collectively negotiated. They should provide no bar to the negotiation of a subsequent collective bargaining agreement.*

*In addition, the public campaign and labor inspection plan should be designed to reach initially companies where the collective pacts are currently in place. According to the ENS, there are 360 collective pacts as of mid-2010. These pacts should be dismantled and allow workers to freely exercise their trade union rights. The outreach campaign should also be crafted in consultation with the trade unions.*

## **VI. ESSENTIAL SERVICES**

The MSP will collect the body of Colombian doctrine, case law, and jurisprudence that has narrowed the definition of essential services. The MSP will disseminate this

information as well as relevant guidelines to labor inspectors, the judicial branch, unions, and employers by April 22, 2011.

*AFL-CIO Concerns: Articles 430 and 450 of the Labor Code prohibit strikes not only in essential services in the strict sense of the term but also in a wide range of services that are not essential. The ILO has found that strikes may be restricted or prohibited: (1) in the public service only for public servants exercising authority in the name of the State; or (2) in essential services in the strict sense of the term (that is, services the interruption of which would endanger the life, personal safety or health of the whole or part of the population). The ILO has found that the following services on Colombia's list are not generally deemed essential: civil servants not exercising authority of the state, transportation, mining (salt) and oil. Some, but not all, work in telecommunications, hospitals and sanitation may be classified as essential.*

*The Labor Action Plan does not require Colombia to do anything other than to inform government, employers, unions and workers concerning existing jurisprudence that has limited slightly the list of essential public services – such as salt mining and some transportation. This leaves sectors which are not essential, such as oil, on the list improperly. Colombia must amend Article 430 of the Labor Code to remove from the list of essential public services those services that are not properly considered essential public services under international law.*

## **VII. INTERNATIONAL LABOR ORGANIZATION (ILO) OFFICE**

The Colombian Government will seek the cooperation, advice, and technical assistance of the ILO to help in the implementation of the measures outlined in this document related to labor rights. The Colombian Government will work with the ILO to strengthen the presence and expand the capacity and role of the Organization in the country. In addition, the Colombian Government will request ILO involvement to foster the Tripartite Process with the goal of ensuring the full protection of labor rights and compliance with labor laws.

As it prepares this request to the ILO, the Colombian Government will consult with the Tripartite Commission by June 15, 2011.

The U.S. and Colombian Governments will work together to identify the necessary resources and sources of support. The Government of Colombia will present a formal request to the ILO regarding the activities described above by September 15, 2011.

*AFL-CIO: We support the continued presence of the ILO in Colombia and hope that it becomes a more effective institution than in the past. Any new executive director of the office will need to be a senior representative and have the full support of the institution. The ILO office also needs to have a broad mandate that includes the promotion of social dialogue and the implementation of the observations and recommendations of the various supervisory bodies of the ILO, in addition to technical assistance programs.*

## **VIII. PROTECTION PROGRAMS**

The Ministry of Interior and Justice will issue by April 22, 2011, a Ministerial Resolution broadening the scope of the definition of who is covered by its protection program to include: (i) labor activists, (ii) persons who are currently engaged in active efforts to form a union, and (iii) former unionists who are under threat because of their past activities. The Ministry will consult with the relevant unions to verify the status of these individuals.

The Colombian Government will plan and budget for the additional resources necessary to support the resulting expansion of the protection program. The Colombian Government will initially increase funds by more than 50 percent for the 2011 fiscal year by reallocating COP 12 billion (approximately US\$6 million) in order to provide adequate support for the expansion of the program during the current fiscal year. Thereafter, the Colombian Government will assess the level of funding necessary to support the expanded program during the 2012 fiscal year and include such funding in the Budget Project to be presented to the Colombian Congress by July 30, 2011. The Colombian Government and the U.S. Government will work together periodically to evaluate utilization of the program and the level of funding to ensure that the objective of effectively protecting all those covered by the program is achieved.

The Ministry of Interior and Justice has begun an emergency plan to eliminate the backlog of risk assessments with respect to applications for protection filed by union members by July 30, 2011. Once the backlog is eliminated, the Colombian Government commits that the National Police will thereafter comply with the legal requirement to process all risk assessments within a 30-day period. The Colombian Government will provide monthly updates to interested parties beginning May 1, 2011.

The Colombian Government will issue a decree by September 15, 2011, reforming the scope and functioning of the interagency committee which reviews risk assessments. The newly constituted committee will include representatives of the Inspector General's Office and the Public Defender's Office in order to enhance the objectivity of the assessment process. The Colombian Government will share the relevant parts of the draft decree with the U.S. Government by April 22, 2011, and will work with the U.S. Government to ensure that the agreed objectives are addressed.

The Ministry of Interior and Justice will immediately implement administrative measures to strengthen the existing protection system, and will provide interested parties with monthly updates on the steps taken to achieve such improvements beginning April 22, 2011.

The Colombian Government will amend by April 22, 2011, its teacher relocation and protection program contained in Resolution 1240 of 2010, to ensure that meritorious requests are granted and to eliminate pecuniary sanctions against teachers found not to be under extraordinary risk. The Colombian Government will share the draft resolution with the U.S. Government and will work with the U.S. Government to ensure that the agreed

objectives are addressed. The Colombian Government and the U.S. Government will also work together to evaluate utilization of the program and the dynamics of threats and risks to ensure that the program is achieving the objective of effectively protecting those covered by it. The Colombian Government will share quarterly reports on the program with interested parties beginning July 1, 2011.

*AFL-CIO: The action plan provides substantial new protections for trade unionists, which is welcome. However, the proposal does not address the concerns raised about trade unions about the privatization process of the protection program, which include both the increased costs as well as safety risks. Further, both the adoption of an emergency plan and the reform of the scope and functioning of the inter-agency committee should be done in conjunction with trade unions and human rights defenders, who have meaningful insights as to how these programs should be reformed. There are also already numerous studies as to how the protection program could be improved, and they should be consulted.*

## **IX. CRIMINAL JUSTICE REFORM**

The President will issue a directive to the National Police by April 22, 2011, assigning ninety five (95) additional full-time judicial police investigators to support the prosecutors in charge of investigating criminal cases involving union members and activists. These judicial police investigators will be assigned exclusively to investigate labor cases. The Colombian Government will complete the assignment to these cases of 50 of the 95 new judicial police investigators by June 30, 2011, and of the remaining new judicial police investigators by December 15, 2011.

The Colombian Government will respond favorably to a request from the Prosecutor General's Office for the necessary resources to finance new and increased activities for reducing impunity in general and for implementing this Action Plan. The Prosecutor General's Office will submit the budget request by May 20, 2011.

The Prosecutor General's Office has informed the Colombian Government of the following actions it has taken, and plans to take, to combat impunity in the cases involving union members and labor activists:

The Prosecutor General's Office has issued a directive requiring the judicial police, the Technical Investigative Body (CTI), and prosecutors investigating criminal cases to determine during the initial phase of an investigation whether a victim was an active or retired union member, or was actively engaged in union formation and organization.

The Prosecutor General's Office has issued a directive to the chiefs of the Unit of Justice and Peace and the Unit of Human Rights ordering them to share in an effective manner evidence and information about criminal cases involving union members and activists, as well as teachers, journalists, and human rights activists.

The Prosecutor General's Office will develop a plan and identify specific budgetary needs for training judicial police investigators and prosecutors on crime scene

management, as well as jointly training them in investigative techniques with specific reference to the issues involved in labor cases. The Prosecutor General's Office will send to the U.S. Government by April 22, 2011, the 2011 detailed training program and will work with the U.S. Government to ensure that the agreed objectives are addressed. The Prosecutor General's Office will request from the U.S. Embassy in Bogota its input and cooperation to refine, enhance, and support the training program. The U.S. Government will provide technical assistance coordinated by the U.S. Embassy in Bogota, the U.S. Department of Justice, and the U.S. Department of Labor.

The Prosecutor General's Office will present to the Colombian Government by May 20, 2011, its specific budget request associated with the financing of the training program, to be reviewed for the purpose of inclusion in the 2012 budget.

The Prosecutor General's Office will develop a plan and identify specific budgetary needs by May 20, 2011, to strengthen the institutional capabilities and the number of prosecutors and judicial police investigators assigned to process labor cases in the regional offices, based on an assessment of structural weaknesses or a lack of sufficient resources.

The Prosecutor General's Office will finalize by July 15, 2011, an analysis of closed cases of homicides of union members and activists, in order to extract lessons that can help improve the guidelines and protocols for effectively investigating and prosecuting future cases. The analysis will search for lessons learned in order to improve future efforts to identify the intellectual authors and other perpetrators of such crimes, any repeat offenders, the existence of any patterns relating to targets, criminal methods, and any evidence of motives. The results of this analysis will be made available to the public and widely publicized. The understanding gained from the analysis and its wide dissemination will serve as a tool to reduce impunity and deter future crimes.

The Prosecutor General's Office will develop a plan and identify specific budgetary needs for establishing victims' assistance centers specialized in human rights cases, including labor cases. The Prosecutor General's Office will staff these centers with professionals with expertise on human rights/labor issues. The Prosecutor General's Office will direct these centers and enable them to share information with the victims and their families about the status of the cases, as well as provide legal and psychological support. The Prosecutor General's Office will share with the U.S. Government the plans and budgetary allocations for this project by June 15, 2011, and will work with the U.S. Government to ensure that the agreed objectives are addressed.

The Prosecutor General's Office will develop a program to address the backlog of unionist homicide cases that will include:

a) Holding periodic meetings with representatives of the union confederations and the Escuela Nacional Sindical (ENS) to undertake a comparison of the unionist homicide cases in the ENS' database versus the Prosecutor General Office's database in order to try

to reconcile the discrepancies. The meetings will begin by April 22, 2011, with the aim of finalizing this process by the end of the year; and

b) Issuing internal guidance to prosecutors to accelerate action on those cases with leads and to provisionally close cold cases. This should include a special focus on the “priority labor cases” identified by the Colombian labor unions as well as labor cases from recent years. This will be accomplished by June 15, 2011.

The Prosecutor General’s Office will improve public reporting with respect to completed criminal cases involving labor violence:

a) The Prosecutor General’s Office will by April 22, 2011, publicize the results of the cases decided from January 1, 2011, and thereafter will similarly publicize the results of all subsequent cases; and

b) The Prosecutor General’s Office will by June 15, 2011, identify methods for posting aggregate information about all completed cases to date on its website.

The Colombian Government has submitted to the Colombian Congress amendments to the Criminal Code, referenced in Section II above, that: (1) broaden the definition of illegal threats to include such threats directed at individual union members and activists that are meant to intimidate those seeking to exercise their rights of freedom of association and to organize and bargain collectively; and (2) strengthen the penalties for illegal threats to include imprisonment.

The Colombian Government is seeking enactment of these reforms by the Colombian Congress by June 15, 2011.

*AFL-CIO: The issue of impunity, both as to the low quantity and quality of sentences, has been a central concern for the AFL-CIO. This action plan goes far in proposing measures that if effectively carried out over a sustained period of time, could have the effect of bringing the impunity rate down. The expansion of the universe of cases to all of those on the ENS database is important, as is the increase in the number of investigators, among other points. However, we have some concerns.*

*First and foremost, the action plan does not establish any specific measures either as to quantity or quality of cases. Again, the plan requires only that additional personnel and new procedures be put into place but it does not require that the government establish any track record of high-quality convictions. It is assumed that such sentences will be the result of the other requirements of the action plan with regard to impunity.*

*Over the last several years, we have outlined our concerns with regard to the methodologies used by investigators and prosecutors in these cases. We are aware that the Prosecutor General is undergoing an internal assessment of its performance on past cases (which it was already doing prior to the negotiation of the Labor Action Plan), to draw lessons from those cases. This is positive, but we are concerned that the self-analysis of the Prosecutor General may pull punches and not provide a complete analysis*

*of the problems or draw all of the proper conclusions. That is why we believe it is important that the analysis must take into account the observations of the union federations and organizations such as ENS, DeJusticia, the Colombian Commission of Jurists and the Corporacion Colectivo de Abogados. This is the only way we can be assured that the right lesson will be learned. Further, it is important that the analysis of closed cases focuses carefully on the plea bargains that resulted from voluntary depositions (versiones libres) under the “Justice and Peace” process and other processes. In the past, little effort was taken to ascertain the veracity of those confessions. In the future, thorough investigations must be undertaken to verify these statements made in these voluntary depositions. Finally, if the review of the previous cases identifies errors or omissions in those cases, new investigations should be opened so as to make sure that all perpetrators are brought to justice.*

*It is not clear whether it is the internal guidance as to cold and priority cases that is due by June, or the actual evaluation of the cases by that date. In any case, it is important that the trade unions be intimately involved in drafting that guidance as well as to identify the cases, both cold and priority. As suggested several times before, many murders are concentrated by union and geographically. Prioritization must take into account these realities, and ensure that investigations are done in a careful, systematic manner which leads to material authors, intellectual authors and beneficiaries.*

*Finally, the action plan makes no specific mention of hiring additional prosecutors or judges. Additional, full-time, dedicated prosecutors are sorely needed. Once the flow of cases increases, it will be necessary to hire additional, high-quality judges.*

*In addition to the legislation with regard to threats, police will need to be trained in proper criminal investigation methods. In the past, few threats were pursued and in many cases investigations in those few cases were not serious.*

## **X. FOLLOW-UP MECHANISM**

To assess progress in implementing this Action Plan, the U.S. and Colombian Governments have agreed to meet as follows:

- a) For the balance of 2011: Every two months at the technical level and once at the senior officials level;
- b) For 2012: Four times a year at the technical level and twice a year at the senior officials level; and
- c) For 2013: Two times a year at the technical level and once at the senior officials level.

The 2013 meeting of Senior Officials will decide on further meetings.

*AFL-CIO: Starting now, it is absolutely critical that interested stakeholders in the United States and Colombia, including trade unions and other labor and human rights organizations, be regularly consulted. Consultations should be more than simply*

*providing pre-scrubbed information to stakeholders but rather involving them directly into the development of laws, regulations, policies and plans.*