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United States House of Representatives
Committee on Ways and Means
Subcommittee on Trade

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“Anti-Union Violence, Human Rights,
and the

US-Colombia Free Trade Agreement”



Mr. Chairman, Committee members:

Thank you for inviting me to convey to the Committee Human Rights Watch's concerns regarding the human rights situation in Colombia and, specifically, the problem of ongoing violence against trade unionists.

I am the executive director of the Americas Division of Human Rights Watch, where for nearly two decades I have been closely monitoring human rights abuses committed by left-wing guerrillas, right-wing paramilitaries, and state security forces in Colombia.

For the last several years, ratification of the U.S.-Colombia Free Trade Agreement (FTA) has been held up because of human rights abuses in Colombia. A chief concern has been the plight of Colombia's trade unionists, who defend the rights of the workers producing the goods to be traded with the U.S., and who continue to be killed, attacked and threatened every year. The great majority of these abuses remain in impunity.

Since taking office, President Juan Manuel Santos' government has promoted important human rights initiatives, including draft legislation to recover and return stolen and abandoned land to displaced persons. It is encouraging that the Santos government has stated its commitment to pursuing new strategies to address the threat posed by successor groups to paramilitaries. But these steps have not yet been fully implemented, and they face powerful opposition from the armed groups and their political supporters. And as these successor groups continue to operate throughout Colombia, levels of violence against trade unionists remain alarmingly high.

Human Rights Watch takes no position on free trade per se. But we believe any free trade agreement should be premised on respect for fundamental human rights, especially the rights of the workers producing the goods to be traded. In Colombia, those conditions are far from being met. That is why we consider

that the United States should continue to delay ratifying the U.S.-Colombia FTA until Colombia demonstrates concrete and sustained results in addressing violence against trade unionists and its underlying causes.

Specifically, we believe that the FTA should not be ratified until the Government of Colombia demonstrates:

- 1) Significant progress in dismantling the successor groups to paramilitaries and a dramatic reduction from current levels in abuses committed by these groups;
- 2) A dramatic decrease from current levels in killings of and threats against trade unionists; and
- 3) A dramatic increase in the quantity and improvement in the quality of criminal investigations and prosecutions of cases of anti-union violence, including a significant number of the more than 2,800 killings of trade unionists reported since 1986.

1) Paramilitaries and Their Successors

Between 2003 and 2006, the Colombian government implemented a demobilization process for the brutal, mafia-like, paramilitary coalition known as the AUC, which is believed to have killed more than 100,000 persons over the past several decades. The government claimed success, as more than 30,000 persons went through demobilization ceremonies. Since then, the government has repeatedly said that the paramilitaries no longer exist.

But almost immediately after the demobilization process had ended, new groups cropped up all over the country, taking the reins of the criminal operations that the AUC leadership previously ran. Often led by mid-level commanders of demobilized paramilitary organizations, these successor groups exercise territorial control in certain regions and are responsible for widespread atrocities against civilians, including massacres, killings, rapes, and forced displacement. They also frequently threaten or attack trade unionists, human rights defenders,

journalists, indigenous and Afro-Colombian leaders, and victims of paramilitaries who seek land restitution or justice.

Successor groups to paramilitaries drove a dramatic increase in massacres in 2010, making for the highest annual total of massacres since 2005. In February 2011, the United Nations High Commissioner for Human Rights representative in Colombia said that the successor groups are the primary threat to human rights and the rule of law in the Colombia. Indeed, Colombian National Police Chief Oscar Naranjo recently acknowledged that the illegal groups, which the government calls “emerging criminal gangs,” are responsible for the majority of violence in Colombia.

As stated in the U.N. High Commissioner’s 2010 report on the situation of human rights in Colombia, “these groups have benefited from the acquiescence, tolerance and even collusion of members of security forces, including the National Police.” State complicity with paramilitaries is not limited to the armed forces: in recent years, more than 100 members of Congress have come under investigation for alleged ties to paramilitaries. The former director of the national intelligence agency (DAS) from 2002-2005 currently stands trial for delivering information to paramilitaries about trade unionists and other social leaders who the paramilitaries subsequently assassinated.

Most trade unionist killings have never been investigated, so it is impossible to know exactly who is responsible and why all the killings have been committed. What is clear is that in many cases, the killers have been mafia-like paramilitary groups, who have admitted to deliberately persecuting unions.

To achieve the goal of significant progress in dismantling the successor groups to paramilitaries and a dramatic reduction from current levels in abuses committed by these groups, the following conditions must be met:

The Government of Colombia must:

- Establish and effectively enforce a credible mechanism to identify land and illegal assets that paramilitaries, members of successor groups to the

paramilitaries, or their accomplices may be holding, and ensure their recovery and restitution to victims;

- Substantially strengthen the presence of civilian police, who are charged with taking the lead in confronting the successor groups, in regions where those groups have a presence (particularly in rural areas where police often are not present); and
- Strengthen the Early Warning System (EWS) of the Ombudsman's Office by ensuring that it has the necessary resources and stability to continuously monitor potential threats to civilians posed by successor groups, that the EWS's risk reports are made public, and that other state agencies take necessary actions to respond to those reports and address the threats.

The Office of the Attorney General of Colombia must:

- Strengthen and increase the size of the specialized unit of prosecutors charged with investigating successor groups, and assign them sufficient resources to carry out their work effectively;
- Conduct thorough investigations not only of individual members of successor groups, but of their criminal networks, including their financial backers and collaborators within the state; and
- Vigorously investigate and prosecute *all* state officials, including politicians and members of the security forces, who are credibly alleged to have collaborated with or tolerated paramilitaries or their successor groups.

2) Anti-Union Violence

Over the last couple of decades, Colombia's unions have suffered extreme violence, mostly at the hands of right-wing paramilitary groups that have deliberately targeted unions. Colombia leads

the world in killings of trade unionists, with more than 2,800 reported killings since 1986, according to the National Labor School (ENS), Colombia's leading NGO monitoring labor rights.

Despite the success story often painted by government officials in Colombia and the U.S. alike, the rate of trade unionist killings in Colombia remains unacceptably high. According to statistics maintained by ENS, after dropping to 39 in 2007, the number of killings of unionists has increased once again, to 51 in 2008, 47 in 2009, and 51 in 2010. Annual killings of Colombian unionists often equal or surpass the total number of union killings in all other countries combined: the ENS reports that 63% of the 1,717 murders of unionists worldwide over the past decade occurred in Colombia.

Some commentators have sought to downplay the gravity of the problem by arguing that it is safer to be "in a union than to be an ordinary citizen," noting that the rate of unionist killings is lower than the national homicide rate. But this rhetorical claim compares apples and oranges: the supposedly "ordinary" citizen includes many people at unusually high risk of being killed, including drug traffickers, criminals, and people living in combat zones, which skew statistical results. The national homicide rate is exactly the same for all these people as it is for civilians in the safest neighborhood in the capital, Bogotá.

Setting aside the statistical discussion, it is important to bear in mind that trade unionists are not random victims who are being killed accidentally or in crossfire. Evidence indicates that unionists are frequently victims of targeted attacks by armed groups, particularly paramilitaries and their successor organizations. According to the information compiled by the Attorney General's Office and analyses made by the ENS, by far the largest share of the killings have been attributable to paramilitaries, who view labor organizing as a threat to their interests and stigmatize unionists as guerrilla collaborators. Moreover, threats issued by successor groups to paramilitaries against unionists indicate they are responsible for many of the recent killings: according to the ENS, of the over 900 threats

trade unionists reported receiving in 2008 and 2009, 401 were identified as having come from successor groups.

3) Impunity

An important factor perpetuating anti-union violence has been the failure to bring those responsible for it to justice. The unit within the Attorney General's Office mandated to prosecute such crimes is only investigating 25 percent of the more than 2,800 ENS-documented killings of unionists since 1986. Out of the reduced number of cases of anti-union violence investigated by the specialized unit, only 15 percent had resulted in convictions as of October 2010, according to official sources.

Even the limited number of convictions have been marred by serious flaws in the methodology that authorities have employed to investigate violence against trade unionists. It is our understanding that cases of crimes against trade unionists are investigated in a piecemeal manner, and many investigations are being closed without a proper inquiry as to whether the motive of the killing was related to the victim's trade union activities. Cases are frequently closed without identifying and holding accountable all persons who bear criminal responsibility, including those who ordered the crimes.

For example, former paramilitaries giving voluntary confessions in the Justice and Peace process have confessed their responsibility for the murder of a trade unionist by justifying it as the assassination of a guerrilla. Instead of opening an investigation based on the copy of the confession received from the Justice and Peace Unit, the specialized unit dedicated to investigating crimes against unionists has used this self-incrimination to close the case, determining the unionist was a terrorist solely on the basis of the former paramilitary's testimony.

These deficient investigation methodologies have led to impunity for cases of anti-union violence. They have also engendered unfounded conclusions about the nature of union killings, such as the notion that the killings are isolated cases of common crime. These baseless interpretations only aggravate the problem

of union killings in Colombia, where 20 unionists have already been killed during the government of President Santos, according to the ENS.

To achieve a dramatic increase in the quantity and improvement in the quality of criminal investigations and prosecutions of cases of anti-union violence, the Colombian government must, among other steps:

- Ensure that the specialized prosecutors for labor union cases handle all the reported cases, not just the small fraction they are currently investigating; and
- Ensure that authorities investigate union killings as part of a pattern of crimes that takes into account the victims' union, the time period and location in which the crimes occurred, as well as the context of armed groups operating in the region where the crimes were committed. Prosecutors should identify the motives behind the crime and prosecute not only the direct perpetrator of the killing, but all persons who bear criminal responsibility, including those who ordered the assassination. The convictions should be based on more than the mere admissions of guilt by paramilitary commanders participating in the Justice and Peace process.

Given what is at stake for Colombia—the success or failure of a generational struggle to break the hold of brutal mafias over the country's political life, and in turn the ability of Colombia's workers to exercise their rights—the United States should not seek FTA ratification prematurely or in exchange for partial measures.

The Santos government has stated its commitment to resolving the key human rights challenges it inherited from past governments. The United States should seize this opportunity by standing firm on the need for fundamental changes in Colombia, and providing support to achieve those changes. By continuing to delay the deal's approval, the United States will show that human rights

are not just words, but rather basic values that have real consequences for US policy.