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Congressman Kevin Brady
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1102 Longworth House Office Building
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Re: Written comments for the record to the Subcommittee on Trade of the Committee on Ways and Means in response to the hearing on the pending Free Trade Agreement with the Republic of Colombia.

The International Labor Rights Forum hereby submits these comments for the record to the Subcommittee on Trade of the Committee on Ways and Means in response to the hearing on the pending Free Trade Agreement with the Republic of Colombia. The International Labor Rights Forum (ILRF) is an advocacy organization dedicated to achieving just and humane treatment for workers worldwide. Since 2002, ILRF has worked alongside Colombian trade union and NGO partners advocating for labor rights and witnessed how violence and intimidation to labor rights defenders creates a chilling effect to workers attempting to organize for their basic rights at work.

I. The U.S. Government must require the successful implementation of benchmarks as preconditions to ensure Colombian workers can freely exercise their right to freedom of association prior to entering into a free trade agreement.

Colombia is the world's most difficult and dangerous environment for workers to establish and join unions. Union leaders are assassinated, attacked, or threatened at alarming rates. Moreover, Colombian workers' are placed in precarious work situations due to expanding forms of labor contracting in violation of the workers' right to organize and bargain collectively. As a result, union density remains low in Colombia; where workers have the opportunity to form unions, they fear organizing due to threat of persecution, or worse, violence. In order for free trade to provide broad-based economic growth, trade unions and the workers who form them must have a voice to promote their own social and economic empowerment. Prior to entering into a Free Trade Agreement with Colombia, the U.S. Government must ensure that the Government of Colombia meets the benchmarks (hereinafter "benchmarks") outlined by Representatives McGovern, Miller, DeLauro, Michaud, Schakowsky, and Sanchez to address the underlying factors that have lead to

serious violations of the right to freedom of association, including the murder of labor activists and the widespread impunity enjoyed by those responsible.¹

ILRF is particularly concerned about the mounting pressure to pass the Colombian Free Trade Agreement when Colombia is fundamentally unprepared to enter a free trade agreement. However, the U.S. should thoughtfully examine the human and labor rights considerations at stake in Colombia, in order to not move ahead with an agreement in a country that does not have adequate legal protections for all workers, or institutions in place with capacity to investigate and prosecute violence against human rights defenders. Labor rights considerations and conditionality are now part and parcel of U.S. trade policy.

Congress should not vote on the Free Trade Agreement until the Government of Colombia has met the benchmarks. ILRF echoes the call for meaningful and sustainable change in order to:

- 1) End violence against trade unionists and other human rights defenders;
- 2) Strengthen and increase investigations, prosecutions, and convictions of intellectual and material authors of trade union violence and intimidation; and
- 3) Guarantee fundamental worker rights by making policy changes and improving labor rights enforcement.

II. The Government of Colombia must take concrete steps to reduce violence against trade unionists, which continues to occur at alarming rates.

Colombia is the most dangerous environment for workers to establish and join unions. Contrary to the myths circulated by those pushing for a quick passage of the agreement, union leaders continue to be assassinated, attacked, or threatened at alarming rates. In 2010, 51 trade unionists were murdered, 47 were murdered in 2009, and 51 were murdered in 2008.² There is a clear pattern and recurrence of assassinations of trade union leaders. In 2011, three trade union murders have already occurred. Colombia continues to lead the world in the number of unionists killed each year. From 2005 to 2009, 241 trade unionists were killed in Colombia, while 286 unionists were killed in the rest of the world combined over the same period.³

The Escuela Nacional Sindical (ENS), the National Labor School, a non-profit organization that monitors labor rights in Colombia, reported that 2857 trade unionists were murdered in past 25 years. In 2010, ENS reported 338 death threats issued against unionists, 21 cases of attempted murder, and 16 cases of assault. The violence, threats, and intimidation result in extremely low levels of union density in Colombia where only four to seven percent of workers are union members.⁴

In the past ten years the murder rate has reduced, however 50 killings a year is still far too many to be considered acceptable. During the February 2011 visit, the International Labor Organization (ILO) High Level Tripartite Mission to Colombia concluded that “the only acceptable situation is one in which all acts of violence have ceased and there is need to act

¹ Letter to President Barack Obama, Mar. 17, 2011. “Advancing Colombian Labor and Human Rights and Congressional Consideration of the U.S.-Colombia Free Trade Agreement.” From Representatives James P. McGovern, George Miller, Rosa L. DeLauro, Michael H. Michaud, Jan Schakowsky, and Linda T. Sánchez.

² International Trade Union Confederation, “2010 Annual Survey of Violations of Trade Union Rights for the Americas.” Accessed at: <<http://survey.ituc-csi.org/+Americas-Global-+.html>>.

³ ITUC, 2010, and U.S. Labor Education in the Americas Project, “Violence Against Colombian Trade Unionists: Fact vs. Myth” March 2011.

⁴ Id.

with determination to bring this about.”⁵ Until Colombia is able to take steps to approach “the only acceptable situation,” it is unable to be an equal trading partner with the U.S.

The new administration in Colombia has taken some small steps to improve the situation for labor rights defenders, although much more needs to be done. According to the Latin American Working Group, 20 trade unionists have been killed since the new government took office.⁶ The Government of Colombia continues to be fundamentally unprepared to enter into a free trade agreement with the U.S. due to the violence and threats experienced by trade unionists. However, if Colombia, with support of the U.S., were to implement the steps outlined in the benchmarks, and create an environment where trade unionists are able to organize without fear of violence or discrimination, it would be more adequately prepared to enter into a free trade agreement with the U.S. without putting its workers at risk.

III. The culture of impunity toward crimes against trade unionists and human rights defenders must be addressed through tangible improvements in investigations, prosecutions, and convictions of intellectual and material authors of crimes.

Labor leaders and human rights defenders are targeted for violence and intimidation, and the overwhelming majority of those that committed the crimes enjoy impunity. While the numbers of murders has decreased, the level of investigation and prosecution has not increased regardless of the recently constituted Labor Sub-Unit in the Prosecutor General’s office, with nineteen prosecutors.

Since 1986, the Attorney General’s office has only investigated 25.5 percent of union killings.⁷ Over the past 25 years, convictions were achieved in only 6 percent of the murders of trade unionists, leaving the country with an impunity rate of 94 percent.⁸ According to the Colombian Commission of Jurists, nobody has been held accountable in 98 percent of crimes against unionists. These rates of impunity are disturbing and must be improved prior to the U.S. entering into a free trade agreement with Colombia.

The Government of Colombia has dedicated some resources to crimes against trade unionists, and created a Labor Sub-Unit of the Attorney General’s office, however, prosecutions of murders have advanced very slowly. There is an enormous backlog of cases, and prosecutors are unable to keep up with the new murders that occur.⁹ The ILO High Level Tripartite Mission to Colombia found that “in order for the Sub-Unit to make greater progress in the investigations to enable prosecution and sentencing to take place, the number of prosecutors and investigators assigned to that Unit would have to be increased.”¹⁰ Taking further steps to end impunity, as outlined in the benchmarks, is not only the responsibility of the Government of Colombia to provide justice, but also will serve as a deterrent to acts of violence against trade unionists in the future.

⁵ International Labor Organization, “Conclusions of the High-level Tripartite Mission to Colombia” February 2011.

⁶ Latin America Working Group Education Fund, “Colombia, Human Rights under the Santos Administration: Better Words, But Violence Still Unchecked” March 2011.

⁷ Comisión Colombiana de Juristas, “Impunity and the Violation of the Human Rights of Trade Unionists in Colombia 2009-2010 and 2002-2010” October 2010. Accessed at:

<http://www.coljuristas.org/LinkClick.aspx?fileticket=mI2x73n8ynI%3d&tabid=36&language=es-CO>.

⁸ Id.

⁹ U.S. Labor Education in the Americas Project, 2009 Annual Impunity Report, “Colombia: Falling Further Behind in the Fight Against the Impunity of Anti-Union Violence” December 2010. Accessed at:

<http://www.usleap.org/files/2009%20Annual%20Impunity%20Report%20Final%20Web.pdf>

¹⁰ ILO, February 2011.

Allowing for free trade between the U.S. and Colombia provides Colombia with an unfair comparative advantage. Workers whose rights to organize and bargain collectively are undermined by violence, intimidation, and structural contract employment schemes will always have an unfair wage advantage in comparison with U.S. workers.

IV. Labor policy and practice in Colombia needs to be improved in order to guarantee the minimum rights for workers set out in the eight core ILO Conventions.

Colombia has ratified the eight core ILO Conventions,¹¹ however its laws and regulations do not guarantee the minimum rights set forth in these conventions. Colombian labor law and policy fail to meet internationally recognized standards on freedom of association as much of the Colombian workforce is denied the right to join or establish unions. Weak labor rights enforcement is another obstacle that denies Colombian workers access to justice for labor rights violations. As a result, Colombians working to produce goods for export to the U.S. are unable to exercise their basic rights.

Employers benefit from systematic abuse and overuse of subcontracted and short-term contract labor that has increasingly replaced permanent and direct forms of employment. In addition, many subcontracted workers are denied government and social security benefits, minimum wage, and are left in a state of insecurity of employment through short term contracts. Employers use a variety of strategies to undermine direct employment relationships and avoid regular employer obligations under the Labor Code.

One of the most widely used practices of promoting precarious work in Colombia is requiring employees to form associated labor “cooperatives” (CTAs) that are controlled by the employer. Labor “cooperatives (CTAs) differ from worker owned cooperatives because they are not democratically run by workers, but are controlled by employers. CTA associates are prohibited from joining or establishing unions. CTAs are a means for employers to hire workers indirectly, and evade responsibilities of direct employment relationship under Colombian labor code. People do not freely choose to join “cooperatives” or become “contract” workers. Rather, companies are requiring workers, many who are full-time employees, to agree to new contracting arrangements. Any full-time employee who leaves or is fired is replaced by a contractual worker.¹²

According to the Washington Office on Latin America (WOLA), CTAs became the primary form of contracting sugar cane cutters during the Uribe Administration from 2002-2010.¹³ In Valle del Cauca, WOLA found that more than 12,000 manual laborers in the sugar cane sector are affiliated with CTAs, totaling more than 40 percent of the workforce.¹⁴ Many sugar cane cutters are required to belong to a CTA in order to gain employment. Workers contracted with CTAs typically pay out 45.9 percent of their gross income back to their contractor for various fees, credit payments, and social security; due to these extra fees, workers employed under CTAs make on average 44.6 percent less than those directly employed by the refineries, and

¹¹ The eight core ILO Conventions cover four core labor standards: ban of forced labor and slavery (Conventions 29 and 105), freedom of association and collective bargaining (Conventions 87 and 98), ban of workplace discrimination (Conventions 100 and 111), and minimum working age and ban of worst forms of child labor (Conventions 138 and 182).

¹² Corporación Cactus, “Prácticas Laborales en Empresas con Certificaciones de Buenas Prácticas: El Caso de Elite Flowers” March 2011. and Corporación Cactus, “Cooperativas de Trabajo Asociado: Regulación y Realidad” 2007.

¹³ Washington Office on Latin America, “Workers without Rights: Labor Activists in Valle del Cauca’s Sugar Sector under Fire” January 2010. Accessed at:

<<http://www.wola.org/sites/default/files/Workers%20without%20Rights.pdf>>.

¹⁴ Id..

less than the Colombian monthly minimum wage.¹⁵ As a result, sugar cane cutters employed under CTAs make less than the monthly minimum wage.¹⁶

In December 2010, Colombia passed Law 1429, the Law on Formalization and Generation of Employment. Article 63 of the law is a step forward in guaranteeing labor rights by increasing penalties for employers that violate the prohibition of using CTAs to hire workers that perform permanent core functions of a business. The law does not provide a blanket prohibition of the use of cooperatives; rather it allows CTAs to be used for temporary, fixed duration work that is not part of the core permanent work of a business or public entity. The law is also vague with regard to what employees carry out permanent core functions. The new law does not take effect until July 2013. The ILO High Level Tripartite Mission has recommended that CTAs be outlawed entirely, and as quickly as possible.¹⁷

Other strategies of indirect hiring where employers avoid responsibilities owed to employees under the Labor Code occur when employers hire workers under commercial contracts rather than employment contracts or hire workers through temporary employment service companies.

Other trade related industries, such as mining and cut flower production, are plagued by health and safety concerns. Improvements to labor inspections, enforcement, and sanctions are necessary to combat anti-union discrimination, health and safety concerns, and to eradicate child labor. Labor rights grievance procedures must be swift, accessible, transparent, and independent in order to be effective.

According to Article 77 of the Colombian Labor Code, businesses can contract labor through “Temporary Service Agencies” when the work is considered temporary, incidental or transitory, when it is necessary to fill in for workers on vacation, disability, sickness or maternity and in order to attend to increases in production or seasonal harvests. The law establishes that workers can be contracted for periods of six months, extendable for another six months. In Colombia, the illegal use of temporary contracts to fill actual permanent positions, displacing direct contracts between employers and employees, is quite common.

The cut-flower industry has also increasingly become characterized by indirect employment relationships, including fix short-term contracts, contracts based upon quotas, subcontracting through temporary employment agencies, and subcontracting through CTAs. In the year 2002, 86 percent of employees were directly contracted with by the flower farms, while in 2010, only 58 percent have direct contracts.¹⁸ The cut-flower industry in Colombia generates 100,000 direct jobs, of which 42 percent are contracted through intermediaries: 30 percent of workers are employed through temporary employment agencies, eight percent by CTAs, and four percent by contractors.¹⁹ Temporary employment agencies fill permanent positions with temporary workers by contracting with workers for six months, extending the contract for another 6 months, and then giving the worker a “break” in order to return to contract the worker for 6 months under the same system. The illegal contracting of a worker on a temporary basis for several years, a practice denounced by unions and NGOs working in the

¹⁵ A sugarcane cutter employed by a CTA nets between \$440,000 and \$520,000 COP a month (\$235.24-\$278.00 USD), while the minimum wage in Colombia for 2011 is \$535,600 COP per month (\$286.35 USD). Washington Office on Latin America, “Workers without Rights: Labor Activists in Valle del Cauca’s Sugar Sector under Fire” January 2010, quoting Grupo Semillas, “Deuda Social y Ambiental del Negocio de la Caña de Azúcar” March 2009. Accessed at: <<http://www.wola.org/sites/default/files/Workers%20without%20Rights.pdf>>.

¹⁶ Id.

¹⁷ ILO, February 2011.

¹⁸ Corporación Cactus, March 2011.

¹⁹ Id.

flower industry, permits the employer to avoid paying indemnifications for ending contracts without just cause when the employer wants to dismiss a worker for trying to protect his or her own rights or for health reasons.

Another common practice that hinders the exercise of freedom of association are “collective agreements” (*pactos colectivos*) with non-unionized workers. The “collective agreements” are contracts unilaterally imposed by employers on unorganized workers, and are often used to undermine the existing union’s work to negotiate for better conditions of employment. The agreements provide an incentive for workers to disaffiliate from the union. The ILO High Level Tripartite Mission to Colombia recommended that collective accords concluded by employers with non-union workers should not be used against exercise of freedom of association and collective bargaining.²⁰

Colombian labor policies that violate the right to freedom of association include: the prohibition of public employees from collective bargaining, the prohibition of national level unions the right to negotiate for industry wide agreements, and prohibitions on the right to strike for workers in “essential services.”²¹

In order to ensure benefits of trade will be broadly shared and ultimately lead to long-term sustainable economic development, workers must be guaranteed the right to organize unions, bargain for wages and working conditions, enjoy the benefits of stable, direct employment, and not be subject to subcontracting arrangements. The above-mentioned political and practical obstacles that undermine the standards set out in the core ILO Conventions must be remedied prior to U.S. consideration of the free trade agreement.

V. Conclusion

The International Labor Rights Forum is in agreement with Representatives McGovern, Miller, DeLauro, Michaud, Schakowsky, and Sanchez that prior to entering into a free trade agreement with Colombia, 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.”²² Rather than feigning ignorance of the serious labor rights concerns in Colombia, the U.S. government should support Colombia to address violence against trade unionists, end impunity for human rights violations, bring labor legislation and enforcement to the standards set out by the core ILO conventions, and create an environment where workers can exercise their rights, and free trade can serve as a viable means of broad-based economic development. Specific concrete and sustainable measures must be taken prior to consideration of the free trade agreement.

Prior to submitting the Free Trade Agreement to Congress for consideration, the U.S. should ensure the Government of Colombia takes concrete steps to meet the benchmarks to:

1. Demonstrate a dramatic and sustained decrease from current levels in murders and attacks against trade unionists and rights defenders, with clear recognition that the only acceptable situation is one where all murders have ceased;
2. Demonstrate a dramatic increase from current levels in the rate and significant improvement in the quality of criminal investigations and prosecutions of

²⁰ ILO, February 2011.

²¹ “Essential services” has been broadly interpreted to include a series of non-essential industries, such as oil production, salt production, telecommunications, and utilities, among other sectors.

²² Letter to President Barack Obama, March 2011.

- perpetrators of anti-union violence, members of paramilitary successor groups, state actors responsible for extrajudicial killings; and state actors who have collaborated with, benefited from, or tolerated the criminal acts of paramilitaries.
3. Ensure that 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 ratified by Colombia, including but not limited to: “the rights of all workers, public and private, to freedom of association and to collectively bargain over terms and conditions of employment, revising the legal definition of “essential services” in which employees are banned from striking in conformity with ILO definitions,” prohibitions of anti-union discrimination and other obstacles to the exercise of freedom of association, such as the use of associated work cooperatives (CTAs), collective accords (*pactos colectivos*), and misuse of temporary contracting.

These benchmarks must serve as preconditions for consideration of the free trade agreement in order to improve the labor rights situation and access to justice for Colombian workers.

The benchmarks must be preconditions to consideration of a free trade agreement with Colombia. As witnessed in Guatemala, when serious labor rights enforcement and impunity for violence co-exist, signing a free trade agreement with labor rights clauses and providing additional capacity building funds will not remedy the situation. Moreover, free trade under those circumstances will not promote equitable sustainable development. The U.S. should ensure that financial resources are available to Colombia to achieve the measures outlined in the benchmarks.

While the Government of Colombia, with the support of the U.S., is taking the steps necessary to remedy and improve the dangerous and disconcerting labor rights situation on the ground, the U.S. should renew Andean Trade Preferences and Drug Elimination Act benefits. Renewal of benefits would allow Colombian goods to enter the market without tariffs while the Government of Colombia works to meet the benchmarks.

ILRF concurs that the U.S. Administration should ask “those most affected by the lack of rights and the threat of violence” to evaluate how well the Government of Colombia has addressed the benchmarks. The U.S. Government must ask those most affected by the lack of rights and the threat of violence by consulting directly with Colombian labor leaders, trade unionists, and human rights defenders.

Respectfully submitted,



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