

## OPPOSE THE COLOMBIA FREE TRADE AGREEMENT

### *No Legislative Link to Labor Action Plan = No Assurance that Worker Rights Addressed*

*Serious concerns about workers rights have prevented consideration of the Colombia free trade agreement (FTA). The Obama Administration negotiated a Labor Action Plan with the Colombian Government, but Republicans have refused to even reference this Action Plan in the implementing legislation. Given the lack of full implementation of the Action plan to date, and without a provision explicitly linking implementation of the FTA to Colombia addressing anti-union violence, impunity and fundamentally deficient labor laws under the Action Plan, the legislation is fundamentally flawed.*

#### **THERE ARE LONGSTANDING DEMOCRATIC CONCERNS REGARDING ANTI-UNION VIOLENCE, IMPUNITY AND DEFICIENT LABOR LAWS IN COLOMBIA:**

- **Pervasive Violence:** The International Trade Union Confederation reported that in 2010, Colombia had more union worker assassinations – 49 – than the rest of the world combined.
- **Impunity:** In February 2011, the International Labor Organization (ILO) reported that “the majority of the cases [of violence against workers] have not yet been investigated nor have the perpetrators, including the intellectual authors of these crimes, been brought to justice”.
- **Serious Labor Law Deficiencies:** The ILO has had long-standing concerns about the failure of Colombian laws to provide basic internationally-recognized worker rights. These include laws that: (1) let employers force workers into “cooperatives” and other sham entities to avoid unions, (2) let employers by-pass unions and negotiate “collective pacts” directly with workers, and (3) impose broad restrictions on the right to strike.

**THE LABOR ACTION PLAN WAS IMPORTANT, BUT FAILURE TO INCORPORATE IT INTO THE FTA WAS A FUNDAMENTAL MISTAKE:** The agreement reached between the U.S. and Colombia on April 7, 2011 – the Labor “Action Plan” – was important, addressing issues that had held up consideration of the FTA. Given its importance, the Action Plan should have been incorporated into the FTA. And both House and Senate Democrats proposed an amendment that would create a link between the two. Unfortunately, even though there was strong legal precedent for linkage, Republicans blocked any reference to the Labor Action Plan in the Colombia FTA.

**DEFICIENCIES IN IMPLEMENTATION DEMONSTRATE THE IMPORTANCE OF INCLUDING THE ACTION PLAN IN THE FTA LEGISLATION CONGRESS IS SET TO VOTE ON:** Implementation of the Action Plan over the summer has been weak and incomplete, not aimed at ensuring that Colombia’s serious labor law deficiencies are addressed. The failure to include the Action Plan in the implementing legislation gives up vital leverage now, in the months before the President certifies compliance, and sacrifices critical context for future enforcement proceedings. The following examples demonstrate precisely the need to link the Action Plan to implementation of the FTA:

- **Continuing to Use Cooperatives and Other Contractual Employment Relationships to Curtail Worker Rights.** The ILO has long identified, as one of the most serious problems facing Colombian workers, the use of sham “cooperatives” and other such contract forms to camouflage true employment relationships and thwart workers’ efforts to organize. (In Colombia, only workers who are directly employed can form a union and collectively bargain.) Colombia initially committed to stop such abuses, passing far-reaching legislation and proposing effective regulations. In recent months, however, Colombia has backed away, reading the new law and regulations as applying solely to one of these contract forms (cooperatives), and thus creating massive loopholes. Immediately, Colombian employers, including a major beverage company and palm oil producers, began converting cooperatives to other contract forms to continue denying workers their basic rights. Although there was private pressure for months by the U.S. government on Colombia to clarify the law, to try to stem this problematic shift, **it was not until midnight on October 4 – hours before a Ways and Means Committee markup and once a significant public spotlight was shone on the matter – that Colombia issued a “clarification.”** And this clarification fails to restore the scope of the laws and regulations, leaving major loopholes.

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- **Permitting the Cycle of Union-Related Violence and Impunity to Persist.** President Santos' commitment to ending impunity has not translated into results. According to Human Rights Watch, Colombian authorities have obtained just six convictions for 195 union murders that occurred between January 2007 and May 2011. Roughly 9 in 10 of the cases from that period are still in the preliminary stage with no suspect formally identified. Notwithstanding clear commitments under the Action Plan to improve this situation through reforms in investigative policies and methods, **Colombia did not take the first step to do this – publication of an analysis of closed union murder cases – until October 3, the eve of the Ways and Means markup, even though the Action Plan called for its completion on July 15.** And even with this, it is clear that additional leverage is necessary. Interviews by Human Rights Watch with Colombian prosecutors reveal that there has been no clear direction to implement new policies and methods, as committed to under the Action Plan.
- **Poor Progress Protecting Teachers.** Teachers are an especially vulnerable population in Colombia. To address violence and threats against this population, Colombia committed to strengthen the teacher protection program to “ensure that meritorious requests [for protection] are granted”, which entails relocating the teachers. But, five months after the announcement of the Action Plan, Colombia is far from meeting the commitment. Indeed, a recent report shows that 224 of 648 teachers found by the government to be “threatened” – more than one-third of the most vulnerable members of this population – have yet to be relocated.
- **Bypassing Restrictions on Collective Pacts Simply by Renaming Them.** Colombian employers can bypass unions whenever unions are small (one-third of workers or less), and can negotiate wages and benefits – “collective pacts” – directly with non-union workers. The ILO has found that this severely undermines unions and called on Colombia to bar collective pacts in unionized workplaces. While the Action Plan did not adopt this recommendation, it did require Colombia to criminalize the offering of better terms under a collective pact than under a union agreement. But even that minimal requirement is not being meaningfully implemented. Colombian employers – including a major aviation company – are being allowed to circumvent the law simply by renaming the pacts (e.g., as “voluntary benefit agreements”). (To implement its FTA obligations, Panama banned collective pacts in unionized workplaces.)
- **Allowing “Essential Services”-related Worker Rights Abuses to Continue.** Colombia prohibits strikes in an over-broad range of sectors designated “essential” by law, including its oil sector. While the ILO has called on Colombia to narrow its list, the Action Plan did not require it to do so. Instead, it simply required Colombia to publish a summary of the relevant court decisions. Unfortunately, that summary reveals that Colombian courts have broad latitude to add sectors to the list, and that they have done exactly that, rendering Colombian law even more inconsistent with international norms. (To implement its FTA obligations, Panama narrowed its list of essential services where strikes were prohibited.)
- **Questionable Commitment to Criminalizing Anti-Union Conduct.** In June 2011, pursuant to the Action Plan, Colombia passed legislation attaching prison sentences to acts to impede or disrupt the exercise of labor rights. Earlier Colombian laws criminalized the same acts but applied only fines, and these fines were rarely imposed. Whether the new law will deter anti-union conduct hinges on whether Colombia's Prosecutor General is active in prosecuting cases and seeking jail time for employer offenders. To date, no such cases have been reported, even though there appear to be strong candidates (e.g., in one case, private investigators were hired to tail and collect information against workers protesting unfair dismissals at an auto plant).
- **No Meaningful Consultation with Stakeholders.** Colombia has engaged in only cursory efforts to engage stakeholders in implementation and enforcement, even when the Action Plan contemplates meaningful engagement. For example, notwithstanding a commitment to meet “periodically” with ENS to reconcile differing union homicide lists, the Colombian government has only held one such meeting, in which it demanded that ENS accept the government list. Similarly, Colombia has not consulted unions in developing a request for expanded ILO presence, making it more likely that the mission will be unsuccessful in bringing Colombian labor law and practice into compliance with ILO norms.