

American Federation of Labor and Congress of Industrial Organizations



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August 4, 2011

Re: U.S.-Colombia Trade Agreement

Dear Representative/Senator:

I write to bring to your attention the continuing campaign of terror against trade unionists in Colombia, and to urge you to reject the Colombia Trade Agreement.

Unfortunately, Colombia is still the most dangerous place in the world to be a trade unionist. This tragic fact has not changed in recent years despite increased international scrutiny on Colombia associated with trade agreements negotiated with Canada, the U.S., and the European Union. The 51 trade unionists killed in 2010 represented an increase over the 2009 figure. Seventeen have been killed so far in 2011, including 10 just since the announcement of the "Labor Action Plan," announced on April 7, 2011.

There are no doubt important changes taking place in Colombia. The Santos Administration has abandoned the heated, anti-union rhetoric of the Uribe Administration and has engaged in apparently good-faith efforts to improve the environment for working men and women who band together to form unions to improve their economic circumstances. This change in approach is welcome and culminated in the Labor Action Plan.

However, Colombia's past and present circumstances have contributed to deep social rifts and dysfunction that cannot be addressed hastily. Congress should not act prematurely on the first signs of good intentions, but should rather wait for clear and convincing evidence over a sustained period of time that the facts on the ground have changed before acting on the Colombia Trade Agreement. Once the Congressional vote takes place, we will lose much of the leverage we currently have to promote workers' rights in Colombia.

We do not want to read any more stories like that of Freddy Antonio Cuadrado Nunez, a teacher and trade unionist in the Edumag union who was shot in the head on May 27 while he celebrated his 46th birthday. Or that of Alejandro José Peñata, who disappeared on June 20 as he left the school where he worked, only to be found dead later that evening, hung with barbed wire and displaying signs of torture. Based on the ongoing humanitarian tragedy in Colombia, the AFL-CIO urges you in the strongest possible terms to **oppose the Colombia Trade Agreement.**

Labor Action Plan has Scope, Implementation, and Enforceability Problems

The AFL-CIO recognizes that the Labor Action Plan contains several meaningful provisions that the Colombian trade unions have long fought for and which we have supported. However, the AFL-CIO also has three fundamental criticisms of this plan.

First, we are troubled by the lack of any specific commitments in the Labor Action Plan with regard to establishing a meaningful record of enforcement prior to the implementation of this Agreement. It is important to have new tools, such as increased enforcement personnel and the availability of stiffer penalties, 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. The proposal by House and Senate Democrats to link implementation of the trade agreement to Colombia meeting its commitments under the Labor Action Plan would have been a positive development. We are disappointed that the versions marked-up to date do not include this provision.

Second, because the Labor Action Plan is **not** part of the trade agreement, some of its provisions will likely be difficult to enforce should the government of Colombia fail to fully comply with Action Plan commitments. For instance, if the Prosecutor General's Office fails to "develop a plan and identify specific budgetary needs for establishing victims' assistance centers specialized in human rights cases," that failure alone may not suffice to establish a claim under the trade agreement. It would have to be linked to violation of the obligations under the Labor Chapter, or other obligations in the trade agreement, in order to be actionable.

Finally, the Labor Action Plan falls short in reforming Colombia's labor law. For example, the Labor Action Plan fails to include commitments with regard to collective bargaining in the public sector, collective bargaining above the enterprise level, or collective bargaining over pensions. Moreover, Labor Action Plan's language regarding "*pactos colectivos*" (unilaterally determined salary and benefit schemes imposed by employers to dissuade workers from joining a union) and essential public services is, on its face, inconsistent with the recommendations of the International Labor Organization. Colombia will thus not be in full compliance with its commitments under Chapter 17 of the Agreement even if it adopts the measures agreed to in the Labor Action Plan.

Anti-Union Violence and Impunity Remain High; Labor Rights Still Not Protected

The promises in the Labor Action Plan are useful only insofar as they improve the daily lives of Colombia's working men and women. Colombia's oppressive poverty, its culture of violence, and its lack of reliable public safety and justice systems remain serious challenges. We have yet to see the improved rhetoric in Colombia materialize into real change. Anti-union violence continues at alarming levels. The rate of impunity for those committing such crimes is still unacceptably high—over 95%. And despite promises of improvement, the country's labor laws fail to meet minimum international norms in a number of key areas.

We have received alarming reports from our brothers and sisters in the labor movement in Colombia that some employers, faced with new restrictions on cooperative labor associations announced in the Labor Action Plan, are already implementing new and more creative ways to get around direct employment relationships with their workers. Should the use of labor cooperatives decrease only to be replaced by some other method of labor intermediation, the Labor Action Plan will have achieved very little—and the rank and file of Colombia's workers would continue to lack basic labor rights: freedom of association, the ability to engage in collective bargaining, and the right to strike. Such an outcome appears likely given statements by government officials that the decree on cooperatives does *not* prohibit other sham forms of employment. We also note with disappointment that a new law criminalizing anti-union conduct, enacted pursuant to the Labor Action Plan, falls short of expectations and may provide insufficient incentive to stop systemic anti-union schemes.

Union brothers and sisters who have complained about employer misuse of "*pactos colectivos*" and illegal worker firings report to us that they have seen no change in response from the Ministry of Social Protection since the Labor Action Plan went into effect. Violations of labor law continue unabated in many sectors, including palm, sugar, ports, and even air travel. Simply put, it is too soon to know if the promises made in the Labor Action Plan will rise above the level of good intentions to benefit Colombia's workers.

We often hear that implementing the Colombia Trade Agreement will, in and of itself, improve the lives of Colombia's working families. We believe nothing could be further from the truth. Colombia already enjoys significant foreign direct investment—often touted as a solution to poverty. But our brothers and sisters in Colombia's trade union movement tell us it is often transnational corporate employers who most flagrantly flout existing labor laws and most vehemently oppose attempts by workers to organize and bargain collectively for improved wages and working conditions.

Development in Colombia cannot be done on the cheap by increasing market access and adding a few foreign investors. It will require a safe and stable society and adequate investments in infrastructure, training, and education, as well as the opportunity for workers to meet, organize, and engage in collective action to improve their pay, benefits, and conditions of employment. At this point, the Colombian government can provide neither personal safety and security, nor the promise of the right to exercise basic labor rights.

We ask you to oppose the Colombia Trade Agreement until Colombia takes sustained, meaningful, and measurable action to change the culture of violence that plagues those who work to better their lives.

Sincerely,


Richard L. Trumka
President