

MAJORITY MEMBERS:

GEORGE MILLER, CALIFORNIA,
CHAIRMAN
DALE E. KILDEE, MICHIGAN, VICE CHAIRMAN
DONALD M. PAYNE, NEW JERSEY
ROBERT E. ANDREWS, NEW JERSEY
ROBERT C. "BOBBY" SCOTT, VIRGINIA
LYNN C. WOOLSEY, CALIFORNIA
RUBÉN HINOJOSA, TEXAS
CAROLYN McCARTHY, NEW YORK
JOHN F. TIERNEY, MASSACHUSETTS
DENNIS J. KUCINICH, OHIO
DAVID WU, OREGON
RUSH D. HOLT, NEW JERSEY
SUSAN A. DAVIS, CALIFORNIA
DANNY K. DAVIS, ILLINOIS
RAÚL M. GRIJALVA, ARIZONA
TIMOTHY H. BISHOP, NEW YORK
LINDA T. SÁNCHEZ, CALIFORNIA
JOHN P. SARBANES, MARYLAND
JOE SESTAK, PENNSYLVANIA
DAVID LOEBSACK, IOWA
MAZIE HIRONO, HAWAII
JASON ALTMIRE, PENNSYLVANIA
JOHN A. YARMUTH, KENTUCKY
PHIL HARE, ILLINOIS
YVETTE D. CLARKE, NEW YORK
JOE COURTNEY, CONNECTICUT
CAROL SHEA-PORTER, NEW HAMPSHIRE



COMMITTEE ON EDUCATION AND LABOR
U.S. HOUSE OF REPRESENTATIVES

2181 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-6100

MAJORITY (202) 225-3725
MINORITY (202) 225-4527
<http://edlabor.house.gov>

September 12, 2008

MINORITY MEMBERS:

HOWARD "BUCK" McKEON, CALIFORNIA,
SENIOR REPUBLICAN MEMBER
THOMAS E. PETRI, WISCONSIN
PETER HOEKSTRA, MICHIGAN
MICHAEL N. CASTLE, DELAWARE
MARK E. SOUDER, INDIANA
VERNON J. EHLERS, MICHIGAN
JUDY BIGGERT, ILLINOIS
TODD RUSSELL PLATTS, PENNSYLVANIA
RIC KELLER, FLORIDA
JOE WILSON, SOUTH CAROLINA
JOHN KLINE, MINNESOTA
CATHY McMORRIS RODGERS, WASHINGTON
KENNY MARCHANT, TEXAS
TOM PRICE, GEORGIA
LUIS G. FORTUÑO, PUERTO RICO
CHARLES W. BOUSTANY, JR., LOUISIANA
VIRGINIA FOXX, NORTH CAROLINA
JOHN R. "RANDY" KUHL, JR., NEW YORK
ROB BISHOP, UTAH
DAVID DAVIS, TENNESSEE
TIMOTHY WALBERG, MICHIGAN
DEAN HELLER, NEVADA

President Álvaro Uribe Vélez
Presidency of the Republic of Colombia
Palacio de Nariño
Bogotá, Colombia

Dear President Uribe:

I was very pleased to learn that you will travel to Washington, D.C. next week to meet with Congressional leaders, and I look forward to discussing our mutual concern over the historical and ongoing violence against Colombians who are labor leaders, labor organizers, or simply members of labor unions. As you know, I traveled to your beautiful country earlier this year and met with your Vice President and Attorney General, as well as various leaders from Colombian labor unions, human rights organizations, and the specialized labor judges that handle the significant backlog of labor-homicide cases. I am sorry that your travel schedule and mine prevented us from meeting last January during my stay in Bogotá, but I look forward to meeting with you and welcoming you to the United States.

Since I visited your country, I have written two letters to the Colombian government and sent my Committee staff on a return trip to Colombia to further investigate various labor issues, including the still-unexplained decision to remove Judge José Nirio Sánchez from his position as a specialized labor judge. I agree with the assessment of many Colombian observers – including your own Vice President Francisco Santos – that Sánchez was an excellent judge who was diligently working on Colombia's enormous backlog of labor-homicide cases. Nevertheless, in January 2008, the *Consejo Superior de la Judicatura* decided by a contentious split vote of 12 to 11 to remove Judge Sánchez from his position in the middle of open criminal cases pending before him. Unfortunately, I do not think we will ever know whether Sánchez was removed in retaliation for his politically-sensitive legal rulings that convicted high-profile defendants such as the violent right-wing paramilitary leader Salvatore Mancuso, several soldiers from the Colombian Army, and implicated the multinational Nestle Corporation in anti-labor killings. Because we may never know why Judge Sánchez was removed from his position on the bench, I believe it is now time to look forward. Our two ally nations should work together to help Colombia improve its labor laws,

decrease the ongoing violence, and finally put an end to the impunity enjoyed by those who have perpetrated thousands of anti-labor killings.

These challenges have taken on heightened significance this year as the violence in Colombia has escalated. Even according to the statistics kept by the Government of Colombia, 2008 has already been a more violent year than all of 2007 in terms of labor-homicides. During only the first eight months of this year, the assassins have made more threats, caused more bloodshed, and taken more lives of labor leaders than they did in all twelve months of last year. Given this troubling context, I would like to discuss with you the urgent need for:

- 1) an effective, sustainable, and transparent Colombian system of justice to protect the rights of working people and vindicate the lives of the victims of anti-labor violence;
- 2) further investigation and prosecution of the intellectual authors who planned the attacks and killings of labor union leaders in Colombia; and
- 3) additional reforms to bring Colombian labor laws up to the minimum core labor standards set by the International Labor Organization (ILO) and cited by both the U.S. State Department and U.S. Department of Labor.

Indeed, the Democratic Majority in our Congress already recognized these exact challenges in Colombia by appropriating millions of dollars last year to help Colombia further develop the rule of law, prosecute human rights cases, and improve labor conditions. My colleagues in the Congress and I are quite proud that last year we improved on Plan Colombia by appropriating more funds to help Colombia address its very serious problems related to the issues of the ongoing anti-labor violence and weak labor standards. As you know, the ILO has issued repeated proclamations – as recently as June 2008 – expressing serious concern over various deficiencies in Colombian labor law.

Thus, many members of our Congress are currently very disappointed that the Bush Administration has not yet even transferred to the Colombian Attorney General's Office the funds that we appropriated last year. If the Bush Administration had not created these inexplicable delays, the Government of Colombia could have already hired even more investigators and prosecutors, and Colombia might by now be several steps closer to creating an effective and sustainable system of justice to address the grave problem of anti-labor violence. However, I am hopeful that the next Administration will work more closely with the Government of Colombia to bring about improvements in Colombian labor laws and human rights, increased trade, and an even stronger relationship between our two ally nations.

In the meantime, I believe the United States Congress must continue to examine these issues and search for solutions. Indeed, one advantage stemming from our Congress' decision to postpone the vote regarding the proposed Colombia Free Trade Agreement is that it has given my colleagues and me additional time needed to assess whether or not Colombia has in fact created an effective and sustainable system of justice to combat anti-labor violence. In my capacity as Chairman of the Committee on Education and Labor, my staff and I have taken advantage of that time by meeting regularly with Colombian human rights advocates and many Colombian government officials. I hope that this ongoing fact-finding work will allow Congress to provide helpful recommendations to the next Administration in the United States over how we can further strengthen our nation's relationship with Colombia in such a way that promotes increased trade and higher labor standards. As a first step in this process, please consider the following concerns about labor rights in Colombia.

I. The Need for an Effective, Sustainable, and Transparent System of Justice That Will Protect the Rights of Working People and Vindicate the Lives of Slain Labor Union Leaders in Colombia

According to the *Escuela Nacional Sindical* (ENS), almost 2,700 Colombian union leaders or union members have been murdered since 1986. The overwhelming majority of these killings remain uninvestigated and un-prosecuted by the Colombian Attorney General's Office. Moreover, at Colombia's current and disappointing pace of investigations and indictments, it would take the Attorney General's Office several decades to get through its entire backlog.

In the past months, various Colombian human rights attorneys have conveyed to me and my Committee staff the serious problems that still hinder Colombia's judicial system for addressing anti-labor killings. I have not created an exhaustive list, but I do respectfully ask that you please consider addressing the following problems so that Colombia's judicial system becomes more effective, sustainable, and transparent.

A) *The temporary nature of the specialized labor judges.*

Colombian Vice President Santos wrote to me on March 28, 2008, reporting that the Executive Branch had approved the budget for the Judicial Branch to create three permanent specialized courts to adjudicate the criminal cases stemming from anti-union homicides. However, in June and July 2008, the Colombian Judicial Branch approved two new decrees that still do not actually accomplish this goal. The first decree created three new permanent judicial positions, but without any mention of what type of cases those judges will hear. See Agreement No. 4924 (dated June 25, 2008). The second decree assigned those three permanent judges to exclusively hear labor-homicide cases, but only for a one-year period. See Agreement No. 4959 (dated July 11, 2008). Thus, when read together, these two decrees

clearly demonstrate that the three specialized judges' assignments to hear labor-homicide cases will expire yet again in July 2009.

The Colombian Judicial Branch has already once allowed the expiration of the mandate of these three judges to cause disruptions in ongoing legal proceedings. As you will remember, these three judicial positions were allowed to expire for the first time on December 31, 2007. By the time I met with the three judges in Bogotá on January 12, 2008, they had been out of work for almost two weeks, had been forced to cancel January hearings for pending criminal trials, and they did not even know whether they would be allowed to ever return to work on the labor-homicide cases. Two of the three judges were eventually reinstated, and I understand that many of the January hearings were eventually rescheduled for the following month. Nevertheless, the expiration of these three judicial positions caused unnecessary disruption and delay, and I imagine we can both agree that the repeat of such a scenario should be avoided if at all possible.

Thus, I am reassured that some members of the Uribe Administration have recently expressed concern about the still-temporary nature of the position of the specialized labor judges. On August 23, 2008, the Colombian Ministry of Social Protection wrote informally to the Colombian Judicial Branch to inquire whether further changes would be made so that the three judicial slots would be guaranteed for labor-homicide cases not just through July 2009, but rather until the entire backlog of such cases has been fully adjudicated. (My Committee staff has a copy of the written inquiry on file). I ask that you please inform me of any response that the Ministry of Social Protection receives regarding its inquiry to the Judicial Branch. In addition, I would like to discuss with you whether the Government of Colombia will pledge publicly to continue the mandate for these three judicial slots to handle labor-homicide cases beyond July 2009 and until the entire backlog of labor-homicide cases has been completed.

B) The fact that the written judicial opinions in labor-homicide cases are not easily accessible by the relatives of victims, human rights attorneys, or the public.

When my Committee staff traveled to Colombia last month, we requested a copy of each of the 123 written judicial opinions corresponding to the 100 labor-homicide cases that have been adjudicated thus far. (Some murder cases result in more than one written sentence because the case may have multiple defendants). However, the Attorney General's Office told my Committee staff that it would be exceedingly difficult to provide a copy of all 123 of the written opinions because they are not stored by the Colombian government in one central location, but rather scattered throughout many government buildings in several different cities. The Attorney General's Office also explained that some of the 123 sentences may have gone missing due to bureaucratic complexities, and that in general, the Colombian

government does not have sufficient resources to find and keep a central inventory of the written judicial opinions.

My Committee staff also made the same request to the head administrator of the *Consejo Superior de la Judicatura*, who seemed slightly more optimistic that it might be possible to eventually provide a copy of each of the 123 written opinions. However, we are still waiting for the Judicial Branch to respond definitively.

I imagine that you and I both agree on the importance of allowing the sons and daughters or spouses of slain labor leaders to easily access and read the judicial opinion that either convicts or acquits the person accused of killing their deceased family member. For those Colombians who have lost a loved-one to such senseless violence, the judicial record of the case against the killer is one small part of achieving justice. In addition, these written judicial opinions serve as important learning tools for human rights attorneys who plan on litigating similar labor rights cases in the future. While the decisions do not create binding legal precedent because they are issued by trial court judges rather than the Colombian Supreme Court, those written opinions nevertheless create a written record of an important and concerning part of Colombia's history. For all of those reasons, Colombian human rights attorneys have asked my help in persuading the Government of Colombia to make public and easily accessible all of the written judicial opinions, including all new decisions that are issued going forward.

Therefore, I would like to discuss with you whether the U.S. Congress should consider appropriating funds to help Colombia centralize and make public these judicial opinions as part of the next set of appropriations for Plan Colombia. As you know, under the leadership of Chairman David Obey and Chairwoman Nita Lowey of the Committee on Appropriations, last year the Democratic Majority improved on Plan Colombia by allocating greater amounts of funds dedicated to Colombia's efforts to develop the rule of law and improve labor conditions. It strikes me that any efforts to make public the judicial opinions in Colombian labor-homicide cases falls squarely within that goal of promoting the rule of law. In fact, the federal trial courts in the United States often publish their written judicial opinions on the internet within hours of the judge's final decision. Thus, I am interested in helping Colombia create such an internet-based system that will allow the Colombian public – and the families of victims in particular – to acquire easier access to the written judicial opinions in labor-homicide cases.

C) The secrecy by the Attorney General's Office as to the contents of its full backlog list of labor-homicide cases yet to be investigated and adjudicated.

According to the Colombian Attorney General's Office, approximately 1,300 union leaders or union members have been murdered or faced serious acts of violence in Colombia since

the mid-1980's. However, this figure is only half the number of the approximately 2,700 murders for the same time period as chronicled by the *Escuela Nacional Sindical* (ENS). The ENS is Colombia's leading non-profit labor think-tank, and it has been cited by the U.S. State Department in its human rights reports related to labor violence. I am concerned that we cannot begin to compare and reconcile the names on the two lists because the Colombian Attorney General's Office refuses to release its list of names. Indeed, it will be impossible to know the true scope of the killings, and thus the scope of the work that lies ahead, until this is done. Recently, the leading Colombian labor union federations submitted a petition to the ILO complaining over the fact that the Colombian government refuses to share this information with them. To the contrary, the ENS has proven willing to subject itself to transparency and public scrutiny, having published and shared its complete list of approximately 2,700 union killings with the Colombian government, labor unions, human rights attorneys, and even my Committee staff. I therefore respectfully encourage the Office of the Attorney General to make this information available as soon as practicable.

D) The ongoing inaccuracies in the Attorney General's published statistics about the defendants' motives in completed judicial decisions in labor-homicide cases.

Colombian human rights advocates have expressed their concern that the Attorney General's Office may be publishing inaccurate summaries about the judicial determinations of the motives of the killers in labor-homicide cases. These summaries are created by the Attorney General's Office once per month, and they tally how many fully-adjudicated cases to date were found by the judge to have had various different possible motives. For example, a judge may find that the assassin's motive for killing the union leader was the deceased's pro-union activity. In the alternative, the judge may find that the motive of the assassin who murdered the union leader was not the deceased's union-activity, but rather any number of other motives such as "personal issues" or "political activity." In order to create these documents, the prosecutors in the Attorney General's Office read each judicial opinion, decide what the prosecutors believe was the ruling of the judge, and then add up the number of cases that fall into each category. For example, the Attorney General's summary for July 2008 states that 21 murders had "union activity" as the motive, as compared to 8 cases with "personal problems" and 1 case with "political activity" as the motive.

The problem with these summaries, however, is that the statistics seem to fluctuate dramatically and illogically from month to month. For example, when I traveled to Colombia in early January 2008, the Attorney General's Office gave me the summary for December 2007, which claimed that as of that time the judges had found the "personal problems" motive in 10 total cases since the prosecutions began. However, as I just noted above, the July 2008 summary claims that there now are only 8 total cases in which "personal problems" was the motive. It is simply illogical that as the total number of judicial decisions has increased from last December to this July, that somehow the number of those

cases in which the motive was found by a judge to be “personal problems” has somehow decreased. This irregularity leads me to believe that either the prior statistics were inaccurate, or in the alternative, the current statistics are the problem.

Unfortunately, because the Attorney General’s Office does not place footnotes in these summary documents in order to explain which specific cases it considers to fall into each category, the public cannot verify the claims made in those summaries. I hope that in the future the Attorney General’s Office will exhibit more precision when creating the summaries it distributes to members of the U.S. Congress and the public.

Finally, I want to note how much personal anguish the misclassification of the motive in a labor-homicide case can cause to the families of the victims of that violence. Please consider the example of Colombian labor leader Jorge Dario Hoyos Franco, who was tragically gunned-down by two assassins in the year 2001. When the Attorney General’s Office began to investigate the case, the prosecutors’ original theory was that the defendant – a Colombian Police Officer named Monroy – had wanted to kill Hoyos Franco as a “crime of passion” due to an alleged adulterous affair in which Hoyos was supposedly engaged. However, after this case went to trial in 2007, Judge José Nirio Sánchez rejected this original theory, finding that it had “fallen by its own weight” because the woman in question testified under oath that she did not even know Hoyos Franco. (Criminal Sentence against defendant Carlos Alberto Monroy, dated Aug. 14, 2007.) Therefore, Judge Sánchez ruled that the evidence in the case:

demonstrates that the motive of the HOYOS FRANCO murder was not about a love affair, as was the focus of the investigation in the beginning, but rather [as demonstrated] by the statement made by the defendant [Monroy] to the previously mentioned illegal armed organization [known as the AUC], which during that time . . . drew up a list of union, civic, popular and communal leaders that in their estimation were military targets . . . [and because the] activities [in favor of labor unions by] the murder victim [Hoyos Franco] had [been] undertaken for several years and for that precise reason he was killed.

(Id.) This binding legal decision by a Colombian judge should have definitively settled the matter of the motive behind the killing of Jorge Dario Hoyos Franco. However, more than three months after the judicial opinion, the Attorney General’s Office released a November 2007 document that still listed the Hoyos Franco case as one with the “personal problems” motive. (This document is on file with my Committee staff.) I am told that the young daughters and widow of the deceased union leader were pained that their own government continued to publicize the lie that their father and husband had allegedly committed an adulterous affair even after that theory had been discredited in a Colombian court of law. I understand that the family repeatedly petitioned the Attorney General’s Office to revise the

document and accurately classify the case, but that change was apparently not made until only recently.

E) The fact that the Attorney General's Office has not publicly committed to a work-plan for completing the entire backlog of the thousands of labor-homicide cases.

The Colombian Office of the Attorney General has made some modest progress in the last year in securing convictions in labor-homicide cases, especially compared to the situation only a few years ago when there were hundreds of labor-homicides per year and virtually no convictions whatsoever. As I understand it, there are now convictions in 100 labor-murder cases, and a corresponding 123 judicial sentences because some of those 100 cases have more than one defendant. Thus, if one takes the Attorney General's statistics of approximately 1,300 total cases, then Colombia has secured convictions in only 7.6 % of cases. If one takes the ENS statistics of approximately 2,700 murders, then Colombia has secured convictions in only 3.7 % of cases. In either event, the modest progress of the past year still leaves a highly troubling level of impunity for the perpetrators of these killings. Well over 90% of the murderers have escaped justice.

The Bush Administration has done far too little to help Colombia improve its labor laws and combat anti-labor violence. In fact, it was not until the leadership of the Democratic Majority that last year our Congress significantly increased the funds in Plan Colombia that are dedicated specifically to fostering the rule of law and prosecuting human rights cases. Almost nine months have passed, and disappointingly the Bush Administration has still not actually transferred those funds to the Colombian Attorney General's Office. I cannot think of a plausible reason for this delay, but I do wonder whether the Colombian Attorney General's Office might have investigated and brought more killers to justice if the Bush Administration had only exercised greater diligence and concern for these important labor issues. I hope that the next Administration will work much more closely with the Government of Colombia to help implement a plan that will eventually investigate, prosecute, and adjudicate every last remaining labor-homicide case. The family members of the slain union leaders deserve nothing less.

As I noted above, at Colombia's current pace of investigations and indictments, it would take the Attorney General's Office several decades to get through its backlog. Therefore, I urge the Government of Colombia – and the Attorney General's Office in particular – to publicly commit to a plan that will dramatically improve the pace of investigations and indictments, and thus assure members of the U.S. Congress that Colombia will achieve the goal of prosecuting every murder on the entire backlog list of labor-homicide cases.

II. The Need for Further Investigation and Prosecution of the Intellectual Authors Who Planned the Attacks and Killings of Labor Union Leaders in Colombia

Of the modest number of convictions that the Attorney General's Office has begun to win in the past few years, the vast majority of the cases have been against the "material authors" of the crimes (i.e. the man who pulled the trigger of the gun, or the man who stabbed the union leader to death with a machete). Such convictions are, of course, extremely important. I commend the Attorney General's Office for creating a special unit for prosecuting these labor cases, and I am hopeful that these specialized prosecutors will eventually bring indictments in the large number of murder cases that remain uninvestigated.

However, impunity will persist unless the Government of Colombia does more to investigate and prosecute the "intellectual authors" who ordered, planned, or paid for the low-level assassin to perpetrate the killing. For example, serious allegations have been leveled against a cabinet-level official in the Uribe Administration, high-level military officers in the Colombian Army, top right-wing paramilitary leaders, and even some multinational corporations. In some of these cases, the Colombian specialized labor judges have issued Court Orders requiring the Attorney General's Office to investigate such alleged intellectual authors. But to this date, very few such investigations and prosecutions have gone forward. Therefore, I want to mention three emblematic cases in which the Colombian government's efforts to investigate, prosecute, or imprison the alleged intellectual author of the anti-union homicides have thus far failed.

A) Jorge Noguera of the Uribe Administration.

As you know, Colombia's former intelligence chief – Jorge Noguera – was arrested in February 2007 and indicted for helping violent right-wing paramilitaries to infiltrate the highest levels of the Colombian government. Mr. Noguera – who reported directly to the President as the director of the DAS ("*Departamento Administrativo de Seguridad*") – allegedly facilitated Colombian government cooperation with several paramilitary groups, particularly the "Northern Block" led by the violent narco-trafficker "Jorge 40." Sadly, Noguera is not the only high-level Colombian government official caught up in this "Para-Politics Scandal." Indeed, the Colombian Supreme Court has recently indicted almost 30 members of the Colombian Congress for colluding with the right-wing "AUC" paramilitary organization, which the U.S. State Department has officially classified as a Foreign Terrorist Organization. The Colombian Supreme Court has also launched formal investigations into another 30 members of the Colombian Congress. In response, the Uribe Administration has recently proposed stripping the Supreme Court of its long-standing jurisdiction on this matter, which would quash any further investigations.

President Álvaro Uribe Vélez
September 12, 2008
Page 10

I raise this complicated and troubling issue because the allegations against Noguera are directly related to the labor issues that constitute the focus of this letter. Specifically, Noguera is accused of compiling lists of the union leaders under government protection and then giving those lists to the paramilitaries so the union leaders could be targeted for death. Several of those very union leaders were reportedly threatened or killed. If the Colombian Attorney General eventually proves this allegation in court, the Noguera case will constitute perhaps the most dramatic of several examples of direct Colombian government participation in anti-labor violence and killings.

Unfortunately, more than eighteen months have passed since the original indictment was filed in February 2007, and the case against Noguera has completely stalled due to procedural mistakes made by the Attorney General's Office. The Colombian Supreme Court has found that the evidence and allegations against Noguera are legally valid, but the Court has rejected the case for procedural reasons on two consecutive occasions. As a result of these ongoing prosecutorial mistakes, Noguera was released from prison in June 2008 and he currently remains at large. I understand that the Attorney General is now preparing to re-file his case.

Several Colombian human rights attorneys have expressed their concern to me and my Committee staff that the continual procedural defects and corresponding delays are not typical. Thus, these Colombian observers worry that the politically-connected Noguera will ultimately go free without even facing a trial. Therefore, I would like to discuss this case with you when we meet. In particular, I would like to hear your thoughts about whether your Attorney General's Office will ever bring the Noguera case to trial.

B) The murder of labor leader Luciano Enrique Romero Molina, and the Colombian Court Order to investigate the Nestle Corporation.

In late 2007, Judge José Nirio Sánchez issued a 110-page legal ruling in a case stemming from the brutal murder of a Colombian labor leader named Luciano Enrique Romero Molina. As Judge Sánchez explained in his decision, in late 2005 – months after passage of the “Justice and Peace” Law – Molina was scheduled to testify before an international human rights tribunal in Switzerland regarding the labor conditions at a Colombian factory of the multinational Nestle Corporation. However, just weeks before his scheduled testimony, Molina was abducted and tortured by paramilitaries. When Molina refused to give them information about his complaints against the Nestle Corporation, the paramilitaries stabbed him to death with more than fifty strikes of a machete.

Judge Sánchez convicted the individual defendant who was directly responsible for the killing, but significantly, he also ordered an investigation into whether the Nestle Corporation was in any way responsible for ordering the killing. While courts outside of Colombia –

such as the Inter-American Court for Justice and the federal courts in the United States – have dealt with cases in which multinational corporations have been accused of playing a role in anti-union violence in Colombia, Judge Sánchez’s ruling appears to be groundbreaking for the Colombian courts. According to human rights observers in Colombia, this was the first judicial decision since the backlog process began in which one of the three Colombian specialized labor judges called for an investigation of the possible role a multinational corporation in the assassination of a Colombian labor leader.

Last month, my Committee staff inquired about the status of this investigation while visiting the Attorney General’s Office in Bogotá. We were told that the prosecutor and investigator assigned to the Nestle case had not done anything whatsoever to advance the investigation because they did not feel there was sufficient evidence to warrant any further efforts. According to their own admission, the prosecutors in the Attorney General’s Office have apparently decided not even to interview or take the depositions of the management of the Nestle workplace or of any of the deceased’s former coworkers. I would like to discuss whether you believe the Attorney General’s Office should abide by the Court Order of the now-displaced Judge José Nirio Sánchez and conduct an actual investigation into this serious matter.

C) The Colombian Police Officer who planned the assassination of labor leader Jorge Dario Hoyos Franco has been convicted in absentia, and therefore has not served a single day of his 40-year sentence.

As discussed in Section One of this letter, the well-known Colombian labor leader Jorge Dario Hoyos Franco was gunned-down by two young assassins who drove by him on a motorcycle late at night in March 2001. Prior to his murder, Hoyos Franco had been receiving regular death threats related to his union leadership. He had even faced several unsuccessful attempts to kidnap him. Within a few years of Hoyos Franco’s murder, the Attorney General’s Office had successfully convicted the two material authors who were paid to shoot him. However, the intellectual authors of this crime still remain at large to this day.

Several years after the first trial convicting the two young assassins, the Attorney General’s Office began to investigate one of the alleged intellectual authors. The investigation focused on a man named Carlos Alberto Monroy, who had served as a Colombian Police Officer at the time of Hoyos Franco’s assassination. The Attorney General’s Office decided to prosecute Monroy in absentia, as is allowed pursuant to Colombian law. Judge José Nirio Sánchez presided over the trial and heard testimony that Officer Monroy had provided the assassins with their motorcycle and firearms, and that he had paid and directed the young men to perpetrate the murder. Judge Sánchez convicted Monroy and sentenced him to 40

years in prison. However, Monroy is still at large and has not served a single day of his prison sentence.

The family of Jorge Dario Hoyos Franco has urged the Attorney General's Office to find, capture, and incarcerate Monroy, but thus far these efforts have not proven successful. In addition, the family has urged the Attorney General's Office to continue investigating the additional alleged intellectual authors of this one assassination. Until those two things happen in this case, impunity will persist.

III. The Need to Reform Colombian Labor Laws to Reach the Minimum Core Labor Standards Set by the International Labor Organization and Cited by both the U.S. State Department and U.S. Department of Labor

Before the U.S. Congress took up a vote on the Peru Free Trade Agreement last year, Peru undertook measures aimed at bringing its legal regime fully into compliance with the core international labor standards. In contrast, Colombia has still not completed such measures. Therefore, it is my sincere hope that the next Administration in the United States and the U.S. Congress will work cooperatively with the Government of Colombia to help further improve Colombian labor laws.

Indeed, this work is critical because the ILO, the U.S. State Department, the U.S. Department of Labor, and other international labor advocates have all identified a large number of areas in which Colombia's labor laws are non-compliant with the core international labor standards. I will not list all of them below, but I do want to mention at least some of the problematic areas of law that Colombian workers and labor advocates most often raised with me during my Committee trip to Bogotá.

- A) *"Workers' Cooperatives" that create a legal fiction that misclassifies workers as "self-employed" and thus robs them of their right to join unions and bargain collectively.*

When I was in Colombia earlier this year, I met with workers and labor advocates in numerous sectors of the economy – from the flower industry to manufacturing to health care – who told me that the legal arrangements called "*Cooperativas de Trabajo Asociado*" – or "Workers' Cooperatives" – were preventing them from exercising their fundamental labor rights. Under this controversial labor arrangement, an employer can hire a worker, but nevertheless deem that worker to be "self-employed" so that the worker loses the legal right to join a union or bargain collectively.

According to the most recent U.S. State Department Human Rights Report on Colombia, "[t]he continued growth and prevalence of workers' cooperatives further diminished

collective bargaining.” (U.S. State Department Report, dated March 11, 2008.) In fact, the State Department acknowledged that many Colombian employers inappropriately utilize Worker’s Cooperatives to create a legal fiction that harms workers: “Most cooperatives engaged in subcontracting, and in some cases, private sector employers forced workers to form cooperatives and were themselves managing the cooperatives’ daily operations.” (Id.)

In July 2008, the Colombian Congress passed a modest reform that changes some small aspects of these legal arrangements known as Workers’ Cooperatives. For example, under the new law, Workers’ Cooperatives can no longer operate without making tax payments to the government for national programs for social services. However, it remains unclear whether the recent legislation actually addresses the real problem raised by the ILO, the U.S. State Department, and other labor organizations.

In August 2008, Colombian labor law attorneys who represent the main Colombian labor federations submitted a legal petition regarding this and various other labor issues to the Committee of Experts at the ILO. According to the legal analysis of these attorneys, even after the recent reform, “the Workers’ Cooperatives that comply with this law will still be able to continue operating as tools to evade labor rights and prejudice the labor conditions of workers.” (Legal observations submitted by the Colombian Commission of Jurists, dated Aug. 25, 2008.) As I understand it, the Committee of Experts of the ILO will now review the recent Colombian labor law reforms over the period of months spanning from this fall to next spring. The ILO Committee of Experts will then report its findings in June 2009 to the full ILO. I look forward to reading the ILO’s findings.

I have also instructed the attorneys on my Committee staff to remain in contact with other legal experts – from the U.S. Government as well as various Colombian human rights groups – to continue gathering information regarding the issue of Workers’ Cooperatives so that we can eventually determine whether the recent reform brings Colombia into compliance with internationally-recognized core labor standards. In addition, I look forward to reading the conclusions of the Committee on Ways and Means, which is performing a comprehensive review of Colombia’s labor laws.

B) Even considering the one other new Colombian labor law regarding judicial determinations for strikes, the recent reforms still leave unchanged entire areas of Colombian labor law that have been criticized by the ILO, the U.S. State Department, and other labor organizations.

The Colombian Congress also recently passed a second labor law reform that moves the power to declare the legality or illegality of a strike from the Executive Branch to the Judicial Branch. Colombian labor attorneys have told my Committee staff that this one reform constitutes a step forward. However, much work remains. There are additional entire areas

of law where Colombia has been criticized by the ILO and U.S. State Department, but Colombia still has not passed any labor law reforms whatsoever in those additional areas. These remaining issues range from Colombia's overly broad list of "essential public services" to the problematic labor arrangements called "*Pactos Colectivos*."

In fact, my Committee staff has learned from employees of the U.S. State Department that the Colombian Ministry of Social Protection recently asked the U.S. Agency for International Development (U.S. AID) to conduct a comprehensive study related to the additional improvements that Colombia could make to comply with the internationally recognized core labor standards. I understand this request to be – at least implicitly – an admission by the Colombian government that even after the two most recent labor law reforms, Colombian law remains non-compliant with internationally recognized core labor standards. I am hopeful that the Government of Colombia's request for this study signifies that Colombia is willing to eventually make the additional needed changes to bring its labor laws into compliance with international standards. I wish the Bush Administration would have begun the negotiations on these labor law reform issues years ago, and as stated above, I hope the next Administration in the United States will take these issues more seriously.

C) Colombian legal procedures for union registration still have vague and subjective standards that lead to improper denials and delays in the recognition of labor unions.

When I was in Colombia in January, I traveled outside of Bogotá to a small town called Facatativá, which is in the flower-producing region of the country. There I met with a group of Colombian workers who had been struggling to organize a union at the flower farm where they work so that they could improve their wages and working conditions. However, these workers had been waiting many months for the Ministry of Social Protection to merely register their union, whereas that process should only take a number of days. I have since learned that the delays experienced by these particular workers – unfortunately – are far too common in Colombia.

In fact, the ILO has issued repeated proclamations expressing serious concern that Colombian workers have been improperly prevented from forming and joining labor unions because of the Ministry of Social Protection's mandatory prior registration requirements that give undue discretion to the Ministry's bureaucrats in charge of granting union recognition. For example, the ILO Committee of Experts released a 2008 report on the application of ILO Convention 87 in Colombia and noted: "[t]he arbitrary refusal to register new trade union organizations, new trade union rules or the executive committee of a trade union at the discretion of the authorities for reasons that go beyond the express provision of the legislation." In addition, the ILO's concerns over arbitrary denials of union registration in

President Álvaro Uribe Vélez
September 12, 2008
Page 15

Colombia have also been cited in a recent report by the U.S. Department of Labor. (2008 U.S. DOL Bureau of International Labor Affairs Report on Colombia, at 11). The representatives of the ILO Office in Bogotá have told my Committee staff that the Government of Colombia could address this serious problem if it would only re-write its labor laws to replace the vague and subjective standards for union registration with more objective concrete rules. The ILO has also suggested that the Colombian government could better train the Ministry of Social Protection bureaucrats charged with applying those standards. Therefore, I hope that you and I can discuss the changes necessary to accomplish these goals.

* * * * *

The issues raised above are numerous, though they are not exhaustive. These issues take on heightened urgency at this particular moment in Colombia's history as the violence in 2008 has escalated above 2007 levels. Indeed, during only the first eight months of this year, the assassins have made more threats, caused more bloodshed, and taken more lives of labor leaders than they did in all twelve months of last year. However, I remain optimistic that Colombia can overcome these significant problems. I am also hopeful that the next Administration in the United States will work more cooperatively with the Government of Colombia to bring about improvements in labor laws and human rights, increased trade, and an even stronger relationship between our two ally nations. I will continue to work on these issues in my capacity as the Chairman of the Committee on Education and Labor, and I look forward to working with you and your government to promote greater respect for labor rights.

Sincerely,



GEORGE MILLER
Chairman

cc: The Honorable Francisco Santos Calderon, Vice President of Colombia
The Honorable Mario Germán Iguarán Arana, Attorney General of Colombia
The Honorable Hernando Torres Corredor, Consejo Superior de la Judicatura
The Honorable Carolina Barco, Colombian Ambassador to the United States
The Honorable William Brownfield, U.S. Ambassador to Colombia
The Honorable Marcelo Castro Fox, I.L.O. Representative to Colombia.