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House Committee on Education and Labor
Honorable George Miller, Chairman

"Examining Workers' Rights and Violence against Labor Union Leaders in Colombia"

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Colombia is in the midst of a very serious and unique situation of hostility towards the exercise of labor union rights and freedom of association. A few statistics are sufficient to demonstrate this fact:

1. Violence against labor unions in Colombia

One union worker has been murdered approximately every three days over the past 23 years, which translates into 2,694 murder victims between the first of January of 1986 and December 31, 2008.

Despite the great emphasis the current administration is placing on security, after a few years of declining murder rates, violence against labor unions showed a steep increase in 2008 of 25%, going from 39 murders in 2007 to 49 in 2008. In addition, it is very serious that in 2008, the number of murdered labor union leaders was 16, compared to 10 murdered in all of 2007.

More than 60% of the all murdered unionists in the world are Colombians. The murder rate of unionists in Colombia is five times that of the rest of the countries of the world, including those countries with dictatorships that have banned union activity.

Violence against the union movement in the last 23 years has included 9,911 acts, in violation of the right to life, integrity and freedom of union members, one act of violence everyday. The highlights of these acts include 231 assaults on union leaders and 193 cases of forced disappearance. At least 4,200 unionists have received death threats because of their union activity, and 1,478 have been forced to leave their homes.

VIOLATIONS OF THE RIGHT TO LIFE, LIBERTY AND PHYSICAL INTEGRITY OF UNIONISTS IN COLOMBIA		
January 1, 1986 to December 31, 2008		
Type of Violation	**Number of Cases**	**%**
ILLEGAL HOUSE SEARCH	43	0.4
THREATS	4,200	42.4
ASSAULT WITH OR WITHOUT INJURY	231	2.3
DISAPPEARANCE	193	1.9
FORCED DISPLACEMENT	1,478	14.9
ARBITRARY ARREST	587	5.9
MURDER OF A FAMILY MEMBER	3	0.0
MURDERS	2,694	27.2
HARASSMENT	246	2.5

OTHERS	2	0.0
KIDNAPPING	161	1.6
TORTURE	73	0.7
Total	**9,911**	**100**

Of the 9,911 violations perpetrated against the life, liberty and physical integrity of unionists in Colombia between January 1, 1986 and December 31, 2008, 3,470, equaling 35%, have occurred during the administration of the current president of Colombia, Álvaro Uribe Vélez.

Of the 2,694 murders of unionists in Colombia during that same historical period, 482, equaling 18%, have occurred during this administration. These figures contradict the administration's assurances to the international community that the problem of violence against labor unions has been overcome, and the government has it under control.

VIOLATIONS OF THE RIGHT TO LIFE, LIBERTY AND PHYSICAL INEGRITY OF UNIONISTS IN COLOMBIA		
August 7, 2002 to December 31, 2008		
Type of Violation	**Number of Cases**	**%**
ILLEGAL HOUSE SEARCH	23	0.7
THREATS	2,083	60.0
ASSAULT WITH OR WITHOUT INJURY	65	1.9
DISAPPEARANCE	30	0.9
FORCED DISPLACEMENT	316	9.1
ARBITRARY ARREST	254	7.3
MURDERS	482	13.9
HARASSMENT	175	5.0
KIDNAPPING	29	0.8
TORTURE	13	0.4
Total	**3,470**	**100**

The structural factors that have made violence against labor unions possible are still in place. The increase in murders in 2008 is an indication of that fact, as are the security plans that more than 1,500 union leaders still have in place.

The most worrisome fact is the political exclusion of the labor union movement, which has created widespread anti-union sentiment, fostered and exacerbated by an increasingly common and recurring practice on the part of the President of the Republic and high-level government officials, who make statements that undermine the legitimacy of labor unions by linking them to guerilla groups, or justifying the violence against labor unions as violence between the armed parties to the conflict, thereby, suggesting that labor unions are one of these groups.

The ILO has referred to this situation for several years. Recently, at the 97th Conference (June of 2008), the Committee on the Application of Standards stated: "(…) the Committee expressed its concern over an increase in violent acts against trade unionists in the first half of 2008. In view of the commitments made by the Government and referred to above, the Committee urged it to take further steps to reinforce the available protective measures … All of these steps were essential elements to ensure that the trade union movement might finally develop and flourish in a climate that was free from violence (…)"

2. Impunity of murders of unionists

The investigation and prosecution of crimes against labor unionists was an obligation of the Colombian government that had been forgotten. The Subdivision of the Public Prosecutor and the judges specializing in this area constitute the government's first effort to respond to the critical situation of human rights and violence against the labor union movement.

However, 2,694 unionists have been murdered in the past 23 years, and the Subdivision of Investigation has only recognized the existence of 1,302 cases to be prosecuted, and has only been able to physically locate the case files of 1,104, which means that 60% of the cases do not exist, or are not the subject of any reported on-going criminal investigation.

The reports issued by the Public Prosecutor led to the conclusion that there are no important results in terms of moving forward with the criminal investigations. According to the January 2009 report of the Public Prosecutor, with regard to the 1,104 cases they are investigating, 654 cases (59.23%) are in preliminary stages. That means that in more than half the cases, no suspect has been identified. Two hundred and eight cases (18.84%) are in the preliminary investigation stage, which is the stage in which a formal investigation of an identified suspect is carried out. In 91 cases (8.24%), the Public Prosecutor has filed charges before the judges.

With regard to the total of 1,104 cases under investigation, the number of convictions was 120. This means that only 10.86% of the cases have made progress in determining the responsibility of the perpetrators of crimes against labor unionists.

With regard to the 185 prioritized cases, the number of convictions covered only 31 victims. That is, with regard to the total number of prioritized cases, there have been convictions in only 16.75% of the victims' cases.

There have been convictions in just 90 cases of murdered unionists. Presuming that there is some progress in terms of impunity for these victims, the percentage of those whose cases remain in impunity is 96.7% of the crimes. According to the January 2009 report, without access to all the information provided in July of 2008, but rather just on the basis of the numbers of convictions by judges, and assuming that each conviction represents one victim, impunity remains at nearly 96%.

Calculating the monthly average output of the judges, between September and December of 2007, an average of 11 convictions were issued per month. This same monthly calculation for all of 2008 and January of 2009 yields 5.9 convictions per month. We can conclude from this quantitative analysis of the work of the subdivision and the judges, that at the rate of 70 convictions handed down annually by the country's judges and the ILO sentencing judges, each one representing one labor unionist victim, it would take the justice system around 37 years to overcome the prevailing impunity, presuming no more murders occur starting today, and the continued existence of the special investigation and prosecution division.

With regard to the convictions handed down, the following matters are cause for grave concern:
1. The convictions have primarily identified the material authors and their intentions. In the majority of cases, the chain of responsibility of those responsible has not been established.
2. In the majority of the convictions, no reference is made to the personal context of the victim, or the union affiliation, or regional context, in which the violence against labor unions occurred.
3. Investigations are carried out on a case-by-case basis, with no comprehensive investigational strategy for cases that are clearly systematic, deliberate and selective, as are

the cases of violence against labor unions. The labor union movement has consistently proposed changes to the methods of investigation used. Given that nearly 75% of the violence against labor unions has been committed against 30 labor union organizations in 6 departments of the country, the investigations should be re-organized.
4. The investigations fail to identify all the crimes committed and, therefore, the convictions fail to punish the perpetrators for all of them. In multiple convictions, for example, torture and forced disappearance are not punished, and the perpetrators are sentenced for the murder only. This leaves acts that constitute violence against labor unionists in impunity.
5. There are only convictions at the level of second instance in five cases. That means that of the 108 convictions counted as of July of 2008, 103 could still be reversed by means of appeals the convicted persons may file, and they could, therefore, ultimately be acquitted.

On several occasions, the ILO has referred to the matter of impunity. Recently, during the 97th Conference, June 2008, the Committee on the Application of Standards stated: "(…) the Committee urged it (….) to render more efficient and expedient the investigations of murders of trade unionists and the identification of all of its instigators. Such measures should include an enhanced investment of necessary resources in order to combat impunity, including through the nomination of additional judges specifically dedicated to resolving cases of violence against trade unionists. All of these steps were essential elements to ensure that the trade union movement might finally develop and flourish in a climate that was free from violence (…)"

3. Limitations and violations of Freedom of Association

In Colombia, we have an institutional design, as well as government and company practices that are contrary to the freedom of association. This places a large number of obstacles in the way of the creation of union organizations, and the free functioning of existing unions. This includes election of representatives, modification of by-laws, collective bargaining, striking, participation in public dialogue, etc. The following figures are evidence of this:

a. Obstacles to Freedom of Association

In Colombia today, there are 18,749,836 workers, of which, fewer than 3 million have the right to join a union. This is because the law specifies that only those workers working under employment contracts can exercise that right. This is in violation of international labor conventions and standing ILO recommendations to the Colombian government. Thus, only 4 of every 100 workers are affiliated with a labor union in Colombia.

The Ministry of Social Protection, in the period of 2002-2007, denied the registration of 515 labor union registry petitions. Of these, 253 were denials of new labor union charters.

Labor Union Charters	Registration of Board of Directors	Creation of Sub-committees	Creation of Committees	Changes to By-laws	Revocation of Registration	Total
253	189	47	9	7	10	515

This situation has been reported on multiple occasions before the ILO Committee on Freedom of Association, which issued recommendations to register these charters, as it considered these acts to constitute undue government interference. Just by way rulings C-465, C-621 and C-672 of 2008 among others, of the Constitutional Court, the Ministry of Social Protection lost its

jurisdiction to deny registration in the labor union registry. This is an advance that partially satisfies ILO conventions.

These rulings address only one problem, that of arbitrary government interference at the time of registration in the registry. However, an additional series of legal limitations of the right of association persist in Colombia, which have not been modified. Laws that impede the right of free association for all types of workers, Art. 5 CST, must be modified or repealed. Likewise, laws that limit the freedom to choose the union structure the workers see fit, Art. 365 CST, must also be modified or repealed. The establishment of an expedited judicial mechanism, that would provide a means of quickly resolving possible conflicts in the registration of labor union charters and other matters related to union representation, is also necessary.

The ILO has repeatedly made comments and recommendations in the area of the right to free labor union association. Recently, during the 97th ILO Conference, the Committee on the Application of Standards stated: "(…) it called upon the Government to ensure that all workers, including those in the public service, may form and join the organization of their own choosing, without previous authorization, in accordance with the Convention. In this regard, the Committee called upon the Government not to use discretionary authority to deny trade union registration…"

b. Collective Bargaining, a right accorded to few

In Colombia, only 1.2 of every 100 workers benefit from a collective bargaining agreement. If we compare the period of 1996-1997 with the period of 2006-2007, we will find that in the first period, 1,579 collective bargaining agreements were signed, of which 983 were collective contracts, 592 were collective pacts, and 5 were union contracts, covering 462,641 beneficiaries; while in the second period, 925 collective bargaining agreements were signed, of which 639 were collective contracts, 276 were collective pacts, and 10 were union contracts, covering 176,948 beneficiaries. This demonstrates a significant reduction in collective bargaining and its coverage: 285,693 beneficiaries lost their contractual guarantees, approximately 62% of the beneficiaries of a decade ago are now unprotected. This phenomenon is explained by the enormous legal and practical obstacles to the existence and free operation of workers' organizations, to the lack of promotion of bargaining, to the small number of workers able to bargain, and to the failure of the government to modify its legislation to comply with the labor standards of conventions 87, 98, 151 and 154, ratified by Colombia.

The primary problems are as follows:

- Collective pacts and extralegal benefits plans are permitted, to the detriment of the unions' right to collective bargaining.
- Unionization is hampered, and therefore, so is the signing of collective bargaining agreements for workers with contracts differing from employment contracts, Art. 5 CST. This excludes workers with service contracts, those associated with work cooperatives, those with apprenticeship contracts, the unemployed, workers with a regulatory relationship with the government, and workers in the informal sector, which make up more than 85% of the working population.
- The Ministry of Social Protection exercises poor oversight. It does not investigate or sanction the union-busting practices of employers, nor does it promote the protection of the right of association and bargaining.

- The imposition of obligatory arbitration courts to resolve points not agreed upon in negotiations. This is an intervention by authorities that, in principle, impinges on, and makes collective bargaining more difficult.
- The prohibition of collective bargaining and striking by unions of public employees.
- The lack of bargaining by field or economic activity, and the inability to bargain for different levels.

The right to promote and defend the interests of workers by means of collective bargaining that seeks to improve working conditions is, in current practice, illegal for some and nearly impossible to exercise for others. This is due to legal provisions that limit or prohibit free bargaining between the parties. This is a situation that ILO oversight bodies have identified as contrary to the conventions ratified by Colombia, and whose recommendations have been intentionally ignored by the government, which has failed to take measures to promote bargaining.

c. Right to Strike — its exercise is practically impossible

The right to strike is a fundamental right of all workers, used to defend their labor rights in a peaceful manner. This right is not absolute in nature. The ILO acknowledges that the right to strike can be limited in those services whose interruption may endanger the life, safety or health of a person or a portion of the population, but these limits can only be established for democratic reasons, and those necessary to protect the rights and freedoms of others, and always by way of law.

In the period 2002-2007, 122 petitions of illegality of suspension of activities were submitted to the Ministry of Social Protection, of which, 66 were declared illegal.

Against this backdrop, we can understand why unions stage few strikes in Colombia. The legislative limitations and the actions of the Ministry of Social Protection demonstrate that staging a strike is nearly impossible, because of legislation contrary to the conventions on freedom of association. More so, if we take into account the fact that Art. 450 num. 2 allows employers to fire workers who participate in an illegal strike. In this context, on July 14, the Congress promulgated Law 1210 of 2008, which modifies the provisions that regulate the exercise of the strike in the country. Law 1210 includes only two of the ILO's ten recommendations to Colombia in the area of strike regulation. First, it transfers the jurisdiction the Ministry of Social Protection formerly had, to determine the illegality of a strike to labor jurisdiction. And second, it creates of a voluntary arbitration court, which was formerly obligatory if a strike went beyond 60 days.

On the other hand, in violation of ILO doctrine, article 1, paragraph 2, of this law gave the President of the Republic the authority to order the cessation of strikes "…*If a strike seriously impairs the health, safety, public order or economy of all or part of the population due to its nature or scope*…"

The changes introduced by the law are procedural and not substantive. This, being the case, going forward, judges will declare strikes to be illegal for the same reasons the Ministry of Social Protection did so in the past.

The most critical part of Law 1210 of 2008 is not so much what it includes, but rather what it fails to include, given that the exercise of the right to strike is extremely limited in Colombia, when compared to the recommendations of the Committee on Freedom of Association (CFA), and the

Committee of Experts on the Application of Conventions and Recommendations (CEACR) of the ILO. The following are the most serious omissions in the law:

1. The Colombian legislation defines the strike as a point in collective bargaining, and not as the fundamental means of defense of workers. It is only permitted in the process of negotiation of a list of demands and in no other case.
2. Contrary to the principles of freedom of association, the prohibition of strikes by federations and confederations, or those staged by unions by field of economic activity was not repealed. This right remains reserved for company unions, which represents a curtailment of the right to strike.
3. It is necessary to define what is meant by essential public service, and to regulate the concept of provision of minimal services. The lack of such definitions results in near total prohibition of the exercise of the strike by workers employed by companies that provide public services.
4. Changes must be made to current strike regulations such that solidarity strikes are not prescribed.
5. The law requires a qualified majority to declare a strike, that is, half plus one of the workers of a company. This makes it nearly impossible to achieve a strike declaration in practice, especially in companies with a large number of workers or when the union is in the minority.
6. The omission regarding strikes for the purpose of resolving a local or section problem must be resolved.
7. The legislation should allow workers with contractual relationships different from employment relationships to exercise their right of association and their right to strike.
8. A declaration of illegality of a strike results in the employer's ability to fire workers, who intervene in or participate in an illegal suspension of activities.

4. The large deficit of good jobs in Colombia — the case of the Associated Work Cooperatives

The labor policies and laws of recent years have been characterized by maintaining the exclusion from social and labor protection of more than two thirds of workers, and by denying and evading the minimum labor rights of 12 million workers. The Colombian government, rather than advancing in terms of minimum labor standards, produces legislation and practices that are contrary to decent work, thereby, leaving nearly 70% of workers in a situation of job insecurity. The Associated Work Cooperatives are evidence of this situation of job insecurity.

The recent strikes of African palm workers and cane cutters, the conflict with the workers of the Port of Buenaventura, as well as the situation of workers in superstores, the apparel industry, floriculture, the health sector, security guards, etc., demonstrate that the so-called associated work cooperatives (AWC), have contributed to the deterioration of the quality of employment in Colombia. The organizations that have been established under the legal definition of the AWC do not, in fact, represent cooperative principles, and they abuse the right to cooperative association, in order to evade workers' rights to the benefit of employers and of those who seek to establish such organizations as fronts for employers. The so-called AWCs are pseudo cooperatives.

The AWCs are used by companies as a form of outsourcing, that has allowed them to transfer company costs and replace or fire workers with employment contracts, and, in many cases, unionized workers with collective bargaining agreements. The hugely lower cost, and an employment relationship with no rights, resulted in the spread of the AWCs as a "new model of

labor relations" to the extent that in February of 2008, there were 12,068 registered AWCs. In 2007, it was estimated that there were 4,221,108[1] AWC members.

In the face of this job insecurity, Law 1233 of 2008 was promulgated, which had its origins in a bill presented by the government, as the North American congress was approaching a vote on the FTA with Colombia. The bill was limited to establishing the obligation to pay parafiscal taxes on the part of the Associated Work Cooperatives (AWC). While this bill was making its way through the Congress of the Republic, there were many debates and proposals, and as a result, the law addresses additional matters as well.

However, the government will not be able to point to this law as an advance in relation to international demands in this area, since the recommendations of the ILO oversight bodies have been clearly ignored. Law 1233 does not recognize the rights of association, bargaining and strike of the affiliates of an AWC, nor does it provide sufficient measures to prevent the AWC from being used as a means of evading labor and union rights. In sum, we can affirm that this law allows the AWCs to continue to be used as tools for evading labor rights, and creating insecure conditions for workers since it did not resolve crucial matters such as:

1- AWC members do not enjoy the fundamental and essential rights they would have as workers under labor contracts.
2- When hiring AWCs, companies are able to externalize payroll costs and render them not chargeable to the company. The companies are only responsible for what they sign off on in the commercial bid, with no possibility even of suing them for violation of labor rights.
3- In order to avoid the costs of social security contributions, employers prefer to hire AWCs, in which such contributions are wholly the responsibility of the members.
4- The primary activity of the AWC is to act as a labor intermediary. The great majority of the activities of the AWC stem from contracts with companies as labor intermediaries, and in practice, companies replace their workers with AWC members.
5- There is a near complete lack of oversight of AWCs. Thus, only a small fraction of them are currently in compliance with applicable regulations.
6- There is a lack of democratic participation of AWC members. Due to the lack of reasonable limits on the terms of the administrative boards of the AWCs, many members believe that the AWCs have owners instead of administrator, since the commercial bid signed by the company and the AWC is not subject to the approval of a general assembly of the members.
7- There is competition among AWCs to offer the worst and cheapest contracts, which creates a sort of war for pennies among them.
8- The AWCs are used as a tool to weaken and diminish the unions. AWC members do not have the right to unionize, because according to the Ministry of Social Protection, they are not employees, but rather, providers of labor.

The ILO has issued several comments and recommendations regarding Associated Work Cooperatives. Recently, during the 97th Conference (June of 2008), the Committee on the Application of Standards stated: "…In particular, the Committee expected that legislation would be adopted rapidly so as to ensure that service contracts, other types of contracts, cooperatives and other measures were not used as a means of undermining trade union rights and collective bargaining…"

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[1] Statist published on the web site of the superintendency for economic solidarity, accessed February 6, 2009