



# U.S.-Colombia Free Trade Agreement: Labor Issues

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## Summary

This report examines three labor issues and arguments related to the U.S.-Colombia Free Trade Agreement (CFTA), signed on October 21, 2011 (P.L. 112-42): violence against trade unionists; impunity (accountability for or punishment of the perpetrators); and worker rights protections for Colombians. For *general* issues relating to the CFTA, see CRS Report RL34470, *The U.S.-Colombia Free Trade Agreement: Background and Issues*, by (name redacted). For background on Colombia and its political situation and context for the agreement, see CRS Report RL32250, *Colombia: Issues for Congress*, by (name redacted).

Opponents of the U.S.-Colombia free trade agreement (CFTA) argued against it on three points: (1) the high rate of violence against trade unionists in Colombia; (2) the lack of adequate punishment for the perpetrators of that violence; and (3) weak Colombian enforcement of International Labor Organization (ILO) core labor standards and Colombia's labor laws.

Proponents of the agreement argued primarily for the Colombia FTA on the basis of economic and national security benefits. Accordingly, they argued, the CFTA would support increased exports, expand economic growth, create jobs, and open up investment opportunities for the United States. They also argued that it would reinforce the rule of law, spread values of capitalism in Colombia, and anchor hemispheric stability.

Proponents specifically responded to labor complaints of the opponents, that (1) violence against trade unionists has declined dramatically since former President Álvaro Uribe took office in 2002; (2) substantial progress is being made on the impunity issue as the government has undertaken great efforts to find perpetrators and bring them to justice; and (3) the Colombian government is taking steps to improve conditions for workers. The most recent steps are outlined in the "Colombian Action Plan Related to Labor Rights," released and jointly endorsed by President Obama and Colombian President Juan Manuel Santos, on April 7, 2011.

The Colombia FTA, along with FTAs for Panama and South Korea, are the second set of FTAs (after Peru) to have some labor enforcement "teeth." Labor provisions including the four basic ILO core labor principles are enforceable through the same dispute settlement procedures as for all other provisions (i.e., primarily those for commercial interests). Opponents argued that under CFTA, only the *concepts* of core labor principles, and not the details of the ILO conventions behind them, would be enforceable.

Proponents pointed to recent Colombian progress in protecting workers on many fronts. They argued that approval of the FTA and the economic growth in Colombia that would result is the best way to protect Colombia's trade unionists. They also argued that not passing the agreement would not resolve Colombia's labor issues. In addition, they argued, the United States could lose jobs through trade diversion as Colombia continues to enter into regional trade agreements with other countries.

Opponents argued that delaying approval of the CFTA further would give Colombia more time to keep improving protections for its workers. In fact, proponents point out, this has occurred in the five years between 2011 when Congress approved the implementing legislation, and 2006, when the agreement was first signed.

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The purpose of this report is to examine three labor issues and arguments related to the U.S.-Colombia Free Trade Agreement (CFTA): violence against trade unionists; impunity (accountability for or punishment of the perpetrators); and worker rights protections for Colombians.<sup>1</sup> For *general* issues relating to the CFTA, see CRS Report RL34470, *The U.S.-Colombia Free Trade Agreement: Background and Issues*, by (name redacted). For background on Colombia and its political situation and context for the agreement, see CRS Report RL32250, *Colombia: Issues for Congress*, by (name redacted).

Labor provisions in the U.S.-Colombia Free Trade Agreement result from a May 10, 2007, agreement between the Administration and Congress.<sup>2</sup> Under those provisions in the Colombia Free Trade Agreement, (Article 17.2.1), each Party to the agreement shall “adopt and maintain in its statutes and regulations, and practices thereunder,” five rights as stated in the International Labor Organization (ILO) *Declaration on Fundamental Principles and Rights at Work and its Follow-Up* (1998):<sup>3</sup>

- (a) freedom of association;
- (b) the effective recognition of the right to collective bargaining;
- (c) the elimination of all forms of compulsory or forced labor;
- (d) the effective abolition of child labor and for purposes of this Agreement, a prohibition on the worst forms of child labor; and
- (e) the elimination of discrimination in respect of employment and occupation.

Opponents of the U.S.-Colombia free trade agreement argued against it on three points: (1) the high rate of violence (homicides, arbitrary detentions/kidnappings, and death threats) against trade unionists in Colombia; (2) the lack of adequate punishment for the perpetrators of that violence; and (3) weak Colombian enforcement of International Labor Organization (ILO) core labor principles, the Conventions behind them,<sup>4</sup> and their own labor laws.

Proponents of the agreement primarily argued for the Colombia FTA on the basis of economic and national security benefits. Trade typically benefits all parties to a trade agreement, as each country tends to specialize in exporting those goods which it can produce relatively more efficiently, and to import those which it produces relatively less efficiently than its trading partners. Accordingly, proponents argued, the CFTA will support increased exports, expand economic growth, create U.S. jobs, offer consumers a greater variety of goods and services at lower prices, and encourage economic development by attracting foreign investment and

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<sup>1</sup> The proposed *U.S.-Colombia Free Trade Agreement* (FTA) was signed on November 22, 2006. Implementing legislation was introduced on April 8, 2008 as H.R. 5724 and S. 2830. On April 9, 2008, through H.Res. 1092 (H.Rept. 110-574) the House made certain provisions under “trade promotion authority” (otherwise known as the “fast-track”) inapplicable to the CFTA, so that it is no longer obligated to vote within 60 days of a session and may schedule a vote at any time. This stopped the fast-track clock. For more information on the fast-track or trade promotion process, see CRS Report RL33743, *Trade Promotion Authority (TPA) and the Role of Congress in Trade Policy*, by (name redacted) and (name redacted); and CRS Report RL33864, *Trade Promotion Authority (TPA) Renewal: Core Labor Standards Issues*, by (name redacted).

<sup>2</sup> Trade Facts: Bipartisan Trade Deal, May 2007, available at <http://www.ustr.gov>.

<sup>3</sup> The obligations listed refer only to the ILO Declaration, which lists the worker rights but does not reference or define them by their detailed conventions – one each backing (a) and (b) above, and two each backing (c), (d), and (e). In addition, to establish a violation of an obligation under Article 17.2.1, a Party must demonstrate that the other Party has failed to adopt or maintain a statute, regulation, or practice in a manner affecting trade or investment between the Parties.

<sup>4</sup> Colombia has ratified all 10 of the Conventions behind the Fundamental Principles.

expanding output. They also argued that it will reinforce the rule of law, spread values of capitalism in Colombia, and anchor hemispheric stability.

Proponents specifically respond to the above labor complaints that (1) homicides and kidnappings against trade unionists have declined dramatically since former President Álvaro Uribe took office in 2002; (2) substantial progress is being made on the impunity issue as the government has undertaken great efforts to find perpetrators and bring them to justice; and (3) the Colombian government is taking steps to improve conditions for workers.

On April 7, 2011, the White House and the Government of Colombia, after weeks of negotiations<sup>5</sup> released an “Action Plan Related to Labor Rights” as part of the Colombian government’s “ongoing commitment” to prevent violence against labor leaders, prosecute the perpetrators of such violence, and protect internationally recognized worker rights.<sup>6</sup> For details on this Action Plan, see CRS Report RL34470, *The U.S.-Colombia Free Trade Agreement: Background and Issues*, by (name redacted).

## Background

### Political Context<sup>7</sup>

Colombia is one of the oldest democracies in Latin America, and has a bicameral legislature. Yet it has been plagued by an ongoing armed conflict for over 40 years. This violence has been aggravated by a lack of state control over much of Colombian territory—rugged terrain that has been hard to govern. In addition, a long history of poverty and inequality has left Colombia open to other influences, among them drug trafficking. Leftist guerrilla groups inspired by the Cuban Revolution formed in the 1960s as a response to state neglect and poverty. Right-wing paramilitaries formed in the 1980s to defend landowners, many of whom were drug traffickers, against guerrillas. The shift of coca production from Peru and Bolivia to Colombia in the 1980s increased drug violence and provided a new source of revenue for both guerrillas and paramilitaries. In 2002 Colombians elected an independent, Álvaro Uribe, as president (2002-2010), largely because of his aggressive plan to reduce violence in Colombia. He was succeeded by Jan Manuel Santos on August 7, 2010.

### Trade/Economic Context

Colombia is the United States’ fourth-largest trading partner in Latin America (after Mexico, Brazil, and Venezuela). In 2010, it was the United States’ 25<sup>th</sup> largest import source (\$16 billion in U.S. imports from Colombia) and its 20<sup>th</sup> largest export destination worldwide (\$12 billion in U.S. exports to Colombia). Machinery parts, oil, electrical machinery and organic chemicals

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<sup>5</sup> World Trade Online, U.S. Floats Detailed Labor Rights Proposal to Colombia for Vetting, April 9, 2011. See also, House Members Send Obama Benchmarks for Colombia FTA, press release from the office of Representative Michael Michaud, March 17, 2011

<sup>6</sup> *Colombian Action Plan Related to Labor Rights*, April 7, 2011, available on USTR.gov website; and U.S., Colombia Agree on Labor, *Washington Trade Daily*, April 7, 2011.

<sup>7</sup> This section was taken from CRS Report RL32250, *Colombia: Issues for Congress*, by (name redacted).

constituted more than half (56%) of total U.S. exports to Colombia, and mineral fuels (primarily crude oil) accounted for 67% of all imports from Colombia.<sup>8</sup>

Given the relatively small level of trade between the United States and Colombia, (0.9% of all U.S. trade in 2010) the CFTA would, according to a U.S. International Trade Commission (USITC), likely have minimal to no effect on output or employment for most sectors of the U.S. economy, because, until recently, most Colombian products already entered the U.S. market free of duty under the Andean Trade Preference Act (ATPA).<sup>9</sup> However, new U.S. investment in Colombia as a result of the agreement could support increased economic growth and employment and additional exports to the United States.

U.S. proponents argued that the proposed CFTA would provide a number of economic benefits, including market access for U.S. consumer and industrial products; cooperation in the production of textiles and apparel; and new opportunities for U.S. farmers and ranchers.<sup>10</sup> With regard to the projected small potential effect on U.S. jobs, the largest changes in U.S. output are projected for the cereal grains production sector (0.3%) and the sugar sector (-0.3%), with similar effects on employment. The largest changes in U.S. employment are projected to be in cereal grains (0.3%), sugar cane (-0.3%), and textiles (-0.3%).<sup>11</sup>

Opponents argued that new U.S. investment in Colombia as a result of the agreement could support increased economic growth and employment in Colombia and additional exports to the United States, given the relative wage difference. U.S. total monthly compensation costs in manufacturing for 2008 (most recent data) expressed in U.S. dollars, were roughly five times the level of such costs in Colombia—\$5,060 for the United States and \$984 for Colombia.<sup>12</sup>

Colombian proponents argued that the only Western Hemisphere “Pacific Rim” countries with which the United States did not have a free trade agreement were Colombia, Ecuador, and Panama. Now only Ecuador remains. The United States has FTAs with all others: besides Colombia and Panama, these are Canada, Mexico, Guatemala, Honduras, El Salvador, Nicaragua, Costa Rica, Peru, and Chile.<sup>13</sup>

U.S. proponents concerned that U.S. trade with Colombia could get diverted to other countries if the agreement were not approved, pointed out that Colombia’s current regional trade agreement partners include the Andean Community, Chile, Mexico, Latin American countries, Canada, and four European countries (Iceland, Lichtenstein, Norway, and Switzerland).<sup>14</sup>

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<sup>8</sup> Source: Global Trade Atlas (Census data). Colombia is the United States’ 10<sup>th</sup> most important source of these types of fuels. Mineral fuels from Colombia account for nearly 3% of all U.S. imports of mineral fuels.

<sup>9</sup> U.S. International Trade Commission, *U.S.-Colombia Trade Promotion Agreement: Potential Economy-Wide and Selected Sectoral Effects*, December, 2006, P. 2-13. The Andean Trade Preference Act, last extended under P.L. 111-344, expired February 12, 2011.

<sup>10</sup> Office of the U.S. Trade Representative, *Colombia FTA Facts*, October 2008.

<sup>11</sup> USITC, *U.S.-Colombia Trade Promotion Agreement: Potential Economy-Wide and Selected Sectoral Effects*, op. cit.

<sup>12</sup> Source: Unpublished estimates compiled by Bureau of Labor Statistics, Division of International Labor Comparisons based on data from Colombia’s Annual Survey of Manufacturing and U.S. hourly compensation data adjusted to a comparable monthly basis. Relative compensation costs for any given year are influenced by continuing adjustment in exchange rates.

<sup>13</sup> Colombian Embassy, in an interview, November 20, 2008.

<sup>14</sup> World Trade Organization Regional Trade Agreement Gateway.

## Labor Context

Colombia's official labor force is about 18.4 million, as compared with 154 million for the United States. Roughly 23% of Colombia's labor force is involved in the agricultural sector, 19% is involved in the manufacturing/industry sector, and 58% is employed in the service sector. Almost 60% of the workforce in Colombia is employed in the (largely unregulated, undocumented) informal sector. The unemployment rate in Colombia was roughly 12% in 2010. During most of the more than 40 years that Colombia has experienced internal armed conflict, membership and participation in labor unions has waned. Between 1959 and 1965, the unionization rate grew from 5.5% to 13.5%. Since 1966, the unionization rate has declined to 4.4% or 815,000 of the 18.4 million workforce. In 1999, roughly 1.36% of the labor force was covered by a collective bargaining agreement. Roughly 75 percent of the workforce in Colombia's ports is employed under flexible non-labor contracts and consequently not allowed to join unions or bargain collectively.<sup>15</sup>

## Violence Against Trade Unionists

### Long-Term Trends in Homicides of Trade Unionists

A key issue in the debate on the CFTA is the long-term trend in homicides of Colombia's trade unionists as they try to express rights that are in concept protected in Colombia's laws.

Three organizations track data on the number of trade unionists murdered each year: the Colombian government; the International Trade Union Confederation (ITUC), successor to the International Confederation of Free Trade Unions (ICFTU); and the Escuela Nacional Sindical (ENS) or National Labor School, a non-governmental organization founded in 1982 in Colombia to provide "non-partisan and independent" information on human rights, labor, and the dynamics of association and collective bargaining. **Figure 1** below tracks each of their data on the number of homicides of trade unionists in Colombia and worldwide between 1997 and 2009. It shows a wide year-to-year variation in the number of trade unionists murdered, but a primarily downward trend since 2001.

Inconsistency among the three trend lines for Colombia reflects the fact that the three data sources do not always agree on which homicides should be counted as "trade unionist." Those homicides that may not be counted by all sources include non-affiliated advisors to unions, retired and inactive union members, rural and community organization members, and teachers.<sup>16</sup>

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<sup>15</sup> Data in this paragraph are from Economist Intelligence Unit, *Country Report Colombia*, September 2010, p. 16, and March 2011, p. 16; U.S. Bureau of Labor Statistics; and U.S. State Department, *Country Reports on Human Rights Practices*, 2009 and 2010, published March, 2010 and April 8, 2011, respectively.

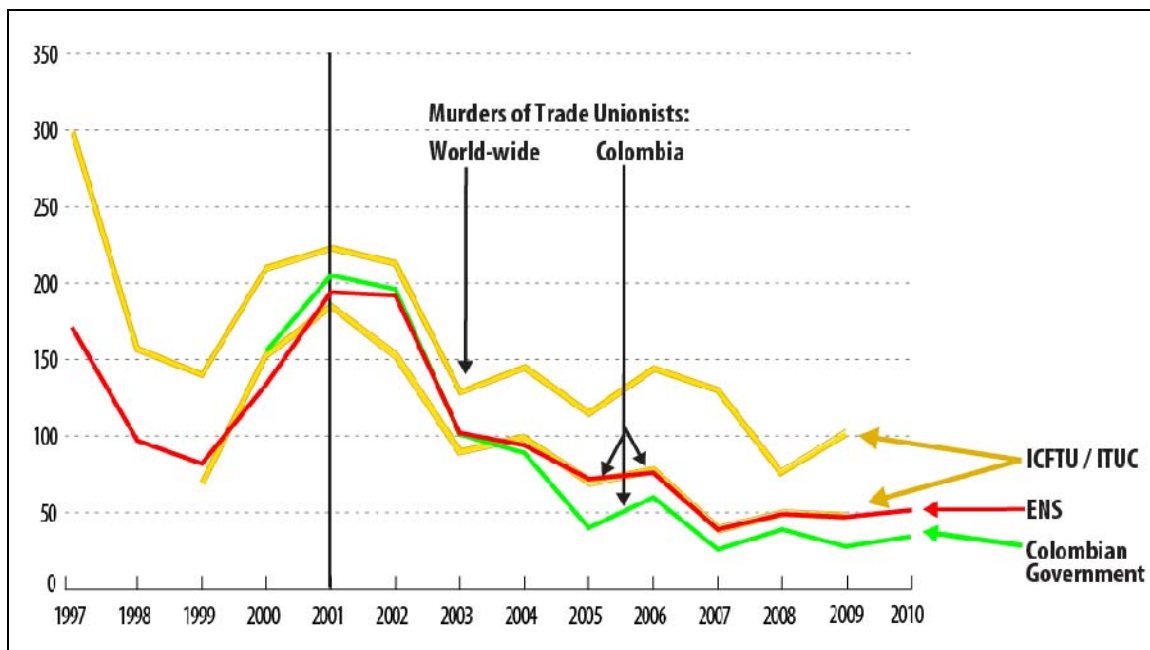
<sup>16</sup> Until recently, murders of teachers were not counted in Colombian government statistics. Yet teachers constitute the group that has suffered the most casualties. Out of 1,994 murders in which the victim is identified by occupation between 1986 and 2006, 825, or 41%, were teachers. Source: *2,515 or that sinister case to forget*, by Guillermo Correa Montoya, researcher for the ENS. Two researchers note that most teachers who are victims are typically singled out for what they do outside of their classrooms as labor activists. Source: "Targeted Teachers," by Seth Stern and Rachel Van Dongen, *Christian Science Monitor*, June 17, 2003. *Country Reports on Human Rights Practices*, 2008, notes that for 2008, teachers made up the largest percentage of registered unionists (34%). In part because of their presence in rural, conflict-laden parts of the country, teachers constituted 55% of all trade unionists killed during that year.

Teachers make up the largest percentage of union members who were victims of violence by illegal armed groups. They represent 53% of all trade unionist homicides according to Colombian government statistics, and 56% according to ENS statistics. There are two reasons cited for this. First, they constituted a sizable 27% of registered unionists; and second, their work situates them in rural, conflict-ridden parts of the country.<sup>17</sup>

In **Figure 1**, the large bump in the homicide trend line from 1999-2003 coincides with a large bulge in the cultivation of coca produced in Colombia and a simultaneous decline in coca production in Bolivia and Peru, according to Department of State data. The fact that the three lines for Colombia's homicides of trade unionists closely track and crowd the line depicting such homicides worldwide, shows the extent to which Colombia accounts for most such world-wide homicides. Colombia's share of world trade-unionist-related homicides ranges from a low of 49% in 1999 to a high of 86% in 2002, and then declines to 54% in 2006.

Proponents argued that Colombia's large share of the total could reflect the fact that other countries may not document the homicides of their trade unionists as carefully as Colombia does.

**Figure 1. Historic Data on Homicides of Trade Unionists, 1997-2010**



**Source:** ICFTU/ITUC, ENS, and Colombian Government. See **Appendix** for data behind this graph.

Opponents of the proposed Colombia FTA tended to focus on the entire 10-plus year trend in homicides and the close relationship between Colombia's homicides and world-wide homicides of trade unionists. Proponents, including the Colombian government, focused on the steady decline in such homicides since former President Uribe took office in 2002, and on actions taken recently by the Colombian government to reduce these fatalities. Such actions include bringing to Colombia a permanent ILO representative, passing new labor laws, stepping up enforcement of

<sup>17</sup> U.S. Department of State. *Country Reports on Human Rights Practices, 2010: Colombia*, Worker Rights section, April 8, 2011, p. 51 pdf version.



labor laws, implementing a new judicial system, and setting up a trade unionist protection program.

Under this protection program, in 2009, roughly 1,550 trade unionists were receiving protection—14% of all persons receiving protection.<sup>18</sup> Opponents of the Colombia FTA also point out other reasons for the decline in homicides, including the decline in targets: Unions in Colombia have declined from 13% of the formal labor force in 1965 to 4.4% in 2010.<sup>19</sup> Opponents argued that they and their efforts have been eroded primarily through such means as violence and employer-mandated union-substitution devices such as government-sanctioned collective pacts and cooperative associations. According to the State Department, some economists also suggest that mandatory high nonwage benefits for vocational training and family welfare programs depress formal employment and thus union membership, and increase informal employment.<sup>20</sup>

Proponents of the proposed CFTA pointed out that the number of trade unionist homicides as a share of all trade unionists is considerably smaller than the total number of homicides as a share of the general population. For the year 2009, according to data provided by the government and ENS, the homicide rate per 100,000 was five for unionists and 35 for the general population. (See **Figure 2.**)<sup>21</sup> The AFL-CIO countered that “it is simply not meaningful to compare random crime statistics to targeted assassinations.”<sup>22</sup>

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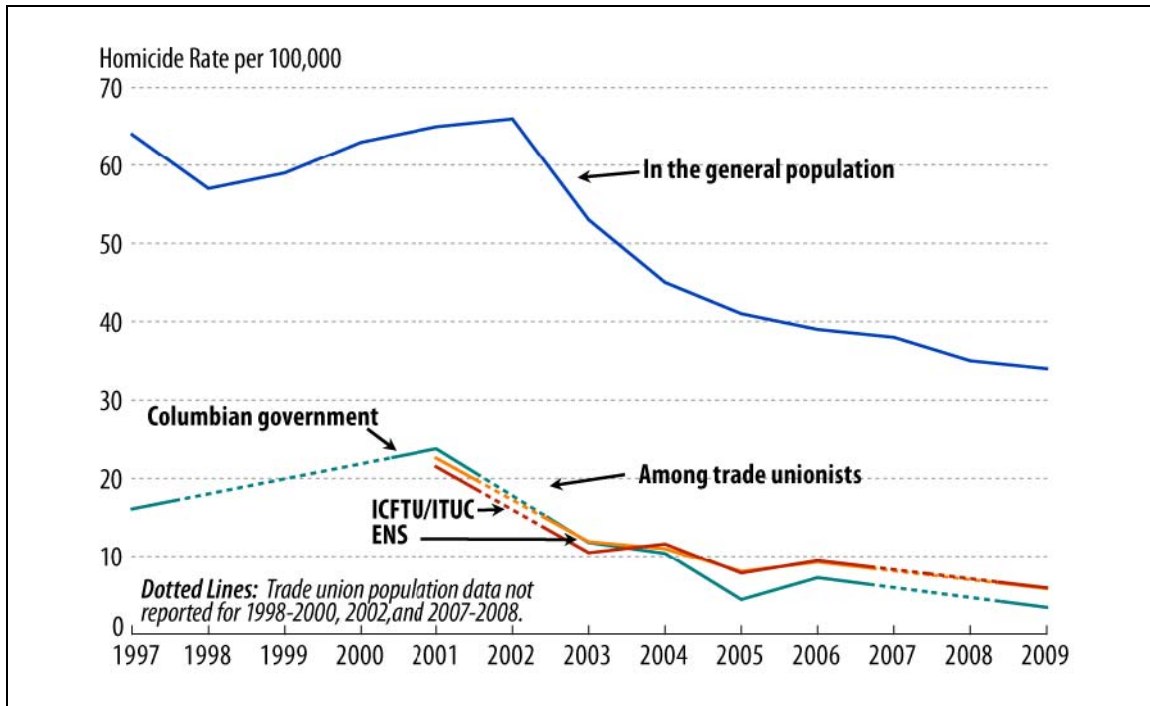
<sup>18</sup> *Country Reports on Human Rights Practices*, 2009: Colombia, Worker Rights section, March 11, 2010.

<sup>19</sup> *Country Reports on Human Rights Practices*, 2010: Colombia, Worker Rights section, April 8, 2011, p. 50.

<sup>20</sup> *Ibid.*, p. 53.

<sup>21</sup> U.S. Department of State: *2009 Country Reports on Human Rights Practices: Colombia*. March 11, 2010.

<sup>22</sup> AFL-CIO. *Colombia: Continued Violence, Impunity and Non-Enforcement of Labor Law Overshadow the Government's Minor Accomplishments*, September 2008, Update.

**Figure 2. Homicide Rate for the General Population and for Trade Unionists**

Source: See **Appendix** data tables for Figure 2.

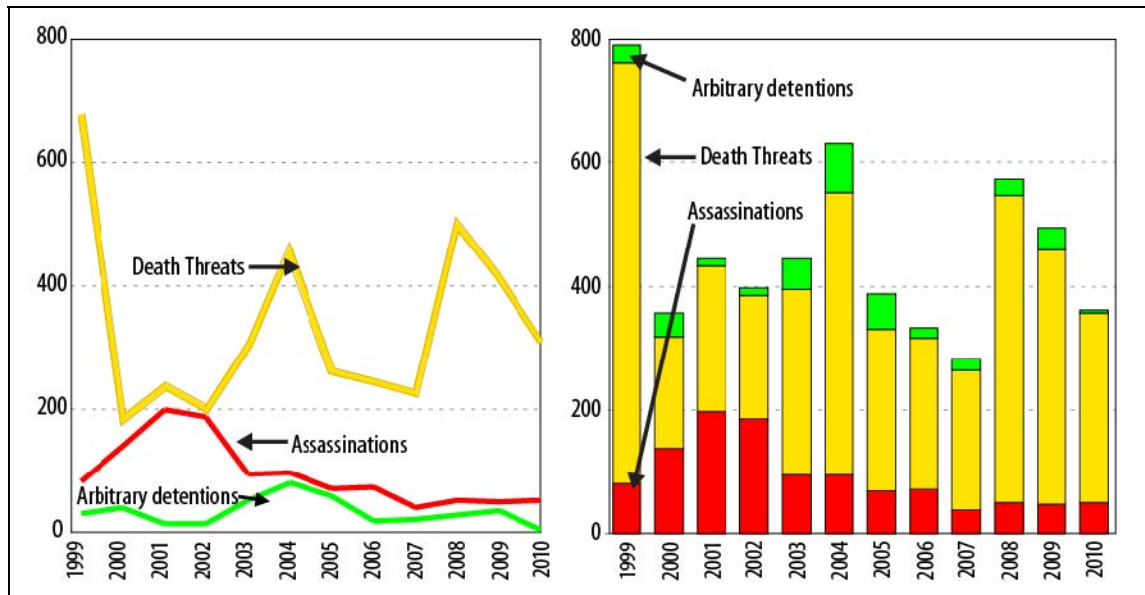
## Long-Term Trends in Three Measures of Violence Against Trade Unionists

A companion issue to trade unionist homicides is long-term trends in three separate measures of trade union violence: homicides/assassinations, kidnappings/arbitrary detentions, and death threats.

Proponents of the CFTA noted reductions in assassinations and arbitrary detentions since 2004. Opponents, examining the data longer term, focused on a third means of intimidation: death threats. They argued that in recent years perpetrators have switched their focus from homicides to death threats, because this more subtle form of intimidation can achieve the same results of discouraging union activity with less public notice.<sup>23</sup> These three methods of intimidation are tracked individually in the left graph in **Figure 3** and cumulatively in the right graph. The right graph shows that assassinations/homicides were about equal to death threats in 2001-2002 when homicides were at their peak, but averaged less than one-quarter the number of death threats between 2003 and 2009, when homicides were lower.

<sup>23</sup> Speech by José Luciano Sanín Vásquez, Director General of the ENS, sponsored by the Global Policy Network, February 27, 2008.

**Figure 3. Assassinations, Death Threats, and Arbitrary Detentions of Trade Unionists, 1999-2010**



Source: See Appendix data table for Figure 3.

## Impunity

The second main issue of opponents in debating CFTA is impunity—accountability for and punishment of the perpetrators of assassinations, arbitrary detentions, and death threats.

Perpetrators of the violence typically fall into three main groups: paramilitaries, guerrillas, and the Colombian military.<sup>24</sup> The human rights advocates group Amnesty International USA has reported on the difficulty in identifying the perpetrators in cases of trade union violence. However, it reported that, among “cases in which clear evidence of responsibility is available” in 2005, of all human rights abuses against trade unionists: paramilitaries committed 49%; security forces committed 43%; guerrilla forces committed 2%; and criminals committed 4%.<sup>25</sup>

Proponents of the agreement cite data showing progress in bringing perpetrators of the violence to justice: as the result of a tripartite agreement with the ILO (among the government, trade confederations, and business groups), the Office of the Colombian Prosecutor General, in October 2006, created a special sub-unit to investigate and prosecute 1,272 criminal cases of violence against trade union members. These included 187 priority cases as determined by the unions.<sup>26</sup>

<sup>24</sup> U.S. State Department, *Charting Colombia's Progress*, October 12, 2007.

<sup>25</sup> Amnesty International USA, *Colombia Killings, Arbitrary Detentions, and Death Threats—the Reality of Trade Unionism in Colombia*, Introduction, 2007. ENS data.

<sup>26</sup> On June 12, 2008, three union confederations, CUT, CGT, and CTC, submitted to the ILO a list of 2,669 homicides and forced disappearance cases as part of case 1787. According to the government of Colombia, the Ministry of Social Protection is now cross-referencing this new case list with its existing case list.

As of February 20, 2010, there were a total of 248 convictions in cases involving violence against trade union members between 2001 and the first two months of 2010, with 199 (80%) of them handed down in 2007-2010. These 248 conviction cases resulted in the conviction of 350 individuals, including 216 imprisonments.<sup>27</sup> José Luciano Sanín Vásquez, Director General of the ENS views convictions over a longer period of time and points out that since 1986, in about 97% of the cases of homicides of trade unionists, the perpetrators have never been identified and brought to justice. He argued further that while in some cases the perpetrators of labor killings are found guilty, in zero cases has the mastermind behind the crime been convicted.<sup>28</sup>

In September 2009, the AFL-CIO, in a submission to the USTR, laid out detailed labor and human rights conditions it wanted Colombia to meet before the United States would consider approving the CFTA. These included (1) convictions in a substantial majority of the over 2,700 cases of trade unionists murdered and prosecutions against both those responsible for carrying out the crimes and those planning the crimes; and (2) the undertaking of substantial efforts to investigate non-lethal forms of violence, including death threats.<sup>29</sup>

## Labor Laws, Protections, and Enforcement

A third main issue in the CFTA is adequacy of enforcement of Colombia's labor laws, and Colombia's ability to protect workers. Many observers point out that enforcement of labor laws and standards generally is an issue for Colombia as well as throughout Latin America and other developing countries.

Proponents pointed to Colombia's system of labor laws and protections, which includes ratification of all four ILO core labor standards<sup>30</sup>—that is, ratification of both the ILO core labor principles and the detailed Conventions that define them. The ILO core labor principles: (1) protect the right of workers to organize and bargain collectively, (2) prohibit forced labor, (3) prohibit child labor, and (4) provide for nondiscrimination in employment.

Others point to strengths and weaknesses in Colombia's protection of worker rights, as reported in the State Department's annual *Country Reports on Human Rights Practices*.<sup>31</sup> Some key findings from its 2011 report for Colombia are as follows:

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<sup>27</sup> *Fiscalia*, February 20, 2010. It should be noted that, according to the statistical branch of the Colombian government, in a significant number of the cases, the defendant was convicted in absentia and is not currently in custody. Therefore, currently, about two-thirds of those convicted are serving time in prison.

<sup>28</sup> Speech by José Luciano Sanín Vásquez, op. cit., with updated figures from the Colombian government. As of July of 2009, an AFL-CIO submission to the USTR notes 154 convictions in cases involving violence between 2001 and 2008, with most of them handed down in 2007-2008. The AFL-CIO Submission notes that a March 2009 report by *Fiscalia* (Colombia's Office of the Attorney General) claims that 33 "intellectual authors" of the crimes had been sentenced. However, a subsequent July 20, 2009 report included no information on intellectual authors. Source: AFL-CIO. *Before the U.S. Trade Representative, Comments Concerning the Pending Free Trade Agreement with Colombia*. Filed September 15, 2009, p. 4.

<sup>29</sup> *Ibid.*, p. 5-6.

<sup>30</sup> Office of the USTR. Colombia FTA Facts. Colombia's Labor Laws and Labor Protections. March 2008.

<sup>31</sup> U.S. Department of State, *Country Reports on Human Rights Practices*, 2010, April 8, 2011. Included in the annual reports on more than 100 countries, is a section on their adherence to U.S. internationally recognized worker rights principles. This list of principles, codified in the U.S. Trade Act of 1974, (P.L. 93-618 as amended), is similar to the ILO list, but includes the "right of association" in addition to the "right to organize and bargain collectively," and (continued...)

- **Right to Organize and Bargain Collectively.** In general, Colombian law allows some workers to form unions, and the government generally respected this right in practice. However, there exist a number of legal restrictions to forming and joining a union, particularly in *indirect* contracting situations. These restrictions stem from the fact that Colombia's labor laws define a "worker" as a *direct* hire with an employment contract. Thus, workers in three groups have at times been treated—legally or illegally—as *indirect* hires, and thus not covered by Colombia's labor code: those employed under (1) workers' cooperatives, (2) temporary service agencies for seasonal, temporary, and contract workers, and (3) collective pacts. The report also notes that some unions have been formed despite some legal restrictions. It also notes that unionists continue to advocate for revision to the labor code. In addition, the report notes that collective bargaining has not been fully implemented in the public sector.
- **Prohibition of Forced or Compulsory Labor.** The law prohibits forced or compulsory labor, including by children, but there were some reports that such practices occurred. New illegal armed groups, which included some former paramilitary members and guerrillas, reportedly used forced labor in coca cultivation in areas outside government control. Forced labor which included organized begging and forced commercial sexual exploitation, often of internally trafficked women and children, reportedly remained a serious problem.
- **Prohibition of Child Labor and Minimum Wage for Employment.** While there are laws to protect children from exploitation in the workplace, child labor reportedly remained a problem in the informal and illicit sectors. Mentioned as significant incidences in which child labor was used, included in the production of clay bricks, coal, emeralds, gold, coca, and pornography, often under dangerous conditions and in many instances with the approval and/or insistence of their parents.
- **Acceptable Conditions of Work.** The government establishes a uniform minimum wage every January. The monthly minimum wage for 2010 was reportedly \$285, a 3.6% increase over the previous year. According to the report, the national minimum wage did not provide a decent standard living for a worker and family. In addition the government reportedly remained unable to enforce the minimum wage in the informal sector. The law provides protection for workers' occupational safety and health in the formal sector, which the government enforced through periodic inspections. However, the report notes, a scarcity of government inspectors, poor safety awareness, and inadequate attention by unions resulted in a high level of industrial accidents and unhealthy working conditions in the formal sector.

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(...continued)

substitutes "acceptable conditions of work" relating to minimum wages, hours of work, and occupational safety and health, for the ILO's "nondiscrimination in employment" principle.

## Possible Implications

The Colombia FTA (along with Panama and South Korea) is in the second set of FTAs (after Peru) to have some labor enforcement “teeth.” Labor provisions including the four basic ILO core labor principles (enumerated previously) would be enforceable through the same dispute settlement procedures as for all other provisions, such as those for commercial interests. Opponents argued that under the CFTA, only the concepts of core labor principles, and not the details of the ILO Conventions behind them, would be enforceable.

Proponents pointed to recent Colombian progress in protecting workers on many fronts. First, the personal protection program for union members has been a success in that since 2002, not a single trade union member enrolled in the program has been killed, according to the Colombian Embassy.<sup>32</sup> Second, funding for investigating and prosecuting perpetrators of crimes against trade unionists has increased. Third, the government has engaged in greater social dialogue with the ILO and other international union organizations, which are having an impact on national labor policy. Fourth, other legislative approaches have been proposed to further protect basic core labor rights.<sup>33</sup> Fifth, the “Action Plan Related to Labor Rights,” jointly released by the President Obama and Colombian President Juan Manuel Santos on April 7, 2011, is designed to “address serious and immediate labor concerns” and to “lead to greatly enhanced labor rights in Colombia and clear the way for the U.S.-Colombia Trade Agreement to move forward in Congress.”<sup>34</sup>

Opponents argued that delaying the vote on the CFTA further would give Colombia more time to keep improving protections for its workers. They asserted that Colombia is still the most dangerous place in the world to be a trade unionist, since it still accounts for the majority of homicides of trade unionists world-wide. They also argued that the progress made in bringing to justice perpetrators of violence against union workers has been limited, and point to the fact that a significant percentage of those convicted in these cases are convicted in absentia and remain at large. Finally, they argued that passing the CFTA could very well halt the progress by the Colombian government on worker rights protections achieved to date.<sup>35</sup>

Proponents argued that the window of opportunity to pass the CFTA may be relatively narrow, and that approval of the FTA and the economic growth in Colombia that would result is the best way to protect Colombia’s trade unionists. They also argued that not passing the agreement would not resolve Colombia’s labor issues.

Passage of the Colombia FTA implementing legislation on October 21, 2011 (P.L. 112-42), opens up a new lens through which to observe Colombia’s progress relating to labor rights.

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<sup>32</sup> As of 2010, there were 1,442 trade unionists in the protection program (14% of 10,510 under protection) according to the Ministry of the Interior, as reported in *Protecting Labor and Ensuring Justice in Colombia*, Embassy of Colombia, January, 2011.

<sup>33</sup> An Open Letter to Congressional Democrats on Hemispheric Trade Expansion. Signed by seven former Members of Congress and the Senate and at least 30 former cabinet officials, ambassadors, and foreign and trade policy advisors. Available at [http://www.chamberpost.com/files/Colombia\\_Letter\\_from\\_Former\\_Democratic\\_Officials.pdf](http://www.chamberpost.com/files/Colombia_Letter_from_Former_Democratic_Officials.pdf). (Undated.)

<sup>34</sup> The White House, Office of the Press Secretary, Fact Sheets: U.S.-Colombia Trade Agreement and Action Plan, April 6, 2011; and Colombian Action Plan Related to Labor Rights, April 7, 2011.

<sup>35</sup> Various sources already identified plus USLEAP, *Violence Against Colombia Trade Unionists and Impunity: How Much Progress Has There Been Under Uribe?* April 2008.

## Appendix. Data for Figures 1, 2, and 3

**Table A-1. Data for Figure 1: Historic Data on Homicides of Trade Unionists**

Year	World-Wide	Colombia		
	ICFTU/ITUC	ICFTU/ITUC	ENS	Colombian Government
1997	299		170	
1998	157		97	
1999	140	69	82	
2000	210	153	134	155
2001	223	185	194	205
2002	213	154	192	196
2003	129	90	102	101
2004	145	99	94	89
2005	115	70	72	40
2006	144	78	76	60
2007	130	39	39	26
2008	76	49	49	39
2009	101	48	47	28
2010	NA	NA	51	34

**Source:** ICFTU/ITUC: *Annual Survey of Violations of Trade Union Rights*, various years; ENS: *Situation of Violence and Impunity, 1986-2010*; Colombian Government: U.S. State Department. For 2009: Memorandum of Justification Concerning Human Rights Conditions With Respect to Assistance for the Colombian Armed Forces; for 2010, Country Reports on Human Rights Practices for 2010: Colombia, Section 7. April 8, 2011.

**Table A-2. Data for Figure 2: Population, Homicides, and Homicide Rates for Colombia Generally**

Year	General Population (millions)	Number of Homicides (thousands)	Homicide Rate per 100,000
1997	40.0	25	63
1998	40.7	23	56
1999	41.4	24	59
2000	42.1	27	63
2001	42.8	28	65
2002	43.5	29	66
2003	44.2	24	53
2004	44.9	20	45
2005	43.7	18	39
2006	44.4	17	37
2007	45	17	36
2008	45.7	16	33
2009	46.3	16	34

**Source and methods:** Data for general population: IMF International Financial Statistics; for homicides: Colombia ministry of Defense and Colombian Embassy.

**Table A-3. Additional Data for Figure 2: Population, Homicides, and Homicide Rates for Members of Trade Unions**

Year	Members of Trade Unions (000)	Number of Homicides (ICFTU/ITUC data)	Homicide Rate per 100,000	Number of Homicides (ENS data)	Homicide Rate per 100,000	Number of Homicides (Colombian Government data)	Homicide Rate per 100,000
1997	1,054	NA	NA	170	16	NA	NA
1998	NA	NA	NA	97	NA	NA	NA
1999	NA	69	NA	82	NA	NA	NA
2000	NA	153	NA	134	NA	105	NA
2001	860	185	22	194	23	205	24
2002	NA	154	NA	192	NA	196	NA
2003	856	90	11	102	12	101	12
2004	856	99	12	94	11	89	10
2005	900	70	8	72	8	40	4
2006	830	78	9	76	9	60	7
2007	NA	39	NA	39	NA	26	NA



Year	Members of Trade Unions (000)	Number of Homicides (ICFTU/ITUC data)	Homicide Rate per 100,000	Number of Homicides (ENS data)	Homicide Rate per 100,000	Number of Homicides (Colombian Government data)	Homicide Rate per 100,000
2008	NA	49	NA	49	NA	38	NA
2009	815	48	6	47	6	28	3
2010	NA	NA	NA	51	NA	34	NA

**Source and Methods:** Data on number of members in trade unions: ENS data as reported in the State Department's *Country Reports on Human Rights Practices*, various years.

**Table A-4. Data for Figure 3: Assassinations, Death Threats, and Arbitrary Detentions of Trade Unionists**

Year	Assassinations	Arbitrary Detentions	Death Threats
1999	80	29	679
2000	137	38	180
2001	197	12	235
2002	186	13	198
2003	94	50	301
2004	96	79	455
2005	70	56	260
2006	72	16	244
2007	39	19	224
2008	49	26	497
2009	47	34	412
2010	51	3	306

**Source:** Escuela Nacional Sindical, *2,515 or that sinister ease to forget*, 2008, p. 69 Updated for 2007-2009. Data for 2010 are from the State Department's *Country Reports on Human Rights Practices*, 2010, April 8, 2011.

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