Testimony

of

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"Colombia Free Trade Agreement"

Chairman Brady, ranking member McDermott, I want to thank you for holding this hearing, and for giving me this opportunity to share the perspective of my organization, the Washington Office on Latin America, on the U.S.-Colombia Trade Promotion Agreement (Free Trade Agreement, or FTA).

Since its founding in 1974, WOLA has advocated equitable economic development, strong democratic institutions, and respect for human rights in Latin America and the Caribbean. I have worked on, and in, Colombia since 1997. My focus has been security, governance, conflict resolution and U.S. assistance, while other WOLA staff have focused on economic development, drug policy and displacement.

Let me be clear: we are for expanded trade. Trade barriers, while occasionally useful policy tools, can create inefficiencies and slow growth. We want to see freer and fairer trade relations between the United States and Colombia.

But we want this trade relationship to develop in a way that is in line with U.S. values of fairness, justice and democracy. Only by pursuing our values do we truly protect our interests, build our respective economies fairly, and strengthen our influence as a good neighbor in Latin America.

My testimony today will seek to lay out what needs to happen before Congress should consider this agreement. It is important to keep two things in mind as we begin this discussion.

First, let's stop thinking in cold-war terms about incurring some sort of geopolitical cost if we do not act immediately. We don't have to sacrifice our values to compete with countries like Venezuela before Latin American opinion. In fact, waiting a bit longer while we engage Colombia in a practical discussion of results and objectives could *improve* the U.S. image in the region. It will show us to be consistent in our concerns about basic human rights and freedoms. The U.S. government regularly and rightly condemns the human rights failings of regional adversaries like Cuba and Venezuela. By taking this course, we show that we don't have a double-standard: when our friends fall short, we don't just overlook it and reward them anyway.

Second, our discussion must take place amid an immediate reinstatement of unilateral preferences under the Andean Trade Preferences and Drug Elimination Act. Raising U.S. tariffs on Colombian goods now – especially as Colombia contends with the impact of devastating floods – sends a perverse message to the region, and the longer we have to wait before ATPDEA is renewed, the more it hurts our relationship with Colombia and its neighbors. This backwards movement away from freer trade is punishing Colombia for nothing, at a time when we should be working with them to get past this.

Why goals and benchmarks?

I'm going to offer some suggested actions here. But first I should explain why my organization, WOLA, has taken the position that these actions are necessary, and should be taken before considering the Colombia pact.

Colombia is a democracy and a friend of the United States. But it is different from the countries with which we have signed free-trade agreements in the past. Elsewhere, the debate focused on labor laws, wages and work conditions. In Colombia, these are critically important, but the most immediate issue is violence amid an internal armed conflict that continues to be fought intensely. In much of the country, to advocate for better work conditions is an act requiring uncommon courage.

Colombia is one of the most unequal places on the planet, in which the writ of the state doesn't extend throughout the entire territory. This means that, unless it comes with some important changes, applying a cookie-cutter free-trade agreement to Colombia can worsen some existing distortions and have some severe unintended consequences.

Some of you have perhaps been to Bogotá, Medellín or Cartagena. These are world-class cities. They have great restaurants, compelling architecture, order and safety in the central neighborhoods, and the people who run things are very cultured and educated.

But go fifty miles past the limits of one of the major cities — or even into these cities' marginal slums — and things change dramatically. You fall off the edge of the world of

governance. In provincial towns and vast rural zones, in jungles and along drug-trafficking corridors, the government presence is scarce and local power matters more.

It is here that the consequences of having one of the world's worst income distributions distorts life in Colombia's democracy. Local political power overlaps with economic power, which is in few hands, and overlaps further with illegality and violence. In far too many territories, large landholders, guerrilla leaders, narcotraffickers, paramilitary leaders, corrupt politicians and other local "barons" exercise arbitrary power with little concern for the policies and edicts that come out of Bogotá, and little fear of running afoul of the justice system. In much of the country, because of wealth, power or ruthlessness, some Colombians have grown quite used to being above the law — to the extent that they regularly threaten, intimidate and kill their adversaries with impunity. Often, these "adversaries" have been regular Colombians working peacefully to improve their lives and their communities.

It is in this Colombia that trade unionists wear bulletproof vests and work behind barbed wire. It is here that hundreds of massacres have taken place over the past 20 years, with nearly all of the killers still at large. It is here that thugs with deep connections to local government fight each other for the ability to send boatloads of drugs to the United States. It is here from where more than 5 million Colombians have been forced to abandon their lands in the past 20 years; 280,000 more, according to the monitoring group CODHES, were newly displaced last year. It is here where, even after twenty years of government human rights commitments, successful prosecutions for crimes against humanity are virtually unheard of.

Paramilitary groups, who have often served as the trigger-pullers in the murders of labor organizers, are a big part of this impunity phenomenon. Though the United Self-Defense Forces of Colombia (AUC) national paramilitary organization no longer exists, old AUC mid-level commanders are at the head of a new proliferation of paramilitaries, with somewhere between 5,000 and 10,000 members, who continue to terrorize unionists, human rights defenders, and Afro-Colombian and indigenous communities throughout the country. Nationwide, these new groups — who have consolidated into five or six main organizations — drove a 40 percent increase in massacres last year.

The FARC and ELN guerrillas and narcotrafficking groups continue to take advantage of the huge gaps left by the weak government presence throughout Colombia's territory. (Though weakened in the past nine years, the FARC still killed about 450 military and police personnel, and hundreds of civilian noncombatants, in 2010.) The paramilitaries and narcotraffickers have also worked to infiltrate, penetrate and undermine the government in many areas, which makes it dangerous for union members and other civil-society leaders even when a government presence does exist.

Also above the law have been large landowners, who at times overlap with paramilitaries, narcotraffickers, powerful and corrupt local politicians, and some retrograde sectors of the armed forces. A major scandal that erupted in 2006, known in Colombia as "parapolitics," revealed the close and corrupt relationships that existed between numerous regional politicians – including up to 30 percent of the Congress Colombia elected in 2006 – and the paramilitaries. The revelations, which Colombian media commonly portray as the "tip of the iceberg," made clear the extent to which illegal, violent actors from Colombia's "off the edge" regions have managed to penetrate national-level politics.

Paramilitary collusion goes well beyond the political system. For more than twenty years, internationally recognized human rights groups have documented very close collaboration between the armed forces and the murderous, drug-financed paramilitaries. This relationship even included soldiers deliberately allowing large-scale massacres to occur. Demobilized paramilitary leaders have since confirmed a relationship that, for most Colombians, was an open secret. Though Colombia insists that aiding and abetting paramilitary groups was never official state policy, there have been very few successful prosecutions of military officers widely alleged to have done so.

To work in a climate like that — where someone knows he can kill you and get away with it — gives an idea of how brave Colombia's labor leaders really are. The same goes for human rights defenders, scholars, jurists, politicians, journalists and others working for peace, legality and justice in Colombia's "off the edge" zones – and past killings have shown that even the cities offer no safety from an assassin's bullet. Only the most audacious and determined would dare to organize under these conditions.

Violence and Impunity

In this atmosphere of inequality and statelessness, the most disturbing consequence is rampant, widespread impunity for even the most violent victimizers. This is why, if you were to ask us what the number-one obstacle to immediate FTA approval would be, we would answer in one word: "Impunity."

Impunity feeds Colombia's shocking level of anti-union violence. When nearly all labor killings go unpunished, there is little disincentive to ordering the killing of a union leader — or any other local leader, human rights defender, journalist or whistleblower who might be causing trouble for a locally powerful actor.

Its level of labor violence is what really sets Colombia apart from past free-trade agreements. In other FTA debates (Central America, Peru, Panama), critics focused on labor laws and poor working conditions. In Colombia, though, it is literally a matter of life and death.

We are considering a free-trade agreement with the country that, for many years running, the International Trade Union Confederation has ranked as the single most dangerous place in the world to be a union member. Nowhere else comes close in levels of killings and threats. Colombia's widely-cited *Escuela Nacional Sindical* (ENS) counts 2,857 trade unionists murdered in the past 25 years, and 51 in 2010, up from 47 in 2009. The Colombian government counted 26 union members killed in 2010, up from 25 in 2009. In 2009 the ITUC counted 48 killed in Colombia; its number-two country, our CAFTA partner Guatemala, saw 16 murders — one-third of Colombia's total. Meanwhile, in 2010 the ENS counted 338 death threats issued against unionists, 21 cases of attempted murder, and 16 cases of assault.

Although the reduction from 200 unionist killings per year in the early 2000s to about 50 per year today is positive, the number remains horrifying. But even this is not the indicator that matters most.

The indicator to watch is the number of convictions of those who planned and ordered the killings of union members. Not just the trigger-pullers, but the so-called "intellectual authors" — the people who told the trigger-pullers whom to target.

This — the level of impunity for labor killings — is an absolutely crucial metric. It has not moved an inch since the trade agreement was signed. And it remains virtually unchanged since then.

Of all cases of unionists murdered since 1986, the Colombian Commission of Jurists counts only about one-quarter to have ever been under investigation by the country's Prosecutor-General's Office (*Fiscalía*). Only 6 percent of these cases, the ENS says, have ever reached a verdict. Of these, a large portion – roughly a quarter – were handed down *in absentia,* many are on appeal, and very few managed to identify more than the trigger-pullers, not those who ordered and planned the murders. That is at least a 94 percent impunity rate.

Since the Free Trade Agreement was signed, with U.S. assistance, Colombia added a Labor Sub-Unit to its Prosecutor-General's office, with nineteen prosecutors (who took with them their existing caseloads from other departments). They have chosen to try a total of 1,387 union murder cases, with 1,885 victims, before three specially assigned judges — a total of 73 cases per prosecutor and 462 cases per judge. By July of last year, the unit had obtained convictions in 192 cases; today it has likely reached, or barely surpassed, 15 percent of the total number of cases it chose to prosecute.

While this is an improvement over past inaction, it is also an alarmingly slow success rate: it would take twenty years to clear this caseload at this rate, even as new cases accumulate at a rate of about four per month. This slowness, even in the face of strong international pressure, is a consequence of a glaring lack of the resources and political will needed to do this right.

The failure to hold killers accountable to the justice system goes way beyond labor cases. Even some of Colombia's most infamous human rights cases have moved at a snail's pace through the courts, if at all, because of the power enjoyed by their traditionally "above-the-law" perpetrators.

An egregious recent example is a mid-2000s epidemic of murders of civilians at the hands of the U.S.-aided military. Apparently in order to reap rewards for high body counts, soldiers murdered non-combatants and reported them as armed-group members killed in combat. The February 2011 report of the Office in Colombia of the UN High Commissioner for Human Rights (OHCHR) lays out in stark terms what we know about a scandal that Colombians refer to as "False Positives":

> The National Human Rights Unit of the Attorney General's Office is investigating 1,488 cases with 2,547 victims. More than 400 additional cases are being investigated through its sectional units. More than 448 active cases still remain in the military justice system. Moreover, an unknown number of cases in the military justice may have been closed without taking appropriate judicial action. Based on the available data on cases and victims, OHCHRColombia estimates that more than 3,000 persons may have been victims of extrajudicial executions, primarily attributed to the Army. The majority of these killings were carried out between 2004 and 2008.

Colombia deserves praise for slowing the pace of these killings to a trickle since 2008, when a major scandal broke surrounding the murder of sixteen young men from the poor Bogotá suburb of Soacha. But that means that nearly all "false positives" cases are now three years old, or older. And despite this long wait, only 6 percent of these cases have arrived at any verdict at all. The Soacha case, which "broke" the scandal and made a big splash in Colombia's media, hasn't even entered its trial phase yet, and the alleged perpetrators are out of prison, though voluntarily confined to a military base, because of limits on preventive detentions.

Impunity is important because it is the ultimate determinant of whether labor killings are going to decline or worsen. Proponents of immediate FTA ratification note that while Colombia still accounts for the majority of the world's union-member murders, the overall number is down from the shocking heights it reached during the first half of the 2000s. As we consider the trade pact, we need assurance that those heights will never be reached again, and that even after the FTA is signed — and pressure to act abates — the number will go down, quickly, to zero. The only real way to do this is to determine whether the justice system is condemning and sentencing those who order unionist killings. Quickly, systematically and transparently punishing those responsible is by far the best way to prevent a resurgence of anti-union and other violence, and to dismantle "new" paramilitary groups.

Why should this matter to U.S. interests, even setting aside our own moral standards and values? Because it is unfair competition. In the same industries, a country that does not punish

murders of workers who seek to organize will always have an unfair wage advantage over a country that does punish such murders.

Blaming the Justice System

In discussions about impunity in Colombia, a frequent reflex is to pin the blame on the country's justice system, in which the Prosecutor-General's Office and the courts are separate branches of government from the executive. Those who blame the judiciary point out byzantine, cumbersome procedures, extreme measures to guarantee defendants' rights, and severe managerial shortcomings.

These may be an important factor; Colombia's prosecutorial and judicial bodies are hidebound by procedural complexities and lack of management expertise. But there's another, perhaps even stronger reason the justice system doesn't act against powerful defendants: it is thoroughly intimidated. The closer one gets to the "intellectual authors" of serious crimes, the more dangerous the case gets for the largely unprotected judges, prosecutors, investigators, and witnesses.

Colombia's justice system is professional, more than those of most of its Latin American neighbors, and quite independent. It draws its personnel heavily from the middle class and does not run in the same social circles, or feel a kinship with, the political and military elite. This is good from an independence standpoint, but it also means they are easily intimidated.

Threats against prosecutorial and judicial branch personnel are frequent. The OHCHR reported that "in March [2010], the Supreme Court publicly warned of threats to the integrity and security of judges, magistrates and their families. Five magistrates of the Court (two of them ended their tenure in September 2010) have been granted precautionary measures by the InterAmerican Commission on Human Rights." And this is the *Supreme Court.*

Colombia's last presidential administration increased the judicial and prosecutorial branches' budgets, but did so amid an atmosphere of executive-judicial tension that intimidated many. President Álvaro Uribe accused top judges of carrying out political vendettas against him, sued one for slander, and accused others of "lending themselves" to terrorism and "trafficking in witnesses." In June 2010, after a court found a retired colonel guilty in the disappearance of eleven people in a high-profile, 25-year-old case, President Uribe appeared the next night on national television, flanked by the entire high command, to denounce the decision. The judge and her young daughter fled Colombia immediately.

Perhaps the most notorious recent example of judicial intimidation has been ongoing revelations that, during President Uribe's tenure, the presidential intelligence service or "secret police," known as the DAS, illegally wiretapped and followed several top judges, including those investigating ties between the President's political supporters and paramilitary groups. One judge

had 1,900 hours of his phone conversations recorded in a three-month period. (The wiretapping extended well beyond the justice system; hundreds of human rights defenders, opposition politicians, journalists and other perceived political opponents either had their phones tapped or were subject to surveillance, email intercepts, threats and theft. International NGOs, including WOLA, had their correspondence with Colombian counterparts intercepted.[1])

Of course it is true that inefficiencies and management shortcomings are an important reason why cases don't move in Colombia. But even if Colombia's justice system brought in teams of MBAs from McKinsey to perform a top-down overhaul, its judges, prosecutors, investigators and witnesses would still be subject to widespread intimidation from violent and powerful people who remain convinced that they are "above the law."

Labor Conditions

Concern about labor rights in Colombia goes beyond impunity for union killings, however. In a country where only 4 to 7 percent of the workforce is unionized, the conditions that workers are organizing to improve remain poor, despite recent reforms.

Colombia has ratified all eight of the core ILO conventions, and some of its labor legislation is quite progressive — although not all of its laws meet the standards of compliance with the ILO core labor rights, as the text of the Free Trade Agreement requires. As a result, Colombian employers are able to use a series of schemes that deny workers their legal rights to bargain collectively and to enjoy labor protections.

Most notorious is the widespread practice of forcing workers to join involuntary "cooperatives" (Cooperative Trade Associations, or CTAs) controlled by the employers. As many as 1.4 million Colombian workers must intermediate with their employers indirectly, through these CTAs. This problem is especially acute, and conditions notoriously abusive, in the oil palm, sugar and port industries.

The word "cooperative" would seem to imply an independent organization that represents workers' interests, or even a worker-owned business. In reality, the CTAs are organizations that fundamentally lack the very independence they need to function. Instead of being employee-focused entities, they are instead heavily influenced by employers, most importantly in the selection of their leadership. They in effect serve as a means for employers to hire workers indirectly, thus evading most of the responsibilities of the employer-employee relationship.

Their lack of independent leadership effectively cripples CTAs' ability to negotiate with employers for fair salaries and decent labor conditions. "Most CTAs are nothing more than camouflaged employment agencies, which promote unfavorable labor conditions and wages," the

[1] See *Far Worse Than Watergate,* the June 2010 report by WOLA, LAWG, CIP and

ENS contends. In addition, this system absolves employers of any economic or social responsibilities to their workers such as health care or disability, which are left up to the cooperatives.

By forcing workers to join CTAs, Colombian employers have made it nearly impossible to form unions and engage in collective bargaining. “The continued growth and prevalence of CTAs,” wrote the State Department’s 2009 human rights report on Colombia, “further diminished collective bargaining because CTA workers were not covered by the labor code and hence could not bargain collectively.”

To remedy this, the ILO’s February 2011 High-Level Tripartite Mission to Colombia recommended passing laws putting “an end to the labor intermediary activities of cooperatives (CTAs), and to all other legal and practical obstacles to freedom of association and collective bargaining.”

A “Law for the Formalization and Generation of Employment” passed in December is a step forward, as are frequent statements condemning the CTAs from Vice-President Angelino Garzón, a former labor leader. The new law holds the promise of the government taking greater measures against the CTAs, including a prohibition on using them for “intermediation” (i.e. acting like an employment agency) between employers and employees. But it does not take effect until 2013, and it does not outlaw them outright.

Meanwhile, the law does not take on some of the other tactics used to treat employees like independent contractors, and it does little to improve labor inspection or to increase enforcement against practices that discriminate against, and intimidate, workers who seek to organize. Among these is a proliferation of “collective pacts,” a relatively new arrangement in which, even when a portion of a workplace is unionized, some of the workforce may enter into a separate contract, whose terms are nearly always dictated by the employer. Often, as part of a “divide and conquer” strategy to weaken existing unions, individuals are offered choice incentives to get them to disaffiliate, bringing the union below the one-third threshold needed and allowing the employer to engage in direct discussions with the vast majority of employees who are non-union. In February, the ILO recommended ensuring “that collective accords concluded by employers with non-union workers are not used against the exercise of freedom of association and collective bargaining.” Any additional benefits to workers, however, nearly always come at the cost of giving up their rights to collective bargaining and association.

Still another strategy used to undermine worker rights is a tendency to overclassify jobs as “essential services” for which it is prohibited to go on strike. Colombia’s labor code, and a number of decrees, classify as “essential” a host of professions normally not considered essential. These include some utility and telecommunications workers, some transportation and

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USOC, at http://www.wola.org/publications/far_worse_than_watergate

sanitation workers, all oil workers, and even employees engaged with “salt production and distribution.” This means that in a broad swath of Colombia’s formal economy, to strike for better conditions is to break the law.

When labor standards are codified and the law meets ILO standards, enforcement can frequently be too lax. Child labor laws, for instance, do not stop as many as 1.6 million children from working illegally today, according to government statistics. Extremely precarious safety conditions, meanwhile, are all too common, especially in the mining sector, where safety inspectors are very few and lack resources to do their job. Colombia has suffered several fatal mine accidents in the past few years. Improved safety enforcement is a very frequent demand of workers in these sectors; its absence is a direct result of their weak collective-bargaining rights.

Land, Displacement, and Victims

The issue of land tenure, displacement and victims’ restitution may seem peripheral, but it relates directly to the agricultural trade provisions of the free trade agreement. The United States could be expanding agricultural trade with a nation whose countryside has seen, during the past 30 years, one of the bloodiest concentrations of landholding in modern history.

Violence has forced more than 5 million mostly rural Colombians from their homes in the past twenty years. Much of their land — estimates range from 3 million to 7 million hectares (7.5 to 17.5 million acres) — has been stolen by “above-the-law” figures: paramilitaries, unscrupulous landowners and ranchers, narcotraffickers, and corrupt politicians who have benefited from the violence. Among the hardest-hit are Afro-Colombian and indigenous populations. More than 60 percent of the Afro-Colombians who possess legal titles to their lands are now internally displaced. Indigenous groups are facing a worsening threat of extinction: 32 indigenous groups have less than 500 members left; of these, 18 groups have less than 200. These groups’ cultural and physical extinction is due in large part to violence and displacement over the mineral wealth, natural resources and biodiversity found in their territories.

In Colombia, the family farm model isn’t disappearing merely because of economic pressures — although these are also strong. It is disappearing because of a brutal campaign of violence in the countryside. It is compounded by a hugely complicated land registry system, and the same rampant impunity enjoyed by people accustomed to acting above the law.

Colombia is exceptional in that Afro-Colombian and indigenous communities have the constitutionally recognized right to land titles to a portion of their collective territories. In accord with Colombia’s Law 70 of the Black Communities, article 330 of the Colombian Constitution for the indigenous *cabildos* and ILO Convention 169, if a project is going to be implemented in an ethnic collective territory it must be previously consulted in a free, transparent and informed manner with the territories’ ethnic authorities.

WOLA's Afro-Colombian and indigenous partners indicate that the FTA itself was not previously consulted with ethnic minorities, and they fear that economic projects imposed upon them due to the FTA will generate more violence and displacement of their people. While internal displacement is caused by multiple factors, not least the continuing armed conflict, we are concerned that economic interests generate violent displacement in Afro-Colombian and indigenous territories. Colombia's Constitutional Court has evidenced the correlation between economic projects, violence and displacement for ethnic minorities and as a result issued Orders 004 and 005 to protect these groups from further displacement. It is precisely for this reason that we want to guarantee that Afro-Colombian and indigenous territorial rights are protected, not undermined, by this agreement.

Land is at the center of Colombia's conflict. It is also at the center of the drug trade: when people relocate into remote jungle zones far from markets and beyond the government's writ, there is only one crop that can put food on the table: coca (or, at high altitudes, opium poppy).

This is an important point. A post-FTA flood of cheap agricultural goods from the United States (and already, a significant flood from Mercosur and soon Canada) could well knock thousands of the remaining smallholding Colombian farmers out of business, as it did in Mexico. Unlike Mexico, though, Colombia's farmers always have another option: they could join the tens of thousands of rural families who have chosen a different, consistently profitable, but illegal crop. This result would gravely undermine alternative development programs that have received about a billion dollars in U.S. investment since "Plan Colombia" began in 2000.

A failure to cushion its blow on small farmers could be felt in increased world cocaine supplies. What can Colombia do to prevent this outcome — as well as the other security fallout that could result from a new shock to a historically conflictive countryside?

The Santos government has an ambitious plan, laid out in a Land and Victims' Law currently passing through Colombia's Congress. Later this year, it will introduce an even more ambitious bill seeking to rationalize Colombia's historically chaotic land tenure patterns.

The stated goals of the Land and Victims' law include returning at least 2 million hectares (5 million acres) of land to displaced people, providing reparations to victims of the conflict going back at least 20 years, and handing out hundreds of thousands of land titles. The proposed law is admirable, although it lamentably lacks a commitment to restore collectively held lands stolen from Afro-Colombian and indigenous communities, who are a big portion of the pool of victims with stolen assets. These communities, the government says, must await the other, later land-use bill, which is expected to be introduced mid-year.

Colombian observers believe that the Land and Victims' bill will pass as early as April. It has had a relatively easy course through the Congress, although a similar bill for victims died in mid-2009.

We hope that the law passes. But once it does, the hard part begins. While the law has faced little legislative pushback, things could potentially get quite ugly once the government attempts to take land from powerful people who stole it, and to distribute it to vulnerable peasant communities. The government could find itself directly confronting individuals — some of them backers of the political parties in President Santos' coalition — who are convinced that their "above the law" status will allow them to respond violently to any attempt to restore "their" land to its original occupants. When that happens — when it comes time to confront the powerful and protect the weak at the local level — we will know the true extent of the Colombian government's commitment to land and victims' restitution.

Already, being an advocate for land rights may actually be more dangerous in today's Colombia than being an advocate for human rights. Nine members of groups seeking to win the return of stolen lands were killed during the first six months of Juan Manuel Santos' administration (and 44 internally displaced leaders, many of whom were advocating for their land rights, have been murdered since 2008). At the moment, the killers of all nine are at large. I don't have a sense of how vigorously these killings are being investigated, but one thing is clear: for the new law to be successful, these must be model criminal and judicial processes. The Colombian state must nip the trend of land-related killings in the bud now by making a shining example of these nine murders' perpetrators.

Even then, the "hard part" is not over. Making Colombia's countryside viable for smallholding agriculture will require a sharp about-face in the government's rural development strategy. Once they get their land titles back, farmers will not only need to be physically protected from land-hungry criminals, they will need access to credit, a decent farm-to-market road network, and assistance with growing techniques and marketing in order to compete in the world market. Without a development strategy, even well-protected family farmers could fail economically, with an outcome similar to the hugely unequal landholding that contributes to Colombia's violence today.

The Credibility of the Colombian Government's Past Commitments

The Land and Victims' law is a great example of an unexpected change in the Colombian government's overall focus and priorities since Juan Manuel Santos took power last August. Speaking on behalf of WOLA, I really value and appreciate the tone that Colombia's new government is taking. For eight years I saw top officials publicly slander friends of mine in Colombia's human rights community and political opposition, calling them terrorists and guerrilla supporters and making their work much more dangerous than it had to be. Merely putting an end to that nonsense is a huge step forward.

The Santos government has made several other important commitments on human rights, strengthening the judiciary, labor reforms and land and victims' rights.

- In advance of the law, the government has already begun handing out hundreds of thousands of acres to displaced families on a pilot basis. (Most of this land is unused land owned by the government, not land recovered from paramilitaries, narcotraffickers or other victimizers.)

- In February the government rolled out a policy to combat the "new" paramilitary groups, known as "D6," as top officials for the first time called these groups the country's "principal threat" to security.

- Official sources tell me that according to a new order, police investigative bodies have been required to determine quickly whether a murder victim was a union member, so that the case may pass to the proper prosecutorial unit.

- President Santos has worked to repair relations with the judicial branch, ceasing verbal attacks and appointing a Prosecutor-General (a position left vacant for a year and a half) with a reputation for independence.

These policy shifts are important, but on their own they don't change our position on what remains to be done before the FTA can come up for consideration. My past experience on Colombia tells me that commitments alone aren't enough. I've been told a lot of things to my face in the past thirteen years that haven't quite turned out as promised. There's no substitute for results.

In the past, when the Colombian government is pressured to do something that involves challenging powerful government-supportive interests, we have seen it take some step that creates the illusion of action but fails to bring results. This step can be a new law that doesn't get enforced, a policy, order or directive that only gets halfheartedly carried out, or the creation of a commission, task force or some other official body that ends up taking in a lot of input but producing very little output.

One of the sorriest examples has been the government's policies toward paramilitary groups. For years, successive governments promised action against the groups, who during the 1990s and early 2000s far outstripped even the guerrillas as the country's main human-rights abusers:

- The groups were declared illegal by a presidential decree in 1989. However, the security forces' collaboration with them continued — often quite openly — in conflictive areas around the country, as human rights groups' reports and demobilized paramilitaries' own testimonies have amply shown.

- In November 1998, as the AUC paramilitary organization underwent enormous growth in its size and brutality, the government announced the creation of a military-police "search block" to fight them in the Magdalena Medio region in the center of the country. By

2000, the AUC had, with almost no apparent resistance, come to control nearly all major towns in this region.

- In February 2000, the government announced a "Coordination Center for the Fight Against Self-Defense Groups," from which little was heard afterwards.

- The same fate befell an "Anti-Assassin Committee" declared in January 2001.

All the while, allegations of military-paramilitary collaboration continued to mount. Then in 2005, the Colombian government passed a "Justice and Peace Law" to govern the AUC's decision to demobilize in exchange for lighter jail sentences for its leaders. As amended by Colombia's Constitutional Court, the Justice and Peace Law was to require demobilizing paramilitary leaders to confess to all of their crimes, give information about the politicians, businessmen, soldiers and others who supported them, hand over their massive illegal assets and distribute them to victims.

While the law provided the framework to demobilize over 32,000 people claiming to be paramilitaries, the vast majority of whom were immediately amnestied, the "Justice and Peace" experience did not work out as promised. Five and a half years later, only three paramilitary leaders have been sentenced, to terms of eight years each, for crimes against humanity. (Another two dozen are in the United States facing narcotrafficking charges, but providing very little in the way of information about their support networks or assets stolen from victims.) More than half of the roughly 4,000 leaders required to give confessions have not yet done so. The Justice and Peace process's failure to uncover paramilitary networks is a direct cause of the alarming proliferation of "new" paramilitary groups today.

In each of these examples, we were assured that the government was committed to turning the page. Within a year or two, though, it was evident that the page we were looking at was the same.

Other examples include directives to try human rights violations in civilian courts instead of the military justice system, where "not guilty" verdicts were all but assured. Progress on civilian jurisdiction for human rights crimes halted sometime in late 2008 or early 2009, and worsened in 2010, as the UN High Commissioner for Human Rights' most recent report notes.

Meanwhile in 1999 and 2005, the Colombian government issued directives instructing all government officials to respect the work of human rights defenders, and to abstain from making public statements that might affect their safety. Yet President Álvaro Uribe suffered no official rebuke for his frequent verbal attacks on human rights defenders, including calling them "spokespeople for terrorism" during a September 2003 speech before the military and "the guerrillas' political friends" in 2007.

More recently, in the past year a colleague at WOLA has received two e-mail death threats from a "new" paramilitary group. After the first threat, the Uribe government responded not with concern, but with a statement attacking us for some of the wording in our own statement. After the second threat, the new government's vice president, Angelino Garzón, called us to voice his concern. While this change in tone and approach is greatly appreciated, we note that – just like these other policies and directives – it is no substitute for action. Even better than a high-level phone call would be an effective investigation of the threats' origin, periodic updates on the investigation's progress, and legal action against whoever issued the threats.

Another example of a "policy change" that didn't quite pan out is the above-mentioned experience of the Labor Sub-Unit of the Prosecutor-General's Office, with the three dedicated judges to hear 1,387 labor cases. Had this sub-unit been able to achieve more than a 15 percent clearance rate over the past four years, we wouldn't be having this conversation about labor impunity. But this has ended up being another in the list of lapsed commitments.

Perhaps Colombian officials genuinely underestimate the cost of these commitments, or the difficulty of taking on powerful and violent interests who push back hard. Or maybe there's an expectation that, a few years from now, the U.S. and other diplomatic officials, and much of the UN and NGO community, will have had so much personnel turnover that very few "old timers" will be around to hold them accountable to past promises. For those of us who have stuck with this, though, the result has been to severely devalue official promises. The creation of a new commission or task force, the promulgation of a new policy or directive — these actions don't impress us. They look like the illusion of action.

The tragic result is that now, even as Colombia has a government that appears willing to do the right thing, it is impossible to assume that "this time is different" and trust that effective reforms are taking place. It would be unacceptable for the trade agreement to be ratified this year only to see, a few years later, the Colombian government's commitments to reform on impunity and labor rights turn out just to have been pieces of paper. We need to see actual progress.

Recommendations: Measuring Progress

These are very serious concerns, and we want to address them pragmatically at this time, when Colombia has a government that is committing to important reforms. We need to know that change is taking root and that what we see is not more commissions or laws that won't be enforced, but real reform. Now, four and a half years since the FTA was signed, what is it reasonable to ask of Colombia before introducing the agreement in Congress?

Results, almost by definition, are hard to measure in the short term. On impunity, results can take years — and the past 4 1/2 years have seen few results on impunity. Worse, past

disappointments mean that commitments made in the coming months, no matter how solemnly promised, aren't convincing by themselves.

We can't completely solve all of the problems listed in my testimony before ratifying the FTA. It is not fair to require Colombia first to become a worker's paradise. But we must make sure that Colombia is taking steps that will bring dramatic change as soon as possible. And that these actions are real, not just the illusions of the past.

How can we tell whether real change is happening and that Colombia is on the way to achieving results? What can the Colombian government do now to show that it has broken with the past and is now "for real" about labor and justice? That the terror is irreversibly ending? That Colombia's leaders are willing to take on powerful, violent interests that have long been above the law?

Here are a few short-term indicators that are minimally required to judge whether real, irreversible progress is truly occurring in Colombia. We will know that true change is occurring if we see:

1. **Colombia aligning its labor laws with the ILO core labor rights that it has ratified**, in accordance with the recent recommendations of the ILO High Level Mission to Colombia, not to mention the FTA's own requirements.

2. **A sharp drop in homicides, attacks, and threats against trade unionists, human rights defenders, victims' advocates, and Afro-Colombian and indigenous leaders** in Colombia, as a result of rapid response to threats when they occur and effective investigations and prosecutions of homicides.

3. **A resulting sharp increase in prosecutions, investigations and verdicts on labor killings**, especially on the most recent, less cold-case killings. Special attention must be placed on the "intellectual authors."

4. Judicial authorities continuing or accelerating the progress they have been making on **investigations and prosecutions of illegal wiretaps and surveillance** against unionists, human rights defenders, journalists, opposition politicians, judges and others, while reforms to the intelligence system, as outlined in the UN High Commissioner for Human Rights' latest annual report on Colombia, are carried out.

5. **Dramatically increased resources and political backing for the beleaguered justice system** so that the last three conditions can be met. All roads — land, victims' rights, labor killings, human rights cases, post-conflict transitional justice, protection of investments, property rights — lead through the justice system, and its ability to do its job is an absolutely critical indicator for the credibility of the FTA.

6. **An increase in the number of prosecutors and investigators within the Prosecutor-General's Labor Sub-Unit**, with those with the most experience in such cases assigned to the unit. Non-labor cases on these officials' dockets would be assigned to other prosecutors, so that this group may focus exclusively on union cases. The Prosecutor-General's Office's Unit for Human Rights and International Humanitarian Law would see a further increase in its own personnel and budget in order to meet the large demand for expeditious performance of its duties.

7. **A sharp increase in the number of verdicts in cases of extrajudicial executions allegedly committed by the military**, as well as an increase in the number of cases that move from the investigation to the trial phase. This would, of course, come with a continuation of the apparent current drop in military and police involvement in extrajudicial executions of civilians.

8. Along with a continued campaign to protect citizens from FARC and ELN abuses, **a significant increase in arrests of leaders of the "new" paramilitaries, and of corrupt officials who aid, abet, or deliberately fail to combat them**. This should come with a significant increase in resources for the "D6" or similar strategy to dismantle these groups and provide police protection to civilian populations currently at risk.

9. **A large increase in funding and political backing for state bodies — especially a reconstituted, standalone Ministry of Labor — that enforce existing laws** on labor inspections, workplace safety inspections, halting anti-union discrimination, and resolving labor disputes. This would include strong and explicit protections for workplace whistleblowers.

10. **Passage of the land and victims' law, but with effective implementation**: the true measure of the law's success will be the number of displaced families who get their land back and receive restitution for the terror they survived, and their ability to do so with minimal red tape and without facing violent retribution. Achieving this — particularly in the face of stiff resistance from paramilitaries, narcotraffickers, large landowners and their corrupt associates — will mean giving the justice system and other agencies the tools, resources, physical protection and high-profile political backing they need to carry them out. Returns of land to Afro-Colombian and indigenous communities, along with prevention of their displacement by "new" paramilitary groups and large-scale economic projects, must be an integral part of the land restitution strategy. This would include strengthening the previous consultation mechanism with Afro-Colombian and indigenous communities to guarantee free and informed consultation about any project affecting Afro-Colombian territories. There would be a sharp increase in the return of territories illegally usurped by armed groups and companies to Afro-Colombian community councils and indigenous *cabildos*.

11. **Funding for the Colombian government's protection program for threatened individuals maintained at or above current levels**, while the government continues to abstain

from the practice, common in the previous administration, of publicly and baselessly stigmatizing its critics as terrorist supporters. The protection and "early warning" programs would address some of the serious shortcomings that led the UN High Commissioner for Human Rights, in its latest annual report on Colombia, to cite "delays in assessing risks, slow implementation of measures, absence of a differential approach, and transfer of protection schemes to private companies."

We owe the Colombian and American people a trade pact that is in line with our values, is implemented justly, protects the most vulnerable, and gives leverage to Colombians — both inside and outside government — who want to break with fifty years of violent conflict and its causes. A genuine effort to meet these standards listed here would at least bring us close to that.

These standards are achievable. All they require is a generous but smart investment of financial resources and political capital. The Colombian government has expressed its dedication to many of them for years, so awaiting progress on them should by no means be viewed as "punishing" Colombia. Compliance with them will be quickly and easily measurable through quantitative means.

Conclusion

There are good people in Colombia's government who are trying to address all of the concerns my testimony lays out. Right now, in this government, there are many more such people than there were before. The opposition they face is powerful and at times quite ruthless. Taking on people who are above the law is going to be hard. Offering achievable, measurable expectations could give these good people a badly needed boost.

We need evidence of structural change. Our watchword, to quote President Reagan, must be "trust but verify." By being clear about the change in justice and human rights that needs to take place, you have the opportunity – indeed, the power – to engage with Colombia and help secure real reform.

I thank you for giving me this chance to share with you our concerns, hopes and recommendations. I look forward to your questions, and am happy to discuss this further anytime.