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TO THE UNITED STATES TRADE REPRESENTATIVE

PETITION FOR REVIEW

OF THE GSP STATUS OF

COLOMBIA

UNDER GSP WORKER RIGHTS PROVISIONS

PETITIONERS:

**INTERNATIONAL LABOR RIGHTS
EDUCATION AND RESEARCH FUND
(ILRERF)**

JUNE 14, 1995

Labor Rights in Colombia

The International Labor Rights and Education Fund renews its call for the suspension of GSP benefits to Colombia. Since June of 1993, the date of ILRERF's previous petition for suspension of Colombia's GSP benefits, the situation faced by Colombian workers has substantially deteriorated. Today, individuals seeking to exercise their rights to freely associate and collectively bargain in Colombia do so at substantial risk to life and liberty. Not only has unlawful violence against trade unionists continued unabated, but increasingly trade unionists are subject to severe criminal penalties merely for exercising fundamental rights of free association and organization.

In a country where human rights violators perpetrate their terror with virtual impunity, the use of "Public Order" courts to prosecute and punish labor activities represents a *violence* frightening new trend in Colombian policy. Rather than acquiescing by fiat to violence by third parties, the government has now assumed a leading role in labor repression. Under the Public Order regime, the Colombian government itself deprives individuals of their right to freely associate and collectively bargain via secret prosecutions carried out under vague and *FOIA* ambiguous anti-terrorist decrees. The new regime institutionalizes violations of civil and political rights as the "price to be paid for the free exercise of the right to union organizing. The right to life, and personal security, the right to protection against arbitrary detention and due process before independent and impartial tribunals and [] right to protection of union property are systematically transgressed."¹

The increasingly active role that the Colombian government has taken in frustrating workers' rights warrants re-examination of Colombia's eligibility as a GSP beneficiary. The

¹ CUT, Derechos Humanos y Movimiento Sindical, 3 (1994).

information contained in this petition demonstrates that Colombia has actively frustrated the internationally recognized rights of workers to freely associate, collectively bargain, and labor under acceptable conditions of work. Because Colombia has not taken the requisite steps to afford Colombian workers these internationally recognized workers' rights, the ILRERF requests that the GSP subcommittee re-examine Colombia's labor record and suspend Colombia's GSP beneficiary status.

I. Ongoing Violence Against Union Leaders & Members

The on-going nightmare of human rights abuses in Colombia, political assassinations, disappearances, and arbitrary detentions, is well-documented. ² Equally well-recognized is the fact that labor leaders and union members are the disproportionate targets of this ongoing terror.³ The Single Federation of Workers of Colombia (CUT) estimates that since its creation in 1986, fifteen hundred labor leaders and activists have been murdered because of their union activities. ⁴ Given that the Colombian labor movement is only some 870,000 people strong, the unchecked violence against unionists has resulted in the murder of fully 2% of labor union members between 1986 and 1994. From June of 1993 to November of 1994, human rights groups reported the murders of eighty-nine more unionists.⁵ During that same time period, the International Labor Organisation Committee on Freedom of Association (ILO - COFA) retained jurisdiction over five separate cases involving the murders and

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² Lawyers Committee for Human Rights, Colombia: Public Order, Private Injustice, (February 1994); Second Report on the Situation of Human Rights in Colombia, OAS - IACHR, OEA/Ser. L/V/II.84, Doc 39 rev., (October 14, 1993);

³ Human Rights Watch, State of War: Political Violence and Counterinsurgency in Colombia, (December 1993); Amnesty

⁴ International, Political Violence in Colombia: Myth & Reality, (1994).

See e.g. United States State Department Report on Human Rights, 359 (1994) ("Labor leaders throughout the country continue to be the target of attacks by guerillas, paramilitary groups, narcotics traffickers, the military, [and] police"); United States State Department Report on Human Rights, 401 (1993) ("Organized labor suffers from a disproportionately high rate of violence").

⁵ CUT, Derechos Humanos v Movimiento Sindical, 4 (1994).

Reports cover the period from June 1993 to November of 1994 and are summarized in the attached Annex A.

disappearances of several hundred Colombian trade unionists. 6

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Union leaders face even greater risks of assassination than rank and file union members. In 1993 alone 11% of unionists murdered were leaders of local and national unions including all of the following: Jaime Serrano Rinco, president of Sinaltrabavaria; Israel Serea, president of Asosimbras; Alirio Gueva and Oliverio Molina, vice president and secretary general of Sintrainagro; Hidalgo Fassel, president of Sintravalores; Luis Carlos Perez, president of Fedetrans; Ignacio Vargas, president of Fabricato Union; Gustavo Alberto Bedoya Duque, president of Sutimac; Jairo Paz Quesada, executive officer of the Confederacion de Trabajadores Democraticos; Manuel Antonio Benitez Pitalua, secretary of the regional section of Sintrainagro; and Rodrigo Alonso Acosta, secretary of the Union Sindical Obrera.⁷ Despite the recurrent assassinations of labor officials, the Colombian government has made no attempt to protect known targets from violence. In a recent notorious case, police intelligence agents interviewed union officials from FUTRAN regarding the murder of FUTRAN leader, Guillermo Marin. That afternoon, five heavily-armed men claiming to be officials from the Attorney General's Office forced their way into the union's office and opened fire at point-blank range on two union officials, killing one and seriously wounding the other.⁸ Even after these attacks, FUTRAN officials were unable to procure any protection from the Colombian government.⁹

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Direct government involvement with these attacks, either as perpetrators or as complicit bystanders, is the norm.¹⁰ The Commission of Andean Jurists reported that in 1993,

6 I.L.O. COFA, 292nd Report, Cases 1434 & 1477 (March 1994); I.L.O. COFA, 294th Report, Case 1686 (June 1994); I.L.O. COFA, 294th Report, Case 1761 (June 1994), reexamined at I.L.O. COFA, 295th Report (March-April 1995); I.L.O. COFA, 295th Report, Case 1787 (March-April 1995).

7 CUT, Derechos Humanos y Movimiento Sindical 4 (1994); see also Annex A.

8 Amnesty International, Urgent Action Appeal, September 30, 1994.

9 Id.

10 Documentation by Colombian human rights groups demonstrate "that state agents and the paramilitary groups that operate with state acquiescence are responsible for the bulk of the killing." Human Rights Watch, State of War: Political

(continued...)

government agents were responsible for 57% of the political assassinations, including murders of unionists, in which the identity of the assassin was known.¹¹ In those cases where third parties committed the actual crimes, government actions often served to encourage the murders by recognizing trade unionists as legitimate targets and shielding perpetrators from punishment.¹² The level of government complicity in the violence against trade unionists is vividly illustrated by the preparation and use of government "black-lists" for publicly targeting union officials as suspected guerrilla collaborators.¹³ Such lists supply tacit government approval for subsequent violence against black-listed individuals. Together with the Colombian government's widespread failure to prosecute perpetrators of violence against trade unionists, the Colombian government's stance has resulted in a climate of impunity for violations of trade unionists' fundamental rights to life and physical integrity.

The unchecked violence against trade unionists has resulted in a climate of terror and intimidation which violates the rights of Colombian workers to freedom of association. Both the International Labor Organization and the Organization of American States have recognized that individuals are only free to form and participate in trade unions in an atmosphere "free from violence, pressure or threats of any kind against [union] [] organizations' leaders and members."¹⁴ The recurrent violence against trade unionists, and particularly against trade union leaders, frustrates the right of Colombian workers to freely associate. As CUT reports, the violence has had a "profound impact on union organizing .. and reveal[s] an array of

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¹¹ Violence and Counterinsurgency in Colombia, 5 (December 1993).

¹² CUT, Derechos Humanos y Movimiento Sindical, 5 (1994).

¹³ See supra note 10, State of War: Political Violence and Counterinsurgency in Colombia, at 5 ("state agents and the paramilitary groups that operate with state acquiescence are responsible for the bulk of the killing").

For example, in August of 1993 military officials in Colombia compiled and attempted to publish a list of some 150 individuals, including a number of trade unionists, they accused of collaboration with guerrillas. Human rights groups attempted to enjoin publication of the list out of fear for the listed individuals safety. Amnesty International, Urgent Action Appeal (August 6, 1994).

¹⁴ I.L.O. COFA, 295th Report, Case 1761, para 460 (March-April 1995); see also Second Report on the Situation of Human Rights in Colombia, OAS - IACHR, OEA/Ser. L/V/II.84, Doc 39 rev., 187 (October 14, 1993).

forces and pressures aimed, directly and indirectly, at eliminating unions in Colombia."¹⁵ The impact of these crimes is heightened by the close correlation between violence and planned labor protests. For example, in 1993, the USO headquarters were bombed on the day that the union had planned a national day of protest regarding ongoing collective bargaining negotiations with Ecopetrol.¹⁶

The Colombian government's failure to respect and guarantee trade unionists' fundamental human rights, by preventing the violence before it occurs or punishing perpetrators subsequently, violates workers' rights to freely associate.¹⁷ Under established ILO principles, countries are responsible for insuring that trade unionists may exercise their rights of association without risking their fundamental human rights to life and liberty.¹⁸ In the case of Colombia, even if preventive measures against such deprivations are currently impractical, subsequent prosecutions of perpetrators would eliminate the current "situation of impunity, which reinforces the climate of violence and insecurity [and] [] is extremely damaging to the exercise of trade union rights."¹⁹ Yet to date, the Colombian government has failed to identify and punish the perpetrators of violence against trade unionists. As the ILO COFA recently noted, "in previous cases [involving Colombia] judicial investigations were unable to identify the guilty parties in the case of acts of violence" against trade unionists, "the Committee expresses the hope that in this case the facts will be clarified and the guilty parties punished."²⁰ Absent substantial efforts by the Colombian government to identify and punish the perpetrators of these crimes, the GSP subcommittee must conclude that the Colombian government has failed to take the necessary steps to afford Colombian workers their right to

¹⁵ *Id.*

¹⁶ International Confederation of Free Trade Unions, Annual Survey of Violations of Trade Union Rights 31 (1994).

¹⁷ I.L.O. COFA, 292nd Report, Cases 1434 & 1477 (March 1994); I.L.O. COFA, 294th Report, Case 1686 (June 1994); I.L.O. COFA, 294th Report, Case 1761 (June 1994), reexamined at I.L.O. COFA, 295th Report (March-April 1995); I.L.O. COFA, 295th Report, Case 1787 (March-April 1995).

¹⁸ Digest of Decisions and Principles of COFA, para. 70 (3rd edition, 1985).

¹⁹ I.L.O. COFA, 295th Report, para 477, Case 1787 (March-April 1995).

²⁰ *Id.*

freedom of association.

II. Criminalization of Labor Activity

While perpetrators of violence against trade unionists routinely escape prosecution, labor activists are increasingly subject to criminal sanctions for engaging in peaceful labor protests. In recent years, the Colombian Penal Code has been amended to expand the scope of prohibited criminal actions in a manner which has resulted in the prosecution of trade unionists for exercising their rights to freely associate and collectively bargain. In particular, the expansive language of the anti-terrorism decree and the Penal Code's prohibition against violations of the "liberty to work" permit legalized labor repression by allowing the government to prosecute trade unionists for engaging in peaceful labor protests.

The anti-terrorist decree reads as follows: "One who causes or keeps the public, or a sector of the public, in a state of unease or terror by acts that jeopardize the life, fiscal integrity, or liberty of persons, or buildings or means of communication, transport, legal activity, by means capable of causing ruin or havoc, will receive a sentence of up to 20 years in prison." ²¹ Individuals accused of acts of terrorism are prosecuted in the jurisdictional regional trial courts, more commonly referred to as Public Order Courts, where proceedings occur in secret; the identity of judges and key witnesses are concealed; evidence is often withheld from defendants until trial; and both pre-trial release and the right to habeas corpus is severely restricted.²² Although these Public Order courts were originally instituted to facilitate

²¹ CUT, *Derechos Humanos v Movimiento Sindical*, 7 (1994).

²² The procedural irregularities of the Public Order courts have been widely condemned by both human rights groups and legal commentators, see Human Rights Watch, *State of War: Political Violence and Counterinsurgency in Colombia*, 35-39 (Dec. 1993); Lawyers Committee for Human Rights, *Colombia: Public Order, Private Injustice*, (Feb. 1994); Michael R. Paul, *Concealing Justices or Concealing Injustice?: Colombia's Secret Courts*, 21 *Denv. J.Int'l L. & Pol'y* 431 (1993).

prosecutions of guerrillas and drug traffickers, in practice over 95% of the cases prosecuted in the secret courts between 1991 and 1992 involved non-violent social protest activities.²³ Not surprisingly, given the procedural irregularities of these secret courts, conviction rates are significantly higher in the Public Order courts than in the regular Colombian trial courts, running at 70% of the individuals tried as compared to 12% of individuals tried for comparable offenses in the ordinary court system.²⁴

The broad definition of terrorism encoded in the Colombian Penal Code authorizes the detention and trial of trade unionists as terrorists subject to prosecution in the Public Order Courts merely for engaging in a work stoppage. Colombian judges have reasoned that the unease and anxiety proscribed as terrorist activity includes the anxiety of an employer faced with a work stoppage which disrupts production and results in economic harm to the employer.²⁵ In 1993 alone, some thirty trade unionists were prosecuted as terrorists in the Public Order court system.²⁶ Notorious examples of these types of prosecution include the 1993 detention of thirteen members of Telecom, held without bail for eight months in the Bogota jail, pending their prosecution as terrorists for engaging in a week-long telephone strike.²⁷ Although the cases were subsequently transferred to the regular trial courts as a result of substantial international pressure, all thirteen workers still faced criminal penalties for their role in the strike.²⁸

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As the case of the Telecom workers demonstrates, workers who are not prosecuted as terrorists for their role in work stoppages, still face criminal prosecution for peaceful labor activities. As the CUT has described the situation:

²³ Human Rights Watch, State of War: Political Violence and Counterinsurgency in Colombia, 37 (Dec. 1993).

²⁴ Lawyers Committee for Human Rights, Colombia: Public Order, Private Injustice, 1, n.3 (Feb. 1994)

²⁵ CUT, Derechos Humanos v Movimiento Sindical, 7 (1994).

²⁶ Id. at 9.

²⁷ Human Rights Watch, State of War: Political Violence and Counterinsurgency in Colombia, 37 (Dec. 1993).

²⁸ Lawyers Committee for Human Rights, Colombia: Public Order, Private Injustice, 32 (Feb. 1994).

"In Colombia, hundreds of workers are taken to trial for violating the freedom of work; for obstructing the entry of workers to the company; for sabotage within the framework of a strike, blaming them for nonexisting damages to the equipment and machinery; for illegal constraint, for damage to someone else's property; for painting graffiti on walls or similar places; for insults; or for slander by the same graffiti, bulletins, or placards where the workers denounce employer's excesses."²⁹

In particular, the Colombian Penal Code proscribes pressuring other workers to respect an on-going work stoppage as a violation of "freedom of work"³⁰ and striking in a manner that results in economic harm to an employer as "sabotage."³¹ As applied these two criminal prohibitions have resulted in the imposition of substantial sanctions against trade unionists for exercising their rights to strike and engage in work slow-downs. In the case of the Cementos del Valle workers, ~~twelve strikers were sentenced to seven months in prison for engaging in~~ strike activity and the union itself was fined P\$728,525,232.00 for violation of the freedom to work and sabotage of the employer's property.³² Even desperate attempts to avoid criminal liability for striking have resulted in the imposition of criminal liability. In 1993, more than 1,000 miners joined a three-week hunger strike by dock workers to protect management repression of labor activity. The workers continued to labor at their jobs throughout the strike in order to avoid being charged with criminal sanctions. However on June 25th, the government issued a resolution declaring that the "reduced productivity caused by physical weakness from the hunger strike was illegal."³³

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The criminalization of peaceful labor protest undertaken by the Colombian government

²⁹ CUT, Nonexistence of Labor Union Freedom in Colombia Notwithstanding the New Constitution, 41 (June 1992).
³⁰ Article 290 of the Colombian Penal Code.
³¹ Article 219 of the Colombian Penal Code.
³² CUT, Nonexistence of Labor Union Freedom in Colombia Notwithstanding the New Constitution, 43 (June 1992).
³³ International Confederation of Free Trade Unions, Annual Survey of Violations of Trade Union Rights 33 (1994).

plainly violates the rights of Colombian workers and warrants close re-examination of Colombia's GSP beneficiary status.

III. Ley 50: Restrictions on the Rights to Freely Associate & Collectively Bargain

ILRERF's June 1993 petition documented several inadequacies and omissions in Ley 50, the 1990 Colombian Labor Code revision. To ILRERF's knowledge, none of these inadequacies have been corrected by new legislation. We renew our contentions, based on the ILO's Committee of Experts on the Application of Conventions and Recommendations Report of 1991, finding that a number of provisions of the revised labor code are fundamentally incompatible with the right of freedom of association, including the following:

- 1) The requirement that 75% of the members of workers' organizations are Colombian nationals (Section 384 of the Labor Code).
- 2) Provisions allowing extensive interference into the internal administration of trade unions, through supervision of internal union management and meetings (Se. 486 of the Labor Code), strict rules for trade union meetings (Decree No. 12655 of 1954) and governmental supervision of all meetings to vote on a strike (Section 444 of the Labor Code).
- 3) The requirement that persons elected to trade union offices be Colombian nationals (Section 384 of the Labor Code).
- 4) The requirement that the election of trade union officers be submitted for approval by administrative authorities (Section 21 of Resolution No. 4 of 1952, Section 10 & 13 of Decree No. 1469 of 1978).
- 5) The prohibition against trade unions taking part in political matters (Section 379(a) of the labor Code).
- 6) Prohibition against labor strikes not only in essential services as strictly construed by ILO

principles, but in a broad range of services designated as essential by Congressional action (Section 430 & 450(1)(a) of the Labor Code).

7) Prohibitions against any strikes, subject to administrative penalties and imprisonment, once a state of emergency is declared.

8) Authority for dismissing trade union officials who intervened or participated in an illegal strike (Section 450(2) of the Labor Code).

9) Authority to withdraw or suspend the legal personality of a trade union for violation of any of the above provisions (Section 380 of the Labor Code) or for striking in a manner that is subsequently determined to be illegal (section 450(3) of the Labor Code).

10) Authorization to hire workers on a temporary basis, for three to six months, with no reason necessary for termination of the contract. The temporary employment provision provide employers seeking to retaliate against union activities with a tremendous loophole - simply wait till the temporary employment contract has expired and refuse to renew the contract. FVA

The application of many of these provisions has been further criticized by Colombian human rights groups as sanctioning continued repression of trade unionists by the Colombian government.³⁴ In particular, restrictions on the legality of strikes have been criticized as placing an onerous burden on the free exercise of trade union rights. If the ministry of labor declares a strike illegal, the Labor Code not only authorizes sanctions against the union, union officials and strike participants but also allows the cancellation of the right of unionization for all participants in the illegal strike activity.³⁵ Given that a declaration of strike illegality is not subject to effective judicial review, these substantial sanctions pose a significant deterrent to legitimate labor union activity.³⁶

³⁴ See Comision Andina de Juristas Seccional Colombiana; Breve Informe Sobre el Estado del Derecho de Asociacion en Colombia Durante el ano de 1994, (1994).

³⁵ Id.

³⁶ Id. at 20.

The impact of Ley 50 on the exercise of trade union rights is also readily documented by examining the number of complaints filed with the ILO COFA challenging acts of employer anti-union discrimination taken pursuant to the revised labor code. In the past two years alone, all of the following cases involving such acts of anti-union discrimination, have been reviewed by the ILO COFA.

- Case No. 1761 involving government monitoring and interference with trade union meetings and headquarters, still under review by the Committee.³⁷ *CNH 4*

- Case No. 1625 regarding the mass dismissals of workers after declarations that peaceful strike activity was illegal. The Committee, though unable to adjudicate the allegations because critical information regarding the dismissals was not provided, did note that "the use of extremely serious measures, such as dismissals of workers for having participated in a strike and refusal to re-employ them, implies a serious risk of abuse and constitutes a violation of freedom of association."³⁸ *5*

- Case No. 1721 involving the dismissal of union members following a labor protest, still under review by the Committee.³⁹ *6*

- Case No. 1686 regarding the dismissal of union members following a declaration that peaceful strike activity was illegal and a request that the legal personality of the striking union be canceled, still under review by the Committee.⁴⁰ *Case 7*

IV. Unacceptable Conditions of Work

³⁷ I.L.O. COFA, 295th Report , para 464, Case 1761 (March-April 1995).
³⁸ I.L.O. COFA, 295th Report , para 477, Case 1787 (March-April 1995).
³⁹ I.L.O. COFA, 292nd Report , para 295, Case 1721 (March 1994).
⁴⁰ I.L.O. COFA, 294th Report, paras. 291, 292, Case 1686 (June 1994).

The ILRERF also reiterates its contention that violations of trade union rights in Colombia has resulted in workers' laboring under abhorrent conditions. Most pertinent to Colombia's status as a GSP beneficiary are the extremely hazardous conditions of work in the export driven flower industry. According to one report, the roughly 70,000 workers who labor in Colombia's flower industry are routinely exposed to extremely dangerous pesticides, many of which have been banned from use in the United States.⁴¹ Flower workers are routinely forced either to work within greenhouses while flower beds are being sprayed or to return to work immediately after the plants have been sprayed. By way of contrast, United States Environmental Protection Agency guidelines recommend a twelve to forty-eight hour hiatus after any pesticide spraying.

Severe health problems have resulted from the exposure of flower workers to pesticides. One doctor in a regional hospital adjacent to the flower growing region reported seeing as many as five workers a day suffering from pesticide poisoning whose symptoms include fainting, dizziness, nausea, skin-irritations, premature labor, miscarriages, respiratory failure and central nervous system disorders including paralysis.⁴² Widespread malnutrition among flower workers exacerbates the harm caused by prolonged exposure to the pesticides, as individuals ability to heal themselves is severely diminished. Children of the predominately female work-force also suffer, as they work alongside their mothers or are exposed to pesticide poisoning while still in the womb or via their mothers breast milk.

Not surprisingly, flower workers who labor under these extremely hazardous conditions are not represented by independent labor unions. Roughly 20% of the flower workers are unionized, but as members of employer unions affiliated with the Unltracun union federation.

⁴¹ Sarah Stewart, Colombian Flowers: The Gift of Love and Poison, Christian Aid - U.K. (July 12, 1994).

⁴² Id. at 1.

Workers who attempt to form independent unions are allegedly blacklisted and fired.⁴³ The local employer's association allegedly maintains a computerized list of all black-listed individuals. ⁴⁴ Moreover, under the revised Labor Code, employers can dismiss individuals for union activities without risking any liability simply by refusing to renew their temporary employment contracts.

Conclusion

The ILRERF believes that the above provides sufficient evidence of ongoing serious violations of trade union rights to warrant a review of Colombia's eligibility for GSP benefits. These violations include the unpunished murders and violent attacks against trade unionists by government agents and paramilitary groups; the criminalization of peaceful labor protest; legal restrictions on the right of free association encodified by the 1990 Labor law reform; and abhorrent conditions of work for individuals in the export-driven flower industry. We therefore petition the USTR to review Colombia's status as a GSP beneficiary.

⁴³ *Id.* at 7.

⁴⁴ *Id.*