

U.S./LABOR EDUCATION in the AMERICAS PROJECT

P.O. Box 269-290 Chicago, IL 60626 www.usleap.org
773-262-6502 (t) 773-262-6602 (f) usglep@igc.org

REQUEST TO TESTIFY, and TESTIMONY, for:

**March 17, 2004 Public Hearing
Concerning the Proposed U.S.-Andean Free Trade Agreement**

Name: Stephen Coats
Executive Director
U.S./Labor Education in the Americas Project

Address: P.O. Box 268290
Chicago, IL 60626

Telephone: 773-262-6502

Fax: 773-262-6602

E-mail: usglep@igc.org

Summary: US/LEAP testimony will focus on labor issues with respect to Colombia and Ecuador. The testimony supports Ambassador's Zoellick's November letter of intent to Congress that both countries have labor issues which must be addressed. We will argue that making substantial progress on these issues should not wait until after a trade agreement is negotiated and approved.

Ecuador has failed to take measurable steps to improve protections for worker rights, despite promises to USTR to do so and despite being under an ATPDEA worker rights review. It has failed to take steps to reform labor law to protect freedom of association, failed to punish those responsible for violent attacks against banana workers, and failed to follow-through on promises to address child labor violations.

Negotiating a free trade agreement with Colombia makes meaningless any commitment to worker rights in trade agreements. More trade unionists are murdered each year in Colombia than in the rest of the world combined; over 99% of these murders have not been prosecuted, providing near total impunity to those who violate the most basic right of workers, the right to life. It would not be sufficient for a FTA, but it should certainly be necessary that the government of Colombia demonstrate meaningful progress in ending impunity for at least a fraction of the murders of trade unionists over the past decade.

The U.S./Labor Education in the Americas Project (US/LEAP) is an independent non-profit organization which supports the basic rights of workers in Latin America. We are a member of the Latin America Working Group and of the Alliance for Responsible Trade, although the views expressed here are those of our own and not necessarily those of either LAWG or ART.

Our testimony will focus on labor issues in Ecuador and Colombia in light of the Administration's intent to negotiate an Andean free trade agreement.

We strongly support the position taken by Ambassador Zoellick in his November 18, 2003 letter of intent to Speaker Hastert that both countries have key labor problems that need to be addressed, namely, "Ecuador needs to take significant further steps to address concerns we have raised regarding inadequate protection of worker rights...." and Colombia must "make progress in addressing violence against trade unionists." However, these are not steps that should wait until after a trade agreement is negotiated and approved.

US/LEAP is not opposed to trade agreements. But we are opposed to those that have been negotiated in recent years, including NAFTA and CAFTA and, if they are its model, "AFTA." The committee is quite familiar with the arguments that have been put forth regarding the need for the global trading system to strengthen respect for worker rights, both to protect the basic rights of workers in countries in the South and to protect minimum standards and floors for workers in the U.S. The worker rights protections negotiated in these multilateral trade agreements represent a huge step backward from those that are contained in current U.S. unilateral programs, including GSP, CBTPA, and the ATPDEA, inadequate as they have been in securing advances on worker rights in countries receiving these benefits. The arguments about the need for the global trading system to ensure compliance with international standards are not unique to the labor issues, but these are not our area of expertise or focus. Regardless, there is little point in repeating the arguments that the TPSC knows so well.

What we would like to do, however, is underscore the degree to which neither Ecuador nor Colombia should be eligible for FTA negotiations given current conditions. US/LEAP has had extensive experience with the GSP worker rights petition process, dating back to 1991 on Guatemala when we were the U.S./Guatemala Labor Education Project. US/LEAP has been actively engaged in the ATPDEA process with respect to Ecuador for the past two years and we are a current petitioner; we have also worked with members of Congress on efforts to enforce the worker rights provisions of U.S. trade programs on both Colombia and Ecuador.

I. COLOMBIA

To be blunt, initiation of trade negotiations with Colombia at this time makes meaningless any expressed commitment to worker rights in trade agreements.

For years, more trade unionists have been murdered in Colombia than in the rest of the world combined. More than 2,000 Colombian trade unionists have been murdered since 1991, with nearly another 100 killed last year. The number of effective investigations, let alone successful prosecutions, launched by the Colombian government against the perpetrators of these crimes is so small as to amount to little more than statistical noise. Over 99% of these murders have gone unpunished by the government. A reasonable person could not be blamed for concluding that such impunity represents state policy.

Overview of killings of trade unionists

Paramilitary groups have been responsible for most of the murders, in cases where the assailants are known. For example, the CUT, Colombia's largest trade union confederation, reported in 2002 that 41% of the murders had been committed by right-wing paramilitaries, 12% by the FARC guerrillas, and 47% by unknown assailants. The National Labor College (ENS), a highly respected NGO that provides training and support to the Colombian labor movement, reports that in 2003, of the murders of trade unionists involving identified criminals, eight times as many murders were committed by paramilitaries as by guerrillas.

Major human rights organizations have documented close and pervasive ties between army officials and paramilitary forces. The State Department's 2003 Human Rights report notes that collaboration between security forces and paramilitary groups continues.

While the vast majority of the war's victims are unarmed civilians, more than 35,000 of whom have died or disappeared over the last decade, *the majority of murdered trade unionists are not arbitrary or casual victims of the civil war*. The ENS calculates that in 2003, 90% of the violence directed against trade unionists was a response to their normal union activities, while less than 5% was related to the civil war, and less than 1% could be attributed to general social violence. Much of this violence occurs when unions are engaged in collective-bargaining negotiations, or when these have just ended, during the formation of new unions, and during the course of nation-wide or local strikes.

The ENS estimates that 22% of all trade unionists murdered since 1991 were leaders. However, that percentage has been climbing steadily since 1998, when it reached 27%, and then 43% in 2003. The violence is highly discriminate and calculated, aimed at weakening union organizations, especially those which are most effective at exercising public pressure.

Drop in Killings in 2003: Why?

There was a significant drop in killings of trade unionists during 2003. ENS puts the final figure at 90, down from the 184 in 2002. The State Department's 2003 Country Report on Human Rights Practices for Colombia cites the Uribe Administration's "emphasis during the year on improving security" as the cause of improvements in many human-rights indicators, including the reduction in the number of trade unionists murdered. The State Department's conclusion echoes a similar viewpoint expressed by then-U.S. Ambassador to Colombia Anne Patterson on March 26, 2003. In a letter sent to U.S. Congressman Raúl Grijalva, she wrote that, "Largely due to the increased efforts of [the protection program run by the Colombian Interior Ministry], killings of trade unionists have dropped significantly since the Uribe government took office."

While the protection program has been welcomed by the Colombian trade union movement and has no doubt contributed to some increased security for trade unionists, US/LEAP respectfully disagrees with both former Ambassador Patterson and the State Department in citing improved security and the protection program in particular as a major reason for the significant drop in recent killings. The program falls well short of covering the number of trade unionists deemed at risk and primarily provides "soft" protection measures (e.g. cell phones) rather than "hard" (e.g. armed escorts). In any case, it is difficult to attribute to the protection program the 50% drop in murders of trade union killings from 2002 to 2003 when the number of trade unionists covered by the program remain virtually the same (indeed, there was a slight drop in the number of covered, from 1,566 in 2002 to 1,424 in 2003, according to the State Department's own figures).

Analysts in Colombia state that primary reason for the drop in killings is a change in tactics by paramilitary groups. In late 2002, President Álvaro Uribe offered to negotiate a peace accord with the paramilitaries. The AUC (United Self-Defense Forces of Colombia, the largest paramilitary group) responded by announcing a unilateral cease-fire. In exchange for demobilizing, the paramilitaries hope to obtain amnesty for their past crimes. They have recognized that violence against trade unionists has attracted considerable international attention in the last few years and is therefore politically inconvenient. Given that the decline in killings is not based on a demonstration of a new-found political will by the government to investigate and prosecute crimes against trade unionists, the drop could very well turn out to be a temporary lull.

Regardless of the cause, US/LEAP and other advocates of labor rights for Colombian workers welcome the drop in murders, and hope that it will continue. Nevertheless, we must underscore the fact that the murder of 90 Colombian trade unionists in one year is still a grotesque crime, and we are alarmed that the Uribe Administration is essentially contemplating the codification of the impunity for its perpetrators that has long prevailed in practice.

Other Violence Against Unionists is Up

Furthermore, a look at the 2003 statistics reveals that while murders, disappearances and kidnappings of trade unionists have dropped, other forms of violence and intimidation against them have actually increased. According to ENS, these include 295 death threats, 12 forced entries by law enforcement authorities into union halls or the homes of union leaders, 42 detentions of union members and leaders, 55 documented cases of harassment, and 91 cases of forced displacement. In all the aforementioned statistics, the 2003 numbers are higher, in some cases dramatically so, than those of 2001 and 2002. ENS reported a total of 617 violations of life, liberty and integrity of Colombian trade unionists in 2003, up from 598 and 459 in 2001 and 2002, respectively. The government itself has increased its role over the last year in repression of unions through arrests and the application of laws which restrict union

activities, codified in the Anti-terrorism Statute passed in December 2003.

ENS also notes a large increase in repression against women trade unionists in 2003, particularly death threats. Twenty-seven of the 90 assassinated trade unionists were women. Moreover, women trade unionists suffered 194 violations against their life, liberty and integrity in 2003, as opposed to 32 in 2002. Another characteristic of anti-union repression during the year noted by ENS was the widespread extension of death threats to members of union leaders' immediate families.

The climate for trade unionists and other human rights advocates has become more insecure as a result of President Uribe's security policies. During a speech to the Colombian military in September 2003, President Uribe attacked human rights groups, stating that they were acting in "the service of terrorism," a remark that drew widespread condemnation, including from twenty U.S. representatives and five U.S. senators.

Teachers Hit Hardest

The sector hardest hit with anti-union violence is teachers, especially primary and secondary, municipal-level teachers affiliated to the Colombian Teachers Federation, FECODE, a member of CUT. Teachers are the most organized of Colombia's workers, and have played a strategic role in organizing protests against cutbacks in social spending over the last decade. In 2002, of the 184 murdered trade unionists, 82, or about 45%, were teachers.

A striking example from 2003 is the case of Liliana Caicedo, the rector of a high school in Ricaurte, Nariño Department. She was a member of SIMANA, the Nariño Teachers Union (a member of FECODE). In June, Colombian Army troops had been using the high school to camp for two weeks when she asked them to withdraw because their presence represented a danger to her students. When they refused, she suspended classes. Shortly thereafter, she was pulled from her house. Her decapitated and tortured body was found outside her home on June 21. ENS attributes this murder to the Colombian Army.

SINTRAINAGRO, the National Union of Agricultural Workers, has suffered its share of repression since the early 1990s. On May 1, 2003, Juan de Jesús Gómez, President of the union local in San Martín, César Department, was gunned down by suspected paramilitaries. At the time of his murder, the local was preparing to strike against a palm-oil company, Palmas del César, after collective bargaining negotiations had broken down due to the company's intransigence. Gómez was the third president of this local to be murdered.

Three members of SINTRAEMCALI (Union of Cali Municipal Utilities Workers) were killed on May 8 when a powerful bomb exploded at Cali's Puerto Mallarino Drinking Water Treatment Plant at 11:50 PM. The three victims, Nelson López, Wilmer Vergara, and Jorge Vásquez, all worked as guards at the plant. Three suspicious persons had been detained by guards at the plant and handed over to the Cali Metropolitan Police earlier that same day. SINTRAEMCALI has been engaged in a bitter struggle to prevent the privatization of Cali's municipal utilities. This attack on SINTRAEMCALI came as negotiations between the union and the Uribe Administration on the fate of the municipally owned EMCALI public utility company were nearing their end.

These are but five of the ninety murders in 2003. Recounting all the murders just in the past three years would take reams of paper, and a strong stomach to read.

Impunity: No Progress

The 2002 State Department Human Rights Report reports on a study by the Colombian government that since 1986 there have only been five convictions for murders of trade unionists. In its 2003 Human Rights Report, the State Department is unable to cite a single new conviction for murder (despite 2,000 cases from which to choose, 90 of them fresh).

Conclusion on Colombia:

There are other serious worker rights violations in Colombia that should be addressed before negotiating a free trade agreement, including a labor code that is short of ILO standards. But for US/LEAP, the first and foremost issue is violence against trade unionists and the impunity enjoyed by the perpetrators. The U.S. should not be negotiating a trade agreement with a country in which successive governments have demonstrated a commitment to maintaining a culture of total impunity with respect to thousands of murders of trade unionists. It is hard to think of a country in

which the most basic of worker rights—the right to life—is more egregiously violated.

It would not be sufficient for initiating negotiations for a trade agreement, but it should certainly be necessary that the government of Colombia demonstrate meaningful progress in ending impunity for at least a fraction of the murders of trade unionists over the past decade. Acceptable trade agreements cannot be built on a culture and practice of total impunity. If the rule of law cannot be applied to the outright murders of trade unionists, how can we expect even minimum respect for core labor rights?

II. ECUADOR

Ecuador's lack of progress in taking steps to protect worker rights is well-known to members of the Committee. Agencies and members of the committee have been engaged with the government of Ecuador since the May 2002 violence against banana workers at plantations owned by Ecuador's richest man and two-time presidential candidate, Alvaro Noboa, that came upon the heels of Human Rights Watch's *Tainted Harvest* report in April 2002 documenting not only child labor violations in the banana sector but also the failure of the Ecuadorian labor code to protect freedom of association.

USTR delayed Ecuador's eligibility designation for ATPDEA benefits in the fall of 2002 in return for certain commitments to take steps to improve respect for worker rights. The Ecuadorian government's failure to follow-through on these commitments in 2003 led to several high-level meetings with U.S. officials but virtually no progress, prompting USTR to undertake a formal worker rights review under the ATPDEA in the fall of 2003. USTR further underscored its concerns about lack of progress on worker rights in its November 18, 2003 letter to Speaker Hastert notifying Congress of the Administration's intent to negotiate a free trade agreement with Ecuador and other Andean countries. Yet, as of March 2004, progress on key issues has been virtually non-existent.

Previous submissions to USTR by US/LEAP and submissions by other petitioners (e.g. Human Rights Watch and the AFL-CIO) and witnesses review the key issues in more depth. But, to summarize, these include:

✉ Labor law reform, especially to provide adequate protection for freedom of association. No labor law reform proposal has been presented to Congress and there is no evidence that a reform proposal addressing worker rights protections is at any stage of actual development. At last report, the GOE had held a few meetings with the ILO and made another promise, to have a proposal ready to be sent to the legislature by the end of July 2004. (Specific labor reform proposals are contained in US/LEAP's previous submissions to USTR.)¹

¹These include the following:

1. Labor law should require reinstatement of all workers—permanent workers, temporary workers, or workers with project contracts—who are fired for engaging in union activity. Workers

should also be paid wages lost during wrongful dismissals.

2. Labor law should allow subcontracted workers to organize and bargain collectively with the person or company for whose benefit work is realized if that person or company, in practice, has the economic power to dictate, directly or indirectly, the workers' terms and conditions of employment.
3. Labor law should lower the minimum number of workers required to form a union from the current requirement of 30 workers, as the ILO has recommended.
4. Labor law should explicitly prohibit anti-union discrimination in hiring, should explicitly prohibit employers from interfering in the establishment or functioning of workers' organizations, and should explicitly prohibit consecutive use of "temporary" contracts.

- ↳ Implementing recommendations of the high-level commission established to investigate the Alamos case, including not only the violence of May 16, 2002 but also the actions of the police prior to the violence, bringing to justice the perpetrators, and the role of the tribunals in dismissing the unions' petitions. Establishment of the commission, which was linked to granting Ecuador ATPDEA eligibility, was delayed for four months and came only in a belated response to a USTR *de facto* "review" in March 2003. The commission's subsequent report was extensive but nearly a year later, none of the recommendations have been implemented.
- ↳ Investigation and prosecution for violence in the May 2002 attacks. As noted, what little was done was seriously flawed, limiting itself to one of the two violent attacks and to only one of the nine injured workers. The promise to fully prosecute the perpetrators reached a new low when the sixteen who were convicted successfully appealed and were released. The bottom line is that no one is behind bars for either of these two highly-publicized violent assaults (one of which was caught on video tape), which successfully broke the most important effort by workers to organize in the banana sector in the past decade. (Perhaps most troubling, the government now seems to have regressed on this issue. A February 2004 hand-out by the Labor Minister defending Ecuador's record when he visited Washington states that the Los Alamos case "was a political problem, not a labor problem.")
- ↳ Labor law enforcement. As stated in previous submissions, US/LEAP recognizes that achieving labor law reform is not an overnight process. Enforcement of current labor law is another matter, yet no evidence has been provided by the government of Ecuador, now in its second year in office, to demonstrate that it has strengthened its enforcement of existing labor law provisions that protect the right to organize, such as (i) limiting temporary contracts to 180 days to be used only to meet an "an increase in demand," (ii) prohibiting replacement workers when a minimum of 20% of striking agricultural workers are prepared to perform essential services, and (iii) establishing a one-year minimum on project contracts.

Nor has the GOE designated one labor inspector for children in each province, as required by law. While the GOE has taken some tentative and preliminary steps to address child labor in the banana industry, the absence of labor inspectors prevent adequate and necessary enforcement of child labor laws.¹

Conclusion on Ecuador:

Under the circumstances, initiating trade negotiations with Ecuador would seriously undercut the message that USTR, and members of Congress, have been giving regarding the need to improve protection for worker rights. Indeed, we believe initiating negotiations now would call into question the integrity of the worker rights review process under ATPDEA. Ecuador's intransigence in addressing worker rights concerns should not be rewarded by initiating negotiations for a trade agreement. Ecuador should first follow-through on the commitments it has made to the U.S. government and, more importantly, on the commitments it should make to its own workers to ensure respect for core worker rights.

¹US/LEAP supports the analysis and recommendations put forth by Human Rights Watch with respect to the need to address child labor violations in the banana sector.

Appendix A

The Ecuador banana sector: the Alamos Case: 2002 and 2003

The Alamos case provides a compelling case study of both failure of the government of Ecuador to enforce current labor law and its inherent deficiencies.

Alamos 2003. On June 19, 2003 workers at the Nenro, Beducorp and Cliadi Alamos operations presented three collective bargaining proposals, in accordance with the law. The workers were immediately locked out and fired, one day later. Despite significant political pressure, these workers were unable to gain reinstatement and in the end did not even receive the compensation to which they were entitled under current law.

The inadequacy of existing labor law was amply demonstrated at Los Alamos in 2003. First, despite the fact that the firings were illegal, the GOE lacked the legal authority to compel reinstatement, underscoring the need for labor law to require reinstatement of workers fired for union activity. Secondly, the case also underscores the need to address the issue of subcontracting and high thresholds for the minimum number of workers necessary to form a union. After the organizing effort in 2002, the Alamos plantations were balkanized into a plethora of subcontractors so that none of them employ more than the 30 worker minimum needed to form a union. The total employment at the Alamos plantations has not changed appreciably over the course of the past two years but now the subdivision into numerous subcontractors has made it legally impossible for any of the Alamos workers to form a union.

The inability of the government to enforce current labor law was also underscored last year in this case. Despite a finding by the Labor Ministry confirming that the firings took place as a result of anti-union discrimination, the workers were unable to obtain their legally-entitled compensation.

Alamos 2002. In addition to the failure to prosecute those who violently attacked workers on May 16, 2002 or those responsible for bringing in the thugs, the government failed to provide adequate police protection as requested by the union and provided by law. The government also failed to enforce the law prohibiting the use of strike-breakers. In short, the government's inactions denied the workers their right to engage in a strike. On the other hand, the government was quite willing to deny the unions their right to represent the workers, claiming that the unions didn't provide the proper paper work to verify that they represented a majority of the workers.

In short, the denial of worker rights at the Alamos plantations in 2002 and 2003 is a perfect case study, if not a poster child, for demonstrating both the need for labor law reform and the need to improve enforcement of existing law, both civil and criminal, to ensure respect for worker rights. The government has failed to undertake any meaningful remedies in this case, despite enormous interest internationally and from the U.S. government. Los Alamos has provided a set of "benchmarks" for measuring progress on worker rights in Ecuador and, sadly, the government has failed every one.