

Congress of the United States
House of Representatives
Washington, DC 20515

April 10, 2012

Rafael Pardo Rueda
Minister of Labor
Republic of Colombia
Carrera 13, No. 32-76
Bogota, Colombia

Dear Minister Pardo:

With the one-year anniversary of the Colombia Labor Action Plan upon us, it is timely to inquire about progress and challenges facing the Government of Colombia in implementing this agreement.

Thank you again for traveling to Washington, DC, and taking the time to meet with the Congressional Monitoring Group. We greatly appreciate how personally committed you are to making real and positive change to the workers' rights situation in Colombia. Your leadership and the leadership of President Santos are vital to the success of this undertaking.

Group staff also recently met with Andres Villamizar, the new head of the National Protection Unit in the Interior Ministry. It was a very productive briefing. These meetings and those with representatives from the legislature, unions, and non-governmental organizations have provided critical exchanges of information, allowing us to understand both where progress has been made and where significant challenges remain.

We are writing to request additional details related to implementation of the Labor Action Plan. With the Labor Ministry reconstituted only four months ago, it is clear that transforming commitments made under the Labor Action Plan into reality on the ground remains a substantial challenge.

We received the "Achievements 2011-2012" report prepared by the Labor Ministry. It is very helpful and we welcome the news that a handful of large employers have decided to formalize their hiring instead of using cooperatives. Nonetheless, we are concerned about continuing difficulties that workers confront as they seek to exercise their rights to freely associate and form unions. Far too often, these efforts have been met with mass firings, threats and violence.

We hope you can provide us with responses to the questions below related to both recent specific incidents reported to us and the status of Labor Action Plan implementation generally.

1. Turbo Port Workers Situation. Most recently, we received communications from Union Portuaria that 450 port workers in the municipality of Turbo decided to form a union,

SIGTRAPORCOL, but that at least 70 workers in the banana and plantain sector have been fired. Companies such as Banacol and Uniban are reportedly pressuring port workers who wish to continue to be employed to provide certification that shows that they are not affiliated with any trade union. These workers confront a desperate situation because, if they do not produce certification disavowing affiliation with a union, they will not work. Has the government analyzed whether these firings or the employers' insistence on only hiring workers who reject union membership are violations of Article 200?

2. Cooperatives and SASSs. We have concerns that, with respect to cooperatives, Article 63 and Decree 2025 are not being fully enforced, in particular, the flat prohibition on cooperatives performing "permanent core activities." Moreover, we have concerns that prohibitions regarding the abuse of other indirect contract forms contained in Article 63 and Decree 2025 are not being enforced. We have received reports, for example, that some Colombian workers have been forced to transfer from cooperatives into other structures, such as *sociedades por acciones simplificadas* (SASSs), without any government response. What steps has the Colombian government taken to enforce Article 63 and Decree 2025 and the flat prohibition on cooperatives performing core permanent functions? What, if any, efforts has the Colombian government taken to clarify and enforce these laws with respect to indirect contracting forms beyond cooperatives? What policies has the Ministry of Labor adopted to take enforcement action where employers have shifted from cooperatives to other structures to frustrate labor rights?

3. Permanent Core Function Determinations. The fine against a Puerto Wilches palm oil plantation with regards to the misuse of cooperatives was an important test to assess implementation of Article 63 and Decree 2025. However, we understand that only one of ten plantations has been fined so far, and, despite the levying of fines at the one plantation, workers continue to be employed by associated labor cooperatives. One issue that has surfaced is which jobs will be deemed a "permanent core function" for which plantations cannot use cooperative workers or other forms of contract employment. As your ministry moves forward in enforcing Decree 2025, we would welcome clarification on how you will determine what jobs will be defined as a "permanent core function." Will the determination of a permanent core function be left up to the employer, or will this become a government responsibility? How many workers will be deemed to be "performing permanent core functions" and how many will not, in light of dynamics of fluctuating business operations and economic conditions across various employers? Will the definition of permanent core function be defined for each specific industry sector? Has the legal framework for adjudicating these disputes been developed yet?

4. Pacific Rubiales Energy Workers. Last year, workers at Pacific Rubiales Energy went on strike. The strike was largely broken after the labor encampment was raided, and armed government forces assisted the company in blockading roads. A company-dominated union was established, the employer reportedly held captive audience meetings to pressure workers to disaffiliate with Union Sindical Obrero (USO), and those workers choosing to affiliate with the

sham union were allowed to work. However, over 1,000 workers affiliated with USO were effectively fired after their short term work contracts expired. Many were reportedly driven out of the labor camps at gunpoint. What is being done to assure that workers' freedom of association is being respected, and that those workers who were fired have been rehired? It would be troubling if these issues were simply dismissed as a mere dispute between two unions, because the matters at issue appear to violate many elements of the Labor Action Plan.

5. Data on Associated Work Cooperatives . To educate employers and cooperatives on what are now impermissible employment arrangements, and to encourage them to formalize their employment relationships is a significant undertaking, particularly in light of previous government policy encouraging the use of cooperatives. What specific initiatives has the Labor Ministry undertaken to communicate with all employers and cooperatives? Do you have an inventory of the total number of associative labor cooperatives, and are these broken down by industry sector? Could you provide statistics on the number of associated labor cooperatives working in each major sector covered by the Labor Action Plan, and the number of individuals employed by these cooperatives?

6. Labor Inspector Hiring, Retention, and Training. The Labor Ministry has reportedly hired and trained 100 new inspectors in the past year. What sort of training have these inspectors gone through? The Labor Action Plan calls for hiring and training another 100 this year. When do you expect these new inspectors will be hired and trained? Have the previous 100 new hires all been retained? What is the current total number of inspectors at the Ministry? Could you kindly provide a copy of the inspection manual referred to in the Ministry's "Achievements 2011-2012" report?

7. Impunity Issues. Another key element of the Labor Action Plan was to increase the number of investigators and prosecutors to focus on murders of trade unionists. Yet, there appears to be little in the way of progress in these cases, and trade unionists continue to be threatened and murdered. To update progress in this area, we would appreciate the following information, understanding that you may need to consult with the Office of the Attorney General (Fiscalía) to respond to these matters:

- How many union murder convictions have there been since this time last year (that are not based on Justice and Peace Law confessions and are not brought against defendants in absentia)?
- How many intellectual authors have been convicted in the past year?
- How often has motive been identified in each of convictions within the past year?
- How are the findings of the Fiscalía study regarding the backlog being implemented?
- Has the Fiscalía issued internal guidance to prosecutors to accelerate action on those cases with leads and to provisionally close cold cases? What effect has this had?

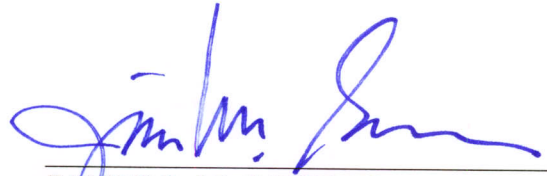
- Has the directive issued last winter requiring the judicial police, the Technical Investigative Body (CTI) and prosecutors investigating criminal cases to determine during the initial phase of an investigation whether a victim was an active or retired union member, or was actively engaged in union formation and organization, had any impact on the investigation/prosecution/conviction rate?

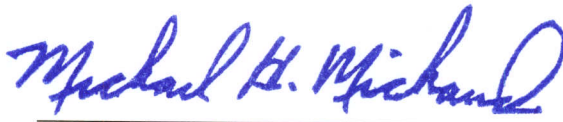
We look forward to receiving the information requested by this letter. We very much appreciate the on-going engagement of the Colombian government with our monitoring efforts. We hope these monitoring efforts will assist in ensuring the effective and meaningful implementation of the Labor Action Plan.

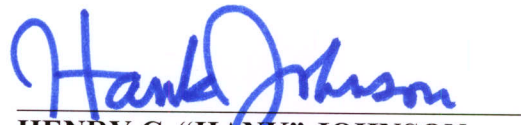
Thank you for your time.


Sincerely,


GEORGE MILLER
Member of Congress


JAMES P. McGOVERN
Member of Congress


MICHAEL H. MICHAUD
Member of Congress


HENRY C. "HANK" JOHNSON
Member of Congress


ROSA L. DeLAURO
Member of Congress

Cc: The Honorable Hilda Solis, U.S. Secretary of Labor
The Honorable Ron Kirk, U.S. Trade Representative
The Honorable Hillary Clinton, U.S. Secretary of State