

CREATING PEACE AND FINDING JUSTICE IN COLOMBIA

HEARING

BEFORE THE

TOM LANTON HUMAN RIGHTS COMMISSION

HOUSE OF REPRESENTATIVES

ONE HUNDRED AND THIRTEENTH CONGRESS

SECOND SESSION

—————
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CREATING PEACE AND FINDING JUSTICE IN COLOMBIA

THURSDAY, OCTOBER 24, 2013

HOUSE OF REPRESENTATIVES,
TOM LANTOS HUMAN RIGHTS COMMISSION,
Washington, D.C.

The commission met, pursuant to call, at 9:30 a.m., in Room HVC-210, Capitol Visitor Center, Hon. James P. McGovern [co-chairman of the commission] presiding.

Mr. McGOVERN. I think we are going to begin. I understand that there were some long lines to try to get into the Capitol here today, so I think there will be others that will be coming in. But I want to wish everybody good morning. I want to welcome you.

And I want to apologize for having to reschedule this hearing once because of something called a government shutdown that kind of messed everything up. And today is the day that our colleague, our beloved colleague, Bill Young from Florida, is having a funeral mass, so they gave away votes today and a number of my colleagues are in Florida to pay their tributes to Congressman Young. But we thought it was important not to reschedule it again. This is an important issue, and we wanted to be able to get some things on the record.

I also want to ask unanimous consent to insert into the record a statement that was provided to us by the Colombian Embassy. We are grateful for that, and that will be made public.

[The information follows:]

**Statement for the Record from the Government of Colombia
Tom Lantos Human Rights Commission United States Congress
Hearing on “Creating Peace and Finding Justice in Colombia”
October 24, 2013**

The Embassy of Colombia to the United States of America presents its compliments to Co-Chairmen James McGovern and Frank Wolf and members of the Tom Lantos Human Rights Commission. We thank you for inviting the government of the Republic of Colombia to provide this statement for the record on the hearing on “Creating Peace and Finding Justice in Colombia.” The Colombian government also acknowledges the important work the Commission carries out in the name of the late Congressman Tom Lantos to defend fundamental human rights around the world.

Advancing the protection of human rights and individual liberties of all Colombians is a continuous quest of the government of President Juan Manuel Santos.

Today Colombia is a country with a progressive agenda aimed at ending the deep inequalities and human rights violations that have occurred during past decades of conflict. Human rights and social inclusion are now at the core of the Colombian government's policies, with particular emphasis in afro-Colombians, indigenous, and Roma population. The mission of each top public policy is to protect the population, repair the victims, and reduce inequality.

Institutions have been strengthened and there is a direct dialogue between the State and civil society. For this reason, President Juan Manuel Santos created the National System for Human Rights and International Humanitarian Law (IHL), which coordinates all human right actions at the local and national level.

In addition, between 2010 and 2012, poverty was reduced by five percentage points. More than two million Colombians were lifted out of poverty and another one million out of extreme poverty.

The government is also providing free education through the public school systems for 8.6 million of our children. Colombia is no longer the most unequal country in Latin America; We have improved our GINI coefficient. Every year, nearly 7 million Colombians improve their vocational skills through our National Training Service –SENA.

Three public policies, in particular, are worth highlighting:

1. Advances in security

Over the past decade, the government of Colombia has focused on weakening and defeating illegal armed groups responsible for most of the violence in Colombia. Much has been accomplished to this date; since President Santos took office in August 2010, the FARC, ELN and the criminal gangs (BACRIM) have been significantly weakened, reducing not only their ability to cause harm but also their territorial presence and influence.

Between January and August 2013, there was not a single terrorist attack either by the FARC or ELN in 1,004 municipalities of Colombia – equivalent to 91 percent of all municipalities in the country. These criminal organizations are increasingly isolated and every day pose less of a threat to the well-being of Colombians. At the same time, the government's tough stance against BACRIMs has also reduced their territorial presence to only 14 percent of Colombian municipalities. These efforts have resulted in a significant reduction of homicides (45 percent) and kidnappings (95 percent) over the last decade.

For citizens who are at an extraordinary security risk because of their activities, the government, through the National Protection Unit (NPU), continues to implement special security measures. As of October 17, 2013, more than 8,000 persons had special security measures in place and the NPU continues to conduct security risk assessments in different parts of the country to ensure that anyone in need of special protection receives it.

2. Victims reparation and land restitution

President Santos' Administration understands that it is not enough to protect the population from threats to their security, it is also imperative to restore the lives of victims of the conflict. With that purpose, in June 2011, President Santos signed and implemented the Victims and Land Restitution Law adopted by Congress, a landmark piece of legislation that recognizes the suffering of victims of violence and provides reparations to facilitate reconciliation.

As of September 2013, the government had individually compensated more than 318,000 victims. As a result, victims are able to invest their compensation in technical and higher education, productive projects, improvement of their homes or acquisition of rural land.

A rehabilitation program has been implemented in 23 cities, providing assistance to more than 19,000 individuals. Over 16,000 families received houses in rural and urban areas.

In addition, the government has launched 207 collective reparations processes to restore social, cultural and economic practices disrupted by the armed conflict. Thanks to this effort, victims of forced displacement have been

able to return to their places of origin. For example, 18 families and 78 individuals from the Embera Katios indigenous community returned to their homes in Resguardo La Puria (Chocó); 70 indigenous families from the Wayúu community in Bahía Porte (Guajira) returned to their lands; and in December 2012, the government also supported the return of 532 indigenous people from Embera Chami community in Mistrató and Pueblo Rico (Risaralda).

As of September 17, 2013, 700 cases of land restitution have been resolved by restitution judges. Of those, 66 percent of restitution beneficiaries returned to live or work on their properties, 24 percent are waiting to go back while only 10 percent have not returned.

Two weeks ago, President Santos attended an event on reparation and land restitution in San Carlos (Antioquia). During his visit, a total 1,858 victims of displacement received compensation, 320 families returned to their lands and began a reparation process that includes psychosocial care, higher education, productive projects, and improvement of their homes or acquisition of rural land. San Carlos is a model of reparation and restitution for victims of the conflict and is just one example of what is occurring in many places throughout Colombia.

Clearly, enormous challenges remain in the implementation of law, now only in its second year, but our nation is on the right path.

3. Negotiations to end the conflict

Over the past year, the government of Colombia and representatives of the FARC guerrilla group have been conducting serious negotiations aimed at ending the conflict.

As President Santos said before the United Nations General Assembly this September: “My generation has not seen one single day of peace, and my dream is for my children and the children of all Colombians to have the chance to see it. We are tired of being afraid, we are tired of violence, we are tired of a conflict that confronts the children of a same nation and delays our development ... Our commitment goes beyond serving the victims of the past; our commitment is eliminating the possibility of having new victims as a result of this conflict.”

Though a final agreement has not yet been reached, President Santos has said he will persevere in the negotiations as long there is a real opportunity for peace.

Conclusion

In sum, with these measures, Colombia is decisively moving forward on the path to lasting peace and prosperity, with a strong democracy, firmly supported by a commitment to human rights, social inclusion, justice and security for all.

Mr. McGOVERN. And I again thank you for attending this important hearing on "Pathways to Creating Peace and Justice in Colombia."

I want to thank Katya Migacheva and the staff of the Tom Lantos Human Rights Commission for organizing this hearing. I also want to thank our witnesses, some of whom have traveled from Colombia to be with us here this morning, for testifying and for everything they do to promote and protect human rights in Colombia. Each of you in different capacities has worked to improve a very difficult state of affairs in Colombia and possess valuable insights into the urgent issues of today.

Over the past 12 years, I have traveled eight times to Colombia. Most recently, Congressman George Miller and I spent a week in Colombia at the end of August reviewing the status of labor rights and key human rights issues as part of a delegation sponsored by the Washington Office on Latin America.

Because of my long involvement with Colombia, I have come to love and admire its people, whose courage and compassion can only inspire hope in Colombia's future. Every time I go to Colombia, I return excited by Colombia's incredible potential for greatness and change and deeply disturbed by the continuing violence and hardship that characterize daily life for too many Colombians, especially those who live in rural Colombia or marginalized urban settings or who advocate for human rights and social justice.

We all know the statistics because Colombians themselves have documented their reality so well. A half-century of conflict has claimed more than 220,000 lives, and even while the country struggles to negotiate an end to the war, the number of victims continues to climb. Human rights activists in Colombia experience grave danger from a variety of sources: rebels, paramilitaries, powerful vested interests, and even some state powers. People trying to return to their land under President Santos' landmark Victims and Land Restitution Law face threats, abuse, violence, and even death. And against the backdrop of ongoing peace negotiations, Colombia struggles to create a system of transitional justice that would allow the war to end and help heal society's deep wounds. It seems to me that we have plenty to talk about today.

Under the Santos government, we have seen Colombia unveil several initiatives which, if fully and faithfully implemented, could address some of its most difficult problems. First is President Santos' historic Victims and Land Restitution Law, signed in 2011. Another is the U.S.-Colombia Labor Action Plan, signed by Presidents Obama and Santos in April 2011, which was needed for the successful passage of the U.S.-Colombia Free Trade Agreement.

In addition, the Santos administration sponsored and the Colombian Congress approved two major but problematic laws that affect how Colombia will address justice and human rights now and in the future, namely the Framework for Peace and the changes to the jurisdiction of military justice, known as the fuero militar. Last night, the Colombian Constitutional Court struck down this law on procedural grounds, and we will have to watch

over the coming days what path the government chooses to follow regarding this controversial matter.

And, finally, this leads me to one of the most important and courageous initiatives under way in Colombia, the ongoing negotiations between the government and the FARC to end 50 years of conflict and secure a just and lasting peace.

Each of these initiatives seeks to address historic wrongs that have resulted in violence, major human rights crimes, and humanitarian crises. Each faces daunting challenges, and each raises new questions about how Colombia will address peace, justice, respect for human rights, reparations for victims of violence, development, equity, and reconciliation.

Many promises have been made or implied, but the proof is in how these initiatives move forward and how they are implemented and whether they change for the better the reality on the ground, especially for those who have been the victims of violence, historic prejudice, and discrimination.

Having just returned from a fact-finding trip looking at labor rights, I can say with some confidence that there is a great distance between the promises made under the Labor Action Plan, the rhetoric employed by both the United States and Colombian Governments, and the difficult and often violent reality that daily confronts so many Colombian workers.

The same can be said for land rights advocates and victims' rights advocates, who face increased threats and violence as the Victims and Land Restitution Law is applied over the next decade. And the same is true for Colombia's most vulnerable populations, in particular its diverse indigenous peoples and Afro-Colombian communities.

I would like to announce that, last night, the Government of Colombia and the thousands of indigenous peoples who have been protesting over the past week also reached a historic agreement. I want to express my appreciation to the indigenous leaders and the Minister of Interior for reaching this agreement. I especially want to mention the important roles played by the Colombian Human Rights Ombudsman and the U.N. High Commissioner for Human Rights representative in Colombia for their role in helping reduce tensions and mediate and facilitate these negotiations that have resulted in these accords.

For those who have been following this situation, it is my understanding that the 7 law enforcement officers held by the Minga and the 34 indigenous protesters who were held by the police have all been released.

I have never met a Colombian who doesn't long for peace. But peace, let alone a just and lasting peace, is never easy. Reconciliation is not easy. And its success will rely on the very individuals and communities that have been most victimized by the war and violence. Quite frankly, war and violence are easy. Ending them, with the FARC and ultimately with the ELN, are essential to Colombia's prosperity and development.

But development, prosperity, and, yes, peace will remain elusive as long as the neo-paramilitaries, criminal networks, and vested local and regional interests that they benefit continue to flourish and exert de facto control over large areas of Colombia through violence and the threat of violence.

I believe that one day we will see a more peaceful, socially just, strong Colombia. But I caution that now is not the time for half-measures, for symbolic laws, and unfulfilled promises. Now is the time to come together, to think creatively and think out of the box, and to act affirmatively so that that day arrives sooner rather than later.

I would now like to turn to our first witness. And, again, as I said, I want to submit for the record any other written testimonies that have been provided by our witnesses, and I will submit the statement by the Colombian Government on the human rights challenges facing the country.

I will also ask for unanimous consent to submit a letter from the U.S. religious leaders in support of the peace process; a statement from Colombian Congressman Wilson Arias Castillo; and a statement by Dr. Gabe Twose, policy director of the Society for the Psychological Study of Social Issues.

[The information follows:]

**Prepared Statement of Wilson Arias Castillo
Statement by Representative Wilson Arias Castillo of the Colombian Chamber of Representatives of the
Colombian Congress to the Tom Lantos Human Rights Commission of the United States Congress**

The first agenda item of the peace negotiations between the Colombian Government and the Revolutionary Armed Forces of Colombia - FARC EP is rural development and access to land. On this point, their partial agreement has been publicly disclosed in an official statement and includes investments in infrastructure, health, education, housing, a special agrarian jurisdiction, social security, legalization of property, the promotion of Peasant Reserve Zones, and the creation of a Land Bank for the free distribution of land.

Meanwhile, Colombia has been living through a rapid process of denationalization and land concentration, particularly in the Altillanura, an eastern region of the country that has been called the "last great agricultural frontier." We have denounced this situation from our vantage point in the Colombian Congress because it worsens land concentration, a persistent historical problem and a key source of armed conflict.

Important domestic and foreign companies have purchased large tracts of land for agroindustrial projects or for speculation. Key among them are multinationals like Cargill, Monica Semillas, and Poligrow, and local entities like Riopaila Castilla, Manuelita, and Luis Carlos Sarmiento, owner of the AVAL group.

In order to do this, they violated Colombian law, particularly the land reform Law 160 of 1994, which states that public lands (vacant or *baldíos*) must be allocated to poor peasants and can not be subsequently accumulated in areas exceeding those initially delivered to the peasants. The Riopaila and Cargill companies had the assistance of the law firm Brigard&Urrutia to circumvent the legal restrictions on land accumulation, at the time when the firm was led by Carlos Urrutia Valenzuela, Colombian Ambassador to the United States. Because of this scandal, he had to resign from his post in July, but inexplicably, still continues to lead the Colombian Embassy in Washington, D.C.

This land grabbing has advanced with the consent of the Colombian State, mainly from the Santos and Uribe governments, which have invited large agrobusiness entrepreneurs to invest in the area and have tried repeatedly to change the existing legislation to accommodate it to those interests. There has also been the persecution and forced

exit of government officials involved in these issues, simply because they have attempted to fulfill their obligation to ensure the full observance and implementation of the agrarian reform law.

In the same vein, we have denounced the so-called Law of Victims and Land Restitution, promoted by President Juan Manuel Santos, as a calculated decision designed to stimulate the land market, according to the World Bank, so that the land falls into the hands of big corporations, which the Government considers to be the most efficient actors. We do not believe that there is an attempt to repair the damage caused to the victims of Colombia's long conflict and base this on official estimates prior to the implementation of the law, according to which only 10.4% of the victims were expected to return to their land; on the emerging land restitution process which barely approaches 200 sentences after nearly three years of operation; and on the serious allegations about the safety of victims and restitution leaders, presented for example in the Human Rights Watch report [The Risk of Returning Home](#).

Clearly, there is a contradiction between agreeing in the Peace Process to reform Colombian rural policy and creating a Land Bank, while on the other hand promoting agribusiness processes, which in spite of existing law, continue to concentrate large tracts of land while receiving state subsidies, which should instead be directed to promote the rural peasant economy and democratize the Colombian countryside.

Prepared Statement of Gabriel Twose

A psychological perspective on truth commissions: What do we know?

Gabriel Twose, Ph.D.

Policy Director

Society for the Psychological Study of Social Issues

Truth commissions, while often helpful, are not inherently individually or socially beneficial. If not carefully designed and implemented, they can harm, rather than help, victims and societies at large.

Truth vs. Justice

Post-conflict settings are inevitably politically unstable, and truth commissions must straddle what some see as a dichotomy between truth and justice. There are three major camps in this debate (Wiebelhaus-Brahm, 2010). The first group sees truth commissions' investigation of the past as harmful by nature, ensuring resentment from all sides, increasing the likelihood of traumatization and extra-judicial retribution (e.g., Snyder & Vinjamuri, 2003). The second views truth commissions as a viable solution, but only in the case that trials are not feasible – they are a passable second best option (e.g., Albon, 1995). The third advocates truth commissions, viewing them as a useful alternative to prosecutions, particularly in deeply divided societies (e.g., Minow, 1998).

The more cynical view truth commissions as trading justice for truth. Unless truth commissions lay the groundwork for future trials, it is argued that they may actually hinder criminal justice (justice that would lead to long-term peace and stability). Commissions can provide perpetrators an opportunity to justify their crimes, and can even provide a smokescreen for continuing them, avoiding serious accountability. They may be thought of as merely a “popular way for newly minted leaders to show their bona fides and curry favour with the international community” (Tepperman, 2002, p. 128). Truth commissions may also harm victims and society at large: When they uncover instances and patterns of violence with no serious accountability, a commission may increase resentment among those who testify and those who are exposed to testimony, increasing the likelihood of continuing cycles of violence (Snyder & Vinjamuri, 2003).

Truth commission proponents argue that truth-seeking is itself a form of justice; simply through investigation, hearings, and publicity, commissions can advance a form of justice themselves. Moreover, advocates claim that truth commissions do not weaken the prospects of criminal justice, and in many cases, their findings and recommendations aid future criminal sanctions. Particularly in deeply divided societies, a truth commission may not just be a secondary alternative to trials, but a superior solution (Minow, 1998). Trials can be deeply divisive, perpetuating societal schisms. Truth commissions on the other hand, can avoid this divisiveness, while signaling an official recognition of crimes and a refusal to allow their recurrence. They may also help survivors to a greater

degree than trials by providing a supportive forum to tell their stories and recommending reparations packages to help them recover economically (Hayner, 2011)¹.

Advocates claim that the “trade off” between truth and justice is an obsolete dichotomy, and the debate should be about how commissions can most effectively promote accountability (e.g., Esterhuysen, 2000). Truth commissions should not be considered an alternative to criminal justice, particularly for those most responsible for widespread abuses. Rather, they promote immediate stability, while working hand in hand with trials or informing future proceedings if immediate prosecutions are deemed impossible (Olsen, Payne, & Reiter, 2010). Proponents claim that truth commissions may facilitate justice processes while concurrently promoting societal stability and peace (Hayner, 2011).

Mechanisms

Truth commissions employ a number of methods to advance post-conflict healing and reconciliation, each of which is delicate and contextually bound.

Truth

The most basic method truth commissions use to achieve their objectives is the discovery of previously unknown facts. Although some mandates limit the scope of inquiry, generally, truth commissions seek to establish as full a historical record as possible. The large number of testimonies sought in the process of truth commissions (the South African Truth and Reconciliation Commission, for example, took testimony from over 21,000 people) positions them to uncover a detailed account of violence across time and locations. This may be contrasted with courts, which, due to their narrow focus on individual perpetrators and crimes, are less able to investigate historical patterns (Minow, 1998).

In some situations, particularly those in the aftermath of war, the onus may be slightly different. Most earlier truth commissions took place in societies characterized by governmental oppression—there was a great deal of hidden information, of truth to be discovered. “Truth seeking” was a priority in situations such as these. As the model developed, with South Africa’s Truth and Reconciliation Commission (TRC) as the turning point, commissions have utilized increasingly advanced methods of “truth-telling,” publicizing the truth that has been uncovered (Millar, 2010a). “After the [South African] TRC, the idea of a truth commission holding public hearings—especially victim-centered hearings—became the norm” (Freeman, 2006, p. 24). Since South Africa’s TRC, particularly in societies transitioning from civil war, truth commissions aim to bring into the open and publicize what is known but not spoken. Hence, truth commissions have aimed to advance reconciliation through performative truth-telling at public hearings.

Advocates hope that truth-seeking and -telling will help survivors, promoting psychological healing (e.g., Lederach, 1997; Kriesberg, 2004) and justice (Teitel, 2003). Commissioners and statement-takers listen to victim stories, uncover hidden atrocities, may hold public hearings, and almost always publish a report recounting survivor experiences (Hayner, 2011). Accordingly, survivors are given a voice, and their experiences are brought to public attention, with the aim of mainstreaming what has been marginalized, and providing official acknowledgement of abuse (Hamber, 2007).

Both truth-seeking and -telling may also aid bystanders, or broader society (Millar, 2010a). Through fulfillment of the previously denied “right to truth,” or hearing tales of suffering or apology, it is thought that previously antagonistic individuals or groups may be helped to leave their grievances behind (Teitel, 2003). People may generalize from specific stories of apology and forgiveness to their own lives. As such, “truth and reconciliation commissions are advocated for their contribution to social catharsis” (Pupavac, 2004, p. 150). In conjunction with leaving problematic histories behind, truth commissions aim to help societies avoid repeating the past. George Santayana (1905) famously argued that those who cannot remember the past are condemned to repeat it. Accordingly, the society must discover and remember what happened, so that together, they can prevent it from happening again.

¹ Designing a reparations package is another vital task for truth commissions, but will not be discussed in this testimony.

However, several empirical investigations have questioned the universal efficacy of the truth-investigation and –publicity model, showing that re-discovering and publicizing a history of violence does not always advance healing or reconciliation. Rosalind Shaw (2005) argues that, in Sierra Leone, “social forgetting is a cornerstone of established processes of reintegration and healing” (2005, p. 1), and goes on to describe the “frictions” that ensue as models that are assumed to be universal come into contact with, and are altered by, local realities (Shaw, 2005; 2007). Millar (2011), builds on Shaw’s research, investigating the Sierra Leonean acceptance of the country’s truth commission. He concurs with the earlier research, concluding that local cultural dynamics worked against acceptance of the truth-seeking model. In actuality, the pursuit of the country’s history of violence aided neither healing nor justice, and was seen as undermining local concepts of individual agency and secrecy.

Justice

Truth commissions have a complicated relationship to the concept of justice. A truth commission may be linked (implicitly or explicitly) to an expectation that there will be no trials, and hence become a replacement for criminal justice. In cases like these, governments can be accused of trading truth for justice (Guttman & Thompson, 2000). However, this is increasingly rare, and, in the more common cases where there is not a blanket amnesty, truth commissions often contribute to retributive justice. Commissions are not courts and are not able to enforce punishment themselves, but may make recommendations to the judiciary to that end, leading to criminal trials, lustration, or community service. Commissioners can provide prosecutors with the results of their investigation, with the names of suspects, and with recommended punishments. Of course, whether the recommendations are followed depends on political will and the feasibility of government action (Hayner, 2011).

Even without prosecutions, truth commissions may hope to contribute to a different kind of justice. Simply the discovery of truth can be thought of as providing survivors with a form of justice, through offering a full accounting of what had previously been denied, acknowledging their experiences (Landsman, 1996). Perpetrators may be publicly shamed through survivor testimony, and the truth commission may list names in its final report, providing some form of accountability (Greenawalt, 2000). Or a truth commission may emphasize a more holistic kind of restorative justice, stressing community rather than punishment. This entails empowering and restoring the dignity of survivors, managing demands for retribution, and stressing the shared humanity of all members of the society (Villa Vicencio, 2004). In this sense, justice necessitates addressing the damages suffered by individuals and communities as a result of past crimes in order to restore a collective experience of relations (Leebaw, 2003).

As with the skepticism surrounding the universal benefits of truth-seeking, there is some doubt as to the universal desire for the two most commonly promoted types of justice: retributive or restorative. After extensive investigation, Millar (2010a) concludes that neither of these two dominant paradigms was desired by survivors in Sierra Leone, and in fact, the promotion of retributive justice was seen as more provocative than helpful. Rather, a needs-based, distributive approach to justice was prominent, stressing economic, cultural, and social rights. Similarly, a representative sample of Nepalese participants emphasized the need for economic support rather than what they perceived as justice (Robbins, 2011). In post-conflict situations characterized by poverty and deprivation, governments, researchers, and practitioners must make sure they are attuned to local desires.

Publicity

Although not all truth commissions choose publicity as a means to advance reconciliation, many do. This idea was popularized by the South African model, with its clear stress on involving broader society, particularly through the human rights committee hearings. The publicized hearings were broadcast as widely as possible: National newspapers ran about 1.4 articles on the TRC per issue for the course of commission hearings; there was extensive radio coverage; the Commission regularly featured on evening news; and the South African Broadcasting Corporation aired a special report every Sunday which was often in the top-10 favorite programs of the week, unprecedented for a political program (Thiessen, 2008). Krabill (2001) argues that the TRC provided a “moment of common experience that transcend(ed) the daily divergence of lives” (p. 570). It is clear that the TRC aimed to reach the South African populace and was relatively successful in doing so.

While it is clearly important to affect perpetrators and survivors who testify, in order to bring about widespread reconciliation, the truth commission must affect society more broadly. If people can be convinced that the commission has discovered the truth about what happened and delivered some form of justice, then perhaps they will personally feel better. Hence the *perception* of truth and justice is perhaps just as important as the *actual* truth and justice delivered (Crane, 2005), affecting cognitive and emotional reactions to the commission.

Truth commissions may also act as a reconciliatory symbol – hearings become a kind of performance (Payne, 2008) or moral theater (Moosa, 2000). In this fashion, the commission enables its audience to participate in acknowledging, mourning, and sympathizing with victims (Minow, 1998), and perhaps come to some understanding with perpetrators. It is not enough to simply uncover the truth. People must understand *why* the truth is being revealed, and that the commission is striving to reconcile a divided society (Tutu, 2000). Most modern truth commissions are explicitly performative in nature, thought to initiate reconciliation partially through their presentation to an audience (Millar, 2010b). Through staging the performance on a national scale, commissions are able to reach entire nations, thus spreading their message as widely as possible.

Empirical Evidence on the Effects of Truth Commissions

Survivors

The majority of relevant empirical research has been conducted on survivors who testify at truth commissions, attempting to ascertain the effects of revisiting a traumatic history, either at an internal, emotional level, or an interpersonal, relational level. Despite the growing body of literature on truth commissions, most evidence remains anecdotal and conclusions tenuous. There are few systematic studies of the effects of testifying at a truth commission. Based in part on the Freudian notion of catharsis, it is often assumed that revisiting one's past is healing, but based on what we know of truth commission testimony, the experience only seems to help some people, in some contexts, in some ways.

Survivors and witnesses may feel better after giving testimony, resulting from a sense of acknowledgement, support, and relief (Hayner, 2011). In some cases, this can even lead to catharsis and forgiveness, implying that there can be therapeutic value of testifying at truth commission hearings (de la Rey & Owens, 1998). Several well-publicized quotes illustrate this view. For example, an individual who was attacked and blinded by a police officer in South Africa reported of his TRC testimony: "I feel what has been making me sick all the time is the fact that I couldn't tell my story. But now I – it feels like I got my sight back by coming here and telling you this story" (Minow, 1998, p. 67). Krog (2002) quotes a mother who testified on the death of her son:

This thing called reconciliation...if I am understanding it correctly...if it means this perpetrator, this man who has killed Christopher Piet, if it means he becomes human again, this man, so that I, so that all of us, get our humanity back...then I agree, then I support it all (p. 109).

However, a variety of studies show that this is not always the case. Researchers working with focus groups in Johannesburg conclude that while survivors who testified at the TRC benefited from discovering the truth, telling their story, and encountering perpetrators, in the longer term, many experienced "a significant deterioration of...physical and psychological health" (Picker, 2005). Byrne (2008) concurs, finding that although a small number of people found testifying before the TRC a positive experience, many others found it painful and disempowering, characterized by failed expectations and promises. Even for those who experienced initial relief, long-term benefits may be limited. For example, two South African psychologists conclude that there are simply no empirical or other data to suggest that any longer-term healing followed for witnesses, even those who experienced catharsis (Allan & Allan, 2000). A separate investigation found no relationship between speaking at the TRC and current psychiatric status (Kaminer, Stein, Mbanga, & Zungu-Dirwawayi, 2001). One cross-national study shows that participation in truth commission hearings may increase negative emotions and symptoms, although some respondents in both South Africa and Guatemala reported increased empowerment following their participation (Martin-Beristain, Paez, Rimé, & Kanyangara, 2010).

In terms of relationships with perpetrators, a six year project utilized South African TRC testimony and a variety of follow-up focus groups, revealing that survivors and their families rarely mentioned forgiveness and reconciliation unless prompted to do so, and those who did speak about it were not generally willing to forgive perpetrators (Chapman, 2007). Similarly, researchers found no relationship between testifying before the TRC and forgiveness attitudes toward perpetrators (Kaminer, Stein, Mbanga, & Zungu-Dirwawayi, 2001). Investigators found that most of those who testified before East Timor's Commission for Reception, Truth, and Reconciliation had a positive impression, but many participants later displayed intense anger at perpetrators, and several suffered from traumatic mental health problems (Le Touze, Silove, & Zwi, 2005).

Effects of Truth Commissions on Broader Society

Similar to the individual-level results, findings on a societal level are mixed. Several studies have sampled people who did not personally testify, but who live in a country that implemented a truth commission. Martin-

Beristain and colleagues (2010) analyzed surveys from 16 Latin American nations, concluding that a successful truth commission has macrosocial benefits, increasing respect for human rights. James Gibson (2004) utilized a rigorous representative design to assess the effects of the South African TRC's promotion of truth on reconciliation. Although it is difficult to definitively attribute causality, the study found that individual acceptance of the TRC's "truths" about apartheid was connected to both individual level reconciliation and to more conciliatory racial attitudes.

Another representative, cross-sectional South African study also investigated the effects of the TRC (Stein et al., 2007). Researchers explored whether the truth commission primarily healed or re-traumatized those who participated in or were exposed to its proceedings, particularly focusing on distress, anger, and forgiveness. The authors are hesitant to attribute causality, but tentatively assert that while testifying does not seem to have been a helpful experience for survivors who testified, it was more beneficial for the population as a whole. Moderately positive attitudes toward the TRC indicate that the Commission, as intended, provided knowledge and acknowledgement of the past, a potentially valuable outcome that could aid the nation in the longer term.

Non-representative research on the Liberian Truth and Reconciliation Commission finds that while most Liberians agreed with the Commission in principle, those who were exposed to its proceedings saw major problems in its implementation, harming their perceptions of reconciliation. They felt that it failed to discover the full truth of wartime abuses, that the truth that was discovered was not told in the right way, and that the Commission had problems implementing justice. People who were exposed to the Commission (for example, through media coverage) were less likely to be willing to refrain from revenge, perhaps due to testimony reminding people of past wounds. More encouragingly, those Liberians who felt that the Commission had successfully uncovered truth and delivered justice had more positive perceptions of societal reconciliation, and those who accepted the Commission's symbolic reconciliatory purpose were more likely to be willing to refrain from revenge (Twose, 2012).

Cross-societal comparisons

Studies of national truth commissions (as well as other transitional justice mechanisms) have recently been extended to include cross-societal comparisons, utilizing two primary methodologies: (1) A series of case studies or (2) large, cross-national databases. Findings have been mixed and at times contradictory. Some researchers find truth commissions to have a positive impact. Long and Brecke (2003), for example, conducted a primarily qualitative investigation of reconciliation events that include: direct physical proximity between senior representatives of respective factions; a public ceremony accompanied by widespread publicity; and symbolic behavior that indicates that both parties consider the dispute resolved. Results indicate that truth-telling was a crucial starting point for each of the successful peace settlements. When combined with limited justice and a subsequent public call for a new relationship and redefinition of the former opponent's identity, truth-telling was part of each successful reconciliation event.

Lie, Binningsbro, and Gates (2006) investigated the influence of post-conflict justice mechanisms on the durability of societal peace in 200 post-conflict societies, controlling for variables such as type of conflict termination, characteristics of the conflict, GDP per capita, and type of post-conflict regime. They find that truth commissions do appear to reduce the risk of post-conflict peace failure, though not at a statistically significant level. However, when democratic societies were isolated and analyzed alone, the effects of truth commissions on subsequent peace became highly significant. Kim and Sikkink (2010) used a different dataset to investigate whether truth commissions and human rights prosecutions had a deterrence effect in 100 transitional countries, controlling for democracy, type of war, treaty ratification, economic standing, and population size. They concluded that truth commissions statistically significantly increase the likelihood of human rights protection and decrease the likelihood of repression, particularly if implemented in conjunction with trials.

Olsen, Payne, and Reiter (2010) compiled the Transitional Justice Database (<http://sites.google.com/site/transitionaljusticedatabase/>), consisting of over 900 transitional justice mechanisms used from 1970-2007, and analyzed how truth commissions, as well as trials and amnesties, have affected human rights and democracy. Controlling for similar variables as the studies above, they found that a combination of transitional justice mechanisms was most effective in promoting human rights and democracy. Truth commissions alone were actually found to have a harmful effect on human rights protection. However, when implemented alongside trials and amnesties, they aided both human rights and democracy. Hence, the researchers argue for a

balanced approach in fragile societies: initial truth commissions and amnesties to advance stability, followed by later trials to provide accountability.

Snyder and Vinjamuri (2003) conducted a comparative analysis of 32 post-conflict countries. Concurring with previous studies citing the importance of established democracy, they conclude that, unless they occurred in a democratically institutionalized state, truth commissions were irrelevant or even harmful, sometimes enabling the continuation of abuse. Although the researchers do not have statistical analyses to support their claims, they argue that positive effects of truth commissions may be more accurately attributed to the political cover they provide for well-designed amnesties, which are the real drivers of peace.

Recommendations

It is clear that we do not yet know enough to make firm claims about the benefits or harms of truth commissions, particularly across different social and cultural contexts. Nevertheless, we know enough to make a number of recommendations:

1. A nation considering a truth commission should **investigate local desires** for such a body through public opinion surveys. Does the local population actually want to look backwards, potentially re-opening past wounds? Some societies, such as post-war Mozambique or Cambodia, may clearly indicate that they wish to simply let go of the past until a later date. This may be because blame is too difficult to attribute, atrocities too horrible to face, wounds too raw to open, or the political situation too volatile to risk. In other situations though, as in Mozambique's neighbor South Africa, a populace may demand an investigation into the past. Colombia should ascertain whether its citizens wish to be publicly exposed to details about violence committed by governmental forces, the Revolutionary Armed Forces of Columbia, and other militant groups.
2. A truth commission should **be clear from day one about its aims**, particularly regarding truth vs. justice. How will it balance the "truth vs. justice" debate? Does the commission aim to promote reconciliation between conflicting parties, or does it aim to inform criminal trials? What exactly will be its relationship to the nation's criminal justice system? This can be reflected in many aspects of the commission's work, including its commissioners. For example, the South African Commission's chairman Desmond Tutu (a religious figure who preached reconciliation) had a different impact from the Liberian Commission's chairman Jerome Verdier (a lawyer who primarily advocated retributive justice). Without this initial clarity as to official aims, the public may be confused as the Commission progresses, denying a groundswell of support. The Colombian government should write a mandate that clearly and concretely establishes the truth commission's goals. (Please refer to International Center for Transitional Justice guidelines for more details).
3. Truth-telling is not always a healing, reconciliatory endeavor; hearing about past atrocities can do more harm than good. Survivors often need perpetrators to admit and express remorse for their crimes. If, instead, they lie or boast about their misdeeds, this can have a negative effect on survivors and the nation, harming individual healing, as well as interpersonal and intergroup reconciliation. Hence, a Colombian truth commission, if established, should **endeavor to ensure that truth-telling is carried out in a conciliatory rather than a divisive manner**, ideally encompassing regret and apology. If this does not seem possible, closed-door hearings should be considered, denying perpetrators from all sides of the conflict the opportunity to grandstand, and minimizing the emotional impact of hearing about their crimes. A public report, summarizing individual crimes and patterns of abuse, should still be issued, as many survivors may wish to learn about past abuses, without the added emotional burden of hearing untruthful or grandiose public testimony.
4. **If seeking to advance widespread reconciliation, a truth commission must aim to affect society at large**, cooperating with media to broadcast findings and select hearings. Only a small proportion of survivors actually participate in the truth seeking process. Many live in geographically remote areas, are unaware of the process, do not feel their story is interesting, or are excluded by the commission's mandate (Daly, 2008). Hence, in addition to those survivors and perpetrators who actually testify, truth commissions must reach out to those who do not. Additionally, as well as those who directly suffer violations, a truth commission must encompass indirect victims, who typically are not able to testify, but

who may have suffered socioeconomic deprivation, missed educational opportunities, family breakdown, trauma, or humiliation (United Nations, 1985). A commission can play a symbolic role, modeling and promoting the reconciliation it advocates; it can broadcast survivor stories, granting national acknowledgement of suffering; and it can publicize perpetrator testimony (if framed correctly), encouraging a national conversation about abuses. Hence, the Colombian truth commission, if established, should work with national media to ensure that the Colombian public is informed about the commission, its mandate, and its proceedings.

5. **Implementing a truth commission should not be considered the end of the story.** Revisiting past violence and providing survivors a platform to speak is not enough. Research shows that truth commissions may maximize their impact if implemented alongside other transitional justice mechanisms. Hence, the Commission should issue realistic, practical recommendations. The enforceability of the Commission's recommendations should be established from its inception, rather than waiting until the recommendations have been made. Recommendations should include **reparations and mental health care** for survivors and/or communities, and **later trials for the worst offenders** (if politically and structurally feasible). The Colombian government should recognize the benefits and limitations of a truth commission alone, and should plan for a longer term response to decades of violent conflict.

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Mr. McGOVERN. I would like to note that Dr. Twose received his Ph.D. at Clark University in Worcester, Massachusetts, where I am from. And for those of you who are interested in a little bit of trivial pursuit, that is the only college or university in the United States that Sigmund Freud lectured at. So I don't know whether he had a bad experience and didn't want to come back and lecture anymore, but that is the only place he lectured.

So it is now my pleasure to welcome our first witness, Mr. William Duncan, the Director of Andean Affairs at the Bureau of Western Hemisphere at the United States State Department.

Welcome.

[The statement of Mr. McGovern follows:]

Prepared Statement of Rep. James P. McGovern

Good morning, everyone. Welcome. Thank you for attending this important hearing on pathways to creating peace and justice in Colombia. I want to thank Katya Migacheva and the staff of the Tom Lantos Human Rights Commission for organizing this hearing. I also want to thank our witnesses – some of who have traveled from Colombia to be here with us this morning – for testifying and for everything they do to promote and protect human rights in Colombia. Each of you, in different capacities, has worked to improve a very difficult state of affairs in Colombia, and possess valuable insights into the urgent issues of today.

Over the past 12 years, I have traveled 8 times to Colombia. Most recently, Congressman George Miller and I spent a week in Colombia at the end of August reviewing the status of labor rights and key human rights issues as part of a delegation sponsored by the Washington Office on Latin America. Because of my long involvement with Colombia, I have come to love and admire its people, whose courage and compassion can only inspire hope in Colombia's future. Every time I go to Colombia, I return excited by Colombia's incredible potential for greatness and change, and deeply disturbed by the continuing violence and hardship that characterize daily life for too many Colombians, especially those who live in rural Colombia or marginalized urban settings, or who advocate for human rights and social justice.

We all know the statistics because Colombians themselves have documented their reality so well. A half-century of conflict has claimed more than 220,000 lives, and even while the country struggles to negotiate an end to the war, the number of victims continues to climb. Human rights activists in Colombia experience grave danger from a variety of sources: rebels, paramilitaries, powerful vested interests, and even state powers. People trying to return to their land under President Santos' landmark Victims and Land Restitution Law face threats, abuse, violence and even death. And, against the backdrop of on-going peace negotiations, Colombia struggles to create a system of transitional justice that would allow the war to end and help heal society's deep wounds. It seems to me that we have plenty to talk about today.

Under the Santos government, we have seen Colombia unveil several initiatives, which, if fully and faithfully implemented, could address some of its most difficult problems. First is President Santos' historic Victims and Land Restitution Law, signed in 2011. Another is the U.S.-Colombia Labor Action Plan, signed by Presidents Obama and Santos in April 2011, which was needed for the successful passage of the U.S.-Colombia Free Trade Agreement. In addition, the Santos Administration sponsored and the Colombian Congress approved two major but problematic laws that affect how Colombia will address justice and human rights, now and in the future, namely Framework for Peace, and the changes to the jurisdiction of military justice, known as the *fuero militar*. Last night, the Colombian Constitutional Court struck down this law on procedural grounds, and we will have to watch over the coming days what path the government chooses to follow regarding this controversial matter. And finally, this leads me to one of the most important and courageous initiatives underway in Colombia: the on-going negotiations between the Government and the FARC to end 50 years of conflict and secure a just and lasting peace.

Each of these initiatives seeks to address historic wrongs that have resulted in violence, major human rights crimes and humanitarian crises. Each faces daunting challenges. And each raises new questions about how Colombia will address peace, justice, respect for human rights, reparations for victims of violence, development, equity, and reconciliation. Many promises have been made or implied; but the proof is in how these initiatives move forward, how they are implemented, and whether they change for the better the reality on the ground, especially for those who have been the victims of violence, historic prejudice and discrimination. Having just returned from a fact-finding trip looking at labor rights, I can say with some confidence that there is a great distance between the promises made under the Labor Action Plan, the rhetoric employed by both the U.S. and Colombian governments, and the difficult and often violent reality that daily confronts so many Colombian workers.

The same can be said for land rights advocates and victims' rights leaders, who face increased threats and violence as the Victims and Land Restitution Law is applied over the next decade. And the same is true for Colombia's most vulnerable populations, in particular its diverse indigenous peoples and Afro-Colombian communities.

I would also like to announce that last night the Government of Colombia and the thousands of indigenous peoples who have been protesting over the past week also reached a historic agreement. I want to express my appreciation to the indigenous leaders and the Minister of Interior for reaching this agreement. I especially want to mention the important roles played by the Colombian Human Rights Ombudsman and the U.N. High Commissioner for Human Rights Representative in Colombia for their role in helping reduce tensions and mediate and facilitate these negotiations that resulted in these accords. For those who have been following this situation, it's my understanding that the seven law enforcement officers held by the "Minga" and the 34 indigenous protesters who were held by the police have all been released.

I've never met a Colombian who doesn't long for peace. But peace – let alone a just and lasting peace – is never easy. Reconciliation is not easy. And its success will rely on the very individuals and communities that have been most victimized by the war and its violence. Quite frankly, war and violence are easy. Ending them – with the FARC and ultimately with the ELN – are essential to Colombia's prosperity and development. But development, prosperity and yes, peace, will remain elusive as long as the neo-paramilitaries, criminal networks and the vested local and regional interests they benefit continue to flourish and exert *de facto* control over large areas of Colombia through violence and the threat of violence.

I believe that one day we will see a more peaceful, socially just, strong Colombia. But I caution that now is not the time for half-measures, for symbolic laws, and unfulfilled promises. Now is the time to come together, to think creatively and act affirmatively – so that day arrives sooner rather than later.

I would now like to turn to our witnesses for this morning's hearing. Along with their oral testimony, I would like to submit into the Record any written testimony provided by our witnesses. I would also like to submit the following statements for the Record:

- A statement by the Colombian government on the human rights challenges facing their country;
- A letter from U.S. religious leaders in support of the peace process;
- A statement from Colombian Congressman Wilson Arias Castillo; and
- A statement by Dr. Gabe Twose, Policy Director of the Society for the Psychological Study of Social Issues. I would like to note that Dr. Twose received his Ph.D. at Clark University in Worcester, Massachusetts.

It is now my pleasure to welcome our first witness, Mr. William Duncan, the Director of Andean Affairs at the Bureau of Western Hemisphere, at the U.S. State Department.

[The statement of Mr. Duncan follows:]

STATEMENT OF WILLIAM DUNCAN, DIRECTOR OF ANDEAN AFFAIRS, BUREAU OF WESTERN HEMISPHERE AFFAIRS, U.S. DEPARTMENT OF STATE

Mr. DUNCAN. Good morning, Mr. Chairman. Thank you for the opportunity to testify before this distinguished commission today.

In the 13 years since the United States began supporting Plan Colombia and subsequent initiatives, Colombia has indeed made significant advances on security, the fight against illicit drugs, and protecting human rights. Between 2002 and 2012, Colombia saw an 89 percent reduction in kidnappings, an 84 percent reduction in political assassinations, a 48 percent reduction in homicides. And just since 2007, Colombia saw a 53 percent drop in coca cultivation, now the lowest since 1996.

In the past year alone, the Colombian Government officially launched a peace process with the Revolutionary Armed Forces of Colombia, supported efforts to vigorously combat corruption, and began issuing land restitution decisions under the new Victims Law.

Additionally, since taking office, President Santos created the National Development Plan that for the first time contains a chapter on human rights, dismantled the abusive Administrative Department of Security, or DAS, and consolidated multiple protection programs into a National Protection Unit.

These successes are significant, and yet Colombia has plenty of work left to do. As Vice President Angelino Garzon stated in Geneva at the United Nations Universal Periodic Review of Colombia in April, Colombia recognizes that it still has to overcome tremendous challenges, in particular those that relate to the fight against members of illegal armed groups and guerrillas, criminal gangs, drug traffickers, and common criminals.

At the Universal Periodic Review, the United States and the world shared concerns with Colombia regarding its human rights situation. Colombia accepted the vast majority of the recommendations made there. The United States continues to support Colombia as it tackles these human rights challenges.

Among the challenges facing Colombia are threats to and violence against labor activists and unionists and obstacles to effectively protecting internationally recognized labor rights. With this in mind, the United States and Colombia jointly agreed to the action plan related to labor rights in April of 2012. The United States, via the Departments of State, Justice, and Labor, has provided assistance to improve the capabilities of justice sector personnel and promote compliance with international labor standards.

Since 2011, Colombia has enhanced enforcement of labor laws and regulations, the Ministry of Labor has increased the number of inspectors, assessed major fines, and begun implementing a new law to increase formalization of workers. Though even one murder is one too many, we are encouraged that homicides of trade unionists have declined from 193 in 2001 to 20 in 2012, according to statistics from the National Union School.

While these are important developments, other results on labor issues are mixed. None of the assessed major fines has been collected. It is our understanding that there have been no successful prosecutions or convictions in trade unionist homicide cases in the past 2 years. The number of threats to union members and leaders has increased. And the Ministry of Labor inspectors working to more stringently apply labor laws have also been threatened. None of the perpetrators of those threats has been brought to justice.

We engage closely with the government and civil society on these issues, and we have found Minister of Labor Pardo to be an open and responsive counterpart. We will continue to work with all stakeholders to help ensure that Colombia fully upholds its clear commitment to protect internationally recognized labor rights,

prevent violence against labor leaders, and prosecute the perpetrators of such violence.

In addition to addressing ongoing concerns, we are supporting Colombia's efforts to prepare for a better future. As Secretary Kerry said during his August visit, President Santos has undertaken a very courageous and very necessary and very imaginative effort to seek a political solution to one of the world's longest conflicts. The United States welcomes and supports a peace that promotes respect for rule of law and human rights.

One key element to building peace is addressing the legacy of decades of conflict. President Santos' Victims Law is an ambitious effort in that regard. As you might expect, with so many people affected, implementation has been a tremendous challenge. According to the Victims Unit Web site, the government has registered 5.8 million victims. We recognize the logistical, administrative, and security challenges involved in assessing and rendering judgment in these cases, but delays have been substantial. According to a July report by the Historical Memory Group, land restitution judges have granted restitution in only 1 percent of the 31,111 claims received under the Victims Law.

To support Colombia's efforts in implementation of the Victims Law, USAID has a \$50 million project to provide technical assistance. This funding covers the first 3 years of the implementation of the Victims Law to help ensure that effective institutions, policies, and systems at all levels -- national, departmental, and municipal -- are established and operational.

In addition to helping the victims, concluding a peace agreement is another daunting challenge with human rights implications. The government's Legal Framework for Peace law, recently found constitutional by the Constitutional Court, is the strategy to allow Colombians the ability to both secure justice for human rights violators and reach a peace agreement that can end the killing. There are tensions involved in this effort, but it is not a zero-sum game.

These are all challenges Colombia will need to work through, but we stand by Colombia as a friend, and we, too, are optimistic. Vice President Biden said to the people of Colombia during his May visit, "You have reclaimed your nation from civil war. You have taken this country further and faster than many dared hope." The United States supports Colombia's efforts to ensure accountability and to protect those who are working to make Colombia a more peaceful, democratic, and secure state.

Thank you. And I would be happy to try and answer any questions you may have.

Mr. McGOVERN. Thank you very much.

Mr. McGOVERN. And we are joined by Congresswoman Suzanne Bonamici of Oregon, and I am happy that she is here with us today.

Let me begin with just a few questions, first of all, about the peace process. In general, what is your assessment of the prospects for these peace talks? And what does the United States Government believe it can do to improve the prospects of peace in Colombia? And if a peace deal is signed with the leftist rebels, do you anticipate that U.S. assistance to Colombia might change? And if so, how?

Mr. DUNCAN. Thank you for the question, Mr. Chairman.

As we have said on many occasions, we welcome and support the efforts by President Santos and the Colombian people to find the peace and security that I think we all agree they deserve. We also hope the FARC will take this opportunity to put an end to its acts of terrorism and narcotics trafficking.

However, as you know, we are not parties to these negotiations, and, therefore, we have tried not to take public positions on the various negotiating points which the parties are discussing.

With respect to your question regarding preparations to support the implementation of an eventual peace accord, Secretary Kerry said when he was in Colombia in August that it is not for the United States to make that sort of decision at this moment while the negotiations are under way, that that would be an insult to the sovereignty of the Colombian Government and inappropriate in the context of this process.

However, we have also made it clear that, once peace is achieved, the United States will be prepared to enter into those sorts of conversations and to try to do everything in our power to support the implementations of those accords, whatever form they may take.

Mr. McGOVERN. And I don't want to challenge Secretary Kerry, who is from my home State, who I admire and think is brilliant on everything. But the reason why I asked the question is because it seems to me that, I mean, there are all kinds of issues that are going to have to be addressed if there is a peace accord: one, making sure that the FARC and then ultimately ELN comply and that there are, you know, verification procedures put in place. But the one, kind of, concern that a lot of us have who have kind of observed Colombia over the years is whether or not the military, as an institution, will actually comply.

And given the fact that the United States has been such a huge supporter of the Colombian military, it would seem to me that -- and this would not be interfering with the negotiations, but it would seem to me that it would be important to signal that, you know, if there is a peace agreement, that we are prepared to, kind of, change the kind of aid that we are providing, one that transitions, you know, more military into the civilian life and, again, less, kind of, the traditional military aid that we would be providing to help them fight a war.

And I think that there are some people in the military, not everybody, but some that are going to need a little bit more convincing than others. And I think that we are in a unique situation to be able to have some significant influence on some of those who might believe that they don't have to comply. So that is why I kind of asked the question.

And I hope that, you know, we are communicating to the Colombian military that if, in fact, there is a peace agreement negotiated between the government and the FARC and the ELN, that we intend to support that agreement and that we will, you know, surely not be providing assistance to people who do not comply with that agreement.

Mr. DUNCAN. Yes, Mr. Chairman, I agree with you. And I think because we have made it clear that we support the process and that we will stand ready to support the implementation, I hope that message is being received.

Certainly, human rights for a very long time has been a central part of our conversations with the Colombian military. And we have been deeply involved in trying to assist them in improving their ability, their respect for human rights.

And I would also note that, in recent years, in terms of our assistance requests and in terms of what Congress has approved, you have begun to see a shift from the security and counter-narcotics assistance moving more towards the consolidation assistance, alternative development, and those sorts of things. To some extent, that process has already begun, and I would anticipate that, with the coming of the peace accords, we would see that begin to accelerate.

Mr. McGOVERN. As I mentioned in my opening statement, I visited Colombia with Congressman Miller, looking pretty closely at the labor rights situation. And we, you know, were trying to get an assessment for whether the Labor Action Plan that was signed by both the United States and Colombian Presidents, whether, in fact, it was being implemented.

And, you know, I just have to tell you in all candor that I think both Congressman Miller and I, while very heartened by the intent of the Labor Action Plan and by the words of all of the Colombian Government officials that we met with who said that they want to see this implemented properly, I think we came away pretty shocked, quite frankly, that the situation was quite dire, you know, that labor rights activists and organizers continue to be under threat, you know, that workers' rights continue to be disrespected, that some of the employers find ways to go around some of the stated intent of the Colombian Government, and that for a lot of workers things have actually deteriorated.

And does the United States carry any responsibility for the successful implementation of this plan? And I ask that question because I think there are -- I didn't support the Colombia Free Trade Agreement, but I know a lot of people that did so because of that Labor Action Plan, because they thought this was going to be something that, you know, was going to make a real difference.

And, you know, Congressman Miller and I are working on trying to put some of our

thoughts in writing, in terms of a report, which we will provide to you, but the situation is really troubling. And I would just like to get your assessment on what you think.

Mr. DUNCAN. Thank you, Mr. Chairman. And we would certainly look forward to seeing you and Congressman Miller's report.

As I indicated in my statement, I do think it is fair to recognize that, since the signing of the Labor Action Plan, there have been important steps made: the creation of the new Ministry of Labor, the appointment of a minister who we think is genuinely committed to doing the right thing on these issues, the increase in the number of inspectors, the significant drop over time in the number of trade unionists who have been killed. Again, one is one too many, but it has been a downward trend over the last several years.

Having said that, we would certainly agree with you that there are significant challenges that remain. There needs to be more done in the area of actually pursuing these cases against people who have killed labor activists, people who are continuing to threaten labor activists.

So there is a prosecutorial job to be done there. There continue to be concerns -- and I know you saw this during your visit -- with these various mechanisms for hiring that, in some cases, lend themselves to employers evading internationally recognized labor rights. Colombia has done some work to close up the loopholes with respect to the cooperatives. Now there are concerns about these so-called limited-liability or SAS corporations.

So I think I would say that the Labor Action Plan was an important inflection point in terms of our bilateral cooperation about the importance of respecting labor rights. Colombia has done a good job of implementing the milestones in that Labor Action Plan.

However, protecting labor rights is not something you do once and then you are done. It is a continuing process. It is something you have to keep paying attention to over time. And to answer one of your specific questions, we certainly think we have a continuing responsibility going forward to engage them, and we will do that.

Mr. McGOVERN. Yeah. And let me just again say, I mean, I want to recognize, kind of, the institutional progress. I mean, I think the fact that this kind of an agreement was signed, the fact that, you know, the Colombian Government says publicly that they want to see it implemented fully and faithfully, that is all very good. But on the ground, it is a very serious situation.

And that is kind of what we have seen not only on the Labor Action Plan but on the Land Restitution Act, as well. I mean, you know, on one hand, you have everybody at the top saying that this is a good idea and that we ought to move forward, but then when you go on the ground, especially when you kind of get out to some of these smaller villages, it is very, very serious. And we will get you that -- we are going to work on a report. We will get it to you.

And I don't want to diminish the importance of what President Santos has said and what, you know, the ministers have said, but, you know, what we have seen on the ground, you know, is very, very troubling. And I think it is important that the United States obviously be a strong partner with not only the Colombian Government but with the human rights organizations and the labor leaders to make sure this is done right. Because, in terms of trade agreements, if you get this right in Colombia, you know, it could actually be a model for other trade agreements.

But, in any event, I appreciate it.

Let me yield to my colleague, Congresswoman Bonamici.

Ms. BONAMICI. Thank you very much, Mr. Chairman. And thank you for holding this hearing to raise awareness and give us updates on this very important topic.

And I wanted to follow up on what you were asking, Mr. Chairman, about the Labor Action Plan. Although I was not here at the time that the Colombia Free Trade Agreement passed, I am very much aware of the Labor Action Plan and the importance of having those labor protections in place as part of the Colombia Free Trade Agreement.

And I wanted to follow up because it is my understanding that, as you said, there has been progress made under the Labor Action Plan, but it is my understanding that some of the implementation issues have been because of a lack of cooperation from the business community and the business sector. And I wanted to talk about what efforts are being made from that regard.

If the business community and the economy are, in fact, benefiting from the free trade agreement, what efforts are being made with the business community to try to emphasize to them the importance of this Labor Action Plan?

Mr. DUNCAN. Thank you, Congresswoman. That is an excellent question.

As I suspect you know, the original plan was for my Department of Labor colleagues to be here with me today, and I think they have explained to the staff why they couldn't do that. It had to do with the shutdown. So they would certainly be able to go into more detail about the conversations that are ongoing with the private sector.

What I would say is that the -- and referring back to my statement, the Colombian Government has levied a very significant amount in fines against violators and quite enormous sums of money, in many cases, in the context of Colombia or anywhere else. What they haven't done is collect those fines. And, obviously, that would send an extremely strong signal to the private sector. And that is something we are continuing to talk to them about and continuing to encourage them to move forward on.

I would also add that my Department of Labor and USTR colleagues have a very strong working relationship with the Colombian Ministry of Labor, with the Minister himself.

It is a fluid, frank, candid relationship that they have. And so they are heavily engaged and will remain heavily engaged.

And, if I may say so, I think it is important that you all remain engaged. I think the visit that the chairman and Congressman Miller made is very important. And I think at every opportunity we need to keep engaging the Colombians on how they actually give effect to all of these important structural changes on the ground, as the chairman says.

Ms. BONAMICI. And on a related note, do you expect that the USAID human rights programs will get continued support from the U.S. Government? And what can we do, working together, to emphasize the importance of that?

Mr. DUNCAN. I think they will certainly continue to have strong support within the administration, and I hope they will continue to have strong support in the U.S. Congress. We will certainly work towards that.

Ms. BONAMICI. Thanks.

I have one more question. We recently found out that the Constitutional Court nullified the expanded military jurisdiction over human rights abuse cases. Can you just give us a little bit of background on the U.S. Government's original positions? And then, also, what is your reaction to this decision? What are the implications of this?

Mr. DUNCAN. With respect to our position on this, we have made it quite clear to the Colombian Government that we are in favor of civilian trials for human rights and other serious crimes and that we are opposed to any step that might lend itself to impunity. Now, I must say, President Santos has been very clear in saying that the military justice reform was not going to lend itself to impunity.

Now that the Constitutional Court has acted, as they did last night, and struck down the reform, we of course need to actually sit down and study their decision. I understand that they did so -- I understand this from the media, actually -- that they did so on procedural grounds having to do with the way the law was moved through the Congress. But I think we are going to need to sit down and take a very careful look at that decision.

And then, to be perfectly frank, I don't know what the Colombian Government is going to do now, whether they are going to back up and take another attempt to get that law through Congress, and if they do that, when they would do that, and what the ultimate form of that law would be. I just don't know. I am sorry.

Ms. BONAMICI. Thank you.

Thank you, Mr. Chairman.

Mr. McGOVERN. I just have one last question. Where does the United States Government stand in the discussions on the continued presence of the Office of the U.N.

High Commissioner for Human Rights in Colombia?

You know, OHCHR has been an important partner in the efforts to promote and defend human rights in Colombia. I mentioned in my opening statement about their role in helping resolve this issue with the indigenous communities. Does the U.S. have a -- do we see their presence in Colombia as important in the next years? Or do we have a position on that?

Mr. DUNCAN. Thank you, Mr. Chairman.

I don't know if we have taken a public position on the continuance of the CHR mandate there. I do know that the Colombian Government has recently announced that they would extend the mandate for another year.

We certainly engage very closely with the CHR office there. I met with some of their representatives earlier this week. And so that is a relationship we would look forward to continuing.

Mr. McGOVERN. All right. Well, I appreciate that. And, you know, we obviously have high regard for their work, as well, and, you know, get concerned every time, you know, we hear that, you know, maybe their stay might be extended or maybe it might not be extended. Again, especially in these next crucial few years, I think any support we can give them would be much appreciated.

I thank you very much for your testimony, appreciate you being here, and thank you for your service.

Mr. DUNCAN. Thank you.

Mr. McGOVERN. We will now call our next panel: Adam Isacson, Senior Associate for Regional Security Policy at the Washington Office on Latin America; and Dr. Virginia M. Bouvier, Senior Program Officer for Latin America, United States Institute of Peace.

Mr. Isacson, why don't you begin?

**STATEMENTS OF ADAM ISACSON, SENIOR ASSOCIATE FOR REGIONAL SECURITY POLICY,
WASHINGTON OFFICE ON LATIN AMERICA; AND VIRGINIA M. BOUVIER, SENIOR
PROGRAM OFFICER FOR LATIN AMERICA, UNITED STATES INSTITUTE OF PEACE**

STATEMENT OF ADAM ISACSON

Mr. ISACSON. Thank you, Congressman McGovern, and thank you, Congresswoman Bonamici, for coming to this hearing. Thank you to the staff of the Tom Lantos Human Rights Commission for holding it. It is really great that we are taking a moment to give a little scrutiny to a country that is very important to the United States, very important to the Western Hemisphere, and doesn't get the attention that it probably should be getting.

And this is an exciting and also a frightening time for Colombia. It is exciting because this is Latin America's number-three country in population, and suddenly it is facing a real chance to end its conflict. It is a conflict that has killed 220,000 people over the last 55 years. In 200 years as an independent country, Colombia has had really only a few moments of actual peace where there were no violent groups with national reach active in its territory. Colombians may be closing in on one of those moments.

Getting there depends on whether the negotiations with the FARC guerrilla group can succeed. And then Colombians face the challenge of making this permanent, avoiding repetition of what they have lived through in the last 55 years.

But this is also a frightening time for Colombia. The peace process isn't guaranteed success, not by any means. The talks are now a year old. They are on their 16th round, and they are only on the second of five agenda items. And it is almost November, when the campaign officially begins for current congressional elections in March and Presidential elections in May.

The negotiators are going to have three choices once November hits: Do they keep negotiating amid the distraction and the uncertainty of a political campaign? Do they put the dialogues on hold for 6 months and hope that they will be easy to restart after the elections? Or do they just get up from the table and cancel the entire process?

I personally think that they are going to manage to keep the talks afloat through the election season, even if they move slowly. If they do and if Colombians elect a Presidential candidate who wants to continue the talks, a reasonable timeframe to expect a peace accord, I think, would be before the end of 2014.

And then the real hard part starts. Colombia is going to have to demobilize 20,000 or more guerrillas, urban militias, members of support networks. It will have to give them enough education and psychological support to rejoin society and not to be tempted to return to the jungles or to violent crime. That won't be easy. Colombia has had a tough time demobilizing and reintegrating about 55,000 people over the past 10 years. Unemployment is constant, and the lure of organized crime is strong.

And then, of those who do demobilize, a few of them won't be able to get amnesty or suspended sentences because the human rights abuses they ordered or committed are just too extreme. So some top leaders are going to be expected to turn in their weapons and then go to something like prison. That is really hard to make them do. Colombia must somehow find an arrangement that is tough enough on FARC leaders who committed the worst abuses but still tolerable enough that these leaders will still go along with it.

This kind of transitional justice is for the victimizers, but post-conflict Colombia would also need to do something for the victims. Five-point-eight million Colombians, 12 percent of the population, have already signed up with the government's national registry of victims. They must get restitution of what was taken from them. They must get the truth about what happened to them and their loved ones. And, overall, they must have a process that upholds their dignity.

And even then, a post-conflict Colombia could be even more violent than it is today. Think of northern

Mexico today or Venezuela or the northern countries of Central America. There are no guerrillas in those places, but organized crime has corrupted institutions and driven violence to higher rates than Colombia's today.

If peace talks succeed, Colombians will need public security as much as ever. But they won't need heavily armed soldiers going on offensives or herbicide-spraying planes eradicating plants. They are going to need police, more than they have now, police that are tied to their communities and accountable to a strong civilian justice system.

Making all of this happen will require extraordinary political will from the Colombian Government. It will need to marshal massive resources with minimal bureaucracy, inefficiency, and corruption, and to do so in the face of opposition from corrupt local political bosses, organized criminals, unethical landowners, factions of the security forces, and others. These, let's call them, recalcitrant actors, they are going to play dirty, maybe even use violence, to stop the government from restituting land, enforcing labor standards, or complying with commitments made at the peace table. The increase in killings of human rights defenders in Colombia so far this year shows that they already are.

Still, the government of President Juan Manuel Santos has launched several well-intentioned efforts. There has been a territorial consolidation program, the Labor Action Plan, the Land Restitution and Victims Law.

The trouble is these efforts have all moved quite slowly. The government's programs have been hobbled by a lack of managerial capacity, a lack of political backing, and direct opposition from those who play dirty at the local level. Good intentions are a start, but execution and implementation are hard, and without them a future peace accord will be little more than a piece of paper.

The United States can help with this. It is in our interest to see Colombia at peace, and we must stand ready to help Colombia bridge the gap from intentions to implementation. Political backing is a big part of this, and it is as important as economic aid and a lot cheaper. Any Colombian leader who is honest, well-intentioned, and democratic should know she has a steadfast friend in the United States. Both in and out of government, Colombians are working to put the violence behind them, to embark on a very new moment of peace, and to make that moment permanent. We need to stick up for them.

Thank you. And I look forward to your questions.

Mr. McGOVERN. Thank you very much.

[The statement of Mr. Isacson follows:]

Prepared Statement of Adam Isacson

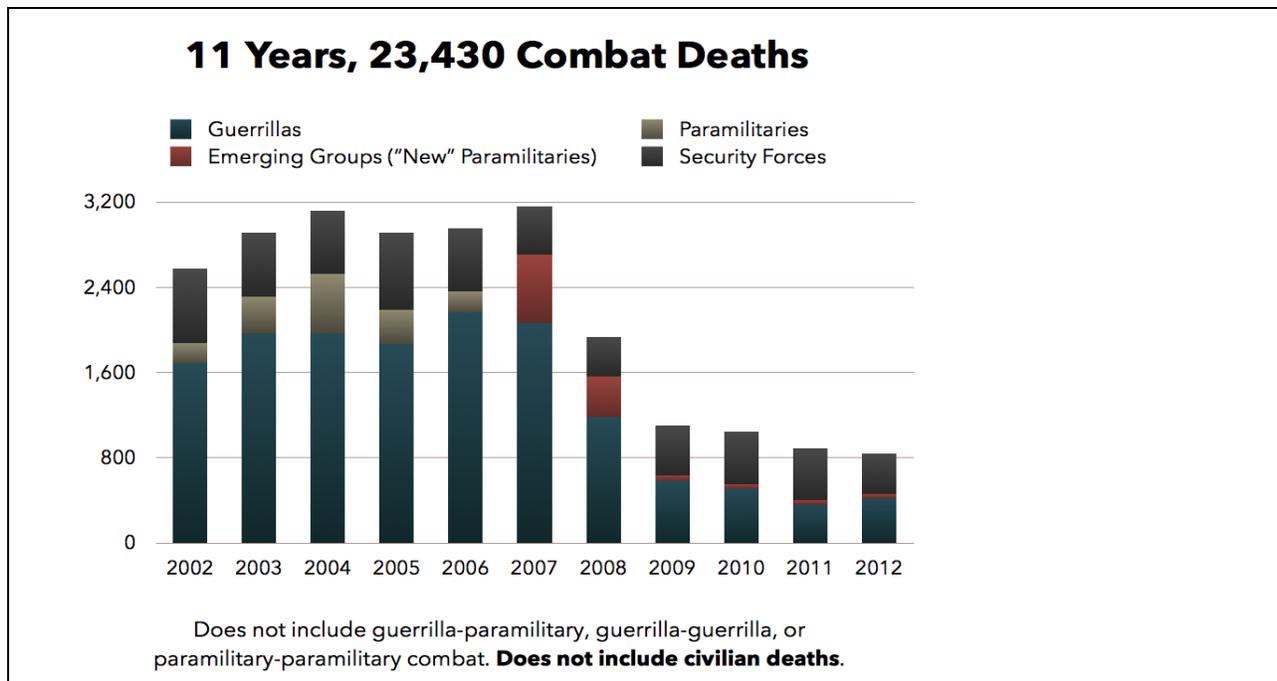
The Human Rights Landscape in Colombia

Written Testimony of Adam Isacson, Senior Associate for Regional Security Policy, Washington Office on Latin America

Hearing of Tom Lantos Human Rights Commission: “Creating Peace and Finding Justice in Colombia,” United States Congress, October 24, 2013

Colombia’s armed conflict killed 218,094 people between 1958 and 2012. Over 81 percent of them were civilians. Since 1985, explains a government-sponsored Historical Memory Center’s July 2013 report, 25,007 more Colombians were forcibly “disappeared,” and 5,712,506—almost 15 percent of the country—were displaced by violence.²

Colombia, Latin America’s third most-populous country, is the only place in the Western Hemisphere where an armed conflict pits a government against violent armed groups with national reach and political demands. Even though 2012 was one of the least violent years of the past 20, combat still killed 827 members of the security forces and illegal armed groups.³ The fighting, and related political violence, most likely killed a similar or larger number of civilians.



² Government of Colombia, Centro Nacional de Memoria Histórica, [¡Basta Ya! Colombia: Memorias de Guerra y Dignidad](http://www.centrodememoriahistorica.gov.co/micrositios/informeGeneral/index.html) (Bogotá: CMH, July 2013) <<http://www.centrodememoriahistorica.gov.co/micrositios/informeGeneral/index.html>>.

³ Government of Colombia, Ministerio de Defensa Nacional, “Logros de la Política Integral de Seguridad y Defensa para la Prosperidad – PISDP” (Bogotá: Defense Ministry, September 2013) <http://www.mindefensa.gov.co/irj/go/km/docs/Mindefensa/Documentos/descargas/estudios%20sectoriales/info_estadistica/Logros_Sector_Defensa.pdf>.

Guerrillas

High levels of violence have been a constant at least since 1948. The two principal guerrilla groups active today date back to 1964, making Colombia's the oldest conflict in the world causing more than 1,000 deaths per year.

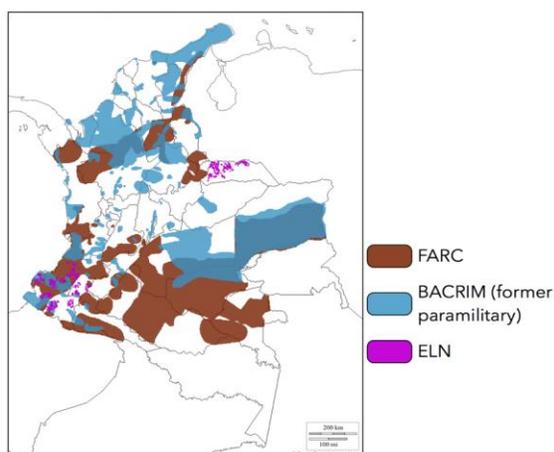
Together, guerrillas are responsible for about 20 percent of all civilian non-combatants killed in the conflict.⁴

Guerrillas lay the vast majority of anti-personnel mines, a practice that has killed or wounded 10,189 people since 1988 and that the armed forces have ceased to employ.⁵ Guerrillas actively recruit minors; 20 to 30 percent of their membership, perhaps more, is believed to be less than 18 years old.⁶

The Revolutionary Armed Forces of Colombia (FARC) was founded in 1964 by radicalized smallholding farmers with links to the Communist Party. The FARC operates in about 23 percent of the country's municipalities (counties), and is most present in border zones, along the Pacific coast, and in its oldest stronghold, the sparsely populated plains and jungles of south-central Colombia.⁷ It is Colombia's largest guerrilla group with approximately 7,000 or fewer members, down from a height of at least 18,000 a decade ago.⁸ It funds itself mainly through narco-trafficking, illegal mining, and extortion.

The National Liberation Army (ELN) was founded in 1964 by radicalized students and Catholic clergy inspired by the 1959 Cuban revolution. It is smaller than the FARC—perhaps 2,000 members—and is strongest in the Arauca oil-producing region near the Venezuelan border, a north-central region known as Magdalena Medio, and in a few municipalities in the far southwest. The ELN participated less in the drug trade than the FARC, at least until recently, and pioneered kidnapping for ransom as a way to fund itself.

Approximate Presence of Armed Groups



⁴ Centro Nacional de Memoria Histórica, [¡Basta Ya! Colombia: Memorias de Guerra y Dignidad](#).

⁵ Centro Nacional de Memoria Histórica, [¡Basta Ya! Colombia: Memorias de Guerra y Dignidad](#).

⁶ Human Rights Watch, [You'll Learn Not To Cry: Child Combatants in Colombia](#) (New York: HRW, September 19, 2003) <<http://www.hrw.org/reports/2003/09/18/you-ll-learn-not-cry>>.

⁷ Pacho Escobar, "Las Farc pierden la guerra en el centro del país pero dan la pelea en la periferia" (Bogotá: Corporación Nuevo Arco Iris, March 7, 2013) <<http://www.arcoiris.com.co/2013/03/las-farc-pierden-la-guerra-en-el-centro-del-pais-pero-dan-la-pelea-en-la-periferia/>>.

⁸ Presidency of Colombia, "Palabras del Presidente Juan Manuel Santos en la entrega de vehículos para la Policía y el Documento Conpes para el transporte masivo en Cali" (Bogotá: Presidencia, September 20, 2013) <http://wsp.presidencia.gov.co/Prensa/2013/Septiembre/Paginas/20130920_07-Palabras-del-Presidente-Santos-en-la-entrega-de-veh%C3%ADculos-para-la-Policia-y-el-Docmento-Conpes.aspx>.

Kidnapping

The ELN and FARC, along with other, now defunct, leftist guerrillas, carried out over 90 percent of the 27,023 kidnappings for ransom that the Historical Memory Center counted in Colombia since 1970.⁹ Kidnapping remains a frequent crime, though it happens far less than it did a decade ago. According to Colombia's Defense Ministry, 305 people were kidnapped in 2012, compared with 2,882 in 2002, and common criminals abducted most of the 2012 number.¹⁰ The sharp decline in guerrilla kidnappings owes to the Colombian security forces' improved mobility, allowing them to respond quickly after they occur; their improved intelligence to find people held hostage; and the guerrillas' own decision to limit the practice because of the high level of rejection it generates within society.

The Free Country Foundation, a Colombian NGO that tracks kidnapping trends, estimated that 1,083 people were being held hostage at the end of 2012, though it is sadly likely that most have in fact died in captivity.¹¹ The ELN continues to kidnap a small number of civilians, while the FARC claims that it renounced the practice to meet a government pre-condition for starting peace talks in mid-2012.

The FARC is currently holding a U.S. citizen who, in June 2013, traveled alone deep into Colombia's southern jungles. The guerrillas say they are willing to release Kevin Scott Sutay as a goodwill gesture, but Colombian President Juan Manuel Santos has so far refused their release conditions on grounds that they would cause a "media show."

Peace Talks

The talks between the FARC and the government, which formally launched in Oslo, Norway on October 18, 2012, began their sixteenth round on October 23, 2013. Each round has taken about ten days, and all but the first took place in Havana, Cuba. This is the fourth time in the past thirty years that the Colombian government and the FARC have held formal dialogues to seek an end to the conflict. Government and FARC negotiators are following a six-point agenda covering five policy issues (land, political participation, transitional justice, drug policy, victims) plus implementation details. While ambitious, the agenda does not touch core themes like Colombia's economic model, foreign investment, or defense and security policy. The two sides are negotiating without a cease-fire in place, at the Colombian government's insistence, and both continue to launch attacks on a daily basis.

In late May, the negotiators reached unprecedented agreement on the first agenda item, land and rural development, an issue of central importance to the rurally based FARC. Since then, though, six rounds of talks have failed to bring agreement on the second agenda item, guarantees for the political opposition (which would presumably include a disarmed FARC acting as a political party). The guerrillas are insisting on a constitutional convention to cement in place a future peace accord, while the government proposes a simple public referendum. Talks currently appear to

⁹ Centro Nacional de Memoria Histórica, [¡Basta Ya! Colombia: Memorias de Guerra y Dignidad](#).

¹⁰ Ministerio de Defensa Nacional, "Logros de la Política Integral de Seguridad y Defensa para la Prosperidad – PISDP." Government of Colombia, Ministerio de Defensa Nacional, "Logros de la Política Integral de Seguridad y Defensa para la Prosperidad – PISDP" (Bogotá: Defense Ministry, October 2011).

¹¹ Fundación País Libre, [Indicadores del Secuestro en Colombia 2012](#) (Bogotá: País Libre, February 2103) <http://www.paislibre.org/site/images/indicadores_de_secuestro_2012.pdf>.

be stuck on this issue. While polls show a clear majority of Colombians supporting the idea of negotiating with the FARC, public opinion is also growing more pessimistic as the talks' pace slows.¹²

The month of November will be critical, as it marks the beginning of the campaign season for Colombia's March 2014 legislative elections and May 2014 presidential elections. Candidates must officially declare their candidacies, and the ensuing campaign is likely to create both uncertainty and distraction that could halt progress at the negotiating table. In November, the negotiators may decide to freeze the talks until after the elections, to attempt to continue dialoguing during the campaign, or to call off the peace process entirely.

Transitional Justice

Should the Havana negotiators manage an agreement on the second agenda item, they move to the third, "Ending the Conflict." The central issue here will be transitional justice: what kind of arrangement will allow guerrillas to demobilize and rejoin civilian life, while still holding them accountable for violating non-combatants' human rights.

In June 2012, Colombia's Congress passed a constitutional amendment that sets the parameters for transitional justice. The "Legal Framework for Peace," upheld by the country's Constitutional Court in August 2013, includes language making possible reduced or even suspended sentences for even the worst rights violators. Whatever arrangement emerges from this framework will result from an enabling law, the contents of which would be negotiated in Havana. Suspended sentences are unlikely, however. This is because Colombia's is the first peace process in the world to involve a party to the International Criminal Court. The Court could intervene if it determines that Colombia has not sufficiently punished those responsible for crimes against humanity.

A likely outcome is that demobilized guerrillas accused of committing lesser crimes would receive suspended sentences or even amnesty in exchange for a full confession of their crimes and reparations to victims. Colombia's judicial system does not have the capacity to try tens of thousands of guerrilla crimes. But Colombia's international commitments make it impossible to suspend sentences for those responsible the most serious crimes. The number of guerrilla leaders and fighters who may face such charges would likely be in the low hundreds.

The conundrum, then, is how to convince top FARC leaders to turn in their weapons, demobilize their fighters—and proceed, if not to prison, then to some sort of arrangement that deprives them of liberty for a specific period of time. This may not be an impossible task: if demobilized FARC leaders truly abandon criminality, they will have no immediate means to support themselves, and their long list of potential enemies would make them very hard to protect if they were out in public. A few years of confinement under police guard, in which they could meet with interlocutors and build their political movement but could not leave the premises, might be appropriate—provided it came with full confessions of deeds, turnover of illegally acquired assets, and reparations to victims.

The Colombian government did something similar with pro-government paramilitary groups that demobilized between 2003 and 2006, though most of the worst violators were placed in regular, not alternative, prisons. This so-called "Justice and Peace Process," though, showed the shortcomings of Colombia's judicial system, which proved under-equipped for a wave of serious human rights cases, even within a transitional justice framework allowing for reduced sentences. Of the 31,849 demobilized members of the United Self-Defense Forces of Colombia (AUC) paramilitary network, 4,237 have faced human rights charges so serious that they entered the Justice and Peace

¹² Invamer Gallup Colombia, "Gallup Poll #96" (Bogotá: Invamer Gallup, August 2013) <<http://www.caracol.com.co/docs/20130904494290e4.pdf>>.

process beginning in 2005.¹³ Eight years later, Justice and Peace trials have yielded only 14 verdicts.¹⁴ Trials continue to drag on for the rest. About 30 paramilitary leaders have been extradited to the United States to face narco-trafficking charges.¹⁵ Dozens of FARC leaders face similar charges in U.S. courts, and will not demobilize unless a peace agreement specifically prohibits their extradition to the United States.

State Security Forces

The peace framework law also applies to members of Colombia's armed forces and police. Post-conflict transitional justice could see similarly light sentences or alternative confinement for members of the security forces accused of committing grave human rights abuses. This did not happen in Colombia's early 1990s peace processes, in which smaller guerrilla groups' demobilized members were amnestied but soldiers and police were not. Colombia's military is determined not to let that happen again—and it has more clout now than it did twenty years ago.

Since 2000, Colombia's armed forces have grown from about 180,000 to 280,000 members, and its police since 2002 from about 101,000 to 173,000.¹⁶ Colombia now has the largest army in Latin America (232,000), though Brazil's total armed forces are still larger than Colombia's. Colombia's defense budget has roughly tripled, in dollar terms, since 2000.¹⁷ Because of recent battlefield successes, opinion polls also show the armed forces to be one of the country's most popular institutions.

¹³ "Las cifras de los 10 años de desmovilizaciones" (Bogotá: El Tiempo, 2012)

<<http://www.eltiempo.com/Multimedia/especiales/desmovilizados/ARCHIVO/ARCHIVO-12224321-0.pdf>>.

Government of Colombia, Fiscalía General de la Nación, Informe de Gestión 2012-2013 (Bogotá: Fiscalía, March 2013)

<<http://www.fiscalia.gov.co/colombia/wp-content/uploads/2012/01/InformedeGestion2012-2013.pdf>>.

¹⁴ Government of Colombia, Fiscalía General de la Nación, "Estadísticas Unidad Nacional de Fiscalías para la Justicia y Paz" (Bogotá: Fiscalía, consulted October 2013) <<http://www.fiscalia.gov.co/jyp/unidad-de-justicia-y-paz/>>.

¹⁵ International Human Rights Law Clinic, Truth Behind Bars: Colombian Paramilitary Leaders in U.S. Custody (Berkeley: University of California, Berkeley, School of Law, February 2010)

<<http://www.law.berkeley.edu/files/IHRLC/Truthbehindbars.pdf>>.

¹⁶ Ministerio de Defensa Nacional, "Logros de la Política Integral de Seguridad y Defensa para la Prosperidad – PISDP."

Thomas A. Marks, Sustainability of Colombian Military/Strategic Support for "Democratic Security" (Carlisle, PA: Strategic Studies Institute, U.S. Army War College, 2005): 4

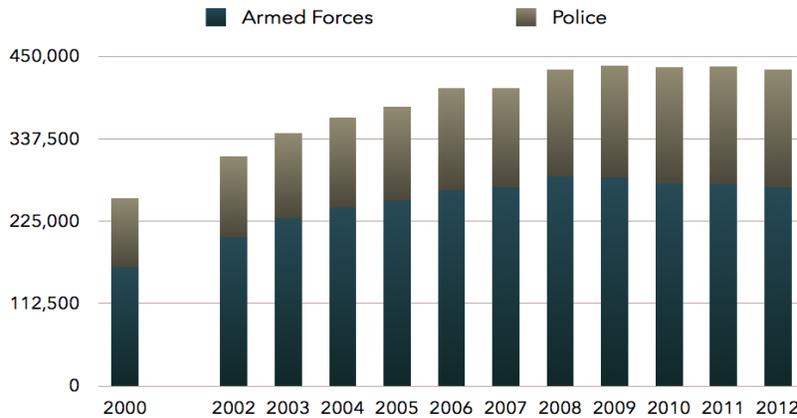
<<http://www.strategicstudiesinstitute.army.mil/pubs/display.cfm?pubID=610>>.

¹⁷ Government of Colombia, Departamento Nacional de Planeación, cited in Tomás E. Concha Sanz, "Fiscalización y Transparencia del Presupuesto Asignado a la Defensa," in Comisión Andina de Juristas, El Control Democrático de la Defensa en la Región Andina Série: Democracia No. 9 (Lima: CAJ, April 2004): 192.

José Fernando Isaza, "Hablar de plata, ¡qué pena!" El Espectador (Bogotá: July 22, 2008)

<<http://www.elespectador.com/columna-hablar-de-plata-pena>>.

Colombia's Security Forces



Source: 2000: International Institute for Strategic Studies. 2002-12: Ministry of Defense of Colombia.

Should a Framework for Peace “enabling law” allow military personnel to receive transitional justice benefits, hundreds of human rights abuse cases could be transferred to a system that (depending on the severity of the crime) gives soldiers amnesty or light sentences similar to those given to the worst ex-guerrilla violators, instead of the maximum 40 years’ imprisonment that they would face today. Though such a process would likely include confessions and reparations, victims of military abuses might be unhappy with the prospect of soldiers avoiding regular criminal justice for committing two especially pervasive sets of crimes.

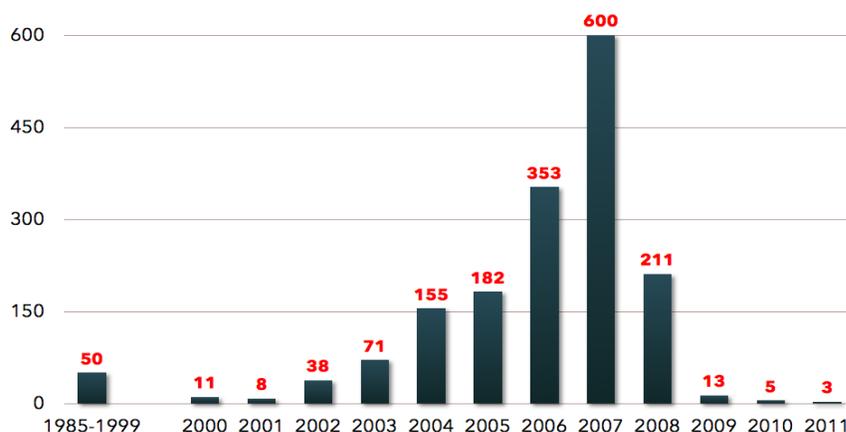
“False Positives”

The first of these are extrajudicial executions of innocent civilians, a practice that worsened dramatically between 2002 and 2008. Basing itself on statistics from Colombia’s civilian Attorney-General’s Office, the UN High Commissioner for Human Rights cited 1,708 cases of civilians killed by the security forces, chiefly the Army, involving over 4,000 victims. Of these cases, over 95 percent occurred between 2002 and 2008.¹⁸

¹⁸ UN High Commissioner for Human Rights Bogotá Field Office, Report of the United Nations High Commissioner for Human Rights on the situation of human rights in Colombia (Geneva: UN Human Rights Council, January 7, 2013) <<http://www.hchr.org.co/documentoseinformes/informes/altocomisionado/informe2012en.pdf>>.

Todd Howland, “Intervención del Señor Todd Howland, Representante en Colombia de la Alta Comisionada de las Naciones Unidas para los Derechos Humanos en la Universidad Sergio Arboleda de Bogotá” (Bogotá: UN High Commissioner for Human Rights Bogotá Field Office, October 1, 2012) <<http://www.hchr.org.co/publico/pronunciamentos/ponencias/ponencias.php3?cod=144&cat=24>>.

Cases of Homicide, Allegedly by Colombian Government Security Forces, Assigned To Attorney-General's Office Human Rights Unit



Source: UN High Commissioner for Human Rights - <http://bit.ly/1a1PiMJ>

Many of the military's victims during the 2002-2008 period were what have come to be known as "false positives." Soldiers stand accused of abducting civilians—or even paying criminal groups to abduct them—then killing them and presenting their bodies as those of armed-group members killed in combat. During this period, military personnel were receiving both moral and material rewards for high body counts. While the UN and human rights groups had been warning publicly of the rise in "false positives" since at least early 2004, the practice did not halt until the September 2008 revelation that more than a dozen men missing from a poor Bogotá suburb had been lured with the promise of employment, taken hundreds of miles away, killed, and presented as dead combatants.

After this scandal broke, incentives were mostly changed, and alleged extrajudicial killings have fallen to the low double digits. In 2012, the UN High Commissioner's Office—whose field office in Bogotá continues to play an absolutely essential monitoring role—"received no reports of military killings having the purpose of increasing statistics" of body counts.¹⁹ The human rights group CINEP, which maintains a database of human rights violations, counted 11 cases of "false positives," with 12 victims, in 2012; Colombia's Defense Ministry disputed CINEP's use of the term.²⁰

Meanwhile thousands of cases of "false positives" and other extrajudicial executions continue to move slowly through Colombia's justice system (principally the civilian justice system, though as discussed below, there is concern that could change). "Of all homicide investigations" against the security forces, the UN High Commissioner reported in early 2013, "only 30 percent report procedural activity. Of these active cases, the great majority has not passed the preliminary criminal investigation stage." The State Department reported in September 2013 that, during

¹⁹ UN High Commissioner for Human Rights Bogotá Field Office, [Report of the United Nations High Commissioner for Human Rights on the situation of human rights in Colombia](#).

²⁰ Centro de Investigación y Educación Popular, [Informe Especial sobre la situación de DDHH y DIH en Colombia durante 2012](#) (Bogotá: CINEP, May 23, 2013)

<http://www.cinep.org.co/index.php?option=com_docman&task=doc_download&gid=302&Itemid=117&lang=en>.

"Mindefensa desestima informe sobre 'falsos positivos' del Cinep" (Bogotá: [El Espectador](#), May 28, 2013)

<<http://www.elespectador.com/noticias/judicial/articulo-424659-mindefensa-desestima-informe-sobre-falsos-positivos-del-cinep>>.

the first 11 months of 2012, civilian courts convicted 589 military and police personnel for 192 cases of extrajudicial executions committed since 2000.²¹

Aiding and Abetting Paramilitary Groups

Over the course of the conflict, Colombia's security forces have been directly responsible for about 10 percent of all non-combatant killings.²² Between about 1996 and 2002, though, the military and police share of total civilian killings fell below 10 percent, as paramilitary groups went on a nationwide rampage.²³ Once the AUC paramilitary group demobilized and reduced its activity in the early to mid-2000s, though, the number of direct abuses committed by soldiers—mainly extrajudicial executions—increased, reaching about half of the overall total in 2007.²⁴

Before those demobilizations, during the period of greatest paramilitary activity, the AUC committed the vast majority of civilian killings: between 70 and 80 percent, according to the Historical Memory Center and major Colombian human rights groups.²⁵ When the AUC was at its worst, especially during the 1999-2002 period, the paramilitary organization carried out more than 100 massacres (defined as the killing of four or more non-combatants in a single event) each year.

The Colombian armed forces' low share of abuses during the peak paramilitary period is deceptive. In very many cases, paramilitary groups benefited from material, logistical, planning, and intelligence support from military and police personnel. In some cases, officers stand accused of helping to plan paramilitary massacres and other actions against the civilian cases. More often, they are accused of deliberate negligence: failing to act to prevent paramilitary massacres, or to respond to calls for help. "The omission of information, collusion, logistical support to the perpetrators, or the disguising of their own actions are some of the ways members of the security forces have been implicated in facilitating the occurrence of massacres," reads the Historical Memory Center report.²⁶

Today, civilian courts have convicted dozens of military personnel, including a handful of generals and colonels, for past collaboration with paramilitary groups. However, Colombia's security forces have yet to come to terms with the breadth of their relationship with individuals accused of some of the most brutal abuses committed in Colombia's conflict, along with the theft of millions of acres of land and the shipment of hundreds of tons of cocaine to the United States.

²¹ United States, Department of State, Determination and Certification Related To Colombian Armed Forces Under Section 7045(a) of the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2012 (Washington: State Department, September 2013) <<http://justf.org/files/primarydocs/130911certsm.pdf>>.

²² 8 percent of massacres, 10.1 percent of selective killings, plus a portion of those for whom authorship cannot be determined. Centro Nacional de Memoria Histórica, ¡Basta Ya! Colombia: Memorias de Guerra y Dignidad.

²³ Comisión Colombiana de Juristas, Colombia: Veinte Razones (Bogotá: CCJ, 2004) <http://www.coljuristas.org/documentos/libros_e_informes/colombia_veinte_razones.pdf>.

²⁴ Comisión Colombiana de Juristas, Informe de seguimiento a las recomendaciones del Relator Especial sobre Ejecuciones Extrajudiciales, Sumarías o Arbitrarias (Bogotá: CCJ, February 16, 2012) <http://www.coljuristas.org/documentos/libros_e_informes/inf_2012_n1.pdf>.

²⁵ Comisión Colombiana de Juristas, Colombia: Veinte Razones. Centro Nacional de Memoria Histórica, ¡Basta Ya! Colombia: Memorias de Guerra y Dignidad.

²⁶ Centro Nacional de Memoria Histórica, ¡Basta Ya! Colombia: Memorias de Guerra y Dignidad.

Paramilitary Groups Today

In 2002, newly elected President Álvaro Uribe made clear that he would negotiate demobilization terms with any armed group that first declared a cease-fire. The AUC quickly agreed, and the result was the Justice and Peace process and the demobilizations of nearly 32,000 people claiming to be paramilitary members.

A handful of paramilitary units refused to demobilize. Some lower and mid-level paramilitaries—rough estimates run from about 1,000 to 2,000 of them—fell back into armed activity as members of new, drug-funded militias. These new paramilitaries, which Colombian authorities call “criminal bands” or BACRIM, number somewhere between 3,000 and 5,000 members, and operate in between 21 and 31 percent of Colombia’s municipalities.²⁷ The most frequently used names are “Urabeños,” “Rastrojos,” “Paisas” and several smaller groups, but even when a name is heard in several corners of the country, their members do not appear to respond to a national command.

Many of these new groups concentrate on narco-trafficking, maintaining control over drug production and transshipment corridors. Some resemble urban street gangs, while others claim to be counter-insurgent armies. Nearly all make money from extortion as well as trafficking. They often fight each other, and some do business, particularly drug-trafficking business, with the leftist guerrillas. While they generate much violence and abuse human rights constantly, their brutality has not reached the scale of the old AUC. Some are used as muscle by landowners and corrupt politicians to threaten and kill local activists and human rights defenders—including dispossessed farmers petitioning for return of stolen land.

Rooting Out Paramilitarism

Like the old paramilitaries, the BACRIM thrive by developing relations with government officials, members of the security forces, and members of the business and landowning communities. Unlike the old AUC, these relationships are usually based more on corruption and illegal enrichment than on shared dedication to a cause like counter-insurgency. Also unlike the AUC, these relationships are not believed to reach the highest levels of government and security institutions in Bogotá, though they may be widespread in rural areas and smaller cities.

In those regions, a true end to Colombia’s conflict will mean confronting the nexus of local political bosses, large landowners, narco-traffickers, factions of the security forces, corrupt judicial and land-registry officials, and others who aided and abetted the rise of paramilitarism and massive theft of land in the 1990s and 2000s, and who continue to collude with the “new” paramilitaries in the 2010s. This will not be easy. A series of judicial investigations into local politicians’ ties with the AUC, known as “para-politics,” led to investigations, trials, or convictions of about 190 members of Colombia’s Congress, governors, mayors, and other local officials since 2006.²⁸ But para-politicians’ cronies, and even family members, remain in power in many regions, and investigations have barely scratched the surface of the relationships between paramilitaries—old and new—and members of the security forces or “para-economic” businessmen and landowners.

²⁷ Fundación Ideas para la Paz, [Narcotráfico: genesis de los paramilitares y herencia de bandas criminales](http://www.ideaspaz.org/index.php/noticias/ultimas-noticias/1197) (Bogotá: FIP, January 2013) <<http://www.ideaspaz.org/index.php/noticias/ultimas-noticias/1197>>.

Pacho Escobar, “Los carteles neoparamilitares que mandan en Colombia” (Bogotá: Corporación Nuevo Arco Iris, March 7, 2013) <<http://www.arcoiris.com.co/2013/03/los-carteles-neoparamilitares-que-mandan-en-colombia/>>.

²⁸ Misión de Observación Electoral, “Parapolítica Congreso 2012” (Bogotá: MOE, 2012)

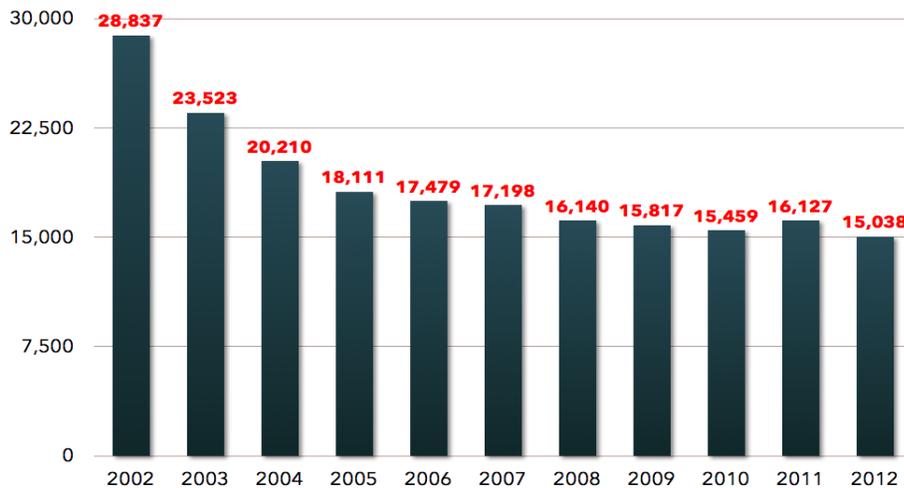
<http://moe.org.co/home/doc/moe_juridica/2012/reformas/PARAPOLITICA_congreso_2012.xlsx>.

Recent Progress on Security and Rights

Colombia's panorama is one of a bewilderingly complex conflict between a shifting, at times overlapping set of armed groups and often-unaccountable institutions. But the news is not all bad.

In fact, Colombia in the past ten years has seen a steeper drop in most measures of violence than any other Latin American country. The growth in the security forces' capabilities reduced guerrilla groups' ability to operate, especially in populated areas, bringing the reduction in kidnappings discussed above. Increased interdiction and regular captures of "kingpins" have reduced narcotraffickers' power, wealth, and deadliness. While it didn't eliminate paramilitarism, the AUC demobilization brought an important drop in these groups' ability to kill, displace, and intimidate.

Homicides in Colombia



Source: Ministry of Defense of Colombia - <http://bit.ly/YktB9M>

Homicides are down by 48 percent, from 28,837 in 2002 to 15,038 in 2012.²⁹ Colombia's murder rate is now lower than Venezuela's and about the same as Guatemala's. At least 256,590 Colombians were forcibly displaced by violence last year; while still horrifyingly high, it is an important reduction from the 412,553 who were displaced in 2002.³⁰ Guerrilla groups are roughly half the size they were a decade ago, and the BACRIM are significantly smaller than the old AUC. Numerous top leaders of both FARC and BACRIM, including some of the most violent, have been removed from the scene in the past five years. Cultivation of coca, the plant used to make cocaine, has dropped to levels not seen since 1997.

²⁹ Ministerio de Defensa Nacional, "Logros de la Política Integral de Seguridad y Defensa para la Prosperidad – PISDP," 2013.

Ministerio de Defensa Nacional, "Logros de la Política Integral de Seguridad y Defensa para la Prosperidad – PISDP," 2011.

³⁰ Consultoría para los Derechos Humanos y el Desplazamiento, *La Crisis Humanitaria en Colombia Persiste. Informe de Desplazamiento Forzado en 2012* (Bogotá: CODHES, June 2013)

<<http://www.lwfcolumbia.org.co/sites/default/files/image/310513%20Informe%20%20desplazamiento%202012.pdf>>.

With the steep decline in “false positives,” human rights abuses directly attributable to the security forces, while still too high, are at their lowest point since documentation began in earnest in the late 1970s. While Colombia remains a dangerous place to be a labor organizer, killings of union members have dropped from 186 in 2002 to 20 last year.³¹ Killings and threats of journalists are higher than in most of Latin America, but reduced, and the Colombian government has not passed measures to restrict media like governments in Venezuela or Ecuador. Scandals during the second half of the 2000s revealed, however, that journalists have been a frequent target of intelligence services’ illegal surveillance and wiretapping. Despite these obstacles, media—especially print media outlets in large cities—perform a good deal of groundbreaking investigative reporting.

Colombia’s current government, meanwhile, has demonstrated some good intentions on human rights (though the picture becomes cloudier in the discussion of military justice on page 15). The administration of Juan Manuel Santos has strengthened the Interior Ministry’s Protection Unit, which provides security for threatened human rights defenders, labor leaders, and others. It re-established a Ministry of Labor to improve vigilance over labor rights. In 2011, Santos worked with Colombia’s Congress to pass a landmark law to indemnify conflict victims and restitute stolen land to tens of thousands of dispossessed farmers. And he has staked a great deal of political capital—even his re-election prospects—on the current effort to negotiate peace with the FARC.

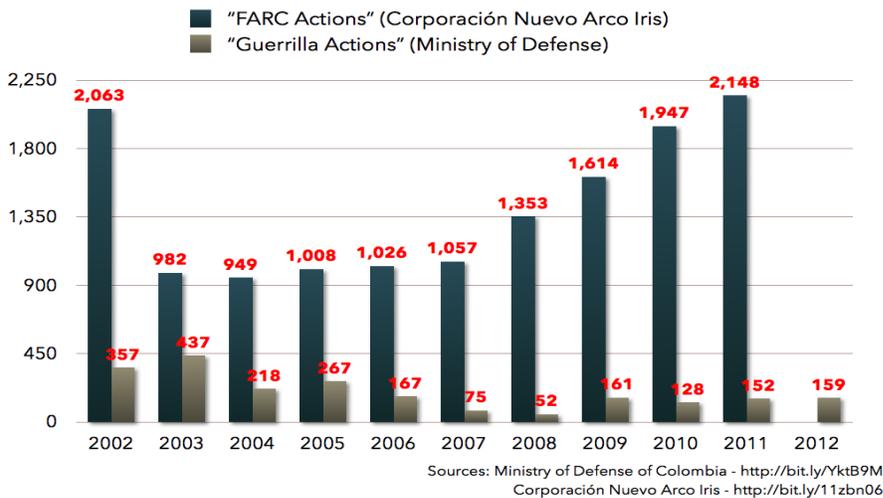
Good intentions only go so far, however. The ability to execute—to implement ambitious policies for extending justice, victims’ rights, and the rule of law to poorly governed parts of the country—is even more important, especially if Colombia is to avoid a repeat of the horrors of the past 50 years. Making its intentions into reality will require the Santos government, especially if it is re-elected next year, to push back actively against recalcitrant, often violent elements: in Colombian society, in the criminal underworld, and, unfortunately, within some of the country’s own government institutions.

Some Security Indicators Moving the Wrong Way

These elements include Colombia’s illegal armed groups, which continue to generate high levels of violence. While indicators like homicide, kidnapping, and coca cultivation are down, others began a disturbing upward climb, or at best a leveling off, during the latter years of the administration of Santos’s predecessor, Álvaro Uribe.

³¹ José Luciano Sanín Vásquez, “El Presidente Uribe niega la realidad de la violencia antisindical en Colombia” (Medellín: Escuela Nacional Sindical, 2007) <http://www.ens.org.co/aa/img_upload/45bdec76fa6b8848acf029430d10bb5a/Luciano_San_n_Presidente_Uribe_niega_realidad_de_la_violencia_antisindical.doc>. Escuela Nacional Sindical, Reporte a Diciembre 2012. Sistema de Información Laboral y Sindical (Medellín: ENS, July 2013) <http://ens.org.co/apc-aa-files/40785cb6c10f663e3ec6ea7ea03aaa15/10_SISLAB_2012_2.pdf>.

"FARC Actions" and "Guerrilla Actions"



Guerrilla attacks, especially on military and police targets, have edged upward, by some counts nearly to early-2000s levels. Almost all of the recent attacks, though, are smaller in scale (ambushes, IED and landmine detonations, sniper attacks), and take place farther from population centers, than they did a decade ago.³² A similar rise has been observed in what the Colombian government defines as “terrorist attacks,” from a low of 387 in 2007 to 819 last year. Guerrilla attacks on infrastructure targets like oil pipelines and energy towers are also up, more than doubling between 2010 and 2012. So are reported cases of extortion, which tripled between 2008 and 2012.³³ And along with the global rise in commodity prices, illegal armed groups are now getting a large portion of their income—by some estimates, even more than from drugs—from illicit mining of products like gold, coltan, and tungsten.³⁴

Human Rights and Land Rights Defenders

Having a well-intentioned administration in Bogotá and a strong military has not increased the safety of human rights defenders and activists. Colombia’s non-governmental *Somos Defensores* project counted the murders of 37

³² Ministerio de Defensa Nacional, “Logros de la Política Integral de Seguridad y Defensa para la Prosperidad – PISDP,” 2013.

Ministerio de Defensa Nacional, “Logros de la Política Integral de Seguridad y Defensa para la Prosperidad – PISDP,” 2011. Ariel Ávila: “Las FARC: La Guerra Que el País No Quiere Ver,” *Arcanos* (Bogotá: Corporación Nuevo Arco Iris, January 2012) <http://www.arcoiris.com.co/wp-content/uploads/2011/arcanos/ARCANOS_17_FINAL.pdf>.

³³ Ministerio de Defensa Nacional, “Logros de la Política Integral de Seguridad y Defensa para la Prosperidad – PISDP,” 2013.

³⁴ Andrew Willis, “Gold Beats Cocaine as Colombia Rebel Money Maker, Police Say” (Bogotá: Bloomberg Businessweek, June 21, 2013) <<http://www.businessweek.com/news/2013-06-21/gold-beats-cocaine-as-colombia-rebel-money-maker-police-say-1>>.

Michael Smith, “How Colombian FARC Terrorists Mining Tungsten Are Linked to Your BMW Sedan” (Bogotá: *Bloomberg Markets*, August 8, 2013) <<http://www.bloomberg.com/news/2013-08-08/terrorist-tungsten-in-colombia-taints-global-phone-to-car-sales.html>>.

non-governmental human rights defenders during the first six months of 2013, a jump from the 29 murders counted in the first six months of 2012.³⁵

Of those being killed and threatened, most are displaced farmers seeking the return of lands stolen from them, often placing their hopes in the Santos government's land restitution program. Even as the government in Bogotá encourages dispossessed citizens to make claims via the 2011 Victims and Land Restitution law, "land rights defender" has become one of the most dangerous categories to which one can belong in today's Colombia. The reason is the sinister nexus of landowners, criminal elements, political bosses, and paramilitaries discussed above, which dominates many regions. Colombia's land restitution program has been moving with utmost slowness. In a September report, Human Rights Watch found that only 446 of 43,590 land claims filed so far had resulted in court orders for restitution—and only one of these orders had allowed a family to return to live on their land.³⁶ If land restitution is to succeed, Colombia's government, and especially its judicial system, must do far more to confront the violent, locally powerful actors who oppose it.

Afro-Colombian and Indigenous Communities

Indigenous Colombians, and Colombians of African descent, make up roughly 30 percent of Colombia's population. Many live on ancestral lands that, while legally protected, have been subject to constant usurpation by large landowners and allied paramilitary groups. CODHES, an NGO that tracks forced displacement, found that 36 percent of all new displacement in the country last year occurred along Colombia's Pacific coast, where the rural population is largely of African descent.³⁷ Colombia's Constitutional Court has determined that 35 indigenous ethnicities face "imminent risk of disappearing, physically and culturally."³⁸ Areas with a high concentration of Afro-Colombian community councils and indigenous reserves, like the Pacific, tend to be some of the poorest, most conflictive, and most ungoverned parts of the country.

Extractive Industries and Agribusiness

While conflict in these zones often revolves around competition for control of drug transshipment corridors, it is increasingly a result of outsiders' desire to exploit the natural wealth of lands held by Afro-Colombian, indigenous, and smallholding farmer communities. Rising commodity prices and new extractive techniques have made many long-neglected corners of Colombia suddenly attractive for oil and gas exploration, mining of coal, minerals and gems, timber extraction, and cultivation of capital-intensive crops like soy and biofuels.

Regardless of the outcome of peace talks, extractive and agribusiness projects are likely to be a flashpoint of social conflict throughout Colombia (and elsewhere in the commodity-rich Andes). Avoiding violence and grave economic injustice will require Colombia's government to play an impartial mediating role between communities and

³⁵ Programa Somos Defensores, Héroes Anónimos: Informe Enero-Junio 2013 (Bogotá: Somos Defensores, August 2013) <http://somosdefensores.org/attachments/article/416/Informe%20ENERO_JUNIO%202013%20Somos%20defensores%20en%20ESPA%C3%91OL.pdf>.

³⁶ Human Rights Watch, The Risk of Returning Home: Violence and Threats against Displaced People Reclaiming Land in Colombia (New York: HRW, September 17, 2013) <<http://www.hrw.org/node/118407>>.

³⁷ Consultoría para los Derechos Humanos y el Desplazamiento, La Crisis Humanitaria en Colombia Persiste.

³⁸ "Indígenas, entre el hambre, la violencia y el olvido" (Bogotá: El Tiempo, August 11, 2013) <http://www.eltiempo.com/politica/analisis-de-la-poblacion-indigena-en-colombia_12986822-4>.

investors, to guarantee communities’ right to prior consultation on such projects, to defend the environment, and to enforce its own laws, preventing illegal projects from going forward.

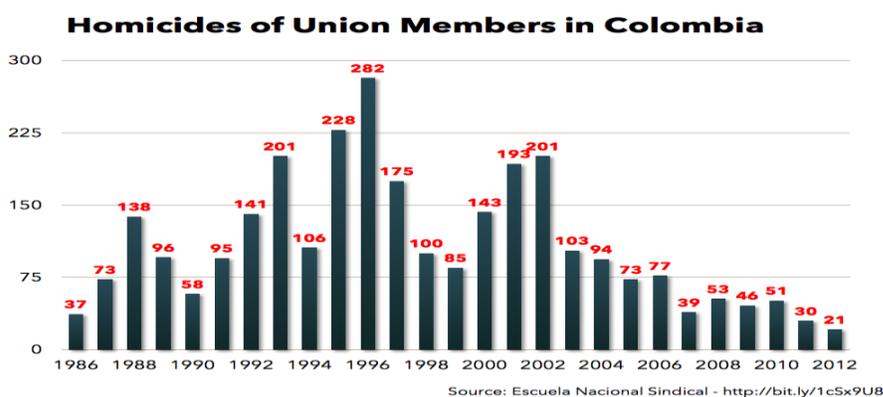
Social Protest

Large investment projects are one of several reasons why Colombia has witnessed a wave of organized protests during 2013. Several times this year, coffee growers, artisanal miners, indigenous groups, and—in August—tens of thousands of farmers have taken to the nation’s roads, mainly in rural areas, to demand protection from declining prices, improved basic services, and help competing with foreign imports. While the Santos government has generally chosen to negotiate with these protestors, its response has been heavy-handed at times. Farmers who block roads with stones and other implements claim many injuries at the hands of riot police.³⁹ These protests, and the security forces’ often confrontational reaction to them, are likely to remain frequent in the coming years. They will demand that Colombia improve not only its crowd control techniques, but also its compliance with its own commitments to poor, and poorly governed, rural communities.

Labor Rights

In 2011, as the U.S. Congress neared ratification of the United States’ free trade agreement with Colombia, the Obama and Santos administrations committed to a Labor Action Plan to address some of the principal concerns about labor rights in Colombia. Two years later, the Labor Action Plan’s objectives remain significantly unmet.

The Interior Ministry’s Protection Program has improved its coverage of labor leaders, and killings of union members are down. But death threats against unionists have not declined, and the justice system rarely investigates them and actually convicts the threat issuers less than 0.1 percent of the time.⁴⁰ Of the 2,941 killings of union members that Colombia’s National Labor School has measured since 1986, 93.4 percent remain unpunished.⁴¹



Efforts to restore collective bargaining rights by doing away with third party contracting have foundered. In many sectors, employers have either replaced “Associated Labor Cooperatives” with new subcontracting schemes, or

³⁹ “La golpiza del Esmad a un campesino” (Bogotá: Semana, August 23, 2013)

<<http://www.semana.com/nacion/articulo/la-golpiza-del-esmad-campesino-video/355013-3>>.

⁴⁰ Escuela Nacional Sindical, Revista Cultura y Trabajo 89: A dos años del Plan de Acción Laboral (Medellín: ENS, August 2013) <<http://www.ens.org.co/index.shtml?s=b&m=a&cmd%5B14%5D=c-1-89&cmd%5B17%5D=c-1-89>>.

⁴¹ Escuela Nacional Sindical, Revista Cultura y Trabajo 89.

simply refused to do away with them at all. The Labor Ministry has been slow to deploy new labor inspectors to investigate these and other violations. And when inspectors do detect problems, they levy fines on employers, but the Ministry rarely manages to collect them. Two years after the Labor Action Plan, the National Labor School said in August, “everything remains the same, as if the rules hadn’t changed.”⁴²

Military Pushback on Human Rights

Especially in the period after the “False Positives” scandal broke (2008), Colombia made important strides toward holding members of the armed forces accountable for human rights abuses. The number of soldiers and officers currently convicted and imprisoned for violating citizens’ rights—and especially the number of generals and colonels—is well into the hundreds, exceeding the efforts of post-dictatorship Brazil, Chile, and Mexico, or post-war El Salvador and Guatemala. As of early 2013, another 4,625 members of the armed forces were under investigation or on trial, in the civilian justice system, for human rights crimes.⁴³

Colombia’s progress owes to that civilian judicial system, which since a 1997 high court decision had been given increasing jurisdiction over military human rights abuses allegedly committed outside of combat. Over the ensuing years, virtually all convictions of military personnel for human rights crimes were handed down by civilian judges, thanks to the work of civilian prosecutors and investigators. Colombia’s military justice system, which frequently challenges civilian courts’ jurisdiction over abuse cases, has a far poorer record of holding soldiers and officers accountable.

As civilian courts’ successful prosecutions of senior officers increased, by 2010 the armed forces were demanding that most human rights cases return to military justice. Civilian judges and prosecutors who did not understand the context of combat, they said, were tying their hands and undermining their effectiveness in the fight against armed groups. President Santos publicly agreed, and in late 2011, months after passage of the Land and Victims’ law, his defense minister introduced legislation to change Colombia’s constitution in a way that would ensure that all human rights cases begin under military jurisdiction.

Over the next year and a half, thanks to strong input from human rights defenders and the international community, including the Obama administration, this legislation was modified. As now worded, the military justice reform sends seven types of cases to the civilian justice system: crimes against humanity, genocide, forced displacement, forced disappearance, extrajudicial execution, sexual violence, and torture. Anything else goes to the military justice system. The constitutional amendment passed in December 2012, and the enabling law passed in June 2013.

Though it is not as drastic as originally proposed, the military justice law still worries most human rights defenders familiar with Colombia’s legal system. The UN High Commissioner for Human Rights, Human Rights Watch, and the Colombian Commission of Jurists, among others including WOLA, worry that past and future cases of serious human rights abuse could end up transferred to, or starting in, the military justice system where punishment is unlikely. Though Colombian authorities insist that this will not happen, the UN High Commissioner and others

⁴² Escuela Nacional Sindical, [Revista Cultura y Trabajo 89](#).

⁴³ Fiscalía General de la Nación, [Informe de Gestión 2012-2013](#).

worry that these cases may include some of the 2002-2008 “False Positives” currently being handled by civilian prosecutors and judges.⁴⁴

Post-Conflict Challenges

Right now, the outcome of the Colombian government’s peace process with the FARC is impossible to predict. Should the talks fail, the largest human rights risk would be what we might call the “Sri Lanka scenario”: a no-holds-barred military offensive with numerous non-combatant casualties. If this fourth attempted peace process collapses, political and military leaders will be tempted to finish the FARC off, once and for all, through scorched-earth tactics. It would be imperative that the U.S. government and the international community urge Colombia to avoid this path, which would carry an enormous human toll while worsening the cycle of vengeance and victimization that has long fed the conflict.

In the meantime, there is still a strong likelihood that the current talks in Havana will succeed. Though they are moving slowly, they are moving, and both sides are continuing to respect the ground rules to an extent not seen before. Even if talks are interrupted by Colombia’s upcoming elections, an agreement before the end of 2014 is a real possibility. Should that happen, a series of new security and human rights challenges would emerge in post-conflict Colombia (in addition to the “transitional justice” challenge listed above).

Demobilization and Reintegration

One of the first would be demobilizing 7,000-plus FARC members, along with a similar number of members of urban militias and the guerrillas’ support networks, and providing them enough security and economic opportunity to prevent them from re-arming. It is almost certain that a portion of the FARC, especially mid-level commanders and money-handlers in lucrative drug trafficking zones, would revert to criminality, perhaps forming new violent groups that could resemble the BACRIM. It is essential that this portion be kept to the lowest possible minimum, and that a well-designed, well-funded demobilization and reintegration program—one that counts with the active participation of former FARC leaders—would be the key.

With 31,849 paramilitaries collectively demobilized, and 22,990 guerrillas and paramilitaries individually demobilized, between 2003 and mid-2012, Colombia has much experience with demobilization and reintegration programs. This record, though, is mixed. As of mid-2012, of these 54,839 individuals, only 30,736 (56%) remained “in the system,” participating in reintegration programs. 10,212 others (19%) had abandoned reintegration, and 8,030 (15%) had never entered the process. 2,308 (4%) had died. 1,786 (3%) were under investigation for committing crimes, and 1,102 (2%) lost their judicial benefits because they had committed crimes.⁴⁵ A future program to demobilize and reintegrate FARC members will need a success rate greater than 56 percent.

⁴⁴ “Fuero militar, ‘tacan burro’ quienes creen que es para cubrir falsos positivos: Santos” (Bogotá: [El Espectador](http://www.elspectador.com/noticias/judicial/articulo-429479-fuero-militar-tacan-burro-quienes-creen-cubrir-falsos-positivos), June 22, 2013) <<http://www.elspectador.com/noticias/judicial/articulo-429479-fuero-militar-tacan-burro-quienes-creen-cubrir-falsos-positivos>>.

⁴⁵ Agencia Colombia para la Reintegración, cited in “Las cifras de los 10 años de desmovilizaciones” (Bogotá: [El Tiempo](http://www.eltiempo.com/Multimedia/especiales/desmovilizados/ARCHIVO/ARCHIVO-12224321-0.pdf), 2012) <<http://www.eltiempo.com/Multimedia/especiales/desmovilizados/ARCHIVO/ARCHIVO-12224321-0.pdf>>.

Victims

A post-conflict program that attends to former victimizers while neglecting victims could create more problems than it solves. If the conflict with FARC ends, Colombia must accelerate implementation of its Victims' Law, which provides for reparations and indemnization. Colombia should also require demobilized fighters to provide a full, detailed confession of their crimes and to help relatives learn what happened to their loved ones. To date, about 5.8 million Colombians—in a country of 48 million—have registered with the government's National Victims' Unit.⁴⁶ As of May, over 115,000 had received some financial compensation under the Victims' Law.⁴⁷ The plan is to spend about US\$26 billion over ten years on reparations and other measures for conflict victims.⁴⁸ As with all of the Santos administration's well-intentioned initiatives, the greatest uncertainty surrounds its ability to execute and implement its plans.

Policing and Public Security

Many analysts speculate, meanwhile, that a post-conflict Colombia could be more violent than what we see today. The disappearance of a large, hierarchically organized illegal armed group like the FARC could leave a vacuum, especially in ungoverned drug transshipment zones, that many smaller violent criminal groups may compete to fill. This competition could rage not just in contested rural areas and border zones, but in cities where disputes between youth gangs could metastasize. A post-conflict Colombia could find itself confronting the same violent phenomena that have bedeviled Mexico and Central America.

As a result, a post-conflict Colombia may need more police than it has now. It would need a mobile constabulary to provide coverage in the countryside. It would need many more detectives and investigators able to “follow the money” and dismantle the criminal networks likely to form in the post-conflict. And it would need many more community police who are able to respond to calls for assistance, and to build ties with local leaders. Colombia's more capable post-conflict police force would be more effective if the country follows a step taken by nearly every other country in Latin America over the last generation: removing the National Police from the Defense Ministry and creating a new, civilian-run Public Security Ministry.

The Armed Forces and Civil-Military Relations

Similarly, a post-conflict Colombia would need fewer soldiers, sailors, and airmen. It will be hard to justify maintaining a 281,000-strong armed force in peacetime. However, military leaders are already making clear that they intend for the armed forces to remain at their current size and budget, which they would justify by taking on a host of internal roles, from auxiliary policing to road-building. Meanwhile, officers are expressing concern about the possibility of a wave of post-conflict trials for human rights abuses, which even in the context of transitional justice would amount to a severe stain on the reputation of a military that will be expecting gratitude for having weakened

⁴⁶ Presidency of Colombia, Departamento Administrativo de Prosperidad Social, Unidad para la Atención y Reparación Integral de Víctimas, “Red Nacional de Información” (Bogotá: Unidad de Víctimas, visited October 2013) <http://rni.unidadvictimas.gov.co/?page_id=460>.

⁴⁷ Anastasia Moloney, “Compensating War Victims – Colombia's Toughest Job?” (Bogotá: Thomson Reuters Foundation, May 28, 2013) <<http://www.trust.org/item/20130528130554-6e4np/>>.

⁴⁸ Cesar García, “Colombia To Start Paying Victims of Violence” (Bogotá: Associated Press, December 20, 2011) <<http://news.yahoo.com/colombian-start-paying-victims-violence-233447930.html>>.

guerrillas. Without wise and careful military and civilian leadership, a legacy of Colombia's massive post-2000 security buildup will be a very rocky, even destabilizing, post-conflict civil-military relationship.

Confronting Local Violent Actors

A post-FARC Colombia would still have some guerrillas (the ELN has not even begun talks), post-paramilitary groups like the Urabeños, organized criminals, and street gangs. It would also still have local political and economic bosses used to getting their way through violence and corruption. These, plus unreformed members of the security forces, could be the generators of a continued security and human rights crisis.

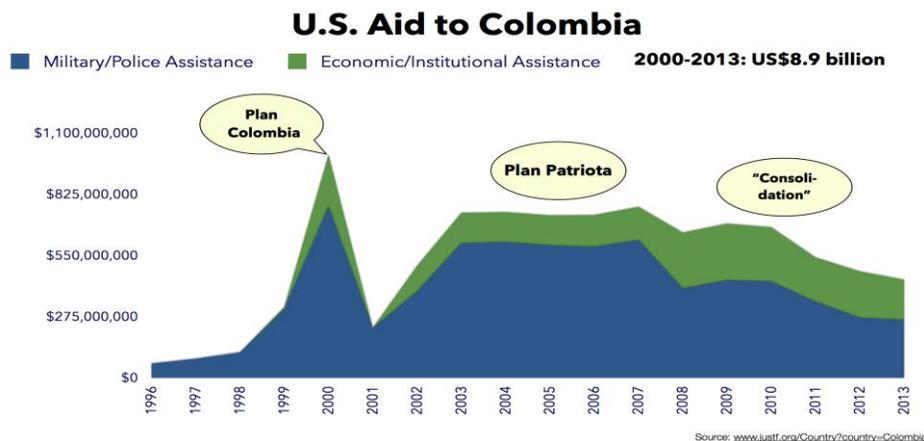
Confronting these threats to democratic stability will, of course, require well-intentioned leaders in Bogotá to exercise a great deal of that magical ingredient, "political will." It will also require that Colombia have a very capable, stable, and well-resourced justice system. Ultimately, all roads in Colombia go through the justice system: land restitution, victims' rights, justice for abuses, curtailing corruption, enforcing labor rights, protecting property rights. If they are to handle these enormous responsibilities, judges, prosecutors, and investigators—plus the witnesses who give them evidence—will need much more physical protection against potential threats. Judges and prosecutors will need more manpower to reduce their caseloads. Investigators will need databases, DNA testing, forensics capabilities, crime labs, and other tools.

Defending peace and human rights from these violent actors will also require Colombia's state simply to be present. Recent Colombian governments appear to be recognizing that they no longer have the luxury of leaving vast stretches of the countryside, plus poor urban slums, almost completely ungoverned. They are finding that these vacuums must be filled not just with soldiers, but also with community police, judges, road-builders, land-titlers, doctors, and teachers. If Colombia brings the state into ungoverned areas—together with the justice system, a healthy press, and a robust non-governmental community providing oversight—then violence and drug trafficking will wither. Even in the worst years of Colombia's conflict, nobody planted coca in the parts of the country that had a credible government presence.

The U.S. Role

The U.S. government can help with this. If a peace accord is reached, the U.S. government must stand ready to help immediately. As Colombia's largest international donor by far, with about US\$9 billion provided since the 2000 launch of "Plan Colombia," we have a clear and compelling interest in helping a friend and ally to avoid a repetition of the trauma it has suffered, and to become a stable, prosperous, just partner.⁴⁹

⁴⁹ Sources cited at Just the Facts Project, "U.S. Aid to Colombia, All Programs, 2000-2013" (Washington: CIP, LAWGEF, WOLA, visited October 2013) <<http://justf.org/country?country=Colombia&year1=2000&year2=2013>>.



Doing so will require that we change the way we measure the success of our policies. Instead of hectares eradicated, tons interdicted, or “high-value targets” taken down, we must measure people protected, verdicts reached, land titles formalized, miles of road built, and peace agreement commitments fulfilled.

Since 2006, the U.S. government supported a program in Colombia known as the National Consolidation Plan. This billion-dollar-plus effort sought to bring both security and basic services to long-ungoverned parts of the country where armed groups and drug trafficking thrive. The National Consolidation Plan still formally exists today, but after some initial successes, it has received much less emphasis as civilian government agencies largely failed to accompany the military into the zones to be “consolidated.”⁵⁰ Post-conflict Colombia would need a state-building effort with a similar end goal, but a more sustained, civilian-based, and participatory strategy. If Colombia develops one, the United States should support it.

In the meantime, as the peace process creeps along and the prospect of a “post-conflict Colombia” remains uncertain, U.S. assistance should still be oriented toward strengthening civilian state capabilities, especially justice. What security assistance we provide must continue to come with strong human rights conditionality, like the Leahy Law and the Colombia-specific conditions currently attached to the State and Foreign Operations budget bill. These provisions not only reduce the probability that U.S. resources will be used to abuse human rights. They ensure that a concern for human rights and impunity remain front-and-center in the U.S. government’s security conversations with Colombian counterparts.

Above all, whether in conflict or in peace, U.S. officials must always take care to ensure that the U.S. government is on the side of those who share our values in Colombia. Wherever there are Colombian leaders with good intentions and clean records, whether in government or in civil society, it should be unambiguously clear, at all times, that the United States stands with them.

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Mr. McGOVERN. Dr. Bouvier?

STATEMENT OF DR. VIRGINIA M. BOUVIER, SENIOR PROGRAM OFFICER FOR LATIN AMERICA, UNITED STATES INSTITUTE FOR PEACE

Ms. BOUVIER. Thank you very much, Congressman McGovern.

I would like to thank the chairs of the Tom Lantos Committee on Human Rights, Congressman Jim McGovern and Congressman Frank Wolf, as well as Congresswoman Suzanne Bonamici and members of this committee for holding this hearing and for the opportunity to speak with you today. This is an important hearing at a critical time for peace in Colombia.

I am Dr. Virginia Bouvier. I am the Senior Program Officer for Latin America at the U.S. Institute of Peace. The U.S. Congress created the institute in 1984 with a mandate to contribute to the prevention, resolution, and management of international conflicts. USIP personnel are on the ground in some of the world's most volatile regions of the world, working to support peace and the resolution of conflicts.

The views I express today are my own and not those of USIP, which does not take positions on specific policies.

As Colombian President Juan Manuel Santos recently noted, making war is much easier than seeking peace. We should applaud President Santos for his courage in taking the more difficult and ultimately more stable route.

The prospects for peace in Colombia are promising, though not without risks. The government and the FARC have developed a methodology, an agenda, and a roadmap, have reached agreement on land reforms, and are moving steadily toward a final agreement.

And here, perhaps, my testimony varies a bit from the interpretation of Adam Isacson. I think that this agreement that has been reached on land is really historic and, if implemented, if it goes to the final agreement, that it will really make a difference.

The process, however, is vulnerable, particularly as the election season gets under way. Adam has outlined some of the prospects ahead of us. Peace talks with the National Liberation Army, the ELN, have yet to be launched, and peace will be more stable if it includes both the FARC and the ELN. U.S. Government efforts to help Colombia win the peace should now match its efforts -- U.S. efforts in the past to win the war should now be matched by efforts to win the peace.

To this end, the USG and all of its agencies should consistently support the peace process in Havana and encourage a peace process with the ELN. The USG should actively persuade potential spoilers of the benefits of peace and ensure that its messaging is clear. And here I pick up on some of the discussion about the U.S. working with friends in the military to make sure that they understand that peace is in their interests and the interests of the country.

The USG should also consider reasonable requests from the parties that would facilitate peace. These may relate to U.S. counter-narcotics policies, extradition practices, release of U.S. records relating to the conflict, or other measures.

A peace agreement is a necessary but insufficient condition for peace. It is necessary because it will end a guerrilla insurgency of nearly 50 years. It is insufficient because the conflict with the insurgents represents only a fraction of the violence in Colombia.

And I know you understand this, Congressman McGovern, from your various trips to Colombia. Given that half of all comprehensive peace accords fail within the first 5 years after they are signed, the international

community should scale up resources in this very vulnerable post-conflict period to ensure that peace holds.

Just over 1 percent of the Colombian population owns half the land, and the illegal usurpation of some 6.6 million hectares has displaced about 5 million Colombians. Efforts to restitute lands have already generated a backlash, and the attorney general in Colombia has warned of a dirty war in the post-accord period.

U.S. policy should support victims to exercise effectively and safely their rights to truth, justice, reparations, and guarantees of nonrepetition. It should vigorously advocate for the legitimate right to nonviolent dissent and the right to organize to defend human rights, including labor rights in Colombia. This committee should continue to monitor the status of human rights in Colombia. Protection is the cornerstone of sustainable peace there.

The USG should partner with traditionally marginalized groups in their efforts to redress discrimination, exclusion, and inequity. Women, Afro-Colombians, indigenous people, youth, and peasants are indispensable partners in the consolidation of peace.

Peace will not automatically trickle down with the signing of a peace accord. It will take years to implement peace accords, heal the legacies of conflict, and transform the attitudes and structures that have allowed this to happen. The U.S. should support capacity-building for implementing peace accords at the municipal and regional levels. The U.S. Institute of Peace has seen the impact of small investments in historical memory initiatives, capacity-building in human rights and conflict resolution, including mediation, facilitation, and dialogue, regional peace and development initiatives, and local reconciliation models. These are critical to long-term reconciliation and cost-effective in preventing future violence.

Violence against women has been strategically employed as a weapon of war by all sides of the conflict and is part of a continuum of violence fostered by discrimination and exclusion. Empowering women's contributions to peace will diminish the risks of future violence.

U.S. leadership should be employed in Colombia to ensure that: women and men participate in decisions affecting their communities and benefit equally from the peace dividend; violence against women is addressed in any ceasefire or peace agreements; and demobilization, disarmament, and reintegration programs meet the differential needs of boys, girls, men, and women, and include measures to prevent violence against women in communities where ex-combatants demobilize.

The U.S. Institute of Peace has a track record helping to foster and secure peace and to prevent violent conflict. We look forward to working with the committee to advance our shared goals.

Thank you very much.

Mr. McGOVERN. Well, thank you very much.

[The statement of Ms. Bouvier follows:]

Prepared Statement of Dr. Virginia M. Bouvier
“Human Rights and the Colombian Peace Process”
Congressional Testimony prepared for the
Tom Lantos Human Rights Commission
U.S. House of Representatives
October 24, 2013
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I would like to thank the co-chairs of the Tom Lantos Committee on Human Rights, Congressman Jim McGovern and Congressman Frank Wolf, and the members of this committee for holding this hearing and for the opportunity to speak with you today. This is an important hearing at a critical time for peace in Colombia.

I am Dr. Virginia M. Bouvier and I am a Senior Program Officer for Latin America and head of the Colombia Conflict Team at the United States Institute of Peace. The U.S. Congress created the Institute in 1984 with a mandate to contribute to the prevention, resolution, and management of international conflicts. USIP personnel are on the ground in some of the world's most volatile regions, working with U.S. agencies, non-governmental organizations, and local communities to foster peace and stability. With your assistance, we have been supporting a political solution to Colombia's internal armed conflict. The views I express today are my own and not those of the U.S. Institute of Peace, which does not take positions on specific policies.

As Colombian President Juan Manuel Santos recently noted, "Making war... is much easier than seeking peace." We should applaud President Santos for his courage in taking the more difficult, and ultimately more stable, route.

Colombia's internal armed conflict has lasted half a century, and repeated efforts over the years have failed to bring peace. The toll in human lives has been enormous and includes some 5 million internally displaced Colombians and more than 220,000 deaths. Nonetheless, the prospects for peace are promising. Last year, peace talks between the Colombian government and the Colombian Revolutionary Armed Forces (FARC-EP), Colombia's largest insurgent group, opened in Norway. Yesterday, on October 23, the government and the FARC began their sixteenth cycle of talks in Cuba. Progress has been steady, though as Colombia's electoral season approaches, the pressures on the table are heightening.

While formal talks between the Colombian government and a second Colombian insurgent organization, the National Liberation Army (ELN), have not yet begun, on October 14, 2013, Nicolás Rodríguez Bautista ("Gabino"), the head of Central Command of the ELN, reiterated once again that group's disposition to also come to the peace table and called on the Colombian government to initiate exploratory talks to that end. Different agendas and priorities have precluded ELN participation at the peace tables in Havana; a more likely scenario is a parallel table. Peace will be more stable if it includes both the FARC and the ELN.

A peace accord with the FARC that successfully addresses the root causes of the Colombian conflict--as well as the factors that perpetuate it--will be the first step to staunching violence in Colombia and will enhance security in the region. Sustainable peace in Colombia is critical to U.S. national security interests and to regional peace and security more broadly. The United States should do everything in its power to ensure that the peace endeavor in Colombia is successful.

PROSPECTS FOR PEACE

The peace talks in Havana between the FARC-EP and the Colombian government are the fourth such effort in three decades. This process has come farther than any previous attempt to end the internal armed conflict, and there are several causes for optimism.

1. The parties have already worked together and achieved a framework agreement that details the path ahead. The framework agreement includes a methodology, road map and modest agenda of six items. The agenda is more focused and manageable than previous agendas.
2. The parties reached a preliminary agreement on agrarian reform, one of the driving forces of the conflict for nearly five decades, and are working to find agreement on the second agenda item, political participation.
3. Both parties appear to have accepted that a military victory is not possible, although the longer the process goes on and each side scores military victories, there is a possibility that this calculus could shift.
4. The peace talks are taking place without benefit of a ceasefire (at the insistence of the Santos government.) Significant blows against the FARC leadership have not caused the insurgents to leave the peace table.
5. The process appears to be serious and for the most part well designed and the parties agree that the goal is to end the conflict.
6. A series of confidence-building measures, including a change in FARC policy to cease its practice of kidnapping and a law to restore usurped lands, have been successfully enacted.
7. Both parties are building on lessons from the past. The government negotiating team includes representatives from the military, police, and business—sectors that have been spoilers in past peace processes. Both sides have upheld the agreements they have made thus far, which has consolidated the working relationship and sense of mutual confidence at the table.
8. The international context is more favorable for peace today than it was during the last talks eleven years ago in Caguán. Armed struggle has fallen out of favor, as former guerrillas and progressive politicians throughout Latin America, and even within Colombia itself, have been elected to office and are seeking reforms without violence.
9. The international community, through Cuba, Norway, Venezuela, and Chile, is playing a quietly constructive role at the table in helping to move the peace process along. The United States has supported the peace process.

The United States Institute of Peace (USIP) has been modestly helping to shape the environment for a political solution in Colombia by supporting civil society initiatives for peace, and fomenting discussions on legal frameworks for peace, lessons from past peace processes, and new approaches that might have more success.

While there will undoubtedly be bumps and delays along the way, the prospects for peace look better than they have in many years.

SIGNIFICANCE OF A PEACE ACCORD

A peace accord is a necessary, but insufficient condition for peace and reconciliation in Colombia. It would mark the beginning of Colombia's transition from war to peace. It will potentially release resources for long-overdue structural changes and bolster the efforts of civil society to deepen democratic practice and have their rights respected and protected. An accord, if it is to lead to sustainable peace, will provide road maps to be followed in order to ensure that victims' rights to truth, justice, reparations and guarantees of non-repetition can be honored. The heightened violence in El Salvador and Guatemala in the aftermath of their peace accords teaches us that peace accords that don't address root causes, dismantle structures of violence, and anticipate new forms of violence will be less likely to hold.

It is important to manage expectations, both during the peace process and in a post-accord period, and not to assume that because a peace accord is reached the problems are solved. A successful negotiation between the Colombian government and the FARC may end Colombia's internal armed conflict, but it is unlikely to stop all of

Colombia's violence. A peace accord with the guerrillas will not end drug trafficking, organized crime, sexual violence, or gang violence—and it may exacerbate these if precautions are not taken. Human rights violations in Colombia may well escalate as reforms are implemented and vested interests are threatened. A peace accord is merely the start of the next phase of building peace.

RISKS TO THE PEACE PROCESS

There are, however, many enemies of peace. Colombian society is largely conservative and has resisted agrarian reform and the opening of the political system for centuries. In Colombia, just over 1% of the population owns half the land, and some 6.6 million hectares have been illegally usurped in the course of the conflict. Ex-President Alvaro Uribe has been a vociferous opponent of the peace talks in Havana. We are already seeing a backlash from powerful landed sectors and their allies, as efforts are made to implement the ambitious Victims and Land Restitution Law.⁵¹ The Attorney General (Fiscal General) Eduardo Montealegre recently predicted that there would be a “dirty war” in Colombia during the post-conflict period, and that this will be a major challenge for the Colombian State.

IMPACT OF THE INTERNAL ARMED CONFLICT ON HUMAN RIGHTS

A peace accord would close a chapter in Colombian history that has been marked by the failure of all conflict parties to observe the most basic legal obligations and principles of international human rights and humanitarian law—particularly those provisions of the Geneva Conventions and related protocols relating to the differential treatment warranted civilians and combatants, and the enactment of precautions that protect and spare civilians and their property from attacks—as well as a range of international human rights laws enshrined in the UN Declaration of Human Rights and other conventions to which Colombia is a signatory.

According to the July 2013 report of the Historical Memory Center, *Basta Ya! Colombia: Memorias de guerra y dignidad* (Enough Already! Colombia: Memories of War and Dignity), between 1958-2012, nearly a quarter of a million people have been killed in Colombia's internal armed conflict.⁵² Eighty percent of those killed have been civilians. Guerrilla insurgents, paramilitary and neo-paramilitary groups (sometimes called *bandas criminales* or *bacrim*), and drug traffickers are responsible for the violence. The report tells of forced disappearances; extrajudicial executions; and the use of sexual violence as a strategy of war by all of the armed groups. The war has affected most regions of Colombia, albeit in unequal ways, and has included:

- 23,154 selective assassinations from 1981-2012 (40% of these were committed by private armies; 27% by unknown assailants; 16.8% by guerrillas; and more than 10% (2,300 killings) were carried out by public security forces (Fuerza Pública); the selective assassinations included at least 1,227 community leaders and 1,495 political party activists (not counting members of the Patriotic Union (Unión Patriótica), who will be the subject of a future HMC report);
- More than 6.6 million hectares of land usurped, causing the internal displacement of 4.7 million Colombians (from 1985 and 2012, 26 people were displaced every hour);
- 27,023 kidnappings in 919 municipalities between 1970-2010, mostly attributable to the FARC-EP;
- 10,189 deaths or amputees from anti-personnel land mines; and
- Illicit recruitment of more than 6,400 children.

⁵¹ See Human Rights Watch, *The Risk of Returning Home: Violence and Threats against Displaced People Reclaiming Land in Colombia*, September 17, 2013, at <http://www.hrw.org/node/118407>.

⁵² The report is available in Spanish and can be downloaded at <http://www.centrodehistoriahistorica.gov.co/micrositios/informeGeneral/descargas.html>.

IMPACT OF THE PEACE PROCESS ON HUMAN RIGHTS

A peace process does not automatically translate into greater respect for human rights. Ironically, it often does just the opposite. Violence is likely to spike at key moments of the process as each side seeks to demonstrate its military power to gain leverage at the table. Before the peace accords were signed in Northern Ireland and South Africa, violence skyrocketed, nearly derailing the peace process in each of those countries.⁵³

In the current talks, with no ceasefire in effect, the Santos government has escalated military activity against the FARC while the dialogues go on in Havana. Both the FARC and the ELN have also escalated their attacks. The strategy of using violence to gain power at the peace table has contributed to increased militarization of the conflict.

This increased violence is most deeply felt by the civilian populations, particularly in the regions populated by Afro-Colombian and indigenous communities. This contributes to the skepticism of the population, which is dismayed to find that engagement in a peace process is translating into more, not less, violence in their communities.

THE FRAMEWORK AGREEMENT AND HUMAN RIGHTS

The theme of human rights permeates the August 26th, 2012 framework agreement, which is the road map set out by both the government and the FARC for the peace talks.⁵⁴ While only one of the items on the agenda in Havana directly addresses the issue of victims, each of the agenda items is nonetheless inextricably linked to the theme of human rights and justice.

The introductory preamble to the framework agreement outlines general areas of consensus between the parties. It recognizes that “respect for human rights... is a goal that must be promoted by the State.” It establishes that “economic development with social justice in harmony with the environment will guarantee peace and progress,” and that “social development with equity and well-being for all will allow the country to grow.” The document also acknowledges the parties’ commitment to “deepen democracy as a condition for securing a solid basis for peace.”

The body of the framework agreement lays out the particular agenda items to be discussed during the peace talks. These also address different aspects of economic, political, and social rights. The first item, agrarian development policy, calls for agreement on measures to increase integration of the rural and urban areas, and enhance equitable social and economic development. Political participation is the second item under discussion. This topic includes security guarantees for the exercise of political rights, including the right to dissent (*oposición política*), and measures to increase the participation of the citizenry, particularly the most vulnerable populations, in local, regional and national politics.

The third item deals with the end of the conflict and considers the question of a definitive bilateral ceasefire and cessation of hostilities, disarmament and reincorporation of the FARC-EP into civil life, and the situation of political prisoners. Also under this point on the agenda are national commitments to end criminal organizations and networks and reduce corruption and impunity, especially for those organizations “responsible for homicides and massacres, or that have attacked human rights defenders, social movements or political movements.”

⁵³ John Darby, *Effects of Violence on Peace Processes* (Washington, DC: U.S. Institute of Peace Press, 2001).

⁵⁴ “Acuerdo general para la terminación del conflicto y la construcción de una paz estable y duradera,” Havana, August 26, 2012, at <https://www.mesadeconversaciones.com.co/sites/default/files/AcuerdoGeneralTerminacionConflicto.pdf>.

The agenda's fourth item on illicit drugs includes the need for integrated development and environmental recovery plans drawn and carried out with the participation of the communities in the affected areas, and drug prevention and public health measures.

The fifth point of the framework agreement notes that respect and compensation for the victims is at the center of the accord between the government and the FARC. Under this item, the negotiators at the table will address the human rights of the victims and questions of truth. Here the parties pledge also to address the phenomenon of paramilitarism (as established in agenda Item 3).

In the final point of the agenda, implementation, verification, and endorsement of the agreement will be established.

Noticeably absent from the agenda are explicit reference to cultural rights and rights of minorities and women. The agenda is an ambitious one that promises reforms that will lead to improved prospects for the protection and promotion of democracy, peace, and human rights. Of course, as they say, "the devil is in the details," and it remains to be seen how these agenda items will be addressed in the final peace accord. The agreement on agrarian development that was reached in May 2013 has been called "important" and "historic". If implemented--and the actual implementation has often been the Achilles' heel of Colombia's generally progressive legislation--it could herald a radical transformation of the countryside in which the rights and dignity of Colombia's peasant farmers will at long last be protected.

TRANSITIONAL JUSTICE AND THE PEACE PROCESS

Peace processes today are infinitely more complex than in the years before the establishment of the International Criminal Court and the evolution of inter-American and international jurisprudence that uphold the rights of the victims to truth, justice, reparations, and guarantees of non-repetition, as well as the government's obligation to investigate, prosecute and penalize systematic violators of human rights.

In the past, in the name of political expediency, pardons and amnesties often left victims feeling that the demands of peace took precedence over the demands for justice. In Latin America, however, despite earlier peace deals, criminal prosecutions have often gone forward and amnesty arrangements have been ignored, overturned or disrupted. Inter-American jurisprudence now contends that blanket amnesties, particularly for war crimes, crimes against humanity, and genocide, are no longer viable.

At a recent event at USIP, political scientist Jo Marie Burt described an "international arch favoring accountability." She noted that the Inter-American Commission and Inter-American Court, as well as victims and human rights groups, have been important constituencies in securing the successful prosecution of heads of state in Argentina, Uruguay, Peru and Guatemala; and the criminal prosecution of mid-low ranking military and civilians, including former priests and judges.

The Colombians, who have incorporated international human rights laws and obligations into their domestic laws, are considering their legal options and international obligations carefully as they shape their peace deal. On September 24, Colombian President Juan Manuel Santos spoke to General Assembly at the United Nations and discussed some of the challenges of Colombia's peace process--including the search for appropriate transitional justice mechanisms that would comply with Colombia's international obligations to investigate and prosecute human rights violators; and the need to satisfy victims' rights to truth, justice, reparations, and guarantees of non-repetition.

“It is not about sacrificing justice in order to achieve peace,” President Santos observed, “but about achieving peace with the maximum amount of justice.”⁵⁵

As the peace talks have advanced over the last year, we have witnessed an important transformation in the willingness of the conflict parties to accept responsibility for their actions. President Santos has spoken publicly of acts of commission and omission of State organs in association with illegal armed actors and called for “recognizing the errors of the past” in order to build a more just and peaceful country. Likewise, the guerrillas have begun to publicly recognize their own wrongdoings. In an August 1, 2013 interview with FARC leaders Iván Márquez, Rodrigo Granda, and Pablo Catatumbo, the latter, long considered one of the FARC hardliners, noted, “We have made mistakes, some serious indeed,” and expressed the FARC’s willingness to ask forgiveness.

These acknowledgements of responsibility for wrongdoing are merely the beginning, and they are a key ingredient to advancing truth, justice, reparations and ultimately reconciliation.

Debates are raging over how priorities might be established for past abuses--Which crimes will be investigated and which parties will face investigation? Will both the military and the guerrillas be subject to prosecution? Will jail time be required or will alternative sentencing or restorative justice options be available? What would satisfy the victims without causing the parties to halt the peace process? The International Crisis Group has suggested a recipe that would include prosecution for the “most responsible” for the “most serious crimes.”⁵⁶ The Constitutional Court has favored a prioritization of cases.

There is a tension between peace and justice, but it is no longer a matter of choosing one over the other. Peace and justice must go hand-in-hand. For any agreement to be accepted as legitimate, it must offer “sufficient” justice to the victims. As Monsignor Leonardo Gómez Serna has noted, “Every crime, every killing must have its consequence. It must be understood that even pardoning from the heart, there must still be a sanction for those who have perpetrated these crimes... The important thing is that justice is done.”⁵⁷

Victims have the right to truth, justice, reparations, and guarantees of non-repetition; and States have the obligation to investigate, prosecute and punish gross violators of human rights. Strong victims groups and human rights organizations can be important partners in ensuring both the rights of victims and the fulfillment of State obligations.

There is recognition, nonetheless, that transitions from authoritarian to democratic rule may differ from transitions from war to peace, particularly where military victory has not been achieved. Blanket amnesties are off the table for crimes against humanity, war crimes, and genocide, but there may be flexibility regarding questions of timing, sequencing, reduced sentences, alternative sentencing, or incarceration options. The question then is not whether there will be consequences, but what those consequences will be. At a minimum, for social and political reconciliation, there must be public acknowledgement of, accountability, and apologies for abuses. Society needs to know what occurred and why. In the case of disappearances, recovery of the bodies seems to be particularly important.

⁵⁵ “No se trata de sacrificar la justicia para lograr la paz, sino lograr la paz con el máximo de justicia.” Juan Manuel Santos, speech to the UN General Assembly, New York, September 24, 2013, at http://wsp.presidencia.gov.co/Prensa/2013/Septiembre/Paginas/20130924_08-Palabras-Presidente-Santos.aspx.

⁵⁶ International Crisis Group, *Transitional Justice and Colombia’s Peace Talks*, Latin America Report, No. 49, August 29, 2013, at [http://www.crisisgroup.org/~media/Files/latin-america/colombia/049-transitional-justice-and-colombia-s-peace-talks](http://www.crisisgroup.org/~/media/Files/latin-america/colombia/049-transitional-justice-and-colombia-s-peace-talks).

⁵⁷ Alberto Mario Suárez, “‘Hablar de perdón no es hablar de impunidad,’ Monseñor Gómez Serna,” *El Tiempo*, Sept. 22, 2013.

The U.S. Institute of Peace has learned from its work in societies transitioning from war to peace that enabling victims to tell their stories is one of the best ways to empower citizens, rebuild communities, and contribute to healing. Efforts to document, discuss, and disseminate the truth behind violence is the basic building for justice, reparations, reconciliation, and guarantees of non-repetition. In this regard, the U.S. Institute of Peace has supported the creation of computer databases in places like Guatemala, Iraq, Afghanistan, Democratic Republic of Congo (DRC), and Cambodia. It has funded work on truth commissions in East Timor, El Salvador, Chile, Argentina, South Africa, Uganda, Bosnia, East Timor, Peru, Sierra Leone, Cambodia, Rwanda, and Uganda. It has convened international conferences and established global networks to share best practices in documenting war crimes and mass human rights abuses, and facilitated meetings between human rights practitioners, forensic scientists and technology specialists to improve methodologies, mechanisms, and strategies for preserving the past.⁵⁸

In Colombia, USIP has supported the gender unit of the Historical Memory Center to research the impact of the war on women, develop methodologies and training materials for communities to construct historical memory, and to ensure that the experiences of victims (most of whom are women) are part of the historical record of the conflict. It has supported the nongovernmental organization Equitas to pierce the silence around disappearances and clandestine cemeteries, to provide forensic evidence in the controversies around Colombia's "false positives," and to create a framework for epidemiological research on violent deaths in the context of armed conflict that we believe will be useful in other conflict zones. It has supported Global Rights and AFRODES to educate and build the technical capacity within displaced and Afro-Colombian communities to document and prevent human rights violations, and to engage with government authorities to address their claims; this work has contributed to greater visibility of the impact of the war on these sectors and was cited by Colombia's Constitutional Court's ruling that mandated increased State attention for these communities. USIP is also supporting programs at the University of the Andes to train youth as historical memory practitioners, and memory galleries and photographic exhibitions that open the door for difficult conversations about the impact of Colombia's war. Likewise, it has supported projects designed to provide psychosocial support to victims and to rebuild the fabric of communities torn apart by violence. The needs are tremendous and the resources are often inadequate to the task, but even small investments now can have huge payoffs in preventing conflicts in the future and helping peace to be sustained.

RECOMMENDATIONS

The U.S. Congress has been an important ally for those seeking human rights and peace in Colombia. It can help ensure that U.S. government support is unequivocal and its messaging uniformly behind Colombia's peace talks. Congressional visits to the region or hearings like these can help ensure that this opportunity for peace is not lost.

USG efforts to help Colombia "win the peace" should now match its efforts to "win the war". To this end:

--The USG --in all of its agencies--should consistently support the peace process in Havana and encourage a peace process with the ELN.

--When the talks falter, as talks often do, the United States should anticipate, support, and encourage both sides to stay the course until an agreement is reached.

⁵⁸ Scott Worden and Rachel Ray Steele, "Telling the Story: Documentation Lessons for Afghanistan from the Cambodian Experience," *USIP PeaceBrief*, December 1, 2008, <http://www.usip.org/publications/telling-the-story-documentation-lessons-afghanistan-the-cambodian-experience>.

--The USG should actively persuade potential spoilers of the benefits of peace, and ensure that its messaging is clear.

--The United States and others in the international community should ensure that their policies, assistance, and training are sensitive to the delicate balance of civil-military relations during a time of transition from war to peace and that they contribute to civilian oversight and control.

--The USG should consider reasonable requests from the peace table that would facilitate peace. These may relate to U.S. counter-narcotics policies, extradition practices, release of U.S. records relating to the conflict, or other measures.

A peace agreement is a necessary but insufficient condition for peace. It is necessary because it will end a guerrilla insurgency of nearly 50 years; it is insufficient because the conflict with the insurgents represents only a fraction of the violence in Colombia. It will take many years to implement peace accords, heal the legacies of conflict, and transform attitudes and structures. In the wake of a peace accord, Colombia, a middle-income country with highly-skewed wealth and income distribution, risks being dropped from the priorities of the international community. This would be a mistake before substantive reforms can take hold and peace can be put on a secure footing. Given that half of all comprehensive peace accords fail within the first five years, the international community should scale up resources in the post-conflict period to ensure that peace holds.

Peace will not automatically trickle down with the signing of a peace accord. Capacity building will be needed to implement peace at the local and regional levels, as will efforts to link these to national peace-building initiatives. Therefore, in addition to supporting a national peace accord:

--The United States should support capacity building for implementing peace accords at the municipal and regional levels. The United States Institute of Peace has seen the impact of its small investments in historical memory initiatives, capacity building in human rights and conflict resolution (including mediation, facilitation, and dialogue), regional peace and development initiatives, and local reconciliation models. These are critical to long-term reconciliation and cost-effective in preventing future violence.

Just over 1% of the Colombian population owns half the land, and the usurpation of some 6.6 million hectares illegally has displaced about 5 million Colombians. Efforts to restitute lands have already generated a backlash and the Attorney General has warned of a “dirty war” in a post-accord period. Those who advocate change will need support and protection. Therefore:

--The USG should vigorously advocate for the legitimate right to non-violent dissent and the right to organize to defend human rights, and the U.S. government, and this Committee in particular, should continue to monitor its status. Protection of human rights is the cornerstone of sustainable peace.

--The USG should partner with traditionally marginalized groups in their efforts to redress discrimination, exclusion, and inequity. Women, Afro-Colombians, indigenous peoples, youth, and peasants are indispensable partners in the consolidation of peace.

--The United States and the international community should actively support civil society leaders, especially women, human rights defenders, and victims’ groups, to ensure that a peace accord meets the needs of victims, including those subjected to sexual or gender-based violence.

--U.S. policy should support victims to exercise effectively and safely their rights to truth, justice, reparations, and guarantees of non-repetition.

U.S. leadership has been critical in putting the gender issue on the global agenda, particularly with regard to women in conflict zones. The United States should be vigilant in ensuring that all of its programming meets gender-equity standards and empowers women to be partners in working for peace and development. Since violence against women has been strategically employed as a weapon of war by all sides of the conflict, and is part of a continuum of exclusion, discrimination, and inequity, empowering women by investing in their political participation, education, and leadership will contribute to a culture that is more respectful of women and help prevent or reduce the risks of gender-based violence. U.S. leadership should be employed in Colombia to ensure that:

-- Men and women participate in decisions affecting their communities and benefit equally from the peace dividend.

-- Violence against women is addressed in any ceasefire or peace agreements.

-- Demobilization, disarmament, and reintegration (DDR) programs meet the differential needs of boys, girls, men and women, and include measures to prevent violence against women in communities where ex-combatants demobilize.

The United States Institute of Peace has a track record helping foster and secure peace, and prevent violent conflict. We look forward to working with the Committee to advance our shared goals.

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Mr. McGOVERN. And let me begin by asking you both the same question. What makes this peace process different than previous initiatives? What are the things that make us feel more hopeful? What are the things that should make us more concerned? I think, you know -- and, you know, I think there is some here in the United States who just aren't quite sure that this is going to actually result in a peace accord, but I would be interested in kind of hearing your interpretation of why this is a different moment.

Ms. BOUVIER. I will go ahead. That is a great question. Thank you very much. I think, for me, this process is very different because you have a prior agreement that was reached in August, what they call the framework agreement. This represented 6 months of the two parties sitting down and coming up with an agenda. It is a modest agenda. It has six points. It is a reasonable agenda. In the past, this has not been possible.

In addition to having the agenda, they have come up with a road map for working forward, a work plan. They seem to have constructed a very high level of confidence at the table, so that between the parties you actually have discussions going on; you have some sort of compromises taking place on the issue of the land. They came up with a land agreement.

This may not seem like much. I think people look at it, and they say, Boy, they have been talking for a year, and they still only have one agreement on land. Well, if land has been the root of the conflict and they were able to come up with an agreement on land, I think that is extremely significant.

I think, secondly, both sides have really looked at the past peace processes and tried to garner lessons from the past to work into this process. One of the things they have done, they have military, business, and police sectors represented on the negotiating team. These are sectors that have historically really created opposition to the -- to any peace process. So having them on board I think was a very smart move on Santos' part.

There have been a number of agreements made on both sides. One, early on, the FARC agreed to stop its practice of kidnapping. The Colombian government moved forward some legislation to address victims and land issues in the Congress. As each of these happens, it is a kind of link that you see in many peace processes where one side will do one thing if the other side does another, and I think this process of give and take seems to have been successful so far.

I think one of the problems that you have seen has been that there is a disconnect between the public views and the press and the media attention to what is happening at the table and what is actually happening there. If you listen, if you zero in on what the negotiators themselves are saying about the peace talks, they are saying that there is progress. They are not necessarily happy with how fast it is going, but they are saying they are taking their time, they are looking at the issues. They are moving through. They are trying to find points of reconciliation between the sides. I think this is the important signal more than what the press says as to whether it is happening fast enough or not.

Clearly, there is an election in Colombia. President Santos needs certain things from the table to show that he is getting progress at the table, so the pressure is really on to produce something, but I think as long as both sides are saying that they are moving forward, that we should give them the chance to continue to move forward even if it takes longer than we might like.

I would just add also, I think the international context is very different now. I think you have had progressive leadership come in, in different parts of Latin America, and former guerrillas, including former guerrillas in different parts of Latin America, and even within Colombia itself, you have former guerrillas who have become mayors and Governors and exerted leadership from an elected nonviolent platform. So it really has undermined any justification that any party might have to continue armed struggle, and I think that has created a different environment in which peace talks can be a politically viable path forward for the guerrillas.

Mr. ISACSON. I would just add a couple of elements that make this different. One, sort of the balance of forces in the conflict. Right now, it is not, they are not evenly matched. The Colombian government has a strong advantage. The FARC are weaker. But you are in a moment where the FARC probably realize that they can't win at this point, that they have no hope of taking power through violence. The Colombian government, on the other hand, is probably realizing now that they can't just simply win on the battlefield either, that they are not in the home stretch, the FARC still have 7,000 fighters, they are attacking at the same rate as they were before, and that it would take bloody, many bloody years to finish this. So there is sort of a hurting stalemate going on that really does help move things along.

Another thing that helps is that they are negotiating outside Colombia, where they are away from a lot of the pressures that Virginia is talking about.

The agenda is another advantage or difference. It is not as ambitious as in the past. They are not trying to remake the economic system. They are not -- the security and defense and the role of the military is not on the table. It is important but more modest. And, you know, I am most encouraged by the fact, as Virginia said, that they are respecting the ground rules in a very serious way of the talks, that there is a lot of discipline, a lot of respect for the secrecy and discretion of the talks, and for all the bluster and bravado that you might hear in FARC declarations, they have really stuck to the framework, but the challenges, I agree, are public opinion, impatience with the process. The polls show the majority of Colombians supporting the talks, but also a majority of Colombians doubting that they will succeed, and, you know, that perception does get fed every time an opponent of the talks gets a microphone or every time things drag on with another few rounds with nothing new happening. But still, I mean, as I said in my testimony, I do think that they are going to muddle through and within a year or so probably finish this.

Mr. McGOVERN. Just a couple more questions. How can the United States Government better support the peace process? What are we not doing that we should be doing now and what should we be prepared to do in the future if this peace accord actually

gets negotiated and agreed upon?

Ms. BOUVIER. I have tried to mention some very specific things within my testimony, but I think that making sure that the message is clear and consistent across the different agencies of the U.S. Government. I think -- and that includes the military. So I think so far, the position has been that the U.S. is supporting the peace process, and I think that is good. I think it should be reiterated over and over and over, and everyone should have the same message.

I think also, as I mentioned, looking beyond the peace accord, Colombia, I think, like many countries, has good legislation. It has good written documents, but the actual implementation and holding to account of what those documents say sometimes lags behind. So I think the U.S. looking ahead toward implementation, helping build capacity for that implementation at the municipal and local or municipal and regional levels as well as national level, they have, the USAID I think has done a good job of trying to support the Victims and Land Restitution Law, it has had a rough time getting off the ground. It has faced a lot of administrative challenges, some of which has to do with a lack of preparation and training of the officials who are supposed to be implementing the legislation. It also has to do with a lack of capacity for the victims to know where to go to have their claims heard. I mean, midway through a process, all of a sudden there was a new process that came into effect, and I think the lead time in trying to get people out to the regions to let the folks on the ground know what they should be doing and how their past claims might no longer be valid, and they might have to start a new process and providing some sort of not only legal accompaniment but psychological accompaniment, advocates who can be out there who can help people get through this very, very difficult process of restituting lands or being repaired for --

Mr. McGOVERN. Do you think the message that the United States Government supports these peace talks is clear enough or loud enough for the Colombian military at this particular point? I mean --

Ms. BOUVIER. For the military, I am not sure. I would also say, you know, there is kind of a mentality shift that needs to happen when you go from war to peace. There has been a mentality -- I think a lot of the human rights violations that we are hearing about and that your committee has been looking at for so long have to do with a kind of counterinsurgency model where anyone who is trying to promote change is seen as the enemy, and I think that kind of mentality needs to change dramatically. There has to be a greater sense that a more just society and more just structures will ultimately be more stable, and that is in the national security interest of Colombia, and if you don't get that message through loud and clear and if people don't really buy into it, you are going to have that dirty war that the attorney general is warning about.

Mr. McGOVERN. And Mr. Isacson, as you responded, I am also kind of -- you know, assuming everything goes the way we want it to go, I mean, the U.S. will have to play a role. We might have to reorient some of our drug policies. We might have to, you know, support, you know, certain implementation processes, but I would be curious to get your --

Mr. ISACSON. I mean, there are three elements of U.S. policy that I think are important here. First is simply words. I try to keep track of every utterance by a U.S. official about these peace talks, and we are really down to an average of about once every 2 months that some official -- it has been high profile people like Vice President Biden -- actually gets out in front of a microphone and says this is something the United States supports and wants to succeed. I think we should be a little more frequent because there are very prominent politicians and others in Colombia who are criticizing the process every day, and a lot of those politicians are associated with having had past U.S. support. So we have to counterbalance that.

And of course, our private words I can't judge because I don't know what is being said privately, but we are certainly helping Colombia's military still very much with its battlefield campaign plan against the FARC, and hope in the process of doing that, we are communicating to the Colombian military that they have to get behind this process. I am not convinced that that is happening.

The second is drug policy. That is the fourth agenda on the peace talks. Most likely, the Colombian government and FARC will agree to something that makes the United States uncomfortable because it will run against what we have been doing for many years. One thing that could happen, for instance, is they might agree to severely curtail the aerial herbicide fumigation program. I think we have to be flexible and go along with that and give it the benefit of the doubt and make sure that our drug policy goals are met a different way in the post-conflict.

And finally simply, money. The United States has given Colombia \$9 billion since 2000. That is about \$600 million a year. Over those years, it has been almost exactly three-quarters for the security forces. That won't make sense in the post-conflict. We are going to have to support a lot of nonmilitary priorities, like the things that Virginia was mentioning, land, demobilization, and justice and others.

Mr. McGOVERN. Suzanne?

Ms. BONAMICI. Thank you very much.

And thank you for your testimony.

I wanted to follow up on, Dr. Bouvier, what you said about a change in mentality and a country that is going from really a state of constant state of conflicts since it looks like the 1940s, with the two main groups, the FARC and the ELN being around since the 1960s, we have had at least a couple of generations of people who have grown up and lived in the country in the way it is now and the state of violence, so can you talk a little bit about the Colombian youth and -- you mentioned, Mr. Isacson, that most Colombians are glad that there are peace talks but they are skeptical about whether they will actually be effective. So if either of you -- I have not had the pleasure of visiting or the honor of visiting Colombia, but if you could talk a little bit about that shift in mentality and what is being done, whether it be through the education system or youth groups or women's rights groups, to sort of change

that, given that so many people have grown up in a country with so much conflict and entire generations now. Thank you.

Ms. BOUVIER. Thank you for your question, Congresswoman Bonamici.

I think there are a number of things, and I think youth is actually the place that you need to focus efforts. USIP is giving a grant right now to a foundation in Medellin, the Mi Sangre Foundation, that is supporting transformation of attitudes through cultural activities. It is bringing young people and their families and educators. It is working through the school systems as well to have some faith in their own creativity and their ability to not only accept themselves but accept other people.

I remember when I was visiting Medellin that someone from the mayor's office there told me that the indicator that they found most significant for violence in the very poor barrios areas, neighborhoods, was whether or not there were after-school programs for children, that if children had something to do after school -- music, drama, theater, you know, sports -- that this actually gave them a legitimate way to turn down efforts to recruit them into armed groups.

Now, without that, it became a kind of confrontation between young people of somebody saying, you know, come with us, we are going to go hang out, but it became a very legitimate reason for them to turn it down. So I think the cultural programming is one way that different communities are finding to reach youth and to give them options.

I think there is a real desperation that comes with living your whole life in a time of war, and trying to envision something different requires creativity, and the arts I think are one way that you can begin to think outside of the box and think more creatively and envision what a different kind of future might be like.

We are also supporting -- and I should say the U.S. Congress is supporting because you of course give us our budget -- we are supporting a group Hijos e Hijas por la Memoria y contra la Impunidad. This is a group of young people whose, most of whose parents have either disappeared or been killed for oftentimes for their political activities, oftentimes progressive activities on the left. This group is a really phenomenal group of leaders, ethical leaders, who are trying to see, they are trying to look at their own histories of victimhood in a new light and see how they can build capacity within themselves to be peace leaders in Colombia.

Ms. BOUVIER. They designed their own schooling. They decided who in Colombian society they admired the most, who they could learn from most. They worked with educators to make sure that they were ground in the history of Colombia, in the history of Colombia's conflict, as well as the history of the efforts to achieve peace in Colombia.

And I think projects like this where you are able to build capacity and let them build their own capacity, because it is not like we are going in and telling them, this is how you have to do it. But you give them a space to learn from each other and to create new visions of how a Colombia at peace might be and how they can contribute to that. And I think young people want to contribute. They want to have a voice. They want to have a say. They don't want to just take the war that has been handed down generation after generation. They want a change.

Ms. BONAMICI. Thank you.

Mr. Isacson, did you have anything to –

Mr. ISACSON. Sure, just very quickly. About 30 percent of the FARC are below the age of 18, and that is similar with other armed groups by most estimates. And, you know, you have got both in parts of rural Colombia, where poverty rates are usually around 70 percent, and urban slums, you face these choices where you can be a subsistence farmer; you can try to make do in the informal economy; or you can join one of these groups and get a lot of money and respect for doing unspeakable things.

And we have to combat that, but it is, in much of Latin America, this is an issue. There is -- the term is, "no estudio, no trabajo"; "doesn't study, doesn't work." And that unfortunately applies to a large percent of the young, sort of 15 to 30 population in Colombia. But in Honduras, San Pedro Sula, Honduras, in Monterrey, Mexico, in Kingston, Jamaica, it is the same thing. And it has to be a very big emphasis of our assistance.

Ms. BONAMICI. Thank you very much.

Mr. McGOVERN. Well, thank you.

And you know, I -- Dr. Bouvier mentioned Mi Sangre. I had the pleasure of visiting them in Medellin a few years back, and in addition to providing after-school opportunities, it is really kind of unique. It uses the arts as a way to try to help young people build self-esteem and help try to solve problems without resorting to violence. And it is really one of the -- really quite an incredible initiative, and again, I got to see it firsthand, which is if you go to Medellin, I will give you all the information you need to know to go see it.

I just have one final question for you, because this is, you know, I mean, I worry about the issue of impunity, you know, where people who have committed terrible human rights atrocities on both sides, where there is no accountability, and you know, there have been efforts to reintegrate former paramilitary individuals into society, which I think it is

probably fair to say is a questionable success.

You know, how do we do this differently? It is a really difficult subject. I mean, there are people in the FARC who have been guilty of some horrific human rights violations. There are people not only associated with the paramilitaries, but people who are associated with the military, who have been guilty of serious and terrible human rights violations. How do we approach this differently, and how do we approach it in a way where we don't disregard human rights?

I mean, you know, I remember when the peace accord in El Salvador was signed and there was a general amnesty granted to everybody, and I was told by a number of people, well, you know, something has to give. And but I would argue that that was a mistake in El Salvador, and I don't think that we ought to just toss human rights aside. So I am just curious to get your thoughts about how we should approach this differently.

Ms. BOUVIER. I think there are two standards that are the benchmarks, victim's rights -- that is victim's rights to truth, justice, reparations and guarantees of non-repetition on the one side -- the state's obligation to investigate, prosecute, and punish those violators. Colombia is a pioneer in that there is now an International Criminal Court as the peace process is going forward. So the negotiators at the peace tables are very aware that if they don't find a balance that respects these rights, and these are victims' rights and government obligations that are not just international law, but they are Colombia's own law, because they have incorporated their obligations in the international realm into their own legislation. So these are Colombian commitments to respect the rights of victims and to fulfill their obligations to investigate, prosecute, and punish.

Now, I think where the -- where there is room for interpretation is how do you do that? How -- what is justice? What will constitute justice for the victims? And what will constitute justice for the perpetrators who will have their day in court and are entitled to their day in court. So I think finding a process that is an independent process where there is consultation, and there is a possibility of getting at the truth, whatever that truth might be, is a really important first step. And I think apologies are a big part of it.

We have already started to see acknowledgments of wrongdoing both by the FARC and the government. This is a really good sign. It has not gotten down to real specifics, and real particulars, and I think it needs to get there, but I think a year ago, we would not have seen apologies from either side, and I think this is also a sign that what is happening at the table is really something different and something very hopeful.

Mr. ISACSON. As Ginny said, this is the first peace process ever to happen with a country this is a signatory to the International Criminal Court, so there are some things that Colombia simply cannot forgive, or even give suspended sentences for, and the prosecutor at the ICC has already written letters to that effects.

The upshot of that for the FARC means that some number of FARC members, probably in the low hundreds, who are responsible for what qualifies as crimes against

humanity, simply can't be amnestied and probably can't simply or even go through a trial and have the sentence suspended afterwards. Something is going to have to happen that deprives themselves of liberty for some fixed period of time; probably not forever, but some reduced period of time. What that is going to look like is one of the \$64,000 questions of Colombia's peace process because how do you get somebody who has 7,000 people in arms and hundreds of millions of dollars in a war budget every year to give up their weapon and walk into some sort of confinement where they are guarded by Colombian authorities? That will be humiliating for them.

The optimistic side of me, however, says that if I'm a FARC leader who is truly giving up criminality and truly giving up getting money from you the drug trade and everything else, I suddenly have no way to support myself. Not like I am going to suddenly get a job and have somebody hire me. At the same time, there are thousands of Colombians who would probably take a shot at me. And I cannot be easily protected because I'm so unpopular.

Maybe it would be good to have a place where for several years I am guarded by police. Inside those grounds, as happened with some former ELN leaders and others, I can meet with visitors. I can plan my political movement. I can talk to the media, but I can't leave. That could be, if not attractive, at least tolerable for guerrilla leaders. But that is something that they are going to have to discuss in the third and fifth parts of the agenda, which are transitional justice and how to help victims. And we will see what comes out of that.

Mr. McGOVERN. Other questions.

Ms. BONAMICI. Thank you. I just had one more quick question.

Mr. Isacson, you said in your written testimony that the FARC is holding a U.S. citizen, who in June of 2013 traveled into the southern jungle. And you said also that the guerrillas say they are willing to release him, but the Colombian president has refused the release on conditions that could cause a media show. Is there any update on that situation? Thank you.

Mr. ISACSON. Unfortunately, there is not. The last thing to happen was about a month ago, Jesse Jackson went to Havana and talked with FARC leaders about this and offered himself and offered himself as someone to whom the FARC in the jungle could release this gentleman, along with the international community of the Red Cross, and the Colombian government refused that. And so far, since then, there has been no new communications about it.

Ms. BOUVIER. Perhaps some of the members of this committee might be interested in proposing that they might assist in that.

Mr. McGOVERN. I think we tried that before. But anyway, yeah, anyway, thank you very much.

Ms. BOUVIER. Thank you very much.

Mr. McGOVERN. I would now like to call up our final panel, Celeste Drake, Trade and Globalization Policy Specialist, the American Federation of Labor and Congress of Industrial Organizations; Max Schoening, a Colombia researcher with the Human Rights Watch; Liliana Avila, a human rights attorney with the Inter-Church Justice and Peace Commission; Jomary Ortegon, human rights attorney with the Jose Alvear Restrepo Collective of Lawyers.

Mr. McGOVERN. So why don't we go in the order I called you up? So I will start with Celeste Drake.

STATEMENTS OF CELESTE DRAKE, MAX SCHOENING, LILIANA AVILA, AND JOMARY ORTEGON.

STATEMENT OF CELESTE DRAKE, TRADE AND GLOBALIZATION POLICY SPECIALIST, THE AMERICAN FEDERATION OF LABOR AND CONGRESS OF INDUSTRIAL ORGANIZATIONS (AFL-CIO)

Ms. DRAKE. Thank you. Chairman McGovern, Congresswoman Bonamici, good morning.

On behalf of the AFL-CIO, I thank the Tom Lantos Human Rights Commission for its consideration of human rights in Colombia, and Chairman McGovern in particular for the generous time and effort that he and his incredible staff dedicate to protecting Colombia's most vulnerable.

Despite some progress in recent years, including efforts by Vice President Angelino Garzon, and Labor Minister Rafael Pardo to help workers benefit from the labor action plan. Colombian workers report minimal progress. Two of the three main goals of the labor action plan were the prevention of violence against labor leaders and the prosecution of perpetrators of such violence. The plan has not been fully successful on either count. Though there has been some reduction in violence in recent years, Colombia remains a place in which exercising workplace rights puts you and your family at risk.

In 2012, ENS reported 22 murders of trade unionists and 641 total acts of violence and intimidation. These incidents are part of a decade-long campaign of terror to prevent workers from acting collectively to better their lives. In July, two leaders of the SINALTRAINAL Union in Barrancabermeja, William Mendoza Gomez and Juan Carlos Galvis and their families received death threats. And in August, the paramilitary group Rastrojo Urban Commandos levied death threats against 30 individuals and their families, most of them trade unionists.

These threats are effective. Given the history of violence against disenfranchised groups in Colombia, workers and their advocates have no reason to discount them. Unions report that workers involved in strikes, organizing efforts, and other collective actions often immediately renounce union membership or leave the locale all together in order to keep their family safe.

The AFL-CIO has been unable to find evidence that significant progress has been made in identifying and convicting intellectual authors of crimes against trade unionists, whether the incidents are recent or years old.

The other main goal of the labor action plan was to protect internationally recognized worker rights. Unfortunately, workers still face termination, blacklisting, and other forms of discrimination as a consequence of exercising fundamental labor rights. For years, employers in Colombia have used various forms of labor intermediation in order to avoid affording workers their rights under the law. Not only freedom of association and collective bargaining, but also social protections due to employees, such as pension and insurance

contributions.

Despite a reduction in the number of registered cooperatives, the labor action plan has had little effect on the overall rate of labor intermediation. This is because too many employers have switched their employees from cooperatives to other forms of subcontracting, including simplified stock companies, known as SAS, and *contracto sindicales*, or union contracts, which might sound good, but literally function as representative worker-controlled unions.

Realizing that the initial labor action plan instruments, including decree 2025 and article 200, were having too small an impact on formalizing Colombia's workforce, the government recently enacted Law 1610, designed to provide a clear path by which employers could directly hire their employees and avoid fines and sanctions. But Law 1610 to date has proved less than effective. For example, on one palm oil plantation, an agreement signed in November 2011 was thought to cover 600 workers, but in July 2013, the Ministry of Labor announced a formalization accord covering only 45 workers through a SAS, and only 12 of those received permanent contracts. Putting workers into a SAS is simply not an acceptable form of formalization, and there has been no action at all to formalize the remaining 555 workers.

In another priority sector, ports, workers in Buenaventura continue to work in cooperatives despite the fact that their employer was found in violation of the law over a year ago. The workers have been trying to negotiate a formalization plan, but their employer failed to attend the last meeting. Unfortunately, the Ministry of Labor has done little to prevent or punish such stalling tactics, and it appears that many employers believe they can continue to violate worker rights with impunity.

Progress on other action plan priorities, including collective pacts, criminal prosecutions for employer interference with labor rights, and clear definitions of essential services has been deplorably lacking. More than 2 years after the labor action plan went into effect, workers expected more. Sporadic inspections and token fines that go unpaid don't add up to the systemic changes required. Increased attention to resources by both the U.S. Government and the Colombian government are necessary. The Ministry of Labor's efforts must evolve into a comprehensive and reliable enforcement plan.

The AFL-CIO urges the U.S. Government to increase its efforts to ensure the labor action plan's fulfillment, including, if necessary, by making clear that continued failure to address violations of internationally recognized worker rights constitutes a violation of Colombia's commitments under the trade agreement that could result in suspension of trade benefits.

Thank you, and I would be pleased to answer any questions.

Mr. McGOVERN. Thank you very much.

[The statement of Ms. Drake follows:]

**Prepared Statement of Celeste Drake
AFL-CIO Trade & Globalization Policy Specialist
Hearing on "Human Rights in Colombia"
Tom Lantos Human Rights Commission
October 24, 2013**

I. Introduction

The AFL-CIO, on behalf of its 57 affiliated unions, appreciates this opportunity to testify on human rights issues in Colombia. We represent workers across all economic sectors, from manufacturing to mining to services. Collaborating with working people around the world, we work to improve labor laws, increase compliance with labor provisions of trade and preference agreements, and empower workers to improve their own lives and conditions of work.

The World Bank classifies Colombia, with nearly 48 million inhabitants, as an upper middle income country—but notes that more than 34 percent of its population lives at or below the poverty line.⁵⁹ The Department of State reports that its most significant human right abuses include “impunity, an inefficient judiciary, corruption, and societal discrimination” and that “[v]iolence, threats, harassment, and other practices against trade unionists continued to affect the exercise of the right to freedom of association and collective bargaining.”⁶⁰ Despite the issuance of new laws and decrees in the more than two years since the “Colombian Action Plan Related to Labor Rights,” (also known as the “Labor Action Plan”) came into force, the influential *Escuela Nacional Sindical* (National Union School, or *ENS*) reports that “[i]n spite of what the Colombian government does and says, labor intermediation is more alive than ever.”⁶¹

Reducing labor intermediation is one of the key points of the Labor Action Plan. Labor intermediation encompasses a variety of methods used by employers to avoid formalizing the employer-employee relationship—in other words, it is an attempt to absolve the employer of the legal responsibility to respect internationally recognized labor rights, including the rights to freedom of association, collective bargaining, and freedom from discrimination, forced labor, and the worst forms of child labor. Labor intermediation has a long and disreputable history in Colombia. Unfortunately, the use of labor intermediation has not been reduced substantially as a result of the Labor Action Plan. Instead, employers have gotten more creative about how they engage in it. The Labor Action Plan contained commitments to crack down on illegal cooperatives, so that workers could be directly hired by employers and exercise their fundamental rights. To date, enforcement efforts by the Ministry of Labor have been delayed, weak, and primarily in response to worker agitation, rather than proactive.⁶² In addition, even as the numbers of registered *CTAs* (cooperatives) have decreased, the use of other alternative intermediary relationships has increased.

Nor has violence against trade unionists abated. While the number of murders finally appears to be on a steady downward trend in recent years, other types of violence, including threats, are not. The number of threats against trade unionists increased from 2011 to 2012, sending a negative signal to workers attempting to exercise the rights promised by the Labor Action Plan. For example, on August 4, the paramilitary group Rastrojo Urban Commandos (*Los Rastrojos - Comandos Urbanos*) emailed an announcement of death threats, naming 30 individuals, most of them trade unionists, as well as their families and a few organizations, including the Union of Workers of the Mining, Petrochemical, Agro-Fuels and Energy Industries (*Sindicato Nacional de la Industria Minera, Petroquímica, Agrocombustible y Energética, SINTRAMIENERGETICA*), the United Federation of Mining and Energy Workers (*Federación Unitaria de Trabajadores Mineros y Energéticos, FUNTRAENERGETICA*) and the Union of Workers of the Metal Industry (*Sindicato de Trabajadores de la Industria del Metal, SINTRAIME*).⁶³

Union leadership report that such threats are effective—given the history against trade unionists and land rights, indigenous, Afro-Colombian, and other human rights activists in Colombia, workers and advocates have no reason to discount the threats. Many workers involved in strikes, organizing efforts, and other collective actions immediately renounce union membership or leave the locale altogether in order to keep their families safe.⁶⁴

⁵⁹ “Colombia: Data,” The World Bank, available at: <http://data.worldbank.org/country/colombia>.

⁶⁰ U.S. Department of State, “Country Reports on Human Rights Practices for 2012: Colombia,” available at: <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2012&dliid=204438>

⁶¹ “Pese a lo que haga o diga el Gobierno, la intermediación laboral está más viva que nunca,” *ENS*, Aug. 30, 2013, available at: <http://www.ens.org.co/index.shtml?apc=Na--;1;-;-;&x=20168028>.

⁶² For example, the U.S. Department of State reported that, despite work by the Ministry of Labor to institute new inspection procedures to enforce the new regulations on *CTAs* [*cooperativa de trabajo asociado*, known as associated work cooperatives or simply cooperatives, in English], by the end of 2012, “inspectors largely had not been trained on the use of this aspect of the inspection guide.” Country Reports on Human Rights Practices for 2012: Colombia,” *supra* note 2.

⁶³ “Document - Colombia: Paramilitaries threaten trade unionists,” Amnesty International, Aug. 8, 2013, available at: <http://www.amnesty.org/en/library/asset/AMR23/037/2013/en/29fce2c9-f67b-4e95-9eab-78af9b98d0a7/amr230372013en.html>.

⁶⁴ *See, e.g.*, The Colombian Act ion Plan Related to Labor Rights: The View Through Workers’ Eyes,” AFL-CIO, July 2012, pp. 6-7, 10, available at: <http://www.aflcio.org/content/download/38251/594971/report+version+2+no+bug.pdf>.

In short, it is impossible to conclude that the Government of Colombia is making sufficient efforts to implement the Labor Action Plan and provide workers with the fundamental labor rights they are due as part of the commitments made in the Colombia Trade and Globalization Agreement.⁶⁵ As we concluded in October 2012, while limited progress has been made in some areas, most notably in the protection unit, the *UNP*, many key commitments remain unfulfilled, and workers report few or no meaningful changes in their ability to exercise fundamental labor rights. The advances to date have been isolated and largely symbolic, leading some workers to—with good reason—doubt the sincerity of the entire Labor Action Plan endeavor.

The AFL-CIO has found little evidence that systemic changes are being made in the relevant institutions or that new measures are being applied in a systematic way.

Nevertheless, we do not believe that what has not yet been accomplished through the Labor Action Plan must always remain out of reach. The Plan gave Colombian working families hope—for some, it was the first ray of hope they had experienced in a long time. The U.S. government must continue to monitor progress and use the diplomatic resources at its disposal to ensure that the promise of the Labor Action Plan delivers.

The remainder of this testimony will provide brief examples of specific failures under the Labor Action Plan and the Colombia Trade and Globalization Agreement to protect workers' lives and opportunities to formalize their employment relationships and exercise their fundamental labor rights.

II. Threats and Violence

As mentioned in the introduction, murders of trade unionists have declined in recent years, but there has been an increase in the number of threats against union leaders. Violence and threats of violence against union leaders and activists and their families interfere with the free exercise of fundamental labor rights, particularly the rights to freedom of association and collective bargaining. When workers fear for their jobs, well-being, and the very lives of their loved ones, they are less likely to speak up for their workplace rights and join in collective actions to secure those rights. Intimidation continues to be a commonly used method to repress worker rights in Colombia. Though the Labor Action Plan recognized this connection between threats and violence and the free exercise of labor rights (for instance, by including commitments to criminalize employer actions to undermine labor rights, to improve protection programs for workers under threat, and to address impunity by ensuring action on the backlog of unionist homicides), the problem persists. *Somos Defensores* (We Are Defenders) even called the first half of 2013 “the most violent six-month period on record for humanitarian workers in the country,” according to *Colombia Reports*.⁶⁶

- As the AFL-CIO previously reported,⁶⁷ on May 12, 2012, four union leaders from different sectors and in different parts of the country (Jhon Jairo Castro, *Union Portuaria*; Renet Morales, *SINTRAINAGRO-Minas*; Carlos Daniel Ardila, *SINTRAINAGRO–Puerto Wilches*; and Wilson Ferrer, *CUT-Santander* (regional)) received identical text messages, warning that they would be “put to sleep” for their trade union activity. To our knowledge, more than a year later, the origin of the threats has still not been investigated.
- In January 2013, at the *La Cabaña* sugar plantation, 100 sugar cane cutters affiliated to *SINTRAINAGRO* report that they were effectively fired, including the entire executive leadership board of the union at the plantation. Approximately 500 other workers were reportedly forced to renounce their union affiliation in order to renew their work contracts. During this labor dispute, a union activist at *La Cabana*, Juan Carlos Munoz, was murdered on his way to work, on January 28, 2013. The union reports that none of its members has been contacted about the investigation, raising questions about the existence and quality of such an investigation.

⁶⁵ See Chapter Seventeen: Labor Rights, available at:

http://www.ustr.gov/sites/default/files/uploads/agreements/fta/colombia/asset_upload_file993_10146.pdf.

⁶⁶ Steven Cohen, “1st half of 2013 worst period on Colombia’s record for human rights workers,” *Colombia Reports*, Aug. 6, 2013, available at: <http://colombiareports.co/january-june-worst-period-on-record-for-safety-of-human-rights-workers-in-colombia/>.

⁶⁷ *Supra* note 6, p. 9.

- In July 2013, two leaders of the *SINALTRAINAL* union in Barrancabermeja, William Mendoza Gómez (Barrancabermeja President) and Juan Carlos Galvis (Member of the National Board of Directors), and their families received death threats. The threats were promptly reported to the *Fiscalía* (Attorney General).
- *USO* (a union in the oil industry in the priority mining sector) activist and community leader Hector Sanchez reported receiving a written death threat on July 16, 2013, two days after a hearing in Puerto Gaitan, Meta, and again on October 9, when a menacing flier was circulated in the region where he lives. Mr. Sanchez is working with allies to petition for protection, but has had to take his family out of the area for their safety. He has not been able to return to exercise his role as a union and community leader. The threat against Mr. Sanchez coincided with a break-in at the offices of the organization REDHER, which had helped to organize the hearing. These are just the latest in a number of threats he has received in the past year warning him to leave the zone or be killed. There has been no official response yet to his petition for protection.
- Community leader, Luisa Fernanda Cardenas, has been collaborating with *Sintraimagra* (an agricultural workers' union) and *CUT-Meta* to organize union activities. After two community meetings in August and September 2013, Ms. Cardenas reported receiving a threatening text message telling her to “stay out of what does not concern you” and reminding her that she had children and a husband. Four days later, on September 22, 2013, her partner Ancelmo Rubio was injured by gunshot in an apparent assassination attempt. Ms. Cardenas reported receiving new threats the following day. When Ms. Cardenas tried to file a report on the threats and the attack on her partner at the *Fiscalía*, the local office refused to receive the report—an action that runs counter commitments to protect workers and improve the responsiveness of the criminal justice system, as outlined in sections VIII and IX of the Labor Action Plan. In addition, failure to respond to threats targeted at worker rights advocates fails to protect the fundamental labor rights to freedom of association, as required by the Colombia Trade and Globalization Agreement.⁶⁸

III. Formalization of Work

Formalization of workers is not yet occurring on a systematic basis, and many obstacles remain to a true formalization of work and labor relations. Instead, as previously reported by the AFL-CIO and the *ENS*, employers continue to utilize creative means to avoid a direct employer-employee relationship with their workers. The measures enacted by the Government of Colombia, including Decree 2025 and Law 1610, appear to have too many loopholes to be effective tools to create real change for workers. Reports from across economic sectors in Colombia indicate that the systematic use of various types of sham intermediaries and subcontractors to avoid employment obligations continues, and that true employers persist in acting with impunity to wrongfully interfere with Colombian workers' fundamental labor rights.

Another obstacle to achieving a greater rate of formalized work relationships is the lack of systemic change at the new Ministry of Labor. At present, it appears to lack both the institutional capacity and commitment to achieve the great strides necessary to make meaningful changes in industrial relations in Colombia.

A. Fines

Of all the fines and sanctions reportedly assessed under the new instruments, which have been touted as proof of the success of the Labor Action Plan, the AFL-CIO understands that no funds have been collected. The Ministry of Labor has announced the imposition of 139 billion pesos (roughly \$73 million US dollars) in fines.⁶⁹ Most of these fines have been imposed on cooperatives, not on violating employers. Most cooperatives, being sham creations rather than real worker-driven organization, have no ability to formally hire workers, thus rendering the sanctions ineffectual at changing labor relations.

⁶⁸ *Supra* note 7.

⁶⁹“Multas por \$139.000 millones por intermediación laboral,” Portafolio.com, Jul. 24, 2013, available at: <http://www.portafolio.co/finanzas-personales/multas-139000-millones-intermediacion-laboral>.

There is insufficient evidence to indicate that sanctioned employers have transitioned to direct, permanent hiring relationships with core employees, likely because they maintain their innocence and have not been compelled to pay their fines. As a result, the touted fines are not having the intended effect: the purpose of the fines is to incentivize employer compliance with internationally recognized worker rights and ensure formalized labor relations, so the non-collection of fines undermines the goals of the Labor Action Plan. The Ministry of Labor should be more assertive in efforts to collect fines, only relenting when true formalization of the entire workforce affected by the illegal use of labor intermediation is achieved.

B. Formalization

To get around the prohibition on sham cooperatives while also avoiding a direct hire relationship with workers, there has been a marked increase in Simplified Stock Companies (known by their Spanish acronym, SAS) and “union contracts” (*contrato sindicales*), through which employees contract labor through “labor unions,” most of which are sham unions created by employers and not truly representative of their members.

Type of Agreement	2009		2010		2011		2012	
	Cases	%	Cases	%	Cases	%	Cases	%
Union Contract	46	7.36	50	9.62	131	28.48	261	40.03
Collective Bargaining Agreement	370	59.20	246	47.31	208	45.22	225	34.51
Collective Pact	209	33.44	224	43.08	121	26.30	166	25.46
Total	625	100	520	100	460	100	652	100

Source: ENS⁷⁰

C. Improper Use of Formalization Accords under Law 1610

Workers and their unions in Colombia report a variety of shortcomings in the current labor law regime and recommend amending Resolution 321 of Law 1610 so that it can provide an effective avenue for formalization of work. Although the government has reported signing formalization accords (*acuerdos de formalizacion*) using the 1610 process, workers report that they and their unions are not consulted during the process, and that the agreements do not fulfill the promise of the Labor Action Plan.

According to Ministry of Labor records, 25 formalization accords have been signed. However, the law and corresponding enabling legislation establishing the formalization accord process has very serious flaws, including the lack of worker consultation and no guarantee that the workers who have engaged in efforts to formalize their work actually benefit from the formalization accord.

The Ministry of Labor reported that in 2012, approximately 14,302 workers had been formalized through such accords,⁷¹ and that in the first half of 2013, six accords benefited an additional 1,892 workers. However, an initial review of some of the formalization accords, using information provided by union partners, indicates that they do not cover nearly as many workers as reported. Furthermore, given that Law 1610 was not enacted until early 2013, it is not clear to which 2012 formalization accords the Ministry of Labor was referring. The AFL-CIO urges Congress to investigate these discrepancies regarding the number of workers formalized by the accords.

- On one palm oil plantation, agreements signed in November 2011 and ensuing inspections processes were supposed to affect 600 workers. Nevertheless, in July 2013, the Ministry of Labor announced a formalization accord covering only 45 workers; furthermore, the agreement employed these 45 workers through a SAS, with only 12 receiving permanent contracts. There has been no action to formalize the remaining 555 workers who expected to be affected by the November 2011 inspections, which found that the employer had been using illegal subcontracting. Certainly, this fractional improvement in conditions for a handful of workers is not the improvement envisioned by the Labor Action Plan’s commitment to

⁷⁰ ENS compiles these numbers annually, so partial statistics for 2013 are not available.

⁷¹ See interview with Minister Pardo in *Portafolio.co*, available at: <http://www.portafolio.co/finanzas-personales/multas-139000-millones-intermediacion-laboral>.

“promote compliance by the companies through a strategy of offering to waive fines, wholly or in part, when the employer agrees to create and maintain a **direct employment relationship with the affected workers.**”⁷² (emphasis added). The union involved is seeking further clarification in the hope that the formalization accord offers more for workers than appears to be the case.

- In the port sector in Barranquilla, there are approximately 1,600 permanent workers in the port; 250 of them are direct hires, with work contracts and benefits. Approximately 150 workers are hired through temporary service companies. The other 1,200 workers are subcontracted, hired through what the union maintains are sham intermediaries. **However, the formalization accord in the Barranquilla port appears to cover only 18 workers.** This agreement was signed by Vice Minister of Labor José Noé Ríos. It is not clear how an accord covering so few workers was deemed acceptable to the Government of Colombia.
- The administration and provision of public transit services in Valle de Aburrá is performed through a subcontractor. The formalization accord was reached with the subcontractor, rather than the mass transit company itself, leaving open the question of whether any workers will be able to exercise their fundamental labor rights given that they lack a formal relationship with their ultimate employer.
- The airline Avianca reportedly has almost 6,500 workers, with 3,471 hired through four cooperatives, for which the company was fined 1,133,400 pesos. To commute this fine, the company presented a proposal for a “labor improvement” agreement, in which Avianca committed to hire 1,220 workers on fixed-term contracts. The union ACAV maintains that, included in the list of positions to be formalized through the plan, were workers already in direct, formalized jobs (in other words, some of the proposed improvements in the plan would not require any change at all). Avianca also continues its use of a “voluntary benefits plan” that ACAV has denounced as an illegal “collective pact” that violates Article 200.⁷³

IV. Priority Cases

A. Priority Sector: Sugar

Unfortunately, there has been too little progress in the sugar sector. In November 2012, *SINTRAINAGRO* formed two new local unions at two sugar plantations, with 600 and 24 affiliated members respectively (all subcontracted workers). *SINTRAINAGRO* reports that management refused to recognize the new unions and began an anti-union campaign, going so far as to call workers at their homes to encourage them to disaffiliate. *SINTRAINAGRO* submitted a proposal to initiate collective bargaining with plantation management, but reports that the proposal was ignored. On January 3, 2013, *SINTRAINAGRO* reported that 87 workers at the first plantation were effectively fired, including the entire executive board; another 24 workers were let go from the second. *SINTRAINAGRO* reported that at a union assembly held in the aftermath of the mass dismissals, two armed men arrived to videotape the event and warned the workers not to question them. All the remaining union members at the first plantation have since resigned from *SINTRAINAGRO* in order to keep their jobs. On January 28, the union reported the murder of union activist and organizer Juan Carlos Muñoz, who was on his way to work at one of the plantations.

Following two meetings in Bogotá in March, one with the Vice Minister of Labor, and the other with *CETCOIT* (the national commission on conflict resolution under the auspices of the ILO), the plantation management continued to reject formalization and recognition of the union. Thus, since March, no formal meetings or engagement have taken place. The Ministry of Labor has not responded to repeated union requests for assistance.

In addition, following the murder of Juan Carlos Muñoz, the union reports that criminal investigators have not interviewed any of its members, making any investigation incomplete and ineffective at addressing serious anti-union violence being used to intimidate workers. More than 100 workers remain out of work, and the workers who

⁷² Colombian Action Plan Related to Labor Rights, available at: http://www.ustr.gov/webfm_send/2787.

⁷³ For more information on the failure of the Government of Colombia to act on the Labor Action Plan commitments to address the abuse of collective pacts, please see “The Colombian Action Plan Related to Labor Rights: The View Through Workers’ Eyes,” *supra* note 6.

report being forced to resign from the union remain unable to exercise their right to join a union. The union filed two submissions to the Ministry of Labor to conduct inspections. **This month, the union reported that it discovered that its two submissions have been “archived,” or simply shelved, because inspectors determined that the events reported by the workers were false.** However, the union has reported that no inspectors or criminal investigators have been in touch with union representatives, and that to their knowledge, the inspectors did not conduct site visits to gather evidence. Certainly, a determination of the veracity of worker complaints requires a thorough investigation. The AFL-CIO believes that the failure to respond to criminal complaints as well as requests for inspection are inconsistent with the protection of fundamental labor rights required by the trade agreement, as well as Sections I and IX of the Labor Action Plan. The Government of Colombia must do much more in order to secure labor rights for its workers.

B. Priority Sector: Palm Oil

In the palm oil sector, the palm workers’ unions in Magdalena Medio continue to press for application of the Law 1429 of 2010 and Decree 2025. The AFL-CIO understands that the 10 sanctions and fines that have been imposed against employers in the Puerto Wilches area remain unpaid and that the Ministry of Labor is not effectively enforcing Law 1610, which provides for forgiveness of the fines if the workers are appropriately formalized. While the inspections and sanctions processes languish, workers report that employers in the area are engaging in a campaign of defamation against the union and the pro-formalization workers at worksites and in the community. Meanwhile, workers maintain that none of the employers have complied with formalization requirements and that no new inspections are underway.

Disturbingly, workers report that local employers have initiated a new type of resistance to the new laws requiring formalization. Three of the largest employers in the region have presented plans for the “voluntary departure” of their directly hired, full-time employees. At one workplace, the company pressured workers with threats of firings with no severance benefits and blacklisting them from further employment in the area if they did not accept the offer to quit their jobs. Of the about 160 direct-hire employees (there are roughly 400 workers on this particular palm oil plantation), about 130 eventually acceded to the pressures of the company and left, leaving the union with 27 members and nearly destroyed. The company is reportedly now seeking to hire the same number of workers, 130, through temporary contracts.

Two additional plantations in the area, both sanctioned for illegal subcontracting, are attempting to promote the same plan, but the workers are resisting and have been pressing for action by the Ministry of Labor to apply the sanctions and oversee a formalization process. In a surprise to the union that represents the workers, *SINTRAINAGRO*, Minister of Labor Rafael Pardo announced in an interview with *Portafolio* that a formalization accord had been negotiated at one of the plantations around July 4, with 45 workers being formalized. *SINTRAINAGRO* had not previously been informed of the existence of such an accord. A copy of the formalization accord shows that a SAS will be created and will hire 45 workers directly, with only 12 workers on permanent, “indefinite term” contracts, and the remainder under short-term contracts. However, the plantation in question subcontracts approximately 600 workers and has already been fined more than a million dollars for illegal use of labor intermediation. The union reports that forty percent of the formalized workers are new workers that had no previous relation to the company. The accord was signed by the Vice Minister of Labor, José Noé Ríos.

A similar situation is occurring in one of the largest employers in the palm sector just north of Puerto Wilches, in Minas, Cesar. There, the company has begun a plan to eliminate the various cooperatives employing some 700 workers, and rehire them through sub-contracting simplified stock companies, or SAS. Unions have been collecting information to present proposals for “formalization accords,” as set forth in Law 1610.

C. Priority Sector: Ports

Unfortunately, workers report that there has been no tangible progress in the ports sector on the application of Law 1429 of 2010 or related Decree 2025 requiring the formalization of labor. The two important sanctions in the ports in Buenaventura, imposed in the first quarter of 2012, and in Cartagena, imposed in August, 2012, continue to be the only employer sanctions in the sector (sanctions have been imposed on cooperatives, but these sanctions can produce neither formalization of workers nor payment of fines). As a result of a number of meetings with the president of the *Unión Portuaria (UP)* seeking to put into effect the 2012 sanction levied on the Port Society of

Buenaventura, the Ministry of Labor convened a meeting with the port workers and employers in Buenaventura on August 6, 2013. The Chief of Inspections and Control of the Ministry of Labor, representatives from the offices of Vice President Angelino Garzon and the Superintendent of Ports, the main port workers' union, *UP*, and four minority unions participated in the meeting. The employers failed to attend the meeting. The *UP* proposed forgiveness of fines in exchange for a negotiated process for formalizing port workers in Buenaventura. The Labor Ministry asked for a comprehensive proposal, which the *UP* provided the following week. The next meeting was scheduled for September 4, 2013. This meeting was postponed by the Ministry, and has not yet been rescheduled. The workers in the Buenaventura ports are still waiting for the Government of Colombia to fulfill its commitments and protect their right to organize and bargain collectively.

At the port in Turbo, Antioquia, as promised by Director of Inspections and Control of the Ministry of Labor in Uraba appealed the November 2012 Ministerial Resolution that found no violations and indicated that a new inspections process would begin and would ensure input from the union. However, to date, the union in Turbo reports that it has not been contacted by inspectors, despite Ministry of Labor attendance at an August meeting in Turbo regarding the new legal framework requiring the formalization of labor.

V. Conclusion

The AFL-CIO concludes that the Government of Colombia has fallen far short of compliance with the Labor Action Plan. More work must be done to achieve the systemic changes necessary to come into compliance with fundamental labor rights, or even to fulfill the commitments of the Labor Action Plan.

Mr. McGOVERN. Mr. Schoening.

STATEMENT OF MAX SCHOENING, COLOMBIA RESEARCHER, HUMAN RIGHTS WATCH

Mr. SCHOENING. Chairman McGovern, Congresswoman Bonamici, thank you for the opportunity to address the commission on the critically important issue of human rights in Columbia.

My name is Max Schoening, and I am a Colombia researcher for Human Rights Watch. My testimony today will focus on threats and attacks against internally displaced Colombians seeking land restitution. Violence associated with Colombia's internal armed conflict have driven more than 5 million people from their homes, generating the world's largest population of internally displaced persons, IDPs. Colombian IDPs are estimated to have left behind 6 million hectares of land, much of which armed groups, their allies and others seized in land grabs.

In June 2011, President Juan Manuel Santos took an unprecedented step toward addressing this immense human rights problem by securing passage of the Victims Law, which aims to return land to hundreds of thousands of displaced families during a decade of implementation. The land restitution program is the most important human rights initiative of the Santos administration. As ambitious as the law is, however, Colombia has made little progress in implementing it, as Human Rights Watch revealed in a report last month. The government has received more than 45,000 land restitution claims, but as of September 2013, only 1 percent had resulted in court rulings ordering restitution. By that date, more than 2 years since the Victims Law was enacted, the government could only confirm three cases of families who had returned to live on their land as a result of court rulings under the law.

Of the myriad obstacles to implementing land restitution, security is perhaps the greatest. IDPs who have sought to recover land through the Victims Law and other restitution mechanisms have been subject to widespread abuses tied to their efforts, including killings, new incidents of forced displacement, and death threats. In researching our report, Human Rights Watch documented 17 cases of killings of IDP land claimants and leaders since 2008 in circumstances that provide compelling evidence the attacks were motivated by the victim's activism. Official data suggests a total number of such killings may be even higher. The Attorney General's Office reported that it was investigating 43 cases of killings of land restitution leaders and claimants committed since 2008. And since 2012, more than 700 IDPs and their leaders attempting to reclaim land through the Victims Law have reported receiving threats.

The threats and attacks are entirely predictable given Colombia's chronic failure to deliver justice for both current and past abuses against IDP claimants. Prosecutors have not charged a single suspect in any of their investigations into threats against land claimants and leaders. Moreover, justice authorities have rarely prosecuted the people who originally displaced claimants and stole their land. Of the more than 17,000 open investigations into cases of forced displacement handled by the main prosecutorial unit dedicated to pursuing such crimes, only 28 had led to a conviction as of January 2013. Authorities' failure to significantly curb the power of paramilitary successor groups, also poses a direct threat to land claimant security. Successor groups to the officially demobilized AUC Paramilitary Coalition have carried out a large share of the threats and attacks targeting displaced land claimants.

In addition, third parties who took over lands after original occupants were forced out, as well as left wing FARC guerrillas have also targeted land claimants. The government's protection program, which is unparalleled in the region, has provided hundreds of at-risk land claimants with protection measures, such as bulletproof vests and body guards. While helpful, these are essentially palliative measures, since they do not reign in or hold accountable the armed groups, criminal mafias and others who are threatening claimants' lives.

In Human Rights Watch's view, a more strategic approach by prosecutors in coordination with restitution efforts could go a long way toward ensuring justice and thus protection for IDPs seeking to return to their land. In particular, Colombian prosecutors should work with land restitution authorities to vigorously pursue crimes against land claimants into areas where restitution is being carried out. The United States should

urge Colombia to adopt such a strategy, and provide the necessary assistance to do it. Unless Colombia ensures justice for current and past abuses against IDP land claimants many more will suffer threats, episodes of displacement, and killings, and the Santos' administration's signature human rights initiative could be fundamentally undermined. Thank you for your time, and I look forward to answering any questions.

Mr. McGOVERN. Thank you very much.

[The statement of Mr. Schoening follows:]

**Prepared Statement of Max Schoening
Colombia Researcher, Human Rights Watch**

**United States Congress
Tom Lantos Human Rights Commission
Hearing on “Creating Peace and Finding Justice in Colombia”
October 24, 2013**

Co-Chairman McGovern, Co-Chairman Wolf, and distinguished members of the commission, thank you for this opportunity to address the Tom Lantos Human Rights Commission on the critically important issue of human rights in Colombia. My name is Max Schoening and I am the Colombia researcher for Human Rights Watch.

My testimony will focus on threats and attacks against internally displaced persons (IDPs) seeking land restitution in Colombia. I will divide my statement into three parts. The first will describe the Colombian government's lack of progress in returning land to IDPs through its banner land restitution program, the Victims Law. The second will detail the widespread abuses IDPs have suffered in retaliation for trying to recover their land, including killings, death threats, and new incidents of forced displacement. The third part will show how the government of Colombia has consistently failed to punish the perpetrators of abuses against IDP land claimants, and the measures it should take, with United States support, to improve protection and accountability.

Slow Implementation of the Historic Victims Law

Over the past 30 years, violence and abuses associated with Colombia's internal armed conflict have driven more than 5 million people from their homes, generating the world's largest population of IDPs. Mostly fleeing from rural to urban areas, Colombian IDPs are estimated to have left behind 6 million hectares of land—roughly the area of Massachusetts and Maryland combined—much of which armed groups, their allies, and others seized in land grabs and continue to hold.

In June 2011, the administration of President Juan Manuel Santos took an unprecedented step toward addressing this immense human rights problem by securing passage of the Victims Law. The law established a hybrid administrative and judicial process intended to return millions of hectares of stolen and abandoned land to IDPs over the course of a decade of implementation. The land restitution program is the most important human rights initiative of the Santos administration. If implemented effectively, it will help thousands of families who have been devastated by the conflict to return home and rebuild their lives.

As ambitious as the Victims Law is, however, Colombia has made little progress in implementing it, as Human Rights Watch revealed in a report released last month. The Agricultural Ministry estimated that by 2014 there would be judicial rulings in 60,000 land restitution cases under the Victims Law; however, as of September 2013, courts had ordered restitution for just 666 of the more than 45,000 land claims received by the government. By September 2013—more than two years since the Victims Law was enacted—the government could only confirm three cases of families who had returned to live on their land as a result of these rulings under the law.

In response to our report, Colombian officials wrongly stated that Human Rights Watch published erroneous statistics about land restitution. The government's Victims Unit and Restitution Unit said that of the 666 beneficiaries of land restitution rulings under the Victims Law, “66 percent have returned to live on their land or work there.” The 66 percent figure cited by the government is misleading, because it includes families who returned

to their land years before the Victims Law took effect (and who subsequently used the law to recover or formalize their land titles), as well as families who visit their land to work on it, but have not returned to live there. The government has not provided any additional cases demonstrating that more than three families have returned to live on their land as a result of court rulings under the Victims Law.

Widespread Abuses

Of the myriad obstacles to implementing land restitution, security is perhaps the greatest. IDPs who have sought to recover land through the Victims Law and other restitution mechanisms thus far have been subject to widespread abuses tied to their efforts, including killings, new incidents of forced displacement, and death threats.

In researching our report, Human Rights Watch documented 17 cases of killings of IDP land claimants and leaders since 2008, in which 21 people died, in circumstances that provide compelling evidence the attacks were motivated by the victims' activism. Human Rights Watch also documented more than 80 cases in which victims had received serious threats, as well as over 30 cases of new displacement in which restitution claimants fled their homes yet again because of abuses related to their efforts to reclaim land.

Official data obtained through information requests shows that these documented cases of killings, threats, and renewed displacement are part of a wider pattern. As of August 2013, the Attorney General's Office reported that it was investigating 43 cases of killings of "leaders, claimants, or participants in land restitution matters" committed since 2008.

Since 2012, more than 700 IDPs and their leaders attempting to reclaim land through the Victims Law have reported to authorities having received threats. The government has determined that upward of 360 threatened claimants and leaders are at "extraordinary risk" because of their land restitution activities.

The threats are conveyed in a variety of ways: in writing, by text message, by phone, or by verbal face-to-face warning. The content varies, but many of the messages include threats to kill the victims or their family members if they do not give up their attempts to reclaim their land or leave the region.

Usually, the threats appear credible and terrifying. Many are directed at victims traumatized in the past by paramilitaries or guerrillas, including by the very attacks on themselves, their families, or their neighbors that induced them to flee their land in the first place. Guerrillas and successor groups to paramilitaries frequently maintain a presence in the areas where victims are reclaiming land, and the latter in particular have demonstrated a willingness to kill restitution claimants and leaders. Many victims believe, with good reason, that the current threats are from individuals or groups directly linked to the long chain of violence and land theft that they and their families have experienced.

In the majority of cases of killings, attempted killings, and new incidents of forced displacement that we documented, the evidence strongly suggests that paramilitary successor groups are responsible; the same groups are also responsible for a significant portion of the threats. These groups inherited the criminal operations of the United Self-Defense Forces of Colombia (AUC) paramilitary coalition, which carried out widespread land takeovers prior to the government's deeply flawed demobilization process. In addition, third parties who took over lands after original occupants were forced out – sometimes in collusion with paramilitaries – as well as left-wing Revolutionary Armed Forces of Colombia (FARC) guerrillas, have also targeted claimants and leaders who tried to get their land back.

The Government's Response

The threats and attacks are entirely predictable given Colombia's chronic failure to deliver justice for both current and past abuses against displaced land claimants. Prosecutors have not charged a single suspect in any of their investigations into threats against displaced land claimants and leaders in retaliation for their restitution efforts.

Moreover, justice authorities have rarely prosecuted the people who originally displaced claimants and stole their land. Of the more than 17,000 open investigations into cases of forced displacement handled by the main prosecutorial unit dedicated to pursuing such crimes throughout Colombia, only 28 had led to a conviction as of

January 2013. The prosecutorial unit had obtained convictions in just five cases of forced displacement in Antioquia, Bolívar, Cesar, Meta, and Tolima, the five states with the highest number of restitution claims filed in Colombia at the time, and where at least 1.7 million people have been displaced since 1985, according to government data.

The prosecutorial unit also identifies itself as the main office tasked with conducting criminal investigations of the illegal takeovers of land that IDPs left behind. But as of January 2013, it had obtained just three convictions for crimes related to land takeovers—a small number when compared to the estimated 2 million hectares of land that have been wrongfully seized from displaced people. The lack of justice for forced displacement and land theft means that those most interested in retaining control of the wrongfully acquired land often remain off the radar of authorities and readily able to violently thwart the return of the original occupants.

Authorities' failure to significantly curb the power of paramilitary successor groups also poses a direct threat to land claimants' security. Data from the National Police shows that the size of the groups essentially remained constant over the past four years, dipping from 4,037 members in July 2009 to 3,866 members in May 2013. The Urabeños, Colombia's largest and most organized paramilitary successor group, has grown in membership in 2013. One source of successor groups' ongoing power is the toleration and collusion of local security force members.

The government's protection program, which is unparalleled in the region, has provided hundreds of at-risk land claimants and leaders with protection measures, such as bulletproof vests and bodyguards. While helpful, these are essentially palliative measures, since they do not rein in or hold accountable the armed groups, criminal mafias, and others who are threatening claimants' lives.

The limitations of the government's protection program are evidenced by the fact that it often relocates threatened land claimants because authorities cannot guarantee their safety where they live. Since January 2012, the program has temporarily relocated more than 90 land claimants and leaders to new areas due to serious threats against them.

In sum, there is currently a fundamental gap in Colombia's restitution policy: the process of returning land is not being accompanied by parallel efforts to ensure justice for abuses against IDPs. A more strategic approach by prosecutors, in coordination with restitution efforts, could go a long way toward ensuring justice—and thus protection—for those seeking to return to their land. Under the Victims Law, land restitution is gradually implemented across successively prioritized land plots, towns, and regions. We believe the Attorney General's Office should focus its efforts to prosecute crimes targeting IDPs in the same areas where the Restitution Unit is examining claims. Such coordination would take advantage of the concentration of complaints concerning related cases, allowing prosecutors to carry out systematic investigations of forced displacement, land takeovers, threats, killings, and other abuses against IDPs seeking to reclaim land. This more holistic approach would be a powerful and efficient strategy for filling the current accountability gap in the land restitution process.

To this end, the government of Colombia should provide sufficient resources to the Attorney General's Office so that it can create teams of prosecutors and judicial investigators tasked with pursuing crimes against IDP land claimants and their advocates. The teams should be based out of Colombia's main cities, but routinely conduct field visits to each city or town where the Restitution Unit has an active office in order to receive criminal complaints and investigate them.

The United States should urge the Colombian government to create these teams of prosecutors and investigators, and provide it with the necessary assistance to do so. Along with financial resources, this assistance should include logistical support, equipment, and relevant training.

Furthermore, the United States should urge Colombia to improve efforts to dismantle paramilitary successor groups, especially by rooting out collusion with local officials. The specialized unit of Colombian prosecutors dedicated to investigating these groups should be encouraged to prioritize investigations into state agents credibly alleged to have colluded with or tolerated the groups.

Over the next eight years, the government intends to address land restitution claims filed by hundreds of thousands of displaced people. Unless Colombia ensures justice for current and past abuses against IDP claimants and makes substantial progress in dismantling paramilitary successor groups, many of these families will suffer more threats,

episodes of displacement, and killings. And the Santos administration's signature human rights initiative could be fundamentally undermined.

Thank you for your time. I look forward to answering any questions you may have.

Mr. McGOVERN. Ms. Avila.

STATEMENT OF LILIANA AVILA, HUMAN RIGHTS ATTORNEY, INTER-CHURCH JUSTICE AND PEACE COMMISSION

[The following testimony was delivered through an interpreter.]

Ms. AVILA. Good morning to Representative McGovern and Representative Bonamici. I want to thank you for the opportunity to be able to testify today.

My name is Liliana Avila, and I'm a lawyer with the Intereclesial Commission for Justice and Peace and we work and support communities who are Afro-descendant, mestizo, and indigenous. So as part of our accompaniment, we can say fully that the situation of vulnerability of the communities that are Afro-descendant and indigenous continues to be great.

So part of the reason why you have this vulnerability of human rights is linked to the internal conflict, linked to conflict over land, linked to different ideas of what should be done with the subsoil, and we find that all of this together leads to a situation that is making them vulnerable.

And so what we see is that some part of the countries where you have communities that have inhabited these areas ancestrally that the sectors, the private sectors have been linked to paramilitaries, and they have executed and pretended to execute different productive projects, such as the cultivation of mono-cultural crops, and also agriculture projects and the extraction of resources and infrastructure projects.

And we have direct evidence that these companies continue to operate in coexistence with paramilitaries and that those paramilitaries also are in coexistence with some of the authorities of the Colombian government.

So while the law of land restitution is important, we think that unless these obstacles are addressed that there will be impunity in these situations and some of the abandonment of the lands would actually be facilitated.

So one emblematic case is the case of the communities in the lower Atrato region of the Choco. This is areas and communities that have been visited by different members of the U.S. Government.

And so what we saw was that there was a mass displacement of the population in these areas, and shortly after companies, such as oil palm companies, banana companies, and agriculture sectors linked to paramilitaries, overtook these lands. And so currently, these lands have not been restituted to the victims. However, we see that these companies and so forth have continued to occupy these areas or that third parties have been integrated in these areas.

And what we have seen is that national, international authorities have urged the Colombian state to basically look into these violations generated by the mega projects, and we have not seen action.

So the case of Curvarado and Jiguamiando is a very emblematic case. It is a very well documented case, and if this were to be resolved positively, it would give a very important message to the rest of the cases in Colombia.

And in 2010, the constitutional court ordered that there be a land restitution process that is transparent and democratic, so that the victims can return to their lands with full guarantees and they can use their lands in the way they see fit.

And the constitutional court, since 2010, has ordered the Colombian government on five occasions to take steps to move forward in this direction. However, what we see right now is that there is a very high risk

that this process of restitution at this time may lead to favoring the interests of the companies that are linked to paramilitaries. Various victims that were originally displaced have been excluded from the process. However, the Colombian government continues with this process despite the fact that there have been various denouncements of these irregularities taking place. And so if things continue the way that they are moving forward right now, what we will see is a process that will just basically give legitimacy to illegality and that the true victims will not have their lands restituted. If this happens, this would be a very devastating message to the rest of the victims in Colombia that are trying to get their lands restituted.

So, therefore, we urge the Colombian -- I mean, the U.S. Congress to continue to monitor the land restitution process in Colombia to guarantee that the process is transparent and efficient and that the legitimate owners of lands are restituted their lands.

And also, we ask in the specific case of the Curvarado and Jiguamiando community, that the U.S. Congress ask the GAO to do an independent assessment of the land restitution process in this case as well as the situation of security for the community leaders and those who accompany the process.

And that I urge the Colombian government to guarantee that the participation of all of the victims in this process of restitution. So, in name of the communities of Curvarado and Jiguamiando, which I represent today, I would like to thank you very much for this opportunity.

Mr. McGOVERN. Thank you very much.

[The statement of Ms. Avila follows:]

**Prepared Statement of Liliana Avila
Comisión Intereclesial de Justicia y Paz
24 October 2013**

The organization to which I belong, the Inter-Church Commission on Justice and Peace, is an organization dedicated to defending human rights. In our work, we accompany Afro-descendent, mestizo, and indigenous communities that are asserting their rights without the use of violence. We support their efforts in search of truth, justice, reparations, and negotiated political solutions to the internal armed conflict. Currently, we accompany approximately 35 community processes in seven departments in the country.

In order to provide comprehensive accompaniment, we fully inform ourselves of the situation in which these communities suffer violations of their fundamental human rights.

In this way we can affirm that, upon finding ourselves in a scenario where peace dialogues should theoretically be the solution to the events that generate violence, the situation of human rights violations committed against indigenous and Afro-descendent communities continues to be critical. The source of these violations and threats to their human rights is connected to the conflict over land; the determination of land usage; the development model being imposed on their territories; and ignoring traditional customs, ancestral agrarian practices, and relationship to the environment.

In multiple regions of the country, ancestrally inhabited by Afro-descendent and indigenous communities, business sectors, some of them with links to paramilitaries, have carried out or are attempting to carry out agrarian projects such as large-scale monocultures, raising livestock extensively, extracting natural resources, and building infrastructure.

The process of implementing these projects has entailed the threat or direct exercise of military violence prior to and during the development of the projects; the repudiation of the existence of ethnic communities; and the destruction of the ecosystem and environmental richness of the territories.

All this has occurred despite the existence of a law for victims and land restitution, which in theory would attempt to compensate for human rights and territorial violations. In reality the government's position regarding the agrarian

problem, which has without doubt been historically the source generating this violence, has been to favor business interests at the expense of the human rights of ethnic and small farming communities.

Symptomatic of this situation is what has been happening for the past 16 years and continues today in the region of the Bajo Atrato in Chocó, a traditional home of Afro and indigenous communities.

Beginning in the year 1996 and particularly in 1997, paramilitary groups forcibly displaced these communities, with the complicity of the National Army.

Following the forced displacement, large-scale oil palm, banana, and plantain growers, and cattle ranchers connected to paramilitaries entered the region and began to implement their megaprojects.

Finding themselves in a situation of forced displacement, the communities of Curvaradó and Jiguamiandó acquired collective titles to their ancestral lands in accordance with the Constitution and Law 70 of 1993.

Given the serious situation of human rights violation, in 2002 the Inter-American Court of Human Rights awarded precautionary measures to those communities. Due to the continuing seriousness of the situation and the urgent need to take measures intended to guarantee those rights, the Inter-American Court of Human Rights awarded provisional measures to the communities in 2003.

Since then, international organizations and national officials have recognized the direct relationship between human rights violations and the implementation of megaprojects.

As a consequence, the Constitutional Court has, since 2010, ordered the National Government to implement a transparent, participatory, and democratic process of land restitution, that allows for the communities' viable return to their lands, with full guarantees so that they may make use of and enjoy the land in accordance with their customs and ancestral practices.

Since then, the Court has ordered the National Government five times to take necessary measures for this to happen. As it is an emblematic case, the restitution process in Curvaradó has been touted as a successful pilot program.

However, currently, the communities have been re-victimized and a serious risk exists that the restitution process will end up favoring business sectors connected to paramilitaries and continue to develop those agrarian projects that generate displacement.

Despite complaints of these irregularities, the National Government continues with the process.

The vast majority of cases in which Afro or indigenous communities have been victims of human rights violations have received practically no institutional attention. The case of Curvaradó is perhaps the most documented, and there are currently orders and national and international legal and administrative requirements in place addressing the issue.

However, the situation of human rights violations persists and paramilitary groups continue in the region. It is necessary and urgent that the National Government demonstrates political will, complies with its obligation to dislodge business sectors connected to paramilitaries, and prevents those groups from influencing the restitution process, so that the legitimate owners can enjoy their human and territorial rights with full guarantees.

Mr. McGOVERN. Ms. Ortegon.

STATEMENT OF JOMARY ORTEGON, HUMAN RIGHTS ATTORNEY, JOSE ALVEAR RESTREPO COLLECTIVE OF LAWYERS

[The following testimony was delivered through an interpreter.]

Ms. ORTEGON. Good morning. And I would like to first thank the Tom Lantos Human Rights Commission for realizing this hearing. I would like to thank Congressman McGovern, Congresswoman Bonamici, Congressman Wolf, and I especially want to thank all of you for the attention that you have paid to Colombia.

So I would like to start off my testimony by raising a question that is related to what has been discussed about the peace process in Colombia. Basically, if we are able to get political accord to end the conflict between the government and the FARC, will the human rights violations in Colombia actually end?

And our response would be no, it is not sufficient just to have an agreement that ends the conflict. What you need is a parallel set of proposals that basically guarantee that there is not repetition to these violations. In order to guarantee the peace, you also need to guarantee that there is truth in order to make sure that the situation will improvement.

So the CCAJAR, the organization that I represent, has come up with a proposal that is basically based on three different elements. Basically, first is to construct guarantees of nonrepetition; second, that there be a tribunal to deal with the human rights violations; and third, that there be a truth commission set up.

So we think that in order to guarantee nonrepetition that there needs to be an effective dismantlement of paramilitarism through investigation and through effective sanctions for the perpetrators. We also believe that there needs to be a purging of the armed forces and of the state organizations that leads to the destitution immediately of officials that are linked to human rights violations, and also we think that there needs to be a major transformation structurally in terms of economically and through tribunals in order to guarantee a profound transformation.

So we believe, having worked hand in hand with the victims of the crimes against humanity, that what is needed is basically to purge all of the intelligence archives, especially those that relate to social leaders and others. We also think that there needs to be a purging of the armed forces and especially those who have members that have been linked to human rights violations and a complete dismantlement of the paramilitary structures at the political and the economic level.

So we think that there needs to be basically an examination, investigation into manuals, doctrines, and other forms that make social leaders considered to be enemies. We also think that there needs to be an end to the judicial wars against those considered to be enemies.

So we believe that there needs to be a mechanism that monitors and regulates the use of force during criminal -- not during criminal, sorry -- use of force during public protests. Also we believe that there needs to be a reduction of the funding that goes to military operations and an upping of the funding that goes to economic and social programs.

So we think that there needs to be some reforms in terms of tribunals and economic structures that favor injustice in the country, as well as there needs to be more investment to develop different sustainable economies, especially of the rural population indigenous people.

So we think that it is not possible to construct a sustainable peace unless you combat impunity. So you need to put in place different formulas that not only lead to nonrepetition of actions but also guarantee the maximum amount of truth possible.

We believe that our proposal is that there be a creation of a tribunal for justice and peace that includes all of the actors concerned in the conflict, so guerrillas, armed forces, paramilitaries, and also other sectors that have fueled or benefitted from the conflict.

We propose that this tribunal take a confessional approach. Basically, it looks at two different types of infractions. One would be human rights abuses. Another would be international humanitarian law infractions and that there exist different gradients of sanctions for different sorts of violations committed. However, within that, the violations committed by the state need to be weighed more heavily, given that the state has an obligation to guarantee human rights.

In the case of the guerrilla groups, we believe that there needs to be some kind of a concept that allows that there be amnesty with some of the political crimes, on crimes committed within the war context, however this needs to be weighed against a mechanism that doesn't offend the rights of victims.

And it should become very clear that members of groups, of armed groups that don't contribute to peace should be judged in the ordinary mechanism or should be subjected to the International Criminal Court in the future.

Lastly, we think that the best way to get the highest amount of truth in this situation is to follow the example of other countries that have terminated armed conflicts, and that is with the creation of a truth commission that looks at all of the violations that have taken place since 1945, what sort of trends or mechanisms existed throughout this period and then recommendations to rectify those situations.

So, in closing, I would like to thank you again for this opportunity and urge you to continue to work for contributing to peace and for justice in Colombia.

[The statement of Ms. Ortegon follows:]

Prepared Statement of Jomary Ortegon

Good morning. My appreciation to the Human Rights Committee of Congress, particularly the offices of James McGovern and Frank R. Wolf for organizing and convening this hearing on working for peace and justice in Colombia.

1. Transitional Justice Without Transition

In the last eight years, Colombia has approved several legislative frameworks that, by invoking the concept of transitional justice, have been hailed as advancing victims' rights to truth, justice, and comprehensive reparations, despite limited results and a lack of support for the overall integration of a plan for peace. The so-called Peace and Justice Law (Law 975 of 2005) and related legislation, has only resulted in 14 convictions, and if it has made any contribution to revealing the truth through the process of voluntary public confessions by demobilized paramilitaries, it is evident that this has not produced a corresponding reduction in the effect of paramilitarism. Monetary compensation for victims, announced as part of the overall reparations process, has been ineffective. As of July of this year, only 11 individuals who have applied actually received a legal determination of their claim, and Law 519 of 2012 in fact eliminated this form of reparations for victims.

For its part, the Victims and Land Restitution Law (Law 1448 of 2011) has had limited results and one of its obstacles continues to be the social and armed control that paramilitarism exercises over the country, as evidenced by the presence of so called "Anti-Restitution Armies."

A peace process that puts an end to the armed conflict in Colombia, in order to be viable and real, should include the demobilization of all actors in the armed conflict and putting an end to dirty war tactics. It means supporting a peace process that includes the demobilization of the guerrilla forces, and at the same time ensuring the dismantling of political and economic structures that feed into the violence; in particular: state agents, paramilitaries, and civilian sponsors of grave human rights and humanitarian law violations.

As such, CCAJAR proposes a formula, still currently under debate and construction, that will enable not just the end of the armed conflict, but moreover implies a future consolidation of peace through three elements: adopting guarantees of non-repetition; creating a Special Justice Tribunal for Peace; and the establishment of a Truth Commission.

II. Proposal for Guarantees of Non-Repetition

In order to prevent human rights violations from continuing, structural changes in the functioning of the State are needed. These include strengthening institutions of investigation and protection, cleaning up the State, transformation of the economic and taxation systems, successful dismantling of paramilitarism, and other measures including:

- Successfully dismantle paramilitarism through investigation and effective sanction of its supporters;
- Purge the Armed Forces and state organizations, with the immediate termination of State officials implicated in human rights violations, either by action or omission;
- Revise and eliminate manuals, regulations, and legislation that contain statements characterizing sectors of the population as the “internal enemy”;
- Revise and purge State intelligence files and exclude all information on human rights defenders, trade unionists, members of opposition parties and political movements, and members of social organizations, among others;
- Adopt protocols and control mechanisms that regulate the use of force by State security forces at social protests, and as such abolish those laws that criminalize the exercise of peaceful protest;
- Address the economic and tax structures that perpetuate social injustice. Adopt formulas that guarantee community subsistence, the small farmer’s economy, and food sovereignty;
- Strengthen the Rule of Law and the power of civilian power over military power;
- Reduce military spending, the size of the Armed Forces, and ensure that those resources are dedicated to promoting economic, social, and cultural rights.

III. Proposal for a Justice Tribunal for Peace

In order for peace to be credible, firm, and lasting, it cannot and should not be synonymous with impunity for crimes against humanity, genocide, or grave infractions of international humanitarian law.

As such we propose the creation of a **Special Justice Tribunal for Peace**, in which all who wish to support a solid peace process by contributing to truth, reparation, and justice, and in particular supporting guarantees of non-repetition of crimes and contributing to the deconstructing of methods, practices, financing, and intellectual authors of crimes of an international character, should submit themselves. Those who chose not to participate in this Tribunal or, having submitted themselves have not contributed to the satisfaction of the rights of victims, should face prosecution in the national legal system, or face a possible action from the International Criminal Court.

- The character of this tribunal is confessional in nature, and would have two focuses: one on the crimes committed as part of the internal armed conflict in which guerrillas and members of the military responsible for war crimes would enter; a second on the crimes committed as part of the social, economic, and political conflict that deal with genocide, crimes against humanity and human rights violations.
- Amnesty and pardons relating to political crimes should be granted as broadly as possible for guerrilla groups who demobilize, taking into account the obligations and international standards that limit concessions to said criminal benefits to those who are responsible for crimes against humanity or war crimes.
- Criminal responsibility and sanction should be asymmetrical. The benefits granted should take into account differentiated sanctions for the perpetrators of state crimes, in which case the justice should be more drastic, and those individuals should be disqualified from future public office.

- The conditions in which criminal sanctions are carried out cannot be turned into a new crime against humanity, and especially not against the victims.

IV. Proposal for a Truth Commission

We propose a **Truth Commission**, which in no case should be substituted for the actions of judicial and disciplinary bodies. It will be officially sanctioned and will contribute to the clarification of the systematic and generalized human rights violations, war crimes, crimes against humanity and genocide, with special emphasis on state involvement in said crimes, as these are particularly serious given the State's grant of power and authority. The Commission's recommendations regarding institutional reforms, truth, justice and comprehensive reparations and means of non-repetition will be the foundation of a public policy of human rights.

Mr. McGOVERN. Well, thank you all for your excellent testimony.

I want to thank Gimena Sanchez-Garzoli for her unbelievable translation, and my colleague has a previous appointment, so I am going to yield to her first for questions.

Ms. BONAMICI. Thank you very much, Mr. Chairman.

And I am going to start with Ms. Drake. You talked about Law 1610, which was really designed to provide a clear path through which employers could directly hire employees and avoid the fines and sanctions, but obviously, according to your testimony, this is not working as planned, and what do you think would need to be changed to make that law effective?

Ms. DRAKE. Thank you very much. We have some specific criticisms of Resolution 321, which puts Law 1610 into practice. And these include the fact that under the law, the labor inspector cannot decide on controversies, and "controversies" aren't really well defined under the law. So an employer can sort of stop up the process by saying, well, this is a controversy that we have here rather than saying it is actually clear that we were illegally using cooperatives or other forms of labor intermediation.

Secondly, there is no provision at all for union worker participation in the creation of the formalization accords. So you have events like the one that I talked about in my testimony where this formalization accord just appears and the workers who were working so hard to get the recognition that they were being illegally subcontracted and get the attention of the labor ministry are now shocked to find out that 45 of them have been formalized when there were really 600 workers that with were supposed to be affected. And there is really no process in the law for a follow-up provision to make sure that the elements of the accord are being followed.

You know, in addition to that it really requires training and clear training for all of the labor inspectors who are involved in creating the formalization accords. There has been local labor inspectors who have said to the workers that virtually any kind of civil, commercial, labor subcontracting organization all will count as labor formalization, including SAS, under Law 1610. Well, that is, you know, completely contrary to the point of the law, and if that is what the Ministry of Labor employees who are charged with enforcing the law believe and then that is what they produce in their formalization accords, the workers are no better off. They have put in the time and risked their lives and livelihoods to accomplish something, and then they end up with either the exact same situation, or marginal improvements to where they were before. So it is -- the goal was good, but there really do need to be a lot of very serious changes in the law itself and its implementation.

Ms. BONAMICI. Thank you very much. It was an excellent summary, and I trust that you are communicating all of that to the relevant people who can make those changes.

Mr. Schoening, you in your testimony talk about the what seems to be a pretty

pathetic prosecutorial background here with regard to the cases. I think you said that there had been only 27 -- 28 cases out of the 17,000 open investigations, only 28 had led to a conviction. And I know our other witnesses talked about some of the problems with the tribunals, but do you have any other explanation for why that record is so really slim in terms of all of the cases that only resulted in 28 convictions?

Mr. SCHOENING. Yes, it is -- the record for investigations of force displacement isn't very impressive. I mean, impunity is a problem that affects all different types of human rights violations in Colombia. Part of this, I think, is a matter of will on the part of the prosecutor's office to go after the really hard cases and touch very powerful interests on a local level.

While there are many just officials who are extremely committed, there is sometimes, I think, a lack of will to go after some of the tougher cases. Part of it is strategy as well. There is a lack of coordination in the prosecutors -- there has been a lack of coordination in the prosecutor's office, so cases related to the same region and communities and armed actors could be handled by maybe three or four different prosecutors. So instead of grouping the cases under one prosecutor for the same perpetrator in the same region in order to identify patterns, the cases have been spread out, and that doesn't yield the results that need to happen.

Ms. BONAMICI. Thank you very much.

And then I wanted to ask Ms. Avila -- did I say that correctly? I wanted to ask you, in your opinion, what are some of the reasons for the lack of institutional attention to the plight of the indigenous people and the Afro-Colombians?

Ms. AVILA. Colombia's legislation for Afro-Colombian indigenous people -- the legislation that exist in Colombia for Afro-Colombian indigenous people recognizes an ample set of rights. However, in practice, these rights are not well implemented. What we see is that often the rights of economic projects or economic interests are given a higher standing than the rights of the Afro-Colombian indigenous people. And we see that in many cases when it comes to infrastructure projects, mining, oil, extractive industries, there is basically that beneficiary of those their rights over the rights of the Afro-Colombian indigenous, and what we see is a lack of coordination between basically these two aspects and this leads to a vulnerability of risk of violations against Afro-Colombian indigenous.

Ms. BONAMICI. Thank you.

And Ms. Ortegon, I wanted to ask you, do you have a reaction to the constitutional court's decision to strike down the constitutional amendment to expand military jurisdiction? We talked about that earlier.

Ms. ORTEGON. We think that this is an important decision because it basically refers to military reforms and a statutory law that we, from our perspective, saw as a step backwards in human rights violations. Basically, it would be going back 30 years in what has been achieved in terms of protection of human rights in Colombia. While the constitutional

court's response and reasons given for this decision are really procedural, we know that the constitutional court, and they have said it themselves, sees that their decision will have an important implication on what it means in terms of rights of victims.

We think that the constitutional court's decision also comes from a response by the international community and many others of concern about these reforms, and we wish to take this opportunity to thank the U.S. Congress and U.S. civil society organizations for helping us elevate our concerns at the international level in terms of our grave concerns about this reform. It is very important to emphasize that in order to guarantee no repetition, there needs to be further steps to guarantee that there isn't this amplification of such reforms. They need to be very restrictive to guarantee that there is an impunity.

Ms. BONAMICI. Thank you, and if I may just one more question. Thank you.

Mr. McGOVERN. Go ahead.

Ms. BONAMICI. Thank you, and this is to both Ms. Avila, and Ms. Ortegon. Earlier, when Dr. Bouvier was testifying, we talked about the youth in Colombia and the next generation, and here in the U.S. Congress, I serve on the Education Committee, and I am very concerned about child welfare issues, and so when I learned that so many of the fighters in Colombia are just teenagers, I wondered if you could comment, both of you, on really the hope, if any, in the next generation, and how do you sense that the attitude among the youth now that there are these peace talks going on, are they optimistic, or have they grown up with so much violence that they can't see the hope and optimism? Thank you.

Ms. AVILA. So it is very true that these conflicts in Colombia have deeply affected the lives of indigenous and Afro-Colombian women, children, and youth. And many people have, as a result, been forced to flee their territories and live in urban settings where they are living basically in a complete disconnect from what was their prior life before the displacement. But we have also seen at the same time that many communities have reestablished themselves into a territory and engaged in the process of resistance of displacement by utilizing music, art, and other forms.

These are very important initiatives that need to be not just monitored but supported, and these are initiatives that need that support because basically this will help guarantee that these generations that are still in their territories can remain in their territories and contribute to peace and justice in the country.

Ms. BONAMICI. Thank you.

Ms. ORTEGON. I think that this is a very difficult question that you are asking because the majority -- well, the youth in Colombia only knows really the internal conflict, and many of them have suffered as a result. They don't know what it is like to live without that conflict. However, this is a very important opportunity for hope to make the reality very different. One of the things that you see among the youth is a constant fear that they live under. We have see a depoliticization of the youth. We have seen that their social spaces

have decreased. We have seen that basically in order to survive, most of the youth see the only option as recruitment by one of the groups, either the armed forces, the paramilitaries, or the guerrillas. So, in order to generate hope, it is very important that they are no longer part of these groups, that they can recuperate some of their social and political spaces; basically, that their values can be changed so that you have a situation where a different reality is possible. Thank you.

Ms. BONAMICI. Thank you.

And thank you very much, Mr. Chairman, for yielding and for holding this hearing.

Mr. McGOVERN. Well, thank you very much.

I appreciate your questions and I appreciate all of your answers.

I just have a few more, if you don't mind. I know you have been sitting here a long time.

But Ms. Drake, I want you to know that when I was last in Colombia, we did meet with the port workers in Buenaventura, and I echo everything you said. I mean, it is a serious situation.

Let me ask you, do you find the U.S. Government's response to threats and violence against Colombian unions and labor activists -- I mean, how do you find the U.S. -- how do you find our government's response to what is going on down there? And I mean, specifically, are they responsive? Do they follow through and actively pressure the government of Colombia to investigate and prosecute? Should they be doing more? Ms. Drake. I mean, I think the U.S. Government has a good team that I deal with at the U.S. Trade Representative's Office and the Department of Labor that follow the issues of the Labor Action Plan, but I really do think they could be doing much more specifically with reference to the threats and violence and impunity. You know, as the very first witness that you spoke to admitted, there hasn't been one conviction of a murder of a trade unionist in the last few years. Well, that is significant because that was a large point in the Labor Action Plan, and the way to deter these future threats and acts of violence is to make sure that there is going to be swift and certain justice, and that it is not just the material authors of the crimes but the intellectual authors and really finding out what is going on there, and I think, you know, we report when we hear that there are threats. When there are threats publicized, we contact the U.S. Government, and we say, you know, please make sure that in your very next conversation with your counterparts in the government of Colombia that you raise this issue, that you ask for a report back on the issue. You know, are the workers who were threatened receiving immediate protection plans? If it is the case of a murder or an assault, then, you know, we ask for information on what is happening with the investigation, and all too often we unfortunately don't hear back from the U.S. Government on what is the status of the inquiries that we have made, and I do understand that they are quite busy in covering a number of issues. But what we do hear from the workers much too often is that they don't think there is any investigation happening at all, that they haven't been -- the murder of Juan

Carlos Perez Munoz at the La Cabana plantation, his union reports they haven't been interviewed about the murder, and that just calls into question what is happening? Are these promises about threats and violence real promises and real changes, or is it a lot of promises on paper to look good and there is not enough follow-through? And we think the U.S. Government could be more forceful in really encouraging and urging and ensuring follow-through.

Mr. McGOVERN. Just for the record, how do you view the roles played by the ILO, ENS, and the Solidarity Center in Colombia? You know, should the United States Government continue to provide support for them?

Ms. DRAKE. The U.S. Government should continue to provide robust and strong support for them. These institutions are really the institutions that the workers rely on for good information to, you know, train the workers in what their labor rights are, for the ILO for the technical advice, for the ENS, for just great compilation of accurate and reliable data, as accurate as possible, you know, when workers are afraid to report these crimes sometimes, but these are organizations that really ought to be supported, and if they weren't there, however bad the situation is for workers in Colombia, it would be much, much worse.

Mr. McGOVERN. Thank you.

Mr. Schoening, the report that you released last month revealed that 2 years since the Victims Law was enacted, only three displaced families had returned to live on their land as a result of court rulings under the law. Taking into account that millions of Colombians have been forcibly displaced, those aren't particularly impressive numbers. How did the government respond to your findings?

Mr. SCHOENING. Well, in terms of the security issue, the government recognized that frequent threats against land claimants are a serious problem.

In terms of the poor results in implementing the Victims Law, the government attempted to downplay our findings by claiming that hundreds of families had returned to their land thanks to the law, but the hundreds of families that had returned to the land that were cited by the government are, in fact, cases of people who returned years ago. They are essentially cases of people who returned years ago by their own means and were then able to use the law to get their land titles, to formalize their ownership of the land.

While it is important to provide land titles to people, that is not the purpose of the law. The major purpose of the law is to allow the millions of displaced Colombians, who continue to remain away from their homes, who continue to be displaced, and allow them, those Colombians to return to live on their land, and unfortunately, by September 2013, the government could confirm just three cases of families who had been able to transition from the condition of being displaced to returning to live on their land thanks to the law.

Mr. McGOVERN. So just one final question, how do we remedy this? I mean, what should the Colombian government be doing better, and what can the United States

Government be doing to actually support these claimants and ensuring their security and ensuring that the law is implemented in the spirit in which it was supposedly put together?

Mr. SCHOENING. Well, one of the main obstacles here is security, so as lots of the witnesses have touched on, paramilitary groups and associated criminal mafias continue to have a strong influence in many regions of Colombia, so in order to make land restitution work, it is going to be vital to really curb the power of these groups and dismantle them where the government wants to implement land restitution.

Another issue is a matter of strategy, so which cases the government focuses on. I think that one option, a good option would be for the land restitution office to focus its efforts on cases where displaced people have not been able to return and use that mechanism to allow displaced people to return to their land and allow other government institutions that already exist to provide land titles to people who have already returned to their land. I think that would be a probably more efficient strategy, and the U.S. Government I think can play a crucial role here in urging Colombia to prosecute the perpetrators of these threats and attacks, and providing the Attorney General's Office with sufficient resources and assistance that it needs to make greater progress in bringing perpetrators to justice, and also in terms of providing housing to displaced people who have benefited from the law to ensure that they don't just receive a land title and then can't return because their home is now in shambles, and they don't have a place to live. So there is lots of ways.

Mr. McGOVERN. No, and, again, I think this is an important point because, you know, if you are going to negotiate a peace agreement, and you are going to ask people to lay down their arms and to trust the institutions to provide them protection and to help them transition into a, you know, into civilian society, you know, the lack of implementation of some of these laws could complicate things. I mean, it doesn't build up a lot of trust, and so I agree with you. I think we need to figure out ways to make sure that we guarantee people's security. Although having said that, you know, when we were down there, when I was down there with George Miller, we met with human rights advocates and defenders and labor activists and defenders and people who were, you know, advocating for land rights, and they all had, you know, armored cars and bodyguards. I mean, I think at some point, there is a limit to how many bodyguards and armored cars you can provide people. At some point, you have to start breaking the back of impunity and going after, you know, some of these criminal gangs and paramilitaries and, you know, corrupt individuals, some of them who are locally elected officials, you know, and demonstrate the commitment of the national government, you know, to deal with the issue of impunity and actually make sure these laws are implemented. So I think this is a very important issue.

Ms. Avila, members of your organization have received threats and experienced violent attacks, and, you know, and some Members of Congress have actually intervened on behalf of some of your members. What are some of the sources of your protection? I mean, do you receive any protection from the national government?

And just one final question. To your knowledge, have Afro-Colombian or indigenous issues been specifically discussed at the peace talks?

Ms. AVILA. So my organization, like you said, has received multiple death threats, and it is really thanks to the pronouncements by human rights organizations and members of the U.S. Congress with the Colombian government that we have seen some advancement in terms of getting some protective measures in terms of material terms. However, one thing we wish to emphasize, that if you really want to get at the heart of this, that you need to figure out a way to dismantle the structures that basically lead to these organizations to be in the territories that lead to the threats.

What we have stated to the Colombian government on several occasions is that more than cars and material protection support, what we really need is an effective way of dismantling the criminal structures that are behind these groups that generate these death threats and that have usurped lands.

With regard to the second question, various Afro-Colombian indigenous communities have formulated different proposals for how to basically have effective reparation in their territories as well as nonrepetition of events. Many of these proposals have been taken to the national government, they have also been presented to Havana to those who are negotiating, and basically the purpose of that was to inform the dialogue so that the kinds of decisions made are the most effective in order to guarantee the rights of Afro-Colombian and indigenous people.

Mr. McGOVERN. I think I would just say that it is important when talking about a negotiation and talking about peace and reconciliation that it is understood, that there are more than two players involved. It is more than just the state and the FARC or ELN. I mean, there are lots of other groups that have been adversely impacted by the war that have suffered greatly who ought to have a say in the future of the country, and so I hope that some of these proposals actually get serious consideration at the negotiating table.

And finally, to Ms. Ortegón, you know, one of the important obstacles to the successful transitional justice efforts is the population's lack of trust in its national institutions, and we have talked a little bit, a lot about that at this hearing. Is such distrust prevalent in Colombia and, if so, how can it be overcome? And just how would you describe the optimal balance between delivering justice for all victims and peace? Two easy questions.

Ms. ORTEGON. Well, I would like to thank you for this question, the first question, and I would like to answer it basically with illustrating a case that I think answers it well, which is the case of the DAS. Basically there has been a dismantling of the DAS, but, however, this dismantling was really just a change in name and a change in agency. Actually, the country itself doesn't know fully what the DAS was engaged in. It was engaged in arbitrary detentions and ex officio executions. There have been several cases presented in front of the Inter-American Commission on Human Rights of these cases. In the decades of the 2000s, there were so many crimes committed by the DAS, including crimes where there was collusion with paramilitaries, and some of those cases even came to the justice system. There was also ample persecution of members of the political opposition of magistrates, of

human rights defenders, and there was direct engagement in violations, such as the killings of trade unionists. So, basically, you have had this change in the DAS, but the country doesn't know what happened to some of the officials that worked for the DAS. We know that some are working for the national protection unit, some are working for the fiscalia. We know that the former director of the DAS is still far from being completely brought to justice. So we have seen that there has been this justice, but there has been no real truth of explaining to the society what has happened, and I think that is part of the problems we will be confronting.

What I just described about the DAS, you can basically look at different institutions within Colombia and look at the same thing, so if we look at the Armed Forces, for example, it really needs to have a very strong response where there is a purging of those folks who have links to criminal groups and so forth. In the case of the Colombian Congress, the political parties need to be sanctioned so that there is a guarantee that it will not be allowed in the future for any of its members to have links to criminal or other groups, that that is the way that a democratic society should operate. For example, there needs to be also a strengthening of the Attorney General's Office. Right now, the former attorney general is being investigated for links to paramilitaries. So I would say that the formulas that you need to have civilian oversight over military institution, you have to have the maximum response possible in terms of justice so that youth in Colombia, going back to the previous question, refer to their heroes in the society not as folks that have been engaged in criminal activity but those who act differently.

Mr. McGOVERN. Thank you. Well, thank you all very, very much.

Again, I want to thank Katya Migacheva, I want to thank J. P. Shuster, Cindy Buhl, who is my legislative director, who traveled with me to Colombia, and I want to thank all of the witnesses here. I want to thank you for what you do, for defending human rights, and this has been very, very informative.

You know, I am a hopeful kind of person, and I believe that some of the challenges that have been laid out here will ultimately be worked out, and that is good for all Colombians, and so we will continue to monitor the human rights situation, continue to pressure the Colombian government when necessary, continue to pressure the U.S. Government when necessary, send the appropriate messages to the FARC when necessary, but we will continue to monitor the situation, and I want to thank all of you for being here, and the hearing is now adjourned. Thank you.

[Whereupon, at 11:56 a.m., the committee was adjourned.]

APPENDIX

MATERIAL SUBMITTED FOR THE HEARING RECORD



**Tom Lantos Human Rights Commission (TLHRC)
Hearing**

Creating Peace and Finding Justice in Colombia

**Thursday, October 24, 2013
9:30 AM-12:00 PM
HVC 210**

As Colombian and international observers look with hope to the on-going peace negotiations between the Colombian government and Colombia's largest guerrilla organization, a number of human rights issues remain critical. The Labor Action Plan, which aimed to provide adequate protection of workers' rights in Colombia, faces many challenges in its implementation and has not prevented labor activists from becoming targets of intimidation and deadly attacks. Under President Santos's signature Law on Victims' Rights and Land Restitution, many of Colombia's internally displaced are trying to reclaim their land and face serious threats and killings for their activities. And as peace negotiations move forward, Colombia struggles to find an effective approach to transitional justice. Many are now concerned that concessions made at the negotiating table may leave the victims of fifty years of violent conflict without justice but with the burden of reconciliation.

This hearing will provide an update on the ongoing peace negotiations and an overview of continuing human rights challenges. More specifically, the hearing will address the status of labor rights, obstacles to land restitution efforts, and recommendations on effective mechanisms for transitional justice. It will also highlight particular challenges faced by Colombia's indigenous population and Afro-Colombian communities.

The following witnesses will testify:

Panel I:

- William Duncan, Director of Andean Affairs, Bureau of Western Hemisphere Affairs, U.S. Department of State

Panel II:

- Adam Isacson, Senior Associate for Regional Security Policy, Washington Office on Latin America
- Dr. Virginia M. Bouvier, Senior Program Officer for Latin America, United States Institute of Peace

Panel III:

- Celeste Drake, Trade and Globalization Policy Specialist, The American Federation of Labor and Congress of Industrial Organizations (AFL-CIO)
- Max Schoening, Colombia Researcher, Human Rights Watch
- Liliana Ávila, Human Rights Attorney, Inter-Church Justice and Peace Commission
- Jomary Ortigón, Human Rights Attorney, Jose Alvear Restrepo Collective of Lawyers

If you have any questions, please contact the Tom Lantos Human Rights Commission at 202-225-3599 or tlhrc@mail.house.gov.

James P. McGovern
Co-Chair, TLHRC

Frank R. Wolf
Co-Chair, TLHRC