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The U.S.-Colombia Trade Promotion Agreement: Ignoring the Paramilitary's Human Rights Abuses?

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THE U.S.-COLOMBIA TRADE PROMOTION AGREEMENT: IGNORING THE PARAMILITARY'S HUMAN RIGHTS ABUSES?

Pooja Shah*

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I. Introduction

Free trade agreements allow participating countries to benefit as trade partners with remaining parties to the agreement.¹ Specifically, free trade agreements include provisions that reduce tariffs for exports.² United States trade policy encompasses strong attempts to expand their export markets and decrease the foreign trade barriers placed on U.S. goods and services.³ Additionally, the United States is in a unique position to impact the international community through its relationship with trade partners.⁴ The U.S. impacted labor standards in the international community through provisions in all free trade agreements entered into after 1994, starting with the North American Free Trade Agreement (“NAFTA”).⁵

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¹ Kevin J. Fandl, *Bilateral Agreements and Fair Trade Practices: A Policy Analysis of the Colombia-U.S. Free Trade Agreement*, 10 YALE HUM. RTS. & DEV. L.J. 64, 67 (2007).

² *Id.*

³ See, e.g., Mylène Kherallah & John Beghin, *U.S. Trade Threats: Rhetoric or War?*, 80 AM. J. AGRIC. ECON. 15 (1998) (examining increased American attempts to expand the export market).

⁴ Jennifer Alewelt, *The Heat Is on in Latin America: The Future and Implications of the Colombian Free Trade Agreement*, 39 CAL. W. INT'L L.J. 159, at 162 (2008).

⁵ Eli J. Kirschner, *Fast Track Authority and Its Implication for Labor Protection in Free Trade Agreements*, 44 CORNELL INT'L L.J. 385, 396 (2011).

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The Colombian Trade Promotion Agreement (“CTPA”) entered into force on May 15, 2012.⁶ Congress passed the CTPA on October 12, 2011 and President Obama signed it into law on October 21, 2011.⁷ Under the CTPA, over 80% of American exports of goods to Colombia became duty-free upon passage, while the tariffs on the remaining goods phased out over the next ten years.⁸ The tariff reductions under the CTPA will expand U.S. exports to Colombia by over \$1.1 billion.⁹ Moreover, while the Colombian economy is the third largest in Central and South America,¹⁰ it also presents the worst human rights and humanitarian crisis in the area.¹¹ Likewise, while the trade agreement increased exports between the countries, it also allowed the U.S. to protect laborers in Colombia through provisions in the CTPA.¹² However, the primary criticism of labor provisions and standards in U.S. free trade agreements is the lack of an adequate mechanism of enforcement.¹³

Part II of this Article provides insight into the violent history of Colombia and the previous failed free trade agreement with the United States. Colombia has a long and deadly history between labor unionists, the government and the paramilitary. Due to this history, as well as continued problems with labor unions, Congress declined to ratify the free trade agreement with Colombia signed by President George W. Bush.

Part III of this Article discusses the Colombian Trade Promotion Agreement, signed by President Obama and ratified by Congress. This agreement includes a plan to better protect labor unionists against violence. However, many have remaining concerns over the continued human rights violations within Colombia – especially with the paramilitary. American corporations within Colombia have even been found funding the paramilitary to prevent labor strikes and to provide protection.

Part IV of this Article analyzes the Colombian Trade Promotion Agreement. According to the U.S. government, the free trade agreement levels the playing field for American goods by removing tariffs. However, the agreement fails to adequately protect workers against human rights violations within Colombia. Further, the Alien Tort Statute does not provide legal remedy for victims of U.S. corporation actions.

⁶ Cortney O’Toole Morgan ET AL, *International Trade*, 47 INT’L. LAW 81, 83 (2013).

⁷ M. Angeles Villartca, CONG. RESEARCH SERV., RL34470, *THE U.S.-COLOMBIA FREE TRADE AGREEMENT: BACKGROUND AND ISSUES I* (2014).

⁸ O’Toole Morgan ET AL. *supra* note 6, at 83.

⁹ Lisa Haugaard & Vanessa Kritzer, *The U.S.-Colombia FTA: Still a Bad Deal for Human Rights*, HUFFPOST, (Oct. 4, 2011), http://www.huffingtonpost.com/lisa-haugaard/the-uscolombia-fta-bad-deal_b_983780.html.

¹⁰ See, e.g., *U.S.-Colombia Trade Agreement*, OFFICE OF THE U.S. TRADE REPRESENTATIVE, <http://www.ustr.gov/uscolombiatpa/facts> (last visited Nov. 7, 2014) (providing an overview of the U.S.-Colombia trade agreement, including key economic facts about each country).

¹¹ Alewelt, *supra* note 4, at 167.

¹² *Id.* at 172.

¹³ *Id.*

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Part V of this Article considers changes that must be implemented to address and remedy human rights violations. Labor strikes still occur within Colombia even after the passage of the Labor Action Plan and the Colombian Trade Promotion Agreement. Consequently, violence against Colombian labor unionists remains high.

II. History of Colombia Labor Issues

A. Violence in Colombia

Colombia has the worst human rights and humanitarian crisis in the Latin and South American region.¹⁴ It is considered the “most dangerous country in the world” for members of trade and labor unions, and no country is more dangerous than Colombia for those fighting for labor rights.¹⁵ In fact, assassinations of trade activists in Colombia alone account for eighty-five percent of all trade unionist assassinations in the world.¹⁶ Additionally, any labor activists that actively engage in any labor union activities become targets of violence.¹⁷ The increase in assassinations of labor union members is attributed to increased activity of paramilitary groups.¹⁸

Paramilitary groups have a long history in Colombia. During the 1960s, the revolutionary group, Fuerzas Armadas Revolucionaria de Colombia (“FARC”), gained power.¹⁹ The FARC is one of the world’s wealthiest guerilla armies and is the largest left-wing Colombian revolutionary group.²⁰ Guerilla and revolutionary groups like the FARC extort payment from rural farmers for protection of the farmers’ land.²¹ In February 2012, the FARC proclaimed it would no longer commit kidnapping for ransom.²² The Ejército de Liberación Nacional (“ELN”) is the second largest guerilla group within Colombia.²³ The ELN formed during the same time as the FARC²⁴ but has stronger political motivations than the

¹⁴ *Id.* at 167.

¹⁵ *Id.* at 163, 167.

¹⁶ *Id.* at 164. *Murder and Impunity: Colombia and Guatemala*, US LEAP, <http://www.usleap.org/us-leap-campaigns/colombiamurderandimpunity> (explaining that Guatemala is the second most dangerous country for trade unionists. In 2010 fifty-one trade unionists were murdered in Colombia compared to ten trade unionists assassinated within Guatemala).

¹⁷ Alewelt, *supra* note 4, at 163.

¹⁸ *Id.* at 165–66.

¹⁹ Brian A. Ford, *From Mountains to Molehills: A Comparative Analysis of Drug Policy*, 19 ANN. SURV. INT’L & COMP. L. 197, 211 (2013).

²⁰ See, e.g., *Profiles: Colombia’s armed groups*, BBC NEWS (2013), <http://www.bbc.co.uk/news/world-latin-america-11400950> (providing an overview of Colombia’s paramilitary history).

²¹ J. Corey Harris, *Oppression Through Violence: The Case of Colombia – An Expansion of the Fetish Object?*, 29 N.C. CENT. L.J. 98, 106 (2006).

²² *Profiles: Colombia’s armed groups*, *supra* note 20.

²³ Virginia M. Bouvier, *Colombias’ Crossroads: The FARC and the Future of the Hostages*, UNITED STATES INSTITUTE OF PEACE 3 (2008), available at http://www.ciaonet.org/pbei/usip/0002182/f_0002182_1282.pdf.

²⁴ Stephanie Hansen, *FARC, ELN: Colombia’s Left-Wing Guerrillas*, COUNCIL ON FOREIGN RELATIONS (2009), <http://www.cfr.org/colombia/farc-eln-colombias-left-wing-guerrillas/p9272>.

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FARC.²⁵ ELN originally drew members to “advance their cause of [national] ‘liberation or death’” wishing to establish a Colombia with full equality and democracy.²⁶ Both the FARC and ELN claim to protect the poor farmers of Colombia against the wealthy and U.S.²⁷ A third paramilitary group, the Autodefensas Unidas de Colombia (“AUC”), consisted mainly of former military and insurgent persons.²⁸ Although AUC has reportedly disbanded, attacks by former members have been reported as late as 2009.²⁹ Altogether, these paramilitary groups selectively kill between 800–900 people throughout Colombia each year.³⁰

While paramilitary groups are not part of the Colombian government, there is evidence of close ties between the two.³¹ The Colombian government states that it made efforts to shield labor activists and union members, but these efforts have not been successful.³² Seventy to eighty percent of all human rights violations within Colombia are attributed to these paramilitary groups.³³ Human rights violations include massacres, assassinations, tortures, forced displacements, disappearances, kidnappings and drug trafficking.³⁴

Likewise, paramilitary organizations were legal militias under Law 48, which was passed in 1968.³⁵ Law 48 gave the Colombian army permission to “organize and provide arms to groups of civilians called ‘self-defense’ units.”³⁶ These self-defense units were given the power to fight back against guerilla groups such as the FARC.³⁷ While the FARC kept control over many of the southern and eastern regions of Colombia, the paramilitary groups in northern Colombia used aggres-

²⁵ *Colombia: Prospects For Peace With The ELN*, ii, INTERNATIONAL CRISIS GROUP (2002), available at <http://www.ciaonet.org/wps/iccg291/iccg291.pdf>.

²⁶ *Id.* at 5–6.

²⁷ *The guerilla groups in Colombia*, UNITED NATIONALS REGIONAL INFORMATION CENTRE FOR WESTERN EUROPE, <http://www.unric.org/en/colombia/27013-the-guerrilla-groups-in-colombia> (last visited Nov. 7, 2014).

²⁸ *Id.*

²⁹ *United Self-Defense Forces of Colombia*, MAPPING MILITANT ORGANIZATIONS (2014), available at <http://web.stanford.edu/group/mappingmilitants/cgi-bin/groups/view/85>; United Self-Defense Forces/Group of Colombia (AUC-Autodefensas Unidas de Colombia), <http://www.globalsecurity.org/military/world/para/auc.htm> (last visited Nov. 7, 2014) (While the AUC has technically been disbanded, the extent of their infiltration into Colombia’s security forces and government departments has remained high.).

³⁰ Alewelt, *supra* note 4, at 168.

³¹ David Spencer, *Colombia’s Paramilitaries: Criminals or Political Force?* 3 (2001), available at www.strategicstudiesinstitute.army.mil/pdffiles/PUB19.pdf; see, e.g., Francisco Gutiérrez Sanín, Telling the Difference: Guerillas and Paramilitaries in the Colombian War, 36 *Politics & Society* 3 (2008) (discussing the difference between Colombian guerilla forces and paramilitary organizations).

³² Alewelt, *supra* note 4, at 167.

³³ Lisa J. Laplante & Kimberly Theidon, *Transitional Justice in Times of Conflict: Colombia’s Ley de Justicia y Paz*, 28 *MICH. J. INT’L L.* 49, 56 (2006).

³⁴ *Id.*

³⁵ See, e.g., Garry Leech, *Fifty Years of Violence*, *COLOMBIA JOURNAL* (1999), <http://colombiajournal.org/fiftyyearsofviolence> (examining the human rights violations repeatedly committed by paramilitary organizations in Colombia and the history of the government’s role in allowing the violence to continue).

³⁶ *Id.*

³⁷ *Id.*

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sion and terror tactics to introduce “aggressive counter-agrarian reform.”³⁸ Under counter-agrarian reform, paramilitary groups forcefully took valuable lands to favor the interests of “drug traffickers, local landowners and multinationals and private companies.”³⁹

Under Decree 1194 of 1989, Colombian President Virgilio Barco Vargas imposed criminal penalties on those who formed or operated paramilitary groups without permission from the President of Colombia.⁴⁰ In essence, Decree 1194 abolished paramilitary groups. However, in 1994, under Decree 356, self-defense units became legal once again.⁴¹ These self-defense groups became known as the “Convivir.”⁴² Decree 356 allowed the Convivir to carry side arms but nothing else.⁴³ The Convivir “[provides] intelligence for the [Colombian] military.”⁴⁴ They are essentially government funded paramilitary groups that on occasion act together with the traditionally violent factions.⁴⁵ The government promotes the Convivir as “democratic security” and, in contrast, the paramilitary groups argue that the Convivir are the same as them, stating “[let] us not deceive ourselves” all the Convivir were ours.⁴⁶

The Colombian military and paramilitary groups continue to have strong ties.⁴⁷ In northern Colombia, paramilitary groups and military commanders form connections to “protect” the agricultural interests of the wealthy from guerilla extortion.⁴⁸ Additionally, many officers and soldiers join the paramilitary groups upon retirement.⁴⁹ The Colombian government has been notoriously ineffective in protecting the rural population, and, as a result, the paramilitary has become a source of protection for the rural population in spite of the human rights violations the paramilitary groups commit.⁵⁰

The AUC was disbanded between 2003 and 2006, but former paramilitary members joined forces with drug trafficking groups.⁵¹ These groups formed pri-

³⁸ *Id.*

³⁹ Ross Eventon, *The War on Colombia's Poor*, TRADE & INVESTMENT (2012), <http://www.tni.org/article/war-colombias-poor>.

⁴⁰ WILLIAM AVILES, GLOBAL CAPITALISM, DEMOCRACY AND CIVIL-MILITARY RELATIONS IN COLOMBIA 112 (2006).

⁴¹ WILLIAM L. MARCY PH.D, THE POLITICS OF COCAINE: HOW U.S. FOREIGN POLICY HAS CREATED A THRIVING DRUG INDUSTRY IN CENTRAL AND SOUTH AMERICA, 216 (2010).

⁴² *Id.*

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *Bulletin No 27: Series on the rights of the victims and the application of Law 975*, COMISIÓN COLOMBIANA DE JURISTAS 1 (2008), available at http://www.coljuristas.org/documentos/boletines/bol_n27_975_en.pdf.

⁴⁶ *Id.* at 4.

⁴⁷ Laplante, *supra* note 33.

⁴⁸ Jose E. Arvelo, *International Law and Conflict Resolution in Colombia: Balancing Peace and Justice in the Paramilitary Demobilization Process*, 37 GEO. J. INT'L L. 411, 420 (2006).

⁴⁹ Spencer, *supra* note 31, at 6.

⁵⁰ *Id.* at 18.

⁵¹ *Colombia's New Armed Groups*, INTERNATIONAL CRISIS GROUP 1 (2007), available at http://www.crisisgroup.org/~media/Files/latin-america/colombia/20_colombia_s_new_armed_groups.pdf.

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marily because of the failure of the Colombian government to dismantle the criminal networks the groups established before the AUC disbanded.⁵² These successor groups are violent and commit various crimes –including massacres, killings, rapes and extortions.⁵³ The successor groups target human rights defenders, members of trade unions, and those in the successor group “territory” that do not follow their rules.⁵⁴ The Colombian government has been consistently ineffective in dealing with the successor groups.⁵⁵

B. 2008 U.S.-Colombia Free Trade Agreement

Negotiations between the U.S. and Colombia over a free trade agreement first began in 2004 under President George W. Bush.⁵⁶ The process to attempt to ratify the free trade agreement was lengthy and complicated.⁵⁷ Not only was there discrepancy between the English and Spanish versions of the agreement, but there was also considerable opposition to the agreement within the U.S. Congress.⁵⁸ The Colombian government and President George W. Bush signed the free trade agreement in November 2006.⁵⁹ When President George W. Bush submitted the agreement for ratification to Congress in April 2008, the House Speaker, Nancy Pelosi, changed the House rules, effectively avoiding a vote within ninety days after a submission by the President.⁶⁰ Voting on the agreement was postponed multiple times.⁶¹

The agreement was never passed in Congress, in large part due to Democrats claiming the agreement was damaging to the U.S. economy and to national security.⁶² However, the refusal to ratify the agreement was based on a few different issues, including the concern over the safety of workers in Colombia.⁶³ The 2008 agreement specifically prohibited the intervention of each nation in the enforcement of labor laws in the other.⁶⁴ The agreement ensured that if a violation occurred, any person with a legal interest in the matter would have access to

(discussing the various different paramilitary groups and the Colombian government's ineffectiveness in eliminating them).

⁵² *Id.*

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ Alewelt, *supra* note 4, at 161.

⁵⁷ SANOUSI BILAL, PHILIPPE DE LOMBAERDE & DIANA TUSSIE, ASYMMETRIC TRADE NEGOTIATIONS 49 (Ashgate, 2011).

⁵⁸ *Id.*

⁵⁹ WOLA's Human Rights Arguments Against the Colombia FTA, WASHINGTON OFFICE ON LATIN AMERICA (2008), http://www.wola.org/publications/wolas_human_rights_arguments_against_the_colombia_fta.

⁶⁰ BILAL, *supra* note 57, at 150.

⁶¹ *Id.*

⁶² Alewelt, *supra* note 4, at 160–161.

⁶³ *Id.* at 161.

⁶⁴ *Id.* at 178.

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tribunals, the structure of which was left to the discretion of each country.⁶⁵ For this reason, Democrats in Congress were hesitant to support the free trade agreement with Colombia.⁶⁶ There would have been plenty of potential for abuse of labor rights due to the close relationship between Colombian officials and the various paramilitary groups.⁶⁷

According to the Washington Office on Latin America (“WOLA”), there are many human rights related reasons to prevent passing a free trade agreement with Colombia.⁶⁸ WOLA argued that a free trade agreement should not be passed because the rate of killings by the paramilitary remains very high.⁶⁹ Additionally, in 2008 Colombia had approximately 3.8 million displaced people – the second largest displaced population in the world.⁷⁰ It was feared that the trade agreement might increase the number of displaced individuals, as land used to grow crops would become more valuable.⁷¹

III. U.S. Involvement Within Colombia

A. Colombian Trade Promotion Agreement

In 2011, Congress passed and President Obama signed the CTPA, which entered into force on May 15, 2012.⁷² A number of factors rendered the CTPA necessary, primarily increased pressure from other countries negotiating free trade agreements with Colombia. Colombia has the third largest economy in Latin and South America, making free trade with the country very important.⁷³ U.S. exporters were particularly concerned that they would lose their share in the Colombian market due to 2011 agreements between Colombia and Canada as well as 2013 free trade agreements between Colombia and the EU.⁷⁴ Colombia has also entered into a regional free trade agreement with Chile, Mexico and Peru.⁷⁵ Between 2000 and 2011, the share of Colombia’s U.S. imports decreased from thirty-four percent to twenty-seven percent.⁷⁶ Argentina even replaced the U.S. in Colombia as the leading supplier of agricultural imports due to a trade agreement between Argentina and Colombia.⁷⁷ A free trade agreement with Co-

⁶⁵ *Id.*

⁶⁶ *Id.* at 182.

⁶⁷ *Id.* at 185.

⁶⁸ WOLA’s *Human Rights Arguments Against the Colombia FTA*, *supra* note 59.

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² Villarreal, *supra* note 7; *United States, Colombia Set Date for Entry into Force of U.S.-Colombia Trade Agreement*, OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE (Apr. 2012), <http://www.ustr.gov/about-us/press-office/press-releases/2012/april/united-states-colombia-set-date-entry-force-us-colom>.

⁷³ Alewelt, *supra* note 4, at 167.

⁷⁴ Villarreal, *supra* note 7, at 26.

⁷⁵ *Id.* at 26

⁷⁶ *Id.*

⁷⁷ *Id.*

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Colombia was necessary for the U.S. to globally compete to export U.S. products to Colombia.

Many members of Congress were opposed to a free trade agreement with Colombia due to the country's labor and human rights violations.⁷⁸ Others believed that without a free trade agreement, the situation in Colombia for labor activists would only become more problematic.⁷⁹ The Colombian government argues that while killings still occurred in the country, the problem was decreasing in severity.⁸⁰ However, the data available on the number of labor union members killed per year in Colombia vary greatly depending on the source.⁸¹ Although the rate of violence in the country still remains high, the homicide rate in Colombia has decreased over the past decade.⁸²

President Obama negotiated an Action Plan Related to Labor Rights ("Action Plan") as a response to concerns of violence against labor union members and human rights defenders.⁸³ The Action Plan addressed U.S. concerns over "alleged violence against Colombian labor union members, inadequate efforts to bring perpetrators of violence to justice, and insufficient protection of workers' rights in Colombia."⁸⁴ President Obama stated that the Action Plan was a necessary precondition for a free trade agreement to enter into force.⁸⁵ The Action Plan sets forth a number of target dates by which certain obligations are to be met.⁸⁶ Under the Action Plan, Colombia has an obligation to create a Labor Ministry, which it established in November 2011.⁸⁷ The criminal code was reformed to create penalties for employers that "undermine the right to organize and bargain collectively."⁸⁸ The effective date of Article 63 of the 2010 Law of Formalization and First Employment was accelerated from July 1, 2013 to June 15, 2011.⁸⁹ Under Article 63, misuse of cooperatives and labor relationships that affect labor rights are prohibited by law and fines can be inflicted on violators.⁹⁰ The Colombian Ministry of Interior and Justice broadened the definition of who was covered under its protection program to include labor activists, those engaged in efforts to form unions and former unionists who were threatened for their past activities

⁷⁸ *Id.* at 17.

⁷⁹ Villarreal, *supra* note 7, at 18.

⁸⁰ *Id.*

⁸¹ *Id.*

⁸² *Id.*

⁸³ *Id.* at 17.

⁸⁴ Villarreal, *supra* note 7, at 18.

⁸⁵ *Id.*

⁸⁶ *Id.*

⁸⁷ *Id.* at 19.

⁸⁸ *Id.*

⁸⁹ Villarreal, *supra* note 7, at 20.

⁹⁰ *Id.*

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within a union.⁹¹ The Action Plan also created obligations for the Colombian government to create a temporary service agency and criminal justice reform.⁹²

The CTPA incorporates human rights provisions into the agreement itself. The CTPA includes strong provisions to protect basic labor rights and labor standards in addition to “leveling the playing field” for U.S. workers.⁹³ The United States and Colombia, under the CTPA, must adopt and maintain the International Labor Organization’s five fundamental workers’ rights.⁹⁴ The five basic rights are the freedom of association, the effective recognition of the right to collective bargaining, the elimination of forced compulsory labor, the abolition of child labor and prohibition on the worst forms of child labor, and the elimination of discrimination of employment and occupation.⁹⁵ The two countries also have to establish a mechanism for the public to raise concerns about labor violations directly to each country’s government and to provide workers with access to tribunals whose proceedings are fair and transparent.⁹⁶ The CTPA additionally ensures that Colombia will process protection requests from union members and labor activists in a more expedient manner.⁹⁷

B. CTPA Human Rights Issues

More trade union members were killed in Colombia last year alone than in the rest of the world combined.⁹⁸ While President Obama and Colombian President Juan Manuel Santos⁹⁹ agreed to the Labor Action Plan to protect trade union members, the plan rewards promises over results.¹⁰⁰ There are twenty-two million workers in Colombia, but fourteen million of those workers still lack basic labor rights, such as the right to organize.¹⁰¹ On top of this, companies allow workers to form “unions” with just three members, which allows the company to deny worker rights such as social security, health and pension payments.¹⁰²

⁹¹ *Id.* at 20-21.

⁹² *Id.* at 19-24.

⁹³ *Leveling the Playing Field: Labor Protections and the U.S.-Colombia Trade Promotion Agreement* 1, 3, available at http://www.whitehouse.gov/sites/default/files/09302011_labor_protections_and_the_colombia_trade_agreement.pdf.

⁹⁴ *Id.* at 3.

⁹⁵ Villarreal, *supra* note 7, at 8.

⁹⁶ *Leveling the Playing Field: Labor Protections and the U.S.-Colombia Trade Promotion Agreement*, *supra* note 93, at 3-4.

⁹⁷ See generally, *Leveling the Playing Field: Labor Protections and the U.S.-Colombia Trade Promotion Agreement*, *supra* note 93.

⁹⁸ Haugaard, *supra* note 9.

⁹⁹ John Otis, *Colombia’s New President: A Win for the U.S.*, TIME (Jun. 21, 2010), <http://content.time.com/time/world/article/0,8599,1998279,00.html> (explaining that President Juan Manuel Santos was elected in 2010).

¹⁰⁰ *Id.*

¹⁰¹ Daniel Freeman, *US-Colombia Labor Action Plan represents ‘failure’ with ‘worsened’ conditions: Report*, COLOMBIA REPORTS (Oct. 29, 2013), <http://colombiareports.co/us-colombia-labor-action-plan-represents-failure-worsened-conditions-report/>.

¹⁰² *Id.*

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These “unions” are called “*contractos sindicales*” where a union is not representing its members but instead contracting to provide labor to the company.¹⁰³ The *contractos sindicales*, rather than the companies themselves, are then responsible under Colombian law for paying its members social security, health and pension benefits.¹⁰⁴ Colombian union representatives argue that a free trade agreement will interfere with the government’s ability to govern the country.¹⁰⁵ The Colombian government further argues that other countries do not keep records of union member assassinations, therefore, it is hard to classify Colombia as the “most dangerous country for union members” when data is not available for other countries.¹⁰⁶ The Colombian government also states that in professions where union membership is universal, such as educators and judicial branch members, anyone who is killed within the profession will be a union member, and thus, union members are not being specifically targeted.¹⁰⁷

Colombian union members argue that a free trade agreement will have a negative effect on Colombia’s economy specifically within the agricultural sector.¹⁰⁸ The Central Union of Workers within Colombia claims that the free trade agreement does not “go far enough to protect worker rights.”¹⁰⁹ In fact, displacement of union members increased by seventy-six percent in 2012 from 2011, when the CTPA was implemented.¹¹⁰ Colombian union members contend that the free trade agreement only made the violent situation within Colombia worse and accordingly President Obama must take some sort of action to stop the violence.¹¹¹

The CTPA will devastate the poor farmers, or *campesinos*.¹¹² The Colombian *campesinos* are financially dependent on the crops that they grow; with the free trade agreement, their crops would compete with U.S. grown products causing the *campesinos* to lose anywhere from forty-eight percent to seventy percent of their total income.¹¹³ It was estimated that the CTPA would take away at least 250,000 jobs, mostly related to agriculture, within Colombia.¹¹⁴ The free trade

¹⁰³ *The U.S.- Colombia Labor Action Plan: Failing on the Ground*, A STAFF REPORT ON BEHALF OF U.S. REPRESENTATIVES GEORGE MILLER AND JIM MCGOVERN TO THE CONGRESSIONAL MONITORING GROUP ON LABOR RIGHTS IN COLOMBIA 1, 10 (Oct. 2010), available at <http://democrats.edworkforce.house.gov/sites/democrats.edworkforce.house.gov/files/documents/Colombia%20trip%20report%20-%2010.29.13%20-%20formatted%20-%20FINAL.pdf>.

¹⁰⁴ *Id.* at 10.

¹⁰⁵ Villarreal, *supra* note 7, at 28.

¹⁰⁶ *Id.* at 31.

¹⁰⁷ *Id.*

¹⁰⁸ *Id.* at 28.

¹⁰⁹ *Id.*

¹¹⁰ *On One-Year Anniversary of U.S. Free Trade Agreement, Colombia Remains Deadliest Country for Union Members*, COMMON DREAMS (May 15, 2013, 4:18PM), <https://www.commondreams.org/news/wire/2013/05/15-6>.

¹¹¹ *Id.*

¹¹² Haugaard, *supra* note 9.

¹¹³ *Id.*

¹¹⁴ Heidi Andrea Restrepo Rhodes, *The US-Colombia FTA and National Insecurity: A Call for Ethical Foreign Policy*, UPSIDE DOWN (Apr. 28, 2009), <http://upsidedownworld.org/main/colombia-archives-61/1835-the-us-colombia-fta-and-national-insecurity-a-call-for-ethical-foreign-policy>.

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agreement provides that tariffs on agricultural products will be phased out over a three to nineteen year period.¹¹⁵ Quota tariffs will be eliminated in Colombia in twelve years for corn and feed grains, fifteen years for dairy products, eighteen years for chicken legs, and nineteen years for rice.¹¹⁶ In August 2013, over two hundred thousand agricultural workers went on strike claiming that the CTPA have made small farmers within Colombia more exposed to market fluctuations.¹¹⁷ Allegedly, the Colombian police fired tear gas at the strikers while the Colombian army patrolled the streets.¹¹⁸ On the same day, two hundred strikers outside of a Drummond Company coal mine also went on strike.¹¹⁹ The coal mine strikers were fighting for an increase in wages while the agricultural strikers calling for an increase in government subsidies.¹²⁰

C. U.S. Corporation Involvement

The successor groups to the AUC regularly violate human rights by committing massacres, killings, forced displacements, rape and extortion.¹²¹ The Colombian government has continuously failed to disband these successor groups.¹²² Part of this failure is caused by U.S. corporate connections to the AUC and their successor groups. U.S. corporations involved with the paramilitary include Chiquita Brands International, Coca-Cola, and the Drummond Company. Under the Alien Tort Statute (“ATS”), a U.S. federal law, federal courts have the jurisdiction to hear suits filed by non-U.S. citizens for violations of international law.¹²³ International law includes the protection of human rights.¹²⁴ The ATS is an eighteenth century law that has expanded from crimes such as piracy and war crimes to include human rights violations.¹²⁵ A suit can be brought under the ATS against corporations for human rights violations committed abroad as long as the corporation has sufficient contacts with the United States, acted with a government entity and had sufficient control over the violations.¹²⁶ The Torture

¹¹⁵ Villarreal, *supra* note 7, at 4.

¹¹⁶ *Id.*

¹¹⁷ M. Angeles Villarreal, *The U.S.-Colombia Free Trade Agreement: Background and Issues*, CONGRESSIONAL RESEARCH SERVICE 1, 27 (2014), available at <http://fas.org/sgp/crs/row/RL34470.pdf>.

¹¹⁸ *Id.*

¹¹⁹ Andrew Willis, *Strikes Surge as Killings of Colombian Union Leaders Fall*, BLOOMBERG (2013), <http://www.bloomberg.com/news/2013-10-25/strikes-surge-as-killings-of-colombian-union-leaders-fall.html>.

¹²⁰ *Id.*

¹²¹ *Human Rights Watch Comments to the Office of the US Trade Representative Concerning the US-Colombia Free Trade Agreement*, HUMAN RIGHTS WATCH (Sept. 15, 2009 9:34AM), <http://www.hrw.org/news/2009/09/15/human-rights-watch-comments-office-us-trade-representative-concerning-us-colombia-fr>.

¹²² *Id.*

¹²³ *The Alien Tort Statute*, THE CENTER FOR JUSTICE & ACCOUNTABILITY, <http://www.cja.org/article.php?id=435>.

¹²⁴ *Id.*

¹²⁵ *Id.*

¹²⁶ *Id.*

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Victim Protection Act makes individuals liable “only if they have committed torture or extrajudicial killings under actual or apparent authority, or color of law, of any foreign nation.”¹²⁷ Suits were filed against U.S. corporations such as Chiquita Brands International, the Drummond Company, Inc., and the Coca-Cola Company for contracting with Colombian paramilitary groups.

1. *In re Chiquita Brands International Inc.*

In the 2011 case, *In re Chiquita Brands International Inc. Alien Tort Statute and Shareholder Derivative Litigation*, the plaintiffs were the family members of the trade unionists, workers at the banana plantation, and others that were tortured and killed by the AUC.¹²⁸ The plaintiffs alleged that the decedents were killed in the 1990s to early 2000s in the banana growing plantation regions within Colombia.¹²⁹ The plaintiffs alleged that Chiquita Brands International (“Chiquita”) violated the Alien Tort Statute and the Torture Victim Protection Act.¹³⁰ On March 19, 2007, Chiquita pled guilty for violating federal anti-terrorism laws for their relationship with a Foreign Terrorist Organization.¹³¹ Chiquita was sentenced to a twenty-five million dollar criminal fine and five years probation and was required to implement compliance and ethics programs.¹³² It was after Chiquita’s guilty plea that the plaintiffs began filing their civil suits against Chiquita.¹³³

The AUC’s mission was to remove all guerilla sympathizers who opposed AUC paramilitary control of the AUC territories.¹³⁴ Under Decree 356, private groups were allowed to provide “Special Vigilance and Private Security Services.”¹³⁵ These groups were called *convivir* and they worked closely with the Colombian military and the AUC.¹³⁶ The AUC was deemed a Foreign Terrorist Organization by the U.S. government on September 10, 2001.¹³⁷ The plaintiffs alleged that the AUC received support from Chiquita and in exchange for that support the AUC would remove the FARC and ELN guerillas from the banana growing region and provide security and “labor quiescence.”¹³⁸

¹²⁷ SALLY J. CUMMINS, *DIGEST OF UNITED STATES PRACTICE IN INTERNATIONAL LAW* 485 (2006).

¹²⁸ *In re Chiquita Brands Int’l, Inc. Alien Tort Statute & S’holder Derivative Litig.*, 792 F.Supp.2d 1301, 1305 (2011).

¹²⁹ *Id.*

¹³⁰ *Id.* at 1305-06.

¹³¹ *Id.* at 1310.

¹³² *Id.*

¹³³ *In re Chiquita*, 791 F. Supp. 2d at 1310.

¹³⁴ *Id.* at 1306.

¹³⁵ *Id.* at 1307.

¹³⁶ *Id.*

¹³⁷ *Id.*

¹³⁸ *In re Chiquita*, 791 F. Supp. 2d at 1308.

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Chiquita was an American corporation that operated in the Colombian banana-growing region under its subsidiary, Banadex.¹³⁹ In 1995, Chiquita and the AUC first formed an agreement wherein Chiquita paid the AUC to suppress union activity and drive the guerilla groups out of the territory.¹⁴⁰ Chiquita either paid the AUC directly or paid the AUC's *convivir* groups and claimed the payments were for security services.¹⁴¹ Chiquita also paid the AUC indirectly by having Banadex employees withdraw money and pay the AUC in cash.¹⁴² Chiquita top executives were aware that the AUC was an illegal paramilitary group.¹⁴³ In 2003, Chiquita consulted with a U.S. firm who stated that the payments to the AUC were in violation of U.S. Law.¹⁴⁴ On April 24, 2003, Chiquita disclosed the payments to the U.S. Department of Justice who informed Chiquita that these payments were illegal.¹⁴⁵ Regardless, Chiquita continued to make payments to the AUC until February of 2004.¹⁴⁶ The plaintiffs also allege that Chiquita facilitated arms shipments to the AUC.¹⁴⁷

Initially, the ATS only recognized violations of international law when there were "violation[s] of safe conduct[s], infringement of rights of ambassadors, and piracy."¹⁴⁸ In *Sosa v. Alvarez-Machain*, the Supreme Court expanded the scope of the Alien Tort Statute to allow claims where, "the conduct violates an international law norm that is sufficiently well-defined and universally accepted."¹⁴⁹ The Court in *In re Chiquita Brands International*, needed to determine whether terrorism fell under the scope of the ATS. The court considered the fact that two other district courts previously determined that terrorism was not a recognized violation of the law of nations due to differences in the international community regarding the definition of terrorism.¹⁵⁰ While the International Convention for the Suppression of the Financing of Terrorism does codify a definition of terrorism, the convention has not been universally accepted because an "overwhelming majority of states" have not ratified the convention.¹⁵¹ Therefore, the District Court held that the plaintiff's claims of terrorism against Chiquita could not be tried under the ATS.¹⁵²

¹³⁹ *In re Chiquita*, 792 F. Supp. 2d at 1309; Iulia Filip, *Chiquita Can't Shuck Colombia Terror Claims*, COURTHOUSE NEWS SERVICE (2011) (In June 2004, Chiquita sold Banadex but continues to import bananas from Colombian suppliers).

¹⁴⁰ *In re Chiquita*, 792 F. Supp. 2d at 1309

¹⁴¹ *Id.* at 1310.

¹⁴² *Id.*

¹⁴³ *Id.*

¹⁴⁴ *Id.*

¹⁴⁵ *Id.*

¹⁴⁶ *Id.*

¹⁴⁷ *Id.*

¹⁴⁸ *Id.* at 1312.

¹⁴⁹ *Id.* at 1310.

¹⁵⁰ *Id.* at 1317.

¹⁵¹ *Id.* at 1317-9.

¹⁵² *Id.* at 1322.

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The District Court in *In re Chiquita Brands International* ultimately left the plaintiffs without much recourse for the actions of Chiquita. In later cases, such as *Mohamed v. Palestinian Authority*, the court held that the Torture Victim Protection Act did not apply to corporations.¹⁵³ Additionally, the District Court in *In re Chiquita Brands International*, failed to acknowledge that a large majority of courts have recognized that terrorism is a violation of the law of nations.¹⁵⁴

2. *Estate of Rodriguez v. Drummond Co., Inc.*

The plaintiffs in this suit were the family members of the decedents Valmore Locarno Rodriguez (“Rodriguez”), Victor Hugo Orasita Amaya (“Amaya”), and Gustavo Soler Mora (“Soler”) in addition to the trade union Sintramienergetica (“union”).¹⁵⁵ The plaintiffs alleged wrongful death and aiding and abetting against Drummond Co., Inc. under the Alien Tort Statute and the Torture Victim Protection Act.¹⁵⁶

According to a Colombian journalist, the paramilitary had secret workers within the Drummond coal mines and regularly hired paramilitary members for “private security” positions.¹⁵⁷ Additionally, the journalist claimed that the paramilitary would ship cocaine back to the United States on Drummond shipping boats that were transporting coal.¹⁵⁸

The plaintiffs in *Rodriguez* argued that under international law the right to associate and organize are established and therefore should be actionable under the ATS.¹⁵⁹ Drummond Co. (“Drummond”) is a company based in Alabama with coal operations in Colombia.¹⁶⁰ The plaintiffs alleged that the AUC acting for Drummond killed Rodriguez, Amaya and Soler.¹⁶¹ All three of the decedents were members of the union.¹⁶² The District Court held that the rights to associate and organize are actionable as customary and well-established international

¹⁵³ Ryan A. Keefe, Case Comment, *Transnational Law- Terrorism and Material Support of Terrorism Do Not Constitute Alien Tort Statute Claims Under The Law Of Nations- In re Chiquita Brands Int'l, Inc.*, 792 F. Supp. 2d 1301 (S.D. Fla. 2011), 36 SUFFOLK TRANSNAT'L L. REV. 235, 247 (2013).

¹⁵⁴ *Id.* at 247.

¹⁵⁵ *Estate of Rodriguez v. Drummond Co., Inc.*, 256 F.Supp. 2d 1250, 1253 (2003).

¹⁵⁶ *Id.* at 1253-1254.

¹⁵⁷ Stephen F. Jackson, *Taking it to Drummond: Paramilitaries and Mining Companies in Colombia*, INTERNATIONAL LABOR RIGHTS FORUM (May 5, 2007), <http://www.laborrights.org/end-violence-against-trade-unions/news/10858>; See generally Nicolas Bedoya, *Why Drummond and Glencore are accused of exporting Colombian blood coal*, COLOMBIA REPORTS (2014) (explaining that as a result of the “blood coal” coming from Drummond’s Colombian mines there have been an estimated 2,600 homicides all committed by members of the paramilitary and death squads whose growth was financed in part by Drummond).

¹⁵⁸ Jackson, *supra* note 157; Bedoya, *supra* note 157.

¹⁵⁹ MICHAEL KOBBELEH, CORPORATE RESPONSIBILITY UNDER THE ALIEN TORT STATUTE: ENFORCEMENT OF INTERNATIONAL LAW THROUGH US TORTS LAW 141 (2009).

¹⁶⁰ *Estate of Rodriguez*, 256 F.Supp. 2d at 1254.

¹⁶¹ *Id.*

¹⁶² *Id.* at 1253; see Bedoya *supra* note 157 (Drummond nowadays does not “do anything to protect victims of violence, human rights lawyers, and trade unionists from current violence.”).

law.¹⁶³ However, in July 2013 the case was dismissed by the District Court in light of the Supreme Court's decision in *Kiobel v. Royal Dutch Petroleum Co.*¹⁶⁴

3. *Sinaltrainal v. The Coca-Cola Company*

The case, *Sinaltrainal v. The Coca-Cola Co.*, combined four different suits filed against the Coca-Cola Co. ("Coca-Cola"). The *Gil* case, the *Galvis* case, the *Leal* case, and the *Garcia* case were all filed against Coca-Cola and brought under the ATS, the Torture Victims Protection Act and 28 U.S.C. § 1350; all four cases alleged that Coca-Cola worked together with the paramilitary to murder and torture the plaintiffs.¹⁶⁵ In the *Garcia* case, the plaintiffs alleged that Coca-Cola was "vicariously liable for tortious conduct allegedly committed by the local police."¹⁶⁶ In the *Gil* case, the plaintiffs claimed that the defendants hired and conspired with the paramilitary who murdered and tortured members of the trade union that represented workers at the bottling factory.¹⁶⁷ In the *Galvis* case, the plaintiffs alleged that the facility where the decedent worked collaborated with the paramilitary to erase union presence within the facility.¹⁶⁸ Similarly, in the *Leal* case, the plaintiffs alleged that the facility collaborated with the paramilitary to rid the facility of union presence in addition to kidnapping and torturing Leal for his connection to the union.¹⁶⁹

The court in *Rodriguez v. Romero* considered that the ATS had been previously expanded to include corporate defendants and that private individuals could be held liable for violations of the law of nations.¹⁷⁰ The plaintiffs in *Sinaltrainal* contended that the dangerous situation in Colombia for members of trade unions was growing more violent and that there is no appropriate legal system for the people of Colombia.¹⁷¹ The fact that the Colombian government allowed the private security forces to exist does not make the private actors state actors.¹⁷² Under the ATS, war crimes exist only when the country is involved in a civil war.¹⁷³ A claim under the Torture Victim Protection Act must allege that the paramilitaries are state actors or have sufficient contacts with the government to be acting under the color of the law, and the defendants conspired with the state actors to carry out the alleged torture.¹⁷⁴ In this case, the plaintiffs failed to meet

¹⁶³ NEILS BEISINGHOFF, CORPORATIONS AND HUMAN RIGHTS: AN ANALYSIS OF ATCA LITIGATION AGAINST CORPORATIONS 255-256 (2009).

¹⁶⁴ *Drummond lawsuit (re Colombia)* BUSINESS & HUMAN RIGHTS RESOURCE CENTRE <http://business-humanrights.org/en/drummond-lawsuit-re-colombia#c9319>; see *infra* part IV.

¹⁶⁵ *Sinaltrainal v. Coca-Cola Co.*, 578 F.3d 1252, 1257-1258 (11th Cir. 2009).

¹⁶⁶ *Id.* at 1258.

¹⁶⁷ *Id.*

¹⁶⁸ *Id.* at 1259.

¹⁶⁹ *Id.*

¹⁷⁰ *Sinaltrainal*, 578 F. 3d at 1264-1265.

¹⁷¹ *Id.* at 1265.

¹⁷² *Id.* at 1266.

¹⁷³ *Id.* at 1267.

¹⁷⁴ *Id.* at 1270.

the requirements to bring a claim under the ATS and the Torture Victim Protection Act because they failed to sufficiently allege that the abuses were committed during war or that the paramilitary groups were acting under the color of the law.¹⁷⁵

IV. Impact of the Colombian Trade Promotion Agreement

While the CTPA removes trade barriers between the U.S. and Colombia and does “even the playing field” for the U.S. with regards to tariff protections, it does not weigh the human rights issues evenly.¹⁷⁶ Not only do labor unions, farmers and *campesinos* in Colombia oppose the CTPA, members of the U.S. Congress, as well as many human rights organizations are also against it. The primary human rights issue with the CTPA is the lack of protection for members of labor unions and the lack of any adequate action union members may take against the government, paramilitary and U.S. corporations.

The U.S. and Colombia have long been close allies, and it is argued that Colombia is the United States’ closest ally in the South American region.¹⁷⁷ Supporters of the CTPA contend that the trade agreement provides many opportunities for the Colombian people.¹⁷⁸ These benefits include creating alternative ways for Colombians to make money that do not involve drug trafficking, and having a stronger rule of law and system for workers’ rights.¹⁷⁹ The CTPA requirements include a commitment on behalf of both parties to adhere to the International Labour Organization’s five fundamental workers’ rights and requires that workers have access to tribunals when their rights are infringed upon.¹⁸⁰ Further, the CTPA is important and necessary, as Colombia has ratified free trade agreements with other countries.

Those opposed to the CTPA argue that the U.S. is more concerned with trade protection than the many human rights violations that occur within Colombia. Under the Andean Trade Preference Act (“ATPA”), over ninety percent of imports from Colombia into the U.S. enter the United States duty free.¹⁸¹ However,

¹⁷⁵ *Id.*

¹⁷⁶ See generally *U.S.-Colombia Trade Agreement*, *supra* note 10.

¹⁷⁷ *Fast Facts on Colombia and the Colombian Economy*, LATIN AMERICA TRADE COALITION (last visited Jan. 18, 2015), www.latradecoalition.org/files/2010/09/04-Fast-Facts-on-Colombia1.pdf.

¹⁷⁸ *Why Support the U.S.-Colombia Trade Promotion Agreement? Growth, Hope, and Opportunity*, LATIN AMERICA TRADE COALITION, 6, available at <http://www.aapa-ports.org/files/PDFs/Why%20Support%20Colombia%20Trade%20Agreement.pdf>.

¹⁷⁹ *Id.*

¹⁸⁰ *Leveling the Playing Field: Labor Protections and the U.S.-Colombia Trade Promotion Agreement*, *supra* note 94, at 3.

¹⁸¹ *Why Support the U.S.-Colombia Trade Promotion Agreement? Growth, Hope, and Opportunity*, *supra* note 178. Andean Trade Preference Act, Office of the United States Trade Representatives <http://www.ustr.gov/trade-topics/trade-development/preference-programs/andean-trade-preference-act-atpa> (ATPA was enacted in December 1991 to assist Bolivia, Colombia, Ecuador and Peru to fight drug production and trafficking within their countries); Andean Trade Preference Act (ATPA) – Expiration of duty-free treatment, U.S. Customs and Border Protection [https://help.cbp.gov/app/answers/detail/a_id/3251/~andean-trade-preference-act-\(atpa\)-~-expiration-of-duty-free-treatment](https://help.cbp.gov/app/answers/detail/a_id/3251/~andean-trade-preference-act-(atpa)-~-expiration-of-duty-free-treatment) (The ATPA expired on February 12, 2011 and offered duty free protection until July 31, 2013.).

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U.S. exports to Colombia are subject to tariffs – fourteen percent for manufactured goods and over fifty percent for agricultural exports.¹⁸² The CTPA also protects U.S. intellectual property rights in the manner that they are protected within the U.S. itself, especially with regards to copyrighted works, trademark counterfeiting, and copyright piracy.¹⁸³

Within Colombia, some argue that the supposed decrease in violence since the CTPA entered into force is greatly skewed.¹⁸⁴ According to the NGO Consultorio para los Derechos Humanos y el Desplazamiento (“CODHES”), the number of displaced Colombians continues to grow due, in part, to the *campesinos*’ use of valuable farmland.¹⁸⁵ Approximately two hundred fifty-nine thousand Colombians were displaced in 2011 alone.¹⁸⁶ Prior to the CTPA, the Colombian Ministry of Agriculture said that the trade agreement would further harm the rural Colombians and leave them with only three options: “migration to the cities or other countries. . . working in drug cultivation zones, or affiliating with illegal armed groups.”¹⁸⁷ CODHES states that displacement in 2012 increased by eighty-three percent.¹⁸⁸ The fact that the violence has not changed within Colombia shows that the U.S. and President Obama are not as invested in the horrific human rights situation within Colombia. The Labor Action Plan clearly has not bettered life for labor unionists or rural Colombians.

It is against U.S. law for corporations to interact with paramilitary groups such as the AUC and FARC.¹⁸⁹ However, U.S. corporations such as Chiquita Brands International, Coca-Cola, Dole Food Company and Drummond Cole Company have all either been accused or have admitted to associating with paramilitary organizations.¹⁹⁰ Chiquita Brands International admitted to paying the AUC and was fined twenty-five million dollars in a plea agreement with the U.S. Department of Justice; however, it was later discovered that Chiquita was also shipping guns and ammunition for the paramilitary’s use.¹⁹¹ U.S. corporations associate with the paramilitary to keep their costs of production at a minimum and avoid negotiating with labor unions.¹⁹² Furthermore, the paramilitary often works in

¹⁸² *Id.* at *Why Support the U.S.-Colombia Trade Promotion Agreement? Growth, Hope, and Opportunity*.

¹⁸³ *U.S.-Colombia Trade Agreement*, *supra* note 10.

¹⁸⁴ Michael Norby & Brian Fitzpatrick, *The Horrific Costs of the US-Colombia Trade Agreement*, TRUTHOUT (Jun. 3, 2013), <http://truth-out.org/news/item/16737-the-horrific-costs-of-the-us-colombia-trade-agreement>.

¹⁸⁵ *Id.*

¹⁸⁶ *Id.*; See generally *World Report 2014: Colombia*, HUMAN RIGHTS WATCH, <http://www.hrw.org/world-report/2014/country-chapters/colombia> (explaining that contrary to CODHES, Human Rights Watch states over 150,000 Colombians are displaced every year with currently over 5 million Colombians who have been displaced).

¹⁸⁷ *Id.*

¹⁸⁸ *Id.*

¹⁸⁹ *Id.*

¹⁹⁰ Norby & Fitzpatrick, *supra* note 184.

¹⁹¹ *Id.*

¹⁹² *Id.*

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conjunction with the local Colombian government authorities,¹⁹³ further endangering any labor unionists that conflict with U.S. corporations and ensuring that the U.S. corporations can continue to “protect” their interests. Within the U.S., corporations continue to fund paramilitary groups with minimal repercussions. The lawsuits filed against Coca-Cola and the Dole Food Company were dismissed, which left the victims with no legal recourse.¹⁹⁴ Part of the problem is that international law is not defined and paramilitary actions are not always considered violations of international law.

Further, the applicability of the ATS was greatly reduced under the 2013 U.S. Supreme Court decision in *Kiobel v. Royal Dutch Petroleum*.¹⁹⁵ The Supreme Court stated “[t]he ATS covers actions by aliens for violations of the law of nations, but that does not imply extraterritorial reach.”¹⁹⁶ Under *Kiobel* the question became “not whether a federal court has jurisdiction to entertain a cause of action provided by foreign or even international law. The question is instead whether the court has authority to recognize a cause of action under U.S. law to enforce a norm of international law.”¹⁹⁷ Further, nothing in the text of the ATS states that the United States is responsible for enforcing customary international law.¹⁹⁸ The court held that because all the conduct in question took place outside of the U.S., mere corporate presence was not sufficient to bring a cause under the ATS.¹⁹⁹ Further, “even where the claims touch and concern the territory of the United States, they must do so with sufficient force to displace the presumption against extraterritorial application.”²⁰⁰ Essentially, the Supreme Court found that the ATS only applies to conduct that occurs on U.S. soil.²⁰¹ Therefore, it has become extremely difficult if not impossible for victims of U.S. corporations’ overseas actions to force the corporations to take responsibility for their actions.²⁰²

¹⁹³ *World Report 2014: Colombia supra* note 186 (“Since the ‘parapolitics’ scandal erupted in 2005, more than 55 current and former members of Congress have been convicted for conspiring with paramilitaries.”).

¹⁹⁴ *Id.*; Juan Smith, *Colombia: Ex-Paramilitary Implicates Two U.S. Companies in Murder of Trade Unionists*, NORTH AMERICAN CONGRESS ON LATIN AMERICA (2009) <https://nacla.org/news/colombia-cx-paramilitary-implicates-two-us-companies-murder-trade-unionists> (describing that a civil suit was also filed against Dole Food Company by the families of the victims of purported paramilitary acts within Colombia. Dole denied involvement with Colombian paramilitary groups unlike Chiquita); *Frivolous Lawsuit Filed Against Dole By Colombian Plaintiffs Dismissed With Prejudice*, DOLE (2009) <http://www.dole.com/Company-Info/Press-Releases/Press-Release-20100916> (explaining that the lawsuit against Dole was dismissed without prejudice).

¹⁹⁵ *See generally* *Kiobel v. Royal Dutch Petroleum Co.*, 133 S.Ct. 1659 (2013).

¹⁹⁶ *Id.* at 1665.

¹⁹⁷ *Id.* at 1666.

¹⁹⁸ *Id.* at 1668.

¹⁹⁹ *Id.* at 1669.

²⁰⁰ *Id.*

²⁰¹ Rich Samp, *Supreme Court Observations: Kiobel v. Royal Dutch Petroleum & the Future of Alien Tort Litigation*, FORBES (2013) (noting that Congress’ intention in adopting the ATS was purportedly to give foreign ambassadors the ability to seek reparation in the U.S. if attacked on U.S. soil).

²⁰² *Daimler AG v. Bauman*, 134 S. Ct. 746 (2014) (noting that the Supreme Court confirmed *Kiobel v. Royal Dutch Petroleum Co.* and held that Daimler could not be subjected to suit within California where

V. Necessary Improvements to Improve the Colombian Trade Promotion Agreement

President Obama stated that the CTPA will help Colombian workers as the CTPA includes “strong protections.”²⁰³ Unions within the U.S., as well as within Colombia, are strongly opposed to the free trade agreement between the two countries. However, the U.S. government favors the CTPA because of the trade protections it offers the U.S. and the potential to diminish the violence against trade unionists and rural landowners within Colombia. Before President Obama considered implementing the CTPA, he proposed that Colombia implement a Labor Action Plan. Labor unionists in Colombia state that the Labor Action Plan has not been effective in protecting those belonging to labor unions.²⁰⁴ In October 2012, Human Rights Watch released a study that found “virtually no progress” was made in the amount of convictions for killings that have occurred in the last four years.²⁰⁵

It is clear that the CTPA is not working. In fact, strikes within Colombia still occur but receive little to no media coverage. In August 2013, Colombian farmers went on strike to protest the effects of the CTPA.²⁰⁶ The strike included coffee, cacao, potato and rice farmers, as well as cargo truckers, gold miners, and teacher and labor unions.²⁰⁷ The strike originally began with the rural peasants before spreading to the miners, teachers, medical professionals and students.²⁰⁸ The strikers are demanding reduced fuel and fertilizer prices, higher subsidies and the cancellation of all free trade agreements.²⁰⁹ The free trade agreements have made it impossible for Colombian farmers and workers to compete with international products. The strike has been met brutally by the Colombian police who have been reported to use shootings, sexual assault, torture, and tear gas among other abuses to quell the strike.²¹⁰

It is clear that something must be done for the CTPA to be a mutually beneficial agreement. As it stands currently, the U.S. is benefitting far more than the Colombian people. Colombia remains the most dangerous country in the world for trade unionists even with the implementation of the Labor Action Plan and the CTPA. U.S. corporations are still able to get away with paying the paramilitary to prevent and quell labor strikes leaving no recourse for labor unionists.

neither Daimler nor its Argentinean subsidiary was incorporated in California and all activity occurred outside of the U.S. within Argentina).

²⁰³ Julie Pace, *Obama: US, Colombia trade deal a 'win'*, BLOOMBERG BUSINESSWEEK (Apr. 15, 2012), <http://www.businessweek.com/ap/2012-04/D9U5K7F81.htm>.

²⁰⁴ *Id.*

²⁰⁵ *Id.*

²⁰⁶ See generally Dave Johnson, *Strike in Colombia Highlights Free Trade Failure*, CAMPAIGN FOR AMERICA'S FUTURE (Aug. 26, 2013), <http://ourfuture.org/20130826/big-columbia-strike-hilites-free-trade-fail>.

²⁰⁷ *Id.*

²⁰⁸ Jeanine Legato, *Are Colombian Protests the 'Opening Salvo in a Full-Frontal Attack' on Free Trade?*, COMMON DREAMS (Sept. 5, 2013), <https://www.commondreams.org/view/2013/09/05-5>.

²⁰⁹ Dave Johnson, *supra* note 206.

²¹⁰ Legato, *supra* note 209.

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Action needs to be taken in order for a free trade agreement that upholds human rights in Colombia to exist. The U.S. needs to execute stricter punishment for U.S. corporations that associate with the criminal paramilitary groups. U.S. corporations cannot be allowed to simply pay a fine, and not be forced to change their behavior.

Furthermore, the Colombian government must be held accountable for upholding the human rights provisions within the CTPA. The Colombian government needs to reduce the number of paramilitary organizations and find a way to end the government's close relationship with the paramilitary. The Colombian government must also provide an adequate forum for dispute resolution, one that is widely available and guarantees the safety of the labor unionists. Lastly, within international law, a definition of terrorism must be agreed upon and widely accepted by the international community. A widely accepted definition of terrorism may provide the victims of violence in Colombia a legal remedy.

VI. Conclusion

Colombia remains a dangerous country rife with human rights violations. President Obama used the Colombian Trade Promotion Agreement as a way to reduce trade barriers between Colombia and the U.S. and to make Colombia safer for trade unionists. However, the Colombian Trade Promotion Agreement has not made life better or safer for Colombians. Instead, it made competition with U.S. goods extremely difficult for Colombian farmers and failed to change the violent situation in Colombia.

Trade unionists continue to be killed for being associated with unions. Paramilitary groups continue to work with U.S. corporations and the Colombian government. Unfortunately, even under the ATS and the Torture Victim Protection Act, the family members of the killed Colombian trade unionists have no legal remedies. The narrow limits of both laws often do not include U.S. corporation paramilitary involvement. While the CTPA does remove trade barriers between the U.S. and Colombia, it does little to alleviate human rights issues. Until a change is made, the violence against trade unionists within Colombia will continue.