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WAR AND HUMAN RIGHTS ABUSES: Colombia & the Corporate Support for Anti-Union Suppression

Daniel Kovalik¹

I. INTRODUCTION

The United States is currently waging a war in Colombia. Although the United States is claiming to wage this war in the name of fighting drugs and terrorism, U.S. military aid is in fact perpetuating both of these harms. Moreover, what the United States calls its “war on drugs” and “war on terrorism” in Colombia is instead a war being waged in support of corporate profits and access to strategic natural resources, such as oil and coal.

The victims of this war are not the drug traders or perpetrators of terrorism in Colombia, but rather those who dare to challenge the exploitation of Colombia’s working people and its natural resources; namely, human rights advocates, indigenous and peasant leaders, and trade unionists. In a number of cases, U.S.-based multinational corporations, some of which have been vocal supporters and direct beneficiaries of U.S. military aid to Colombia, have been complicit with both military and paramilitary forces in Colombia that intimidate, torture, and even assassinate these individuals, especially trade unionists. The corporate sponsorship of trade union killings in Colombia has become the subject of two lawsuits filed in the United States by the United Steelworkers of America (USWA) and the International Labor Rights Fund (ILRF) on behalf of Colombian plaintiffs.²

These two lawsuits, which involve the Coca-Cola Company and the Drummond Coal Company, are the subject of this article. I will first detail the context in which these two cases have arisen and will specifically address how U. S military aid is fueling state-sponsored terror under the guise of fighting drugs and terrorism. I will next explain how U.S. policy in

Colombia is really one of supporting the interests of multinational corporations that are involved in the extraction of valuable natural resources such as oil and coal. I will detail how these multinational corporations are themselves intimately involved in human and labor rights violations in Colombia. Lastly, I will discuss the lawsuits against Coca-Cola and Drummond Coal Company in terms of how these cases are part of the greater movement to bring peace and justice to Colombia and hold U.S.-based multinational corporations accountable for their actions outside the United States.

II. THE UNITED STATES' WAR IN COLOMBIA IS NEITHER A WAR ON DRUGS NOR A WAR ON TERROR

A. The So-called War on Drugs

The conservative Rand Corporation concluded years ago that it is twenty-three times more effective—and infinitely more humane—to deal with drug abuse within the United States by focusing efforts on drug use at home rather than on eradicating the source of the raw materials for drugs.³ Nevertheless, the United States has instead chosen to focus its resources on providing massive military aid to Colombia for the ostensible purpose of coca eradication, the raw material that produces cocaine.⁴ Though it has been providing significant military aid to Colombia for many years, in 2000 the United States began increasing its military aid to Colombia under Plan Colombia; Colombia has since become the third largest recipient of U.S. military aid in the world.⁵ Since Plan Colombia's passage, the total area of coca cultivation has actually increased from 122,500 hectares in 1999 to 144,450 hectares in 2002.⁶

Even more disturbing than these figures, however, is that the United States is actually funding a military in Colombia that works closely with right-wing paramilitary groups.⁷ This connection is significant because the U.S. Drug Enforcement Administration (DEA) as well as the Colombian

government report that paramilitaries control 40 percent of Colombia's drug trade. (Paramilitaries are indeed involved in the drug trade in a way in which Colombia's left-wing guerilla groups—whose role is limited to taxing coca producers—are not.⁸) The Colombian government has concluded that “it is impossible to differentiate between the self-defense groups [paramilitaries] and narco-trafficking organizations.”⁹

B. The So-called War on Terror

Under Plan Colombia, the United States has also attempted to justify the increased military aid by arguing that it is part of the United States' “war on terror.” However, just as the war on drugs is actually doing little to combat drug proliferation and abuse, the war on terror in Colombia appears to be actually supporting terror rather than eliminating it. The prime terrorist group in Colombia is the United Self-Defense Forces of Colombia (AUC), an umbrella organization for the Colombian right-wing paramilitary groups. The AUC, which is responsible for 80 to 85 percent of the political murders in Colombia, has been officially designated by the U.S. State Department as a terrorist organization.¹⁰

Yet the United States continues to fund the Colombian military at record levels, even though the U.S. State Department concedes that this same military is collaborating with the right-wing paramilitaries by providing them with intelligence and ammunition, participating in some of the terrorist activities, and, in some cases even joining their ranks.¹¹ The result of this involvement is that human rights abuses in Colombia have actually risen since the United States increased its military appropriations under Plan Colombia. Indeed, political assassinations in Colombia have jumped from an estimated 2,000–3,000 in 1999 to 4,416 in 2002. In other words, in the four years since the commencement of Plan Colombia, political violence has increased 50 to 125 percent.¹² In essence, the United States is waging a war in Colombia with the stated aim to combat drugs and terror, all the

while supporting groups that trade in drugs and commit terror against civilians.

III. WAR FOR PROFITS AND AGAINST TRADE UNIONISTS

As the U.S. war on drugs and war on terror in Colombia appear to be neither, why then is the United States at war in Colombia? I believe the United States is at war in Colombia to protect both multinational corporate interests and U.S. access to valuable natural resources such as oil and coal. Indeed, two major supporters of Plan Colombia include two U.S. based fossil fuel companies, Occidental Petroleum and Drummond Coal Company. Moreover, the initial Congressional debates on Plan Colombia underscore the real economic interests behind Plan Colombia and U.S. involvement in Colombia.

I first learned that access to oil was a congressional priority in February 2000, when Congress first debated Plan Colombia. I attended a Congressional hearing in Washington sponsored by the Subcommittee on Criminal Justice, Drug Policy and Human Resources.¹³ As the name of the subcommittee suggests, the hearing was ostensibly held to debate the need for Plan Colombia with respect to its purpose of combating drug flow from Colombia to the United States. Curiously, the Vice-President of Occidental Petroleum, Lawrence Meriage, was invited to testify at the congressional hearing; however, he was not called to testify about drugs or social policy in Colombia. Instead, Meriage testified about the need to protect the United States' (and Occidental's) access to oil in Colombia.¹⁴ As Meriage explained at this hearing, Colombia is the eighth largest supplier of oil to the United States, and both Colombia and Venezuela together provide the United States with 20 percent of its oil. Meriage claimed it was necessary to secure Colombia's oil as an alternative to the oil obtained from "the volatile Middle East."¹⁵

The United States demonstrated its agreement with Meriage's view by subsequently appropriating almost \$100 million to the Colombian military

for the express purpose of protecting Occidental's pipelines.¹⁶ Later, in January 2003, the United States sent Special Forces to Colombia to train Colombian troops on how to protect these pipelines.¹⁷ In fact, one out of four Colombian soldiers are assigned to protect the oil pipelines.¹⁸

Oil is not the only Colombian resource the United States is interested in protecting, however. Colombia is also becoming one of the chief sources of coal for the United States. Coal is Colombia's second largest legal export behind oil, and the industry is expected to grow by 30 percent over the next four years.¹⁹ Columbia has become the world's fifth largest exporter of the fuel's steaming variety, which is used for electricity and heat, especially in manufacturing.²⁰ Drummond Coal Company, based in Birmingham, Alabama, accounted for about 38 percent of Colombian coal exports last year, just behind Cerrejón, a company owned by the government until 2000.²¹ In 2000, Drummond Coal Company owner Garry Drummond personally escorted then-Colombian President Andres Pastrana to Washington D.C. to lobby for a \$1.7 billion military aid package to Colombia.²²

As detailed further below, corporations such as Drummond Coal and Occidental, among other U.S.-based corporations, have been directly involved in atrocious human rights abuses in Colombia, especially against trade unionists. These corporations collaborate directly with the Colombian military—the same military the United States is funding at record levels. The U.S. government's involvement is intended, in large part, to protect these corporations' interests and, possibly, to eliminate what the U.S. government perceives as human barriers to the corporate maximization of profits.

IV. THE ROLE OF CORPORATIONS IN THE VIOLENT REPRESSION OF TRADE UNIONISTS

In his acclaimed novel, *One Hundred Years of Solitude*, Nobel-prize winning author Gabriel Garcia Marquez, a Colombian, vividly described the

massacre of banana workers by the Colombian military acting at the behest of the international banana company.²³ Garcia's fictional account, which ended with the dead workers being loaded into trains, taken away, and forgotten, was based on a real event which occurred in 1928 in the town of Cienaga, Colombia. Specifically the Colombian military massacred striking banana workers at the behest of the Boston-based United Fruit Company.²⁴ This close relationship between multinational corporations on the one hand, and the Colombian military and its paramilitary allies on the other, continues to this day with equally deadly results.

These relationships often have deadly consequences for trade unionists and labor activists. According to the International Confederation of Free Trade Unions (ICFTU), Colombia is the most dangerous country in the world for trade unionists.²⁵ Since 1991, 1,875 labor activists have been murdered in Colombia, and 184 of those murders took place in 2002 alone. To place these statistics in the global context, a total of 213 trade unionists were killed worldwide in 2002.²⁶ Thus, in 2002, Colombia's 184 trade union assassinations accounted for 85 percent of all trade union killings in the world.²⁷ In an almost laughable understatement, the U.S. State Department concluded that for 2002, "violence against union members and anti-union discrimination were obstacles to joining unions and engaging in trade union activities."²⁸ The State Department explained that the majority of these trade unionists have been killed at the hands of paramilitaries who, as noted above, continue to receive substantial help and support from the Colombian military.²⁹

The paramilitaries, along with their Colombian military partners, are ideologically aligned with the interests of both domestic and foreign capital in Colombia and are many times assisted by the corporate elite, including multinational corporations based in the United States. Amnesty International has focused on the Department of Cesar, a state in the northeast of Colombia, and explained in a 1997 report that

the systematic violation of human rights against members of popular organizations . . . in the Department of Cesar corresponds to a national strategy of undermining organizations which the [state] security forces deem to be subversive. . . . Many violations of human rights in the region are committed in order to advance and protect the interests of economically powerful sectors. Labeling anyone who dares to challenge the interests of powerful economic sectors as subversive . . . and then targeting them for human rights violations, provides a means for those sectors to protect their interests.³⁰

As reported by Amnesty International, the collaboration between the paramilitaries and Colombian military in the Department of Cesar has been especially keen. The Department of Cesar has been described as a location where “[d]isappearances, extra-judicial killings, and other human rights violations continue to be reported as the security forces have increased their presence and paramilitary organizations have been set up and consolidated in the region, sometimes with the support of powerful economic interests.”³¹

Drummond Coal Company is one of the most powerful economic actors in the Department of Cesar.³² In 1994, Drummond shut down its unionized mine operations in Alabama and began mining operations in Colombia.³³ According to a high-ranking former Colombian military officer, who spoke anonymously, it was when Drummond began operating in the Department of Cesar that the paramilitaries began aggressive operations.³⁴ The relationship between Drummond Coal Company operations in Colombia and increased violence does not appear to be coincidental. Former NPR reporter Steven Dudley stated, “paramilitary leaders have told me on several occasions they protect business interests in Colombia, especially international companies. . . . In the northeast the paramilitaries have troops around a coal mine owned by Alabama-based Drummond.”³⁵

A. The Murder of Valmore and Victor Hugo

In March 2001, the relationship between Drummond and the paramilitaries turned deadly when Valmore Locarno and Victor Hugo Orcasita were brutally slain. Both men were employees in Drummond's mines and were, respectively, the President and Vice-President of the local trade/mining union, Sintramienergetica.³⁶

Paramilitaries had threatened Valmore and Victor Hugo for some time prior to their assassination. These threats resulted from Drummond's characterization of the mining union as a "guerilla union,"³⁷ a common tactic used by economic elites to discredit unions and other social groups and to mark them for attack by the paramilitaries. Because of the threats Valmore and Victor Hugo received, they had asked Drummond on a number of occasions for safety accommodations. For example, the men had asked to stay in the mines overnight between shifts so that they did not have to travel the paramilitary-controlled highways at night; however, these requests were repeatedly denied.³⁸ In fact, Drummond's senior human resources supervisor, Ricardo Urbina Aroca, in a letter to Valmore dated October 6, 2000, rejected the request without explanation, stating, "[w]e hope that the authorities can take measures that they consider appropriate regarding the situations raised by you all."

On the night of March 12, 2001, Valmore and Victor Hugo were again denied their request to stay overnight at the mines and boarded a Drummond-contracted bus to take them to their homes. A number of these buses left the mines with employees that night, however only Valmore and Victor Hugo's bus was stopped by paramilitaries that evening.³⁹ These paramilitaries boarded the bus, asked for Valmore and Victor Hugo by name, and told them that they were there to settle "a problem" that Valmore and Victor had with Drummond.⁴⁰ They then proceeded to pull Valmore and Victor off the bus, shooting Valmore dead on the spot and taking Victor Hugo away. Victor Hugo was found dead the next day with evident signs of torture.⁴¹

Shortly after these murders, Drummond employee Gustavo Soler took over as President of Sintramienergetica and began negotiating on behalf of the employees.⁴² Gustavo publicly opined that someone at Drummond had to have advised the paramilitaries about which bus Valmore and Victor Hugo were traveling on the night they were killed.⁴³ Shortly after expressing this opinion, Soler was murdered by paramilitaries when he was dragged off a bus, which was also to take him home from the Drummond mines.⁴⁴

Following these murders, the United Nations High Commissioner for Human Rights (UNHCHR) asserted that “the authorities” did not take measures to help these unionists.⁴⁵ The murder of Valmore Locarno was a notable example of the Colombia’s inability and/or unwillingness to protect vulnerable groups, such as trade unionists. The UNHCHR stated, “[t]he Office is particularly disturbed at cases such as that of Valmore Locarno, President of the Drummond company workers’ union, who was killed for lack of effective protection.⁴⁶ Similarly, the UNHCHR also noted that the murder of Soler six months after the double murder of Valmore Locarno and Victor Hugo Orcasita was another example of the Colombian State’s utter failure to address the prevailing state of violence against trade unionists.⁴⁷

It is notable that during this time Drummond provided, and continues to provide, its American-born supervisors with a compound protected around the clock by “[m]ore than 300 Colombian army troops [that] are stationed at La Loma, where Drummond provides them with subsidized food and fuel. The troops protect company facilities and screen employees . . .”⁴⁸

B. The Murder of Isidro Gil

The Drummond Coal Company is not the only U.S.-based corporation in Colombia connected with the murder of trade union members. In 1996, paramilitary forces killed trade unionist, Isidro Gil, a negotiator for the union Sintaltrainal, within the walls of the Coca-Cola bottling plant in

Carepa, Colombia.⁴⁹ This murder followed threats of the plant manager, Ariosto Mosquera, to wipe out the union through the paramilitaries.⁵⁰ After the murder of Isidro, these paramilitaries returned to the plant, assembled all of the workers, and told them to resign from the union or face the same fate as Isidro.⁵¹ The union members were then marched into the management office where they were told to sign union resignation forms the management had drafted for them. All the union members resigned together, and as such the union was effectively destroyed. The paramilitaries then proceeded to burn down the local Sinaltrainal union hall. The complicity of the local managers of Coca-Cola bottling plants in Colombia with paramilitaries continues to this day, and has resulted in the intimidation, kidnapping, and torture of Sinaltrainal leaders in towns throughout Colombia.⁵²

V. THE LEGAL CHALLENGE TO THE WAR AGAINST TRADE UNIONISTS

On the night that Valmore and Victor Hugo were murdered, I was participating in a USWA delegation in Colombia.⁵³ The USWA, along with the ILRF, was so moved by the blatant murders of union activists and the escalating crisis of violence confronting trade unionists in Colombia that it filed a lawsuit against Drummond Coal Company on behalf of the Sintramienergetica and the families of the slain labor leaders. The USWA and ILRF have also filed lawsuits against the Coca-Cola Company on behalf of Isidro Gil and others for their role in human rights abuses in Colombia.

Both the *Drummond* and *Coca-Cola* cases were filed under the Alien Tort Claims Act (ATCA)⁵⁴ and the Torture Victims Protection Act (TVPA).⁵⁵ The ATCA gives aliens the right to sue U.S. citizens in U.S. District Courts for torts committed outside the territory of the United States that violate the law of nations. Originally passed by the Continental Congress to deal with piracy on the high seas, the ATCA has been used with growing frequency since the early 1970s to challenge human rights

abuses committed abroad. Similarly, the TVPA, passed by Congress in 1991, allows aliens to bring suits against individuals to redress human rights abuses committed abroad, though only for torts committed in violation of well-established international law, such as torture or extra-judicial killing.⁵⁶

Beginning in 1996 with the case of *Doe v. Unocal*, foreign plaintiffs for the first time began to bring ATCA actions against U.S.-based corporations for human rights violations committed abroad.⁵⁷ Such cases, however, face tremendous challenges in federal court, including numerous legal hurdles to state a claim, concerted efforts by corporations to rollback the ATCA, and interventions by the U.S. government, which is urging courts to dismiss such suits against American corporations.

Nonetheless, in both the *Drummond* and *Coca-Cola* cases, the plaintiffs have already obtained partial victory by overcoming the corporate defendants' motions to dismiss and by significantly advancing the opportunity to use the law to hold corporate actors accountable for human rights violations.⁵⁸ For example, in both cases, the courts have ruled that the corporations were "individuals" and therefore subject to suit under the TVPA.⁵⁹ In so ruling, the courts relied upon the fact that corporations are considered "persons" under the law of the United States and have all the rights of persons.⁶⁰ Therefore, they must also have the responsibilities of persons.

In addition, the plaintiffs in both cases have succeeded in overcoming the corporations' claims that because they are private actors the plaintiffs cannot make the showing that the human rights violations were committed under color of state law—an explicit requirement of the TVPA, but not of the ATCA. In *Coca-Cola*, the court found that the plaintiffs alleged sufficient facts to demonstrate that the paramilitaries were state actors in light of their collaboration with the official armed services of Colombia.⁶¹ This finding is important because the TVPA creates a cause of action for human rights abuses committed by "[a]n individual . . . under actual apparent authority, or color of law, of any foreign nation."⁶² In *Drummond*,

the Court withheld judgment on whether the violations were committed under color of state law, finding that it was not necessary to reach this issue in light of its alternative finding that the violations alleged—the extrajudicial killings of civilians Valmore Locarno, Victor Hugo Orcasita and Gustavo Soler by paramilitary forces involved in the Colombian civil war—constituted war crimes forbidden by Article 3 of the Geneva Convention.⁶³ In so ruling, the *Drummond* court sided with other courts, which have held that state action is not necessary under the ATCA where the violations alleged constitute war crimes.⁶⁴ On this issue of state action, it is interesting to note that the *Wall Street Journal* opined that Drummond’s “arrangement with the army is critical to the lawsuit. The union and relatives of the murdered activists say that regular army units routinely cooperate with paramilitary fighters, some of whom wear army uniforms and function at times as regular soldiers.”⁶⁵ If it is indeed true that Drummond’s support of the military is critical to the human rights case against it, what does this say about the massive support by the United States for the same military?

Furthermore, in a landmark decision the *Drummond* court ruled that the right to associate and organize a union may constitute a fundamental and internationally-recognized human right providing an independent basis for finding “violations of the law of nations” under both the ATCA and TVPA.⁶⁶

Finally, the courts in *Drummond* and *Coca-Cola* have ruled in favor of the plaintiffs on the issue of whether Colombia has an adequate forum to redress their human rights charges. This issue goes to whether the cases should be dismissed on *forum non conveniens* grounds and whether it can be shown that the plaintiffs have not failed to exhaust “adequate and available remedies in the place in which the conduct giving rise to the claim occurred.”⁶⁷ In both *Drummond* and *Coca-Cola*, the courts have ruled that the plaintiffs sufficiently pled that they do not have an adequate forum in Colombia for their human rights cases. The court’s ruling should not be surprising, however, given the U.S. State Department’s own conclusion that

impunity generally represents the biggest challenge to human rights in Colombia, and that, more specifically, impunity for the murder of trade unionists in Colombia is almost absolute. Indeed, the State Department mentioned the cases against Drummond and Coca-Cola in its most recent human rights report and attributed the commencement of these actions to this very impunity. The State Department wrote, “[h]igh levels of impunity led some labor organizations to file civil suits against the alleged authors of paramilitary anti-labor violence.”⁶⁸ Former U.S. ambassador to Colombia Myles Frechette concurred with this sentiment: “[t]he judicial system [in Colombia] doesn’t work.”⁶⁹

The recent decisions in *Drummond* and *Coca-Cola* serve the purpose of challenging corporate complicity in paramilitary violence in Colombia, particularly violence against trade unionists. Furthermore, the decisions make it clear that the support for such violence will not go unpunished. The litigation has had some positive effect in this regard. Just one week after privately stating to a trade union colleague in Colombia that he has “had it up to here [pointing to his chin] with these lawsuits,” the Vice President of Colombia, Francisco Santos, publicly announced that the Colombian government would no longer tolerate corporate complicity in violence against trade unionists.

VI. THE CONTINUED THREAT AGAINST TRADE UNIONISTS AND THE NEED FOR SOLIDARITY

There is much more work to be done for trade unionists, as those connected with the ATCA lawsuits continue to be threatened with violence by paramilitaries for speaking out in support of workers’ and human rights in Colombia. Domingo Tovar, Director of the United Workers’ Central Human Rights Department (CUT), expressed the continued need for international support for Colombian unionists when he wrote in an open letter on March 1, 2004: “[c]omrades, international community, do not falter in the solidarity that you have given us, we will continue fighting and

denouncing but with your support.”⁷⁰ CUT announced, as part of this call for continued support, that ninety-two trade unionists had been killed in Colombia in the year 2003.⁷¹

Indeed, the situation for trade unionists remains dire. In November 2003, the International Confederation of Free Trade Unions (ICFTU) expressed concern over what it witnessed as the “alarming resurgence in death threats and forced displacements” of trade unionists.⁷² In this same communiqué, the ICFTU also expressed concern with the arbitrary arrest of trade unionists and other political and social activists in Colombia.

Javier Correa, President of the Sinaltrainal union and a human rights activist, has privately expressed that he perceives increased incarceration, death threats, disappearance, and forced exile of trade unionists as the Colombian government’s new strategy to destroy trade unionism in Colombia. Disappearing trade unionists is another such tactic, with an alarming increase in such disappearances in recent years, particularly in 2003.⁷³ The State Department also recently noted that because “[t]he great majority of victims of forced disappearances have never been seen or heard from again,” such disappearances are tantamount to murder.⁷⁴

Correa, who constantly endures threats to both his and his family members’ lives, has said that “to be a trade unionist in Colombia is to have one foot in this world and one in the other.” Instead of carrying weapons for self-defense, Correa explained that he and other Sinaltrainal leaders carry firearms—to be used to take their own lives in order to avoid the inevitable torture they would endure if captured by the paramilitaries.

In a revealing example of death threats against workers willing to speak out against human rights abuses, a former Drummond employee and union activist in exile (who shall remain nameless for security reasons) received the following threat in December 2003 from the Northern Block of the AUC paramilitaries who had tracked him down to his country of exile:

We want to let you know that we have knowledge of your activities against the Drummond Ltd. You should know that we

have located you . . . as well as your family. . . . The command has decided to reactivate operations against you for being enemies of development and impeding foreign investment such as in the case of the Drummond company. . . . We have already ordered rewards, annihilation, and collection of economic sanctions (war tax) for unions who block the development and progress of the people. . . .

This position of yours is what has brought our organization to declare you as enemies and to make your extermination and subjugation our goal; therefore we inform you, your colleagues, and the organizations that support them that they will be sought and executed in the country or place where they are found; if they continue to pressure companies that bring investment and development to our country.

This letter reveals the paramilitaries association with multinational corporations in Colombia and its willingness to intimidate, threaten, and even kill those who challenge corporate impunity for human rights abuses. Other Drummond workers and union activists continue to receive similar threats against their lives. In fact, some mining union leaders have been forced into hiding by such threats, and this forced exile has become the subject of further litigation against Drummond Coal Company.⁷⁵ Although lawsuits help shed light on atrocities, they are not sufficient to end the military and corporate support of human rights abusers in Colombia, or to save the lives of Colombia's trade unionists. Such goals will only be attained when a critical mass of concerned citizens pressure the government and U.S.-based corporations to bring an end to anti-union violence in Colombia via activities such as lobbying within the U.S. Congress, petitioning and protests, organizing grassroots movements in Colombia, and providing direct assistance to trade unions. As Noam Chomsky recently wrote, "[a]mong the mounting horrors in Colombia, few are more shocking than the attacks on trade unionists, for some years on the scale of the rest of the world combined. The District Court decision in the *Coca-Cola* case can be a step forward in the effort to protect courageous labor activists, and to

bring awareness of what is taking place to the American people. The fate of Colombia lies in their hands, in no small measure.”⁷⁶

VII. CONCLUSION

Many Colombians share the view that the fate of Colombia is in our hands. Juan Carlos Galvis, a Sinaltrainal leader in Barrancabermeja who recently escaped an assassination attempt, recently wrote in reference to the international campaign and litigation to bring justice to the Colombian Coca-Cola workers: “[i]f we lose the fight against Coca-Cola, we will lose our union, our jobs, and then our lives.”⁷⁷

The stakes in the ATCA/TVPA actions are indeed great; they implicate broad issues such as corporate complicity in human rights abuses, paramilitary violence, and trade union rights. The outcomes of these cases may literally make the difference between life and death for a number of Colombians. These cases involve specific individuals living in Colombia, individuals who face the threat of violence and even murder on a daily basis. By filing suit and exposing the abuses, these individuals, as they are keenly aware, may have increased the chances that they will be subject of violence. Yet, these individuals have come forward despite the risks, in order to bring about a greater good for their families and their country. Archbishop Oscar Romero of El Salvador, another victim of U.S.-sponsored death squads, once said that we are called to be “a voice of the voiceless.” It seems that the least we can do is accompany them in this effort.

¹ Daniel Kovalik has served as Assistant General Counsel for the United Steelworkers of America (USWA) for over 10 years. While the USWA is institutionally supporting the lawsuits against Coca-Cola and Drummond described herein, and is actively supporting the struggle of trade unionists in Colombia, the opinions expressed herein are not necessarily those of the USWA.

² See *Estate of Rodriguez v. Drummond Co.*, 256 F. Supp. 2d 1250 (N.D. Ala. 2003); *Sinaltrainal v. Coca-Cola*, 256 F. Supp. 2d 1345 (S.D. Fla. 2003).

³ Rand Corporation, *Projecting Future Cocaine Use & Evaluating Control Strategies* (1994), at <http://www.rand.org/publications/RB/RB6002/rb6002.html>; See C. Peter Rydell & Susan S. Everingham, *Controlling Cocaine: Supply Versus Demand Programs*, Rand Corporation (1994) (on file with the *Seattle Journal for Social Justice*).

⁴ It should be noted that the United States does nothing to regulate the exportation to Colombia of chemicals needed to convert coca into cocaine.

⁵ See Thalif Deen, *Colombia: U.N. Focus on Deaths of Children in Civil War*, INTER PRESS SERVICE, Feb. 19, 2004; *Council on Foreign Relations Briefing of the Andes 2020 Commission*, FEDERAL NEWS SERVICE, Jan. 8, 2004; Ruth Morris, *Colombia Conflict Drawing in More Children*, L.A. TIMES, Sept. 19, 2003, at A3.

⁶ See U.S. State Department, *International Narcotics Control Strategy Report—2002* (Mar. 2003) 20, at <http://www.state.gov/g/inl/rls/nrcrpt/2002/html/17944.htm>; Latin American Working Group, *The Numbers Game: Coca Cultivation in Colombia* (April 2003), at <http://www.lawg.org/countries/Colombia/crop-figures.htm>. The U.S. State Department released its 2004 International Narcotics Strategy Report, covering the year 2003, shortly before this article went to press. See U.S. State Dep't, *International Narcotics Control Strategy Report—2003* (Mar. 2004), at <http://www.state.gov/g/inl/rls/nrcrpt/2003/vol1/html/29832.htm>. The total land under coca cultivation in Colombia decreased to 113,850 hectares (i.e., just below the figure for 1999, the year before Plan Colombia began). Adam Isacson, *The State Department Data on Drug-Crop Cultivation*, Center for International Policy, Mar. 22, 2004, at <http://www.ciponline.org/colombia/040322coca.pdf>. Even taking this figure in isolation, it would mean that after more than \$2.5 billion of military aid to Colombia in about four years, the United States government has managed to achieve only the most meager decrease in coca cultivation. *Id.* Moreover, as many narcotics experts predicted, the 2004 report from the State Department indicates that there was an accompanying increase in the coca cultivation of fellow Andean State Bolivia. As the State Department reported, Bolivia experienced a 17% increase in total area under coca cultivation in 2003. *International Narcotics Control Strategy Report—2003*, *supra*. That is, some of the cultivation has moved, but it has not been eliminated. Finally, there is good reason to question the State Department's most recent figures on coca cultivation in Colombia. As the Center for International Policy explains, the price of cocaine has not risen on either U.S. streets or on Colombia's illegal market as would be expected from a decline in coca cultivation. See Isacson, *supra*. The Center also reports that coca cultivation is actually increasing in parts of Colombia where there is not constant spraying of coca crops and that coca cultivation is generally increasing throughout the region. *Id.*

⁷ U.S. State Department, *Colombia: Country Reports on Human Rights Practices—2002* (Mar. 31, 2003) 1, at <http://www.state.gov/g/drl/rls/hrrpt/2002/18325.htm> [hereinafter State Dep't Report (2002)]. A more recent State Department report dated Feb. 25, 2004, noted that the Colombian "[g]overnment's human rights record remains poor," that "some members of the security forces continued to commit serious abuses, including unlawful and extrajudicial killings," and that "[s]ome members of the Columbia security forces collaborated with the AUC terrorist group that committed serious abuses." See U.S. State Department, *Colombia: Country Reports on Human Rights Practices—2003* (Feb. 25, 2004), at <http://www.state.gov/g/drl/rls/hrrpt/2003/27891.htm> [hereinafter State Dep't Report (2003)].

⁸ See DEA Report, *The Drug Trade in Colombia: A Threat Assessment*, at <http://www.usdoj.gov/dea/pubs/intel/02006/>; Peter Slevin, *Colombian President Defends*

Amnesty for Paramilitary Troops, WASH. POST, Oct. 1, 2003, at A17 (“An internal Colombian government analysis said the [AUC paramilitary] force controls 40% of the drug trade.”).

⁹ Scott Wilson, *Colombia Fighters’ Drug Trade Is Detailed; Report Complicates Efforts to End War*, WASH. POST, June 26, 2003, at A1 (quoting a Colombian government study reported by President Alvaro Uribe).

¹⁰ See U.S. State Department, *List of Foreign Terrorist Organizations*, at http://travel.state.gov/reciprocity/list_of_foreign_terrorist_organ.htm (last visited May 1, 2004).

¹¹ State Dep’t Report (2002), *supra* note 7.

¹² Compare U.S. State Dep’t, *Colombia: Country Reports on Human Rights Practices—1999* (Feb. 2, 2000) 3, at <http://www.state.gov/drl/rls/hrrpt/1999/380.htm> with State Dep’t Report (2002) 2, *supra* note 7. The State Department reported on Feb. 25, 2004, that the number of political assassinations in the first nine months of 2003 dropped to levels approximating those in 1999 as a result of paramilitary “cease-fires declared in the context of demobilization negotiations conducted by the AUC” paramilitaries. See State Dep’t Report (2003), *supra* note 7. This fact reported by the State Department reaffirms the findings that the paramilitaries are responsible for the majority of human rights abuses in Colombia. And, indeed, the State Department noted in this same report that even notwithstanding the announced cease-fire, these paramilitary “terrorists continued to commit numerous unlawful and political killings, including of labor leaders.” Moreover, the drop in assassinations in 2003 appears to be made up for in a sharp increase in disappearances, again mostly by military/paramilitary forces. As the State Department reports, most of these disappearances result in murder.

¹³ *The U.S. Response to the Crisis In Colombia Before the House Government Reform Subcommittee on Criminal Justice, Drug Policy and Human Resources*, 106th Cong. (Feb. 15, 2000).

¹⁴ *Id.* (statement of Lawrence P. Meriage, Vice President of Occidental Petroleum), at <http://www.ciponline.org/colombia/021507.htm>.

¹⁵ *Id.*

¹⁶ Maria Cristina Caballero, Op-Ed, *New Wave of Terror in Colombia*, BOSTON GLOBE, Feb. 16, 2003, at E11; Juan Forero, *Bush Wants \$98 Million to Defend Colombian Pipeline*, N.Y. TIMES, Feb. 6, 2002, at A6; Ruth Morris, *Colombian Paramilitary Leaders Announce Peace Talks*, L.A. TIMES, July 16, 2003.

¹⁷ Scott Wilson, *U.S. Moves Closer to Colombia’s War; Involvement of Special Forces Could Trigger New Wave of Guerilla Violence*, WASH. POST, Feb. 7, 2003, at A22.

¹⁸ *Occidental Abandons Oil Development on U’wa Land*, ENVIRONMENTAL NEWS SERVICE (citing an estimate by Amazon Watch).

¹⁹ Jim Trutor, *Transnational firms play complex role*, COLOMBIA WEEK, Mar. 8, 2004, at <http://www.colombiaweek.org/20040308.html>.

²⁰ *Id.*

²¹ *Id.*

²² Sam Hodges, *Callahan Wins \$1.7 Billion for Colombia*, MOBILE REGISTER, Mar. 31, 2000.

- ²³ GABRIEL GARCÍA MÁRQUEZ, *ONE HUNDRED YEARS OF SOLITUDE* (Perennial 2004) (1967).
- ²⁴ GARRY M. LEECH, *KILLING PEACE: COLOMBIA'S CONFLICT AND THE FAILURE OF U.S. INTERVENTION* 10 (2002).
- ²⁵ See ICFTU Survey 2003, *A Stain of Anti-Union Repression is Spreading Across the Map of the World* (Oct. 16, 2003), at <http://www.icftu.org/displaydocument.asp?Index=991217587&Language=EN>.
- ²⁶ State Dep't Report (2002), *supra* note 7, at 39.
- ²⁷ *Id.*
- ²⁸ *Id.*
- ²⁹ *Id.* In its most recent report, the State Department reported that, according to the United Workers Central of Colombia (CUT), paramilitaries were responsible for 77% of the murders of trade union members during 2003. See State Dep't Report (2003), *supra* note 7, at 29. This is remarkable given the fact that, as the State Department explains in this same report, the overall level of paramilitary activity in Colombia was lower in 2003 due to a paramilitary cease-fire.
- ³⁰ Hacienda Bellacruz, *Land, Violence & Paramilitary Power*, AMNESTY INT'L (AMR 23/006/1997), Feb. 1, 1997, available at <http://www.web.amnesty.org/library/print/engamr230061997?open&of=eng-col>.
- ³¹ *Id.*
- ³² Hodges, *supra* note 22.
- ³³ David Bacon, *The Colombian Connection: U.S. Fuels a Dirty War Against Unions*, IN THESE TIMES, July 23, 2001.
- ³⁴ Aram Roston, *It's The Real Thing: Murder—U.S. Firms Like Coca-Cola Are Implicated in Colombia's Brutality*, NATION, Sept. 3, 2001, at 34.
- ³⁵ Steven Dudley, *War in Colombia's Oilfields; Washington's Counterinsurgency Aid Will Be a Big Boost to Occidental Petroleum*, NATION, Aug. 5, 2002, at 28.
- ³⁶ Pui-Wing Tam & Marc Lifsher, *Change of Venue: Colombian Killings Land U.S. Company In American Court*, WALL ST. J., Oct. 6, 2003, at A1.
- ³⁷ See Bellacruz, *supra* note 30.
- ³⁸ See Roston, *supra* note 34.
- ³⁹ Tam, *supra* note 36.
- ⁴⁰ *Id.*
- ⁴¹ *Id.*
- ⁴² *Id.*
- ⁴³ Roston, *supra* note 34.
- ⁴⁴ Tam, *supra* note 36.
- ⁴⁵ *Report of the UNHCHR on the Human Rights Situation in Colombia*, U.N. ESCOR Commission on Human Rights, 58th Sess., Agenda Item 3, U.N. Doc. E/CN.4/2002/17 (2002).
- ⁴⁶ *Id.* at 56.
- ⁴⁷ *Id.* at 57.
- ⁴⁸ Tam, *supra* note 36.
- ⁴⁹ In addition to the murder of Isidro Gil, the lawsuit also involves the kidnapping and torture of Coca-Cola bottling workers and union leader Jorge Humberto Leal as well as

death threats made against Juan Carlos Galvis, the president of the Sinaltrainal union in Barrancabermeja. The lawsuit also involves the six-month incarceration of three Coca-Cola bottling workers and union leaders in Bucaramanga, Colombia. These workers were jailed based upon criminal charges, later dismissed as frivolous by prosecutors, brought by the local Coca-Cola bottler known as Panamco Colombia. The most moving meeting I had with the plaintiffs in the case was with these three formerly jailed workers and their families in Bucaramanga. The families came to the meeting in their Sunday best and, with tears in their eyes, recounted how difficult it was to be separated from each other during the six-month period of incarceration. The family members of the incarcerated workers were only able to visit the jailed workers, invariably the fathers of the family, once a month. Between visits, they would try to communicate by throwing crumpled notes through the bars of the jail. The children in the families are clearly still traumatized by this experience and fear that their fathers may be taken from them again at any time.

⁵⁰ For articles about the facts that led to the case against Coca-Cola, see <http://www.laborrights.org/press/index.html#coke> (last visited Apr. 28, 2004). Tragically, Isidro Gil's wife was later killed by paramilitaries in the year 2000, leaving their two daughters without parents.

⁵¹ *See id.*

⁵² *See id.*

⁵³ This was my second trip to Colombia, the first having been to Barrancabermeja, Colombia in September 2000 with the Colombia Support Network, a group that is working for peace in Colombia through sister city projects.

⁵⁴ 28 U.S.C. § 1350 (2000).

⁵⁵ 28 U.S.C.A. § 1350, Note (2003).

⁵⁶ *Id.*

⁵⁷ *See Doe v. Unocal*, 110 F. Supp. 2d 1294 (C.D. Cal. 2000), *aff'd in part and rev'd in part*, 2002 U.S. App. LEXIS 19263 (9th Cir. Sept. 18, 2002), *vacated by and rehearing en banc granted in*, 2003 U.S. App. LEXIS 2716 (9th Cir. Feb. 14, 2003); *Doe v. Unocal*, 963 F. Supp. 880 (C.D. Cal. 1997); *Gov't of the Union of Burma v. Unocal*, 176 F.R.D. 329 (C.D. Cal. 1997). *See also* Juan Forero, *Rights Groups Overseas Fight U.S. Concerns in U.S. Courts*, N.Y. TIMES, June 26, 2003, at A3. Since the *Unocal* cases were filed, over two dozen such ATCA cases have been filed to remedy corporate wrong-doing abroad.

⁵⁸ *See generally Drummond*, 256 F. Supp. 2d 1250; *Coca-Cola*, 256 F. Supp. 2d 1345.

⁵⁹ *Drummond*, 256 F. Supp. 2d at 1266-67; *Coca-Cola*, 256 F. Supp. 2d at 1358-59.

⁶⁰ *Id.*

⁶¹ *Coca-Cola*, 256 F. Supp. 2d at 1353.

⁶² 28 U.S.C.A. § 1350, Note (2003).

⁶³ *See Drummond*, 256 F. Supp. 2d at 1267-68.

⁶⁴ *Id.* (citing *Doe v. Islamic Salvation Front*, 993 F. Supp. 3, 8 (D. D.C. 1998)).

⁶⁵ Tam, *supra* note 36.

⁶⁶ *Drummond Co.*, 256 F. Supp. 2d at 1264, 1267-68.

⁶⁷ 28 U.S.C.A. § 1350, Note (2003) (emphasis added).

⁶⁸ State Dep't Report (2003), *supra* note 7, at 29. Curiously, the State Department noted that these cases were filed in "foreign courts" (i.e., courts outside Colombia) without noting that they were filed in U.S. courts. *Id.*

⁶⁹ Tam, *supra* note 36.

⁷⁰ *New Rights Abuses Against Colombian Unionists*, Committee for Social Justice in Colombia (New York, NY), Mar. 4, 2004, at http://www.socialjusticecolombia.org/comments.php?id=11_0_1_0_C.

⁷¹ The U.S. State Department estimates this figure to be eighty, but this is an incomplete figure because it accounts for assassinations only through September of last year. State Dep't Report (2003), *supra* note 7.

⁷² *Colombia: Trade unionists face alarming resurgence in death threats and forced displacements*, International Confederation of Free Trade Unions, Online bulletin 154/041103, Nov. 4, 2003, at

http://www.laborrights.org/press/ICFTU_colombia_1103.htm.

⁷³ Conn Hallinan, *Colombia: Old Domino's New Clothes*, Interhemispheric Resource Center, Mar. 16, 2004, available at

<http://www.americaspolicy.org/pdf/commentary/0403colombia.pdf> (disappearances of trade unionists and other left opposition supporters have increased from 258 in the 1994–95 period to more than 1,200 since 2001). The U.S. State Department's figures more than confirm such a leap in disappearances, with the State Department estimating that there were 260 to 785 disappearances in Colombia in the first nine months of 2003 alone, with the vast majority of these disappearances being the responsibility of either the official military or paramilitary forces. State Dep't Report (2003), *supra* note 7, at 7. Further, the State Department notes that the human rights group Association of Families of Detained and Disappeared Persons (ASFADDES), which provides the higher estimate of 785 disappearances, approximates that there were 6,000 total disappearances since 1981. *Id.* Assuming these figures are close to accurate, a significant percentage (possibly 20%) of the disappearances in the past twelve years took place in the year 2003 alone. This is a chilling statistic.

⁷⁴ See State Dep't Report (2002), *supra* note 7.

⁷⁵ Juan Aguas Romero v. Drummond, et al.; John Doe II v. Drummond, et al.; Jimmy Rubio v. Drummond et al., consolidated as Romero v. Drummond Co, Inc., et al., Case No. 03-CV-575 (N.D.Ala.).

⁷⁶ Letter from Noam Chomsky, Professor of Linguistics, Massachusetts Institute of Technology, to Daniel Kovalik, Assistant General Counsel, United Steelworkers of America, (Apr. 20, 2003) (on file with the *Seattle Journal for Social Justice*).

⁷⁷ *Victory in the Campaign to Stop Killer Coke*, Campaign to Stop Killer Coke (International Labor Rights Fund, New York, NY), May 6, 2004, at <http://www.corporatecampaign.org/killer-coke/NL506.htm>.