

■ **JUSTICE** for **ALL**

The **Struggle**
for **Worker Rights**

IN COLOMBIA

A REPORT BY THE SOLIDARITY CENTER



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Note: This report discusses some situations and events in a general context. This reflects our foremost concern, which has been to exercise sensitivity and discretion toward organizations and workers in Colombia. Some interviews for this report were conducted by field researchers in 2004-05. Throughout the report, any quotations that are not otherwise cited were from these interviews.

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The American Center for International Labor Solidarity (Solidarity Center) is a non-profit organization established to provide assistance to workers who are struggling to build democratic and independent trade unions around the world. It was created in 1997 through the consolidation of four regional AFL-CIO institutes. Working with unions, non-governmental organizations, and other community partners, the Solidarity Center supports programs and projects to advance worker rights and promote broad-based, sustainable economic development around the world.

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TABLE OF CONTENTS

FOREWORD	2
By John J. Sweeney	
CHAPTER 1	4
A Country Torn by Conflict: The Historical Context for Worker Rights in Colombia	
CHAPTER 2	17
Freedom of Association and the Right to Organize and Bargain Collectively	
Freedom of Association	21
Right to Organize and Bargain Collectively	25
CHAPTER 3	47
Discrimination in the Workplace, Child Labor, and Forced Labor	
Discrimination	47
Child Labor	52
Forced Labor	53
CHAPTER 4	59
Advancing Worker Rights in Colombia	
GLOSSARY	76
AREA MAP	78

FOREWORD

By **John J. Sweeney**
President, AFL-CIO

Colombia is the deadliest country in the world to be a trade union member. About 4,000 trade unionists have been murdered in the last 20 years and, as noted in this report, *Justice for all: The Struggle for Worker Rights in Colombia*, more union activists are killed each year in Colombia than in the rest of the world combined.

Colombian trade unionists face the same challenges workers face everywhere, with one horrific exception: daily threats of violence and assassination. These deadly threats represent attempts by employers, paramilitaries, guerrillas, and the state – because of weak or non-existent oversight – to stop dissent, silence workers and destroy the only mechanism that gives workers some control over their economic lives: their union.

Like other workers around the world, Colombians experience the devastating effects of bad globalization policies on their economy. The expanded trade and foreign investment environment, abused by some multinational companies, has degraded jobs and worker protections. Anti-union privatization practices and employment contracts that leave workers outside the regulations of labor law and collective bargaining have had disastrous effects on union membership.

In Colombia, legal, political and administrative state procedures act as tripwires to impede union organizing and offer little or no support or legal recourse in labor disputes. The law severely limits workers' rights to bargain collectively and strike. In some cases, where state actors have ties to paramilitary organizations, Colombian government pronouncements have put union leaders' lives in jeopardy.

The Colombian labor movement has faced all these challenges by building a broad leadership base with deep rank-and-file roots, while working daily to build membership, negotiate collective bargaining agreements, and seek new ways to represent members in non-traditional employment arrangements. At the same time, Colombian trade unionists have reached out to build strong ties with the international labor community and to make the world aware of their struggles.

These workers continue to shine a spotlight on the injustices they face at work and the danger they face when they act collectively to fight those injustices.

The Solidarity Center has worked with Colombian union activists by helping them relocate and bringing them to the United States temporarily where they work on organizing campaigns in their own sector.

Today, as the report notes, Colombia doesn't even comply with the most basic human rights. The first step is to end violence against working people. Colombia also

needs to negotiate a just peace, create a democratic environment, build a fair economy, and establish the rule of law, with full support of the international community and every actor in Colombia's political and economic life. As part of this process, the Colombian government must bring its labor law into harmony with fundamental worker rights and genuinely commit to its enforcement. For Colombia to prosper in peace, Colombian workers must first gain their most basic human rights. [*This country report is fifth in the Solidarity Center series Justice for All: The Struggle for Worker Rights.*]



CHAPTER 1

4

CHAPTER 1

A Country Torn by Conflict: The Historical Context for Worker Rights in **Colombia**

The Republic of Colombia is Latin America's fourth largest economy, with a population of about 44 million. It is divided into 32 departments plus the capital district.

Historically, the U.S. has been the country's largest trading partner; in 2002, legal exports to the U.S. reached \$5.4 billion, while imports totaled \$3.3 billion.¹ Colombia is one of the largest oil producers in Latin America, and became a net oil exporter in the 1980s. Today, oil is its largest export, followed by coffee, coal, apparel, bananas and cut flowers. Illegal drug trafficking represents another important component of the country's economy.

Colombia has been plagued by armed internal conflicts and uprisings since its independence from Spain in 1810. Its current armed conflict is the longest running one in the Western Hemisphere. It began as a violent struggle between Colombia's two principal, elite-dominated political parties – the Liberals and Conservatives – in 1948, but quickly drew in large numbers of peasants. The primarily rural conflict, known as “La Violencia,” claimed between 200,000 and 300,000 lives over the next decade. In 1958, “La Violencia” ended when Liberals and Conservatives formed the National Front, a two-party power sharing arrangement that excluded other social actors, planting the seeds for the emergence of the guerrilla movement. Political exclusion of large sectors of civil society, an extremely skewed distribution of wealth, and the traditional power centers' intolerance of dissent are widely considered the root causes of the conflict, while

Colombia's role in drug trafficking and the U.S. response have added fuel to the fire.²

The FARC (Colombian Revolutionary Armed Forces), now the largest guerrilla group, was formed in 1964 after the army repressed a peasant uprising. The FARC has about 18,000 combatants. The ELN (National Liberation Army) was also formed in 1964 by Cuban-trained Colombian students. The ELN is Colombia's second largest guerrilla group, with about 4,000 to 5,000 combatants today. The FARC finances its operations through extortion, kidnapping, and the taxes it charges coca growers in the areas it controls (it also taxes other economic activities in these zones),³ while the ELN depends primarily on proceeds from kidnapping and the extortion of the oil industry.⁴

In the 1970s, increasing poverty encouraged many peasants to turn to coca farming. As new drug barons amassed large fortunes from the drug trade, they sought to diversify their holdings by investing in land to raise cattle, and organized paramilitary groups to protect themselves from guerrilla attacks. In the mid-1980s, paramilitary groups expanded rapidly with financing from large landowners and drug barons and with weapons and training from the army. Though officially outlawed in 1989, these groups have continued to expand with the tacit or open support of local army commanders. The Autodefensas Unidas de Colombia (AUC, or United Self-Defense Forces of Colombia), the largest Colombian paramilitary group, has an estimated 15,000 members.⁵ Today, paramilitary

groups are also key beneficiaries of the drug trade – even more so than the guerrillas – and openly admit that they charge a 60 percent tax on drug traffickers who operate in their areas.

Colombia's armed forces are huge, with about 120,000 members in the army, plus an air force of about 10,000, a navy with 5,000, and the National Police, controlled by the Ministry of Defense, with 105,000. Though well equipped, the army was forced into a defensive position in the 1980s, when the FARC made significant inroads. Presently it is on the offensive against the guerrillas, with support from the AUC.

In the 1980s, the intolerance of the traditional Colombian economic elite for dissent made it very difficult for leftist organizations to participate in the political process. A leftist party called the Unión Patriótica formed in the mid-1980s as part of the FARC guerrilla group's ceasefire negotiations with the Colombian government's Bentancur administration. However, more than a thousand of its members were subsequently murdered by paramilitaries, drug lords, and members of the Colombian army, eventually destroying the party.

Major human rights organizations such as Human Rights Watch and Amnesty International have consistently documented close and pervasive ties between army officials and paramilitary forces. In the early 1990s, the Colombian army was considered by most observers to be responsible for more than half of civilian deaths. With increasing international outcries over human rights violations committed by the army, the proportion of civilian deaths attributable to the army has declined. Paramilitaries have caused a parallel increase in civilian deaths, in an apparent

transfer of responsibility for most of the violence against civilians.

By the mid-1990s, pressure was growing in Colombian civil society for a negotiated solution to the armed conflict, which became a key issue in the 1998 presidential elections won by Andrés Pastrana. Pastrana initiated formal peace talks with the FARC in January 1999 and also announced the creation of a large demilitarized zone in territory controlled by the FARC. From the beginning, however, the talks were plagued by tensions and threats by both sides to end them. The AUC responded to the peace initiative with an upsurge of violence against civilians.

Data collected by a consortium of independent human rights groups between April and September 2000 and reviewed by the Colombian Commission of Jurists indi-



cate that during that time period, 79 percent of political killings and disappearances were committed by paramilitaries, with 16 percent attributed to guerrillas, and five percent to the Colombian Army. The vast majority of the conflict's victims were unarmed civilians, more than 35,000 of whom died or disappeared. Many fled into exile or joined the ranks of the estimated nearly three million displaced.⁶

Hard-line elements within the army were not in agreement with the creation of the demilitarized zone for the FARC, and this resistance undermined Pastrana's peace initiative. For its part, the FARC's own hard line elements impeded their organization from making realistic proposals in the peace talks, eventually alienating many civil society groups that had originally supported the negotiations. By February 2002, the peace talks had broken down completely.

In March 2002, Álvaro Uribe won the presidential elections on a hard-line platform, promising to reestablish the presence of the Colombian government in contested rural areas, increase security, and step up the pressure on the FARC and ELN guerrillas. Much of his election support came from Colombian citizens exhausted from the long armed conflict and disillusioned by outgoing President Andrés Pastrana's inability to end the stalemate through negotiations. Shortly after he took office in August 2002, Uribe offered to negotiate a peace accord with the AUC paramilitary group; he also stepped up military pressure against the guerrillas.

The leaders of the majority of the AUC's estimated 15,000 combatants agreed to put down their arms if the Colombian government satisfied their demands. One of

those demands was virtual impunity for paramilitaries who had participated in gross human rights violations. However, under fire from human rights groups, President Uribe backed off from his original proposal to allow the paramilitaries to walk away without any consequences.

Peace and Justice Law Passed

In June 2005, the Peace and Justice Law (Ley de Justicia y Paz) was passed. The law provides a legal framework for demobilizing armed actors, including paramilitaries and guerrillas. Now they must acknowledge their crimes, give up land they stole from displaced peasants, and pay fines. Violators guilty of kidnappings, massacres, or other serious crimes may be imprisoned from 5 to 8 years.

This step may appear to move the peace process forward. However, critics point to serious flaws in the process that may undermine any efforts to achieve peace. For example, human rights groups raise concerns about the poor quality of criminal confessions and how they are secured. Moreover, the law only allows the attorney general's office 60 days to investigate demobilized combatants. According to rights advocates, this period of time is insufficient to ensure the completion of investigations of most ex-combatants, meaning that many crimes would go unpunished.

Approximately 3,500 paramilitaries had officially demobilized by the end of 2004 - though there were reports that some of them were actually common criminals recruited to pose as paramilitary combatants.⁷ In a letter faxed to members of the U.S. Congress on July 12, 2005, the Colombian Embassy claimed that "more than 12,000

members” of “terrorist groups” had disarmed and demobilized over the last three years.⁸ However, Adam Isacson of the Center for International Policy casts doubt on the Colombian government's statistics: “Colombia's Defense Ministry claimed earlier this year that, between August 2002 (when President Álvaro Uribe was inaugurated) and December 2004, 9,906 members of terrorist groups had demobilized, 23,842 had been captured, and 5,587 had been killed. This adds up to 39,335 fighters taken out of circulation, which is about equal to the combined estimated memberships of the FARC, ELN and AUC. This makes no sense.”⁹

Human Rights Watch has criticized the demobilization process because it does not require the paramilitaries to reveal their sources of financing, their internal structure, their financial holdings, or their past crimes. The process enables impostors to seek financial reward for demobilizing, and allows for incomplete demobilizations. In fact, some demobilized members now living in Bogotá say they have been approached by paramilitary recruiters seeking to induce them to return to combat.¹⁰ Demobilized paramilitaries have also reportedly committed human rights violations.¹¹

According to the U.S. Department of State, paramilitaries continued to violate the cease-fire, recruit soldiers and commit the following human rights abuses in 2005:

“political killings and kidnappings; forced disappearances; torture, interference with personal privacy; forced displacement; suborning and intimidation of judges, prosecutors, and witnesses; infringement on citizens' privacy rights; restrictions on freedom of

movement; attacks against human rights workers, journalists, and labor union members; recruitment and employment of child soldiers; and harassment, intimidation, and killings of teachers and union leaders.”¹²

In addition, political killings targeted labor leaders, local politicians, indigenous leaders, journalists, and “others who threatened to interfere with their criminal activities, showed leftist sympathies, or were suspected of collaboration with the FARC.”¹³ On June 30, 2005 the Colombian Commission of Jurists reported that paramilitaries had killed at least 2,548 civilians since the 2002 cease-fire declaration.¹⁴ Both paramilitaries and the FARC reportedly threatened and killed government officials.¹⁵

The outcome of the demobilization process became even more doubtful after President Uribe authorized the extradition of Diego Fernando Murrillo, an AUC leader, to the United States. Murrillo's arrest in Colombia on homicide charges on September 30, 2005 led the AUC to suspend the demobilizations.¹⁶ Then, on October 19, Hernando Cadavid, a flower grower in Antioquia who was a friend and neighbor of President Uribe's, was kidnapped and hacked to death. The murder was allegedly committed by former members of Murrillo's paramilitary group, five of whom were subsequently arrested.¹⁷

In a further blow to the Colombian government's credibility, Jorge Noguera, the director of the Administrative Department of Security (DAS - Colombia's secret police), and his assistant director, José Miguel Narváez, were forced to resign on October 25, 2005 amid accusa-

tions that the DAS was selling intelligence and espionage equipment to paramilitary groups. As New York Times reporter Juan Forero put it, “The scandal ... comes as human rights groups and some legislators have exposed heightened paramilitary activity, including infiltrations of Congress and the attorney general's office. The paramilitaries also continue trafficking in cocaine, despite disarmament talks that underpin President Álvaro Uribe's effort to pacify Colombia with billions in American aid.”¹⁸

The resignations underscore the concerns of many human rights advocates about Uribe's decision to negotiate with the paramilitaries, since these groups have infiltrated the state and assumed many of its functions in the areas where they operate, often with open collusion on the part of state security forces.¹⁹ According to the U.N., “Repeated reports received by the [U.N. High Commissioner for Human Rights] office, along with direct observation in the field, indicate that links between paramilitary groups and public servants, members of the security forces and government employees continued. ... [I]n the majority of [these cases] no appropriate sanctions against this type of conduct were reported.”²⁰

By choosing to orchestrate negotiations with paramilitaries, Uribe hopes to have found a formula that will yield the appearance of quick results. But without some minimum measure of accountability for those who have engaged in assassinations and massacres of civilians, any peace that flows from these negotiations is likely to be illusory.

The Impact of Economic Reform

In 1990, under pressure from the U.S. government, the International Monetary Fund (IMF), and the World Bank (WB), Colombia committed itself to “liberalizing” its economy in exchange for new loans. Colombia's new economic policies, aimed at structural adjustment,²¹ have included drastic austerity measures, cuts in rural social investment and farm subsidies, layoffs or salary cuts for public sector workers, and the relaxation of rules covering foreign investment.

These changes were made essentially without input from unions or other civil society groups. The privatization of state enterprises has been executed without any plan for re-employing laid-off workers, including urban public sector workers. These workers previously made up the bulk of the Colombian middle class that sustained the country's internal market and fueled its economic growth.

The result, according to the labor rights NGO Escuela Nacional Sindical (ENS, National Labor School), has been that “[T]he sectors of the country that have traditionally created the most wealth and employment have virtually disappeared from the GNP [gross national product] in the face of foreign intervention. For instance, in the farming and livestock sector, more than 800,000 hectares of land is now uncultivated, yet more than 6 million tons of food is imported annually. The country has ceased to be self-sustaining....” Furthermore, structural adjustment has virtually reversed Colombia's noteworthy industrialization process, as small and medium businesses unaligned with foreign capital “have succumbed to the massive influx of foreign prod-

ucts,” and “national production has been replaced by assembly.”²²

The liberalization of capital controls and the relaxation of rules governing foreign investment and repatriation of profits “left the Colombian economy vulnerable to foreign events and subject to fierce fluctuations in the exchange rate” – as when the country’s economy shrunk nearly 4.5 percent in 1999 following the Asian economic crisis. This heralded an unprecedented recession that in turn sent the government back to the IMF to borrow more funds. The result was an extended arrangement, signed in December 1999, in exchange for which the IMF imposed even harsher conditions, including further currency devaluation, the privatization of more public services and publicly-owned industries, increased rates for public services, higher interest rates, and the elimination of subsidies for local producers.²³

Unfortunately, Colombia’s compliance with IMF structural adjustment policies has not eased its external debt burden. In fact, its external debt has more than doubled, from about \$18 billion in 1990 to almost \$39 billion at the end of 2003,²⁴ equivalent to about 45 percent of its gross domestic product (GDP).

Today, Colombian workers continue to experience the adverse impact of these changes. In 2005, unemployment was estimated at 12 percent,²⁵ and employed workers continued to grapple with economic instability in numerous ways. Almost 59 percent of the workforce labored in the informal economy, where only about 45 percent of workers were affiliated with Social Security health plans and only 12.5 percent participated in

pension programs.²⁶ A 2005 ENS study notes that the majority of informal workers “work on their own, with such low and unstable income levels that they can rarely meet the social security payments, and must choose between putting food on the table and being a part of social security...the only priority of the worker is to continue working and earn as much money as they can, simply to put food on the table.”²⁷ Moreover, as the study shows, poverty is not linked exclusively to a lack of predictable income. For the majority of salaried workers, income levels “condemn them to a life of want....”²⁸ More than half of Colombia’s workers receive less than the minimum wage, and a full 85% of workers earn less than double the minimum wage.²⁹

Like most countries in Latin America, Colombia’s economic and political development has been partially shaped by its relationship with the U.S. This has become even truer in the past several years with U.S. foreign policy supporting significant growth in military aid and a free trade agenda backing the economic policies described above (these types of policies are often referred to as components of a neo-liberal economic model). The combination of expenditures on debt service and costs associated with the armed conflict exhaust well over half of the national budget, leaving few resources for education, health and other vital government programs. Trade unionists who have historically defended the need for these basic services have often become the object of threats and attacks.

Colombian Trade Unions: Century of Struggle for Worker Rights

The Colombian trade union movement was born in the first decades of the 20th century. Like most Latin American labor movements, Colombia's began with the establishment of associations of urban artisans and transportation workers. In the 1920s, foreign investment in oil and bananas led to the formation of industrial unions and the first great wave of strikes, including the 1928 strike against United Fruit Company which inspired Gabriel García Márquez's *One Hundred Years of Solitude*. Communists and Liberals competed for political influence in the unions, with the Communists generally gaining the upper hand. The Confederation of Colombian Workers (CTC), founded in 1936, reflected political divisions between Liberals and Conservatives.



The Liberals gained union support in the 1930s and 1940s with a pro-industrialization policy and the enactment of progressive labor legislation, including a ban on striker replacements and job security for union officers. This legislation, which explicitly favored enterprise-level over industrial unions, allowed union density to triple from 5 percent in 1947 to 15 percent in 1964, although it also made unions increasingly dependent on the state for protection and gains in collective bargaining.

In 1946, Catholic activists founded the Union of Workers of Colombia (UTC). Under the state of siege following the 1948 popular uprising, workers' rights were severely restricted. The CTC was hit hardest; the UTC managed better in part due to ties with the Conservatives and the Church, although its leaders resisted Conservative politicians' attempts to control union activities.

In the 1960s, urban social movements began to develop, reaching a peak with a 1977 civil strike. Unions lost ground during this period, weakened by violence and consumed with internal political quarrels. The left wing of the CTC split off to form the Union Federation of Workers of Colombia (CSTC) in 1964, while the General Confederation of Workers (CGT) was created in 1971. In an attempt to regain lost ground, the CSTC and independent left-wing unions joined with the remainder of the UTC to form the Unitary Workers Confederation (CUT) in 1986, while the CGT established the General Confederation of Democratic Workers (CGTD) in 1988.³⁰

Today Colombia has three national trade union centers. According to ENS, over 856,000 workers in Colombia are union members, belonging to 2,357 registered unions. A March 2005 CUT study found that only 4.8 percent of the Colombian workforce is unionized, ranging from 23 percent of union members who work in electricity, gas, and water and 12 percent in mining to 1.8 percent in agriculture.³¹ The largest national center, the CUT, has 546,000 members and is unaffiliated internationally. The CTC, affiliated to the International Confederation of Free Trade Unions (ICFTU), has 51,000 members, and the CGTD, affiliated to the World Confederation of Labor (WCL), has 122,000.³²

The “Deadliest Country for Trade Unionists”

Until the period beginning in 1990, Colombian workers were among the most organized in Latin America, and Colombian trade unions were among the strongest, having won significant economic benefits for workers. Trade unions are currently strongest in the public sector services, education, health care, mining and petroleum. In agriculture, one union, SINTRAINAGRO, an affiliate of CUT, is the largest banana worker union in Latin America and represents 18,000 banana workers.

Political sympathies span the entire spectrum among affiliates of the three national centers, though the three have taken joint positions to oppose privatization of state industries and government/industry attempts to weaken the Labor Code and Social Security. While some individual unionists may have ties to guerrilla (and in a few cases, paramilitary) organizations, as institutions trade union centers have rejected all armed actors in the conflict. They seek civil society participation in the peace negotiations,

.....

In the words of Carlos Castaño, former head of the AUC paramilitary umbrella group, “We kill trade unionists because they interfere with people working.”

and reform of Colombia's structural social inequality, which they see as the root cause of the armed conflict.

The efforts of Colombian unions to build a democratic workers' voice have been trammled by unrelenting violence, which has not spared trade unionists. Since the mid-1980s, approximately 4,000 trade unionists have been murdered in Colombia, more than 2,000 of them since 1991. More trade unionists are killed each year in Colombia than in the rest of the world combined. In October 2005, the ICFTU reported that Colombia was once again the “deadliest country for trade unionists.”³³ According to ENS, 70 trade unionists were killed in 2005, while 260 received death threats, 56 were arbitrarily detained, seven survived attacks in which explosives or firearms were used, six were kidnapped, and three disappeared.³⁴ Ninety-nine trade unionists were murdered in 2004, mostly in connection with collective bargaining disputes or strikes.³⁵

Clearly Colombia is an extremely violent country, with a murder rate approaching 100 per 100,000 per year.³⁶ Nevertheless, it would be a mistake to assume that trade unionists are targeted at random or that, as the Colombian government asserts, most of the violence against trade unions is a by-product of the armed conflict. While it is not always possible to establish a motive for the attacks on union members, analyses of these violations demonstrate that most are directly linked to the victims' participation in

a labor dispute. In the words of Carlos Castaño, former head of the AUC paramilitary umbrella group, “We kill trade unionists because they interfere with people working.”³⁷ Union leaders may also be targeted because of the key role that unions have played in advocating peace negotiations and condemning both paramilitary and guerilla violence.

Colombian workers are essential players in the effort to bring an end to violence in their country. The government can hasten the arrival of peace by beginning to respect and enforce their fundamental rights.

Endnotes

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- ²⁶ Global Policy Network, *Employment and Quality of Work in Colombia*, November 21, 2005, p. 9. Prepared by Escuela Nacional Sindical, Medellín, Colombia. Available at <http://www.gpn.org/data/colombia/colombia-employment-eng.doc>.
- ²⁷ *Id.*, p. 10.
- ²⁸ *Id.*, p. 12.
- ²⁹ *Id.*, p. 13. According to ENS calculations, in order to meet basket of basic goods, an average family would have to earn 2.1 times the minimum wage.

- ³⁰ This summary is based on the following sources: Miguel Urrutia, *The Development of the Colombian Labor Movement*, New Haven: Yale Univ. Press 1969; Miguel Angel Urrego, "Social and Popular Movements in a Time of Cholera, 1977-1999," in Charles Bergquist, et al., eds. *Violence in Colombia*, 1999-2000, Scholarly Resources 2001; Escuela Nacional Sindical (National Trade Union School), *Sindicatos en Colombia* (n.d.).
- ³¹ See U.S. Department of State, *Country Reports on Human Rights Practices- 2005* (March 8, 2006), at <http://www.state.gov/g/drl/rls/hrrpt/2005/61721.htm>, p. 28, and CUT, *Situación Laboral en Colombia*, March 2005.
- ³² Escuela Nacional Sindical, *Los derechos humanos de los trabajadores colombianos en el año 2002* (December 10, 2002). Available at www.ens.org.co.
- ³³ ICFTU, *Americas: Annual Survey of Violations of Trade Union Rights (2005)*. Available at <http://www.icftu.org/displaydocument.asp?Index=991222870&Language=EN>.
- ³⁴ Escuela Nacional Sindical, *Informe sobre la violación a los derechos humanos de los y las sindicalistas colombianas en el año 2005* (March 15, 2006), available at: http://www.ens.org.co/aa/img_upload/40785cb6c10f663e3ec6ea7ea03aaa15/INFORME_DE_DDHH_DE_SINDICALISTAS__COLOMBIANOS_EN_EL_2005.pdf, p. 5.
- ³⁵ ICFTU, *Americas: Annual Survey of Violations of Trade Union Rights (2005)*. Available at <http://www.icftu.org/displaydocument.asp?Index=991222870&Language=EN>.
- ³⁶ Cragin, Kim, and Hoffman, Bruce, *Arms Trafficking and Colombia*, RAND National Defense Research Institute, 2003. Available at <http://www.rand.org/>.
- ³⁶ "Entrevista con Carlos Castaño," *El Tiempo*, Bogotá (May 10, 2001). Castaño disappeared after his ranch was attacked on April 16, 2004, apparently at the hands of paramilitary rivals. Available at <http://www.colombiaweek.org>.

Colombia and International Worker Rights Instruments

Colombia has ratified all the principal United Nations covenants on human and worker rights:

International Covenant on Economic, Social and Cultural Rights (ICESCR)

International Covenant on Civil and Political Rights (ICCPR)

International Convention on the Elimination of All Forms of Racial Discrimination (CERD)

Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)

Convention on the Rights of the Child (CRC)

Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict

In the Americas, Colombia has ratified the principal human and worker rights instruments:

American Convention on Human Rights (ACHR) (“Pact of San José”)

Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (“Protocol of San Salvador”)

Colombia has ratified all eight of the ILO's fundamental conventions reflected in the 1998 Declaration of Fundamental Principles and Rights at Work:

Convention No. 29 on Forced Labor

Convention No. 87 on Freedom of Association and Protection of the Right to Organize

Convention No. 98 on the Right to Organize and Collective Bargaining

Convention No. 100 on Equal Remuneration

Convention No. 105 on the Abolition of Forced Labor

Convention No. 111 on Discrimination (Employment and Occupation)

Convention No. 138 on the Minimum Age for Admission to Employment

Convention No. 182 on the Worst Forms of Child Labor

CHAPTER 2

Freedom of Association and the Right to Organize and Bargain Collectively

Violence and Impunity

In 1976, Colombia ratified ILO conventions 87 and 98. Colombia's most recent Constitution, adopted in 1991, generally provides for freedom of association, the right to organize and bargain collectively, and the right to strike; however, a number of laws and a host of mechanisms, both legal and illegal, limit these rights. In law and practice, Colombia violates the most basic principles of freedom of association and the right to organize and bargain collectively.

The largest single obstacle to worker rights in Colombia today is the climate of violence with impunity, since the right to live is a fundamental prerequisite for the exercise of any other right. Colombians are subject to murder, arbitrary arrest and detention, torture, violations of their right to privacy, forced displacement, and kidnapping. Journalists are subject to harassment and intimidation, and practice self-censorship to avoid retaliation by corrupt officials, criminals, and members of illegal armed groups.¹

In February 2005, the U.N. Human Rights Commission described “an increase in reports of extrajudicial executions attributed to members of the security forces and other public officials.”² The U.S. State Department's 2005 Country Reports on Human Rights Practices also stated:

“There continued to be credible reports that some members

of the security forces cooperated with illegal paramilitaries in violation of orders from government leaders, including the president and the military high command... Such collaboration often facilitated unlawful killings and sometimes may have involved direct participation in paramilitary atrocities.”³

The ILO has repeatedly pointed out that it is impossible for workers to exercise their core labor rights in such an environment:

“Freedom of association can only be exercised in conditions in which fundamental rights, and in particular those relating to human life and personal safety, are fully respected and guaranteed...”

“The rights of workers' and employers' organizations can only be exercised in a climate that is free from violence, pressure or threats of any kind against the leaders and members of these organizations, and it is for governments to ensure that this principle is respected...”

“A climate of violence such as that surrounding the murder or disappearance of trade union leaders, or one in which the premises and property of workers and employers are attacked, constitutes a serious obstacle to the exercise of trade union rights; such acts require severe measures to be taken by the authorities...”

“In the event that judicial investigations into the murder and disappearance of trade unionists are rarely successful, the [ILO] Committee on Freedom of Association has considered it indispensable that measures be taken to identify, bring to trial and convict the guilty parties and has pointed out that such a situation means that, in practice, the guilty parties enjoy impunity which reinforces the climate of violence and insecurity and thus has an extremely damaging effect on the exercise of trade union rights.”⁴

Massacres of union members in the mid-1990s elicited a strong international reaction, leading anti-union forces to change their tactics in favor of more selective targeting that emphasized leaders and mid-level union officials. According to the ENS, of the approximately 2000 trade unionists murdered between 1991 and December 2003, about 22 percent were leaders. The percentage climbed after 1998, when it hit 27 percent, peaking at 39.5 percent in 2003. It then declined to 31.4 percent in 2004, and 30.2 percent in 2005.⁵

Over the years, paramilitary groups have been responsible for most murders of trade unionists in cases where the assailants are known – a relatively small number of cases, given the lack of investigation by police and prosecutors. For 2005, ENS attributed 91 of 443 (or 20.5 percent) of the violations against trade unionists to paramilitary groups, 80 (18 percent) to state institutions, and 4 (0.9 percent) to guerrillas; 173 cases were of unknown origin.⁶

The gradual decline in the number of trade unionists murdered over the past several years, together with the apparent decline in anti-union violence in 2005, should not

be taken as a sign of greater openness toward freedom of association. In Colombia, a symbiotic relationship between the government and employers, and the military or paramilitary forces that enforce their policies, works in concert to deny trade unions their rights. Selective and systematic violence against union leaders and members reinforces anti-union strategies used by private employers and the Colombian state, thus merging government repression with anti-union discrimination.

These strategies aim at discrediting union activity, immobilizing existing unions, and slowing or preventing the formation of new ones.⁷ Violence is aimed more at erasing union gains than at the victims themselves, forcing trade unionists to choose literally between their families and their union.⁸ ENS points out that some types of violations – such as some forced displacements of trade unionists – are not even tracked as such, yet effectively quell the union's voice.⁹

Not surprisingly, then, the combination of legal restrictions on organizing and collective bargaining, anti-union practices by both government officials and employers, and the killing and intimidation of union supporters have undermined union organizing and seriously jeopardized the prospects for a culture of industrial relations based on collective bargaining. In 2004, barely 1.17 percent of the workforce was covered by collective agreements.¹⁰

Public sector unions have been particularly hard hit by the violence. Union leaders who denounce corruption in public institutions are often labeled guerrilla sympathizers by public officials who wish to deflect criticism, leaving union leaders vulnerable to paramilitary attacks. The

government's increasingly severe attempts to comply with IMF structural adjustment policies have had their harshest impact among public sector workers, whose organizations have responded with increasing militancy. This in turn has drawn more repression from both government institutions and paramilitary forces.

Teachers, followed by health workers, municipal workers, and judicial workers continue to be the main victims, and teaching has become one of the most dangerous jobs in Colombia. Teachers, who represent 33 percent of the workforce, are disproportionately targeted for murder by illegally armed groups.¹¹ In 2005, 44 of the 70 trade unionists killed were teachers or working in the education sector.¹² Seventy-one percent of the total number of violations in 2005 were committed against teachers who belong to the Colombian Federation of Educators (FECODE).¹³ Education workers were subjected to 186 of the 260 death threats, 44 of the 56 arbitrary detentions, three of the six kidnappings, one attempted murder, and one disappearance.¹⁴ In Toribio alone, the teachers' union reported that every teacher was displaced due to threats and violence.¹⁵ Though guerrilla violence against trade unions has diminished in the last few years, union leaders are still viewed with suspicion by some guerrilla leaders because they represent strong expressions of organized civil society that the guerrillas do not control.

Many anti-union businesses have been accused of using the armed conflict as a cover for violence intended to break trade unions or weaken their ability to bargain collectively. In a number of cases, credible allegations have been made of companies contracting paramilitary forces to deter union organizing.¹⁶ Unfortunately, as leading Colombian and

international human rights groups have noted, the Colombian government has been largely indifferent to evidence of links between the AUC, the military, and private employers.¹⁷

Although the Colombian government has thousands of cases to pursue, it has failed to investigate, prosecute and bring to justice those responsible for the vast majority of murders committed against human rights defenders, and has even eroded its own ability to do so. Within 72 hours of taking office in July 2001, Attorney General Osorio forced the resignations of a number of high ranking and veteran officials, among them the current and former directors of the Human Rights Unit. In December 2001, Osorio fired four top Technical Investigations Unit (Cuerpo Técnico de Investigaciones, CTI) directors, all described as outstanding professionals by other prosecutors and former officials in the Attorney General's office, and CTI managers.

In April 2002, seven prosecutors with the Attorney General's Human Rights Unit and one member of the CTI received credible and serious threats related to their work on investigations into high-profile cases of human rights violations. Attorney General Osorio failed to take any measures to protect the officials. Dozens of other prosecutors and investigators have either resigned or fled Colombia since Osorio took office. Osorio's office also fired or transferred personnel engaged in investigations of serious human rights violations, and supported the transfer of police functions to military and security forces. In addition, Osorio publicly criticized members of the U.S. Congress who expressed their concerns about human rights in Colombia.¹⁸

In a 2004 briefing to the United Nations Commission on Human Rights, Human Rights Watch excoriated the Uribe administration's lack of concern for ending impunity for human rights violators:

“Under Attorney General Luis Camilo Osorio, the ability of the Attorney General's office to investigate and prosecute human rights abuses has deteriorated significantly: there has been a lack of support for prosecutors working on difficult human rights cases; a failure to provide adequate and timely measures to protect justice officials whose lives are threatened; and the dismissal and forced resignation of veteran prosecutors and judicial investigators. As a result, major human rights investigations that had gathered momentum before Camilo Osorio took office have been severely undermined, and the climate of impunity has been reinforced.”¹⁹

This climate has ensured that very few murderers of trade unionists have been brought to justice. According to the National Prosecutorial Unit on Human Rights and Humanitarian Law, more than 3,000 trade unionists were killed between August 30, 1986 and April 30, 2002. However, only 376 criminal investigations into violations of the right to life of unionists were conducted during the same period. Guilty verdicts were issued in only five cases.²⁰

In May 2004, ENS asked the Attorney General's Office for information on the status of 91 murders of trade unionists in 2003. The Attorney General's Office had files on only 33 of the cases, had initiated investigations in only 13

cases, and had identified suspects in only five.²¹ In late 2004, Colombian Vice President Francisco Santos, seeking to dispel the notion that impunity reigns for the perpetrators of anti-union violence in his country, told U.S. journalists that Colombia had successfully prosecuted 19 cases involving the murder of trade unionists since 1992.²² Nevertheless, ENS data indicate a prosecution rate of less than one percent.²³

By the end of 2005, Colombia's judicial system had still been unable to bring justice to most victims of human rights abuses, including trade unionists. According to the U.S. Department of State, the system was “overburdened, inefficient, and hindered by the suborning and intimidation of judges, prosecutors, and witnesses.”²⁴ The report also noted that judicial authorities were subjected to acts of violence, including killings of judicial workers, and related



widespread impunity to “a lack of resources for investigations, lack of protection for witnesses and investigators, lack of coordination between government entities, and, in some cases, obstruction of justice.”²⁵

In its June 2005 report on Colombia, the ILO Committee on Freedom of Association (CFA) states that it:

“...is bound to reiterate the conclusions it reached in its previous examinations of the case, namely, that the lack of investigations in some cases, the limited progress in the investigations already begun in other cases and the total lack of convictions underscore the prevailing state of impunity, which inevitably contributes to the climate of violence affecting all sectors of society and the destruction of the trade union movement. The Committee once again urges the Government, in the strongest terms, to take the necessary measures to carry on with the investigations which have begun and to put an end to the intolerable situation of impunity so as to punish effectively all those responsible.”²⁶

The CFA adds that,

“The situation is even worse when one also takes into account that since the last direct contact mission which took place in January 2000, the Government has reported fewer than five effective sentences out of all the acts of violence towards trade union leaders and members. In these circumstances, the Committee can only conclude that there is indeed a serious situation of impunity.”²⁷

New government proposals threaten to jeopardize existing protections for human rights victims and weaken an already ineffective judicial system. For example, the government has proposed significant curtailment of *tutela*, a type of injunction that grants an emergency protection of constitutional rights, giving the benefit of the doubt to a grievant while a case is being decided. An affected citizen can seek *tutela* directly from the Constitutional Court when a government action directly violates his/her rights or threatens to leave the person unprotected.²⁸

The government has also proposed limiting the jurisdiction of the Constitutional Court, which has been a bulwark of defense of labor and civil rights. In addition, the government has abruptly broken off its dialogue with the unions in the Inter-Institutional Committee for the Prevention of Violations and the Protection of Workers' Human Rights, which it had previously touted as part of its response to the violence.²⁹ While such a climate prevails, workers will be unable to exercise their rights meaningfully.

Freedom of Association

Colombia's 1991 Constitution establishes in Article 53 that international labor conventions shall be part of domestic legislation. Article 93 provides that in the event of an apparent conflict, the international human rights instruments that cannot be suspended in states of emergency prevail over domestic legislation. ILO conventions do not allow suspension under a state of emergency. Article 33 of the constitution mandates legislation to establish minimum standards for freedom of association and collective bargaining, but this law has never been promulgated.

In effect, many constitutional protections for core labor standards are trumped by Law 50 of 1990, which gives employers broad power to dismiss workers on grounds of business necessity.³⁰ Employers can also invoke Law 550 of 1999, which permits companies that have declared bankruptcy to avoid collective bargaining obligations.³¹

The Colombian Labor Code provides a straightforward mechanism for the registration and recognition of new unions. However, as the U.S. Department of State acknowledges, this process can take years.³² Even though Law 50 of 1990 and the Constitution recognize that unions acquire legal status by the mere fact of their existence, in practice the administrative authorities interfere unduly in the establishment of unions.

First, Article 46 of Law 50 of 1990 effectively gives the Ministry of Social Protection (formerly the Ministry of Labor) authority to deny legal recognition of a new union. Until the registration is completed and published, the union cannot engage in any activity. This mechanism has been used effectively to block the rise of new unions, a serious threat to the future of the Colombian labor movement. A second provision requires that the union publish its registration in a large-circulation daily newspaper, driving up the costs of forming a trade union. As with the establishment of commercial firms, the registration should suffice.

Third, administrative authorities allow employers to challenge legal procedures for union registration and to dispute the decisions of union executive boards to register a union. This violates the ILO's core labor Conventions

87 and 98, which prohibit any employer interference in trade union operation.³³

Law 50 of 1990 also hinders the formation or growth of unions by allowing for temporary contracts without appropriate parameters. Employers are free to hire workers on temporary contracts, sometimes for periods as short as three months, and may continually cancel and then renew them, even over long periods of time. While employees under temporary contract theoretically have the right to join unions, if they do so they are unlikely to be rehired when their contracts expire. This is completely legal under Colombia's reformed labor code, even though it effectively negates workers' right to freedom of association. Employers also use civil and commercial contracts to avoid their responsibility to their employees, hiring them as "independent contractors" who work for a set price and who have no right to unionize.

Laws 79-1988 and 10-1991 similarly hinder freedom of association. The laws establish service cooperatives and companies (*cooperativas y empresas de trabajo asociado*), ostensibly to stimulate economic activity by encouraging self-managed groups to provide services or manufacture products. However, employers have frequently used them as a vehicle to avoid traditional labor contracts, substituting their employees with subcontracted labor organized in cooperatives often formed by the employer itself; typically, employees are pressured to resign and affiliate to the cooperative, or face dismissal. As members of a cooperative, employees no longer enjoy the right to organize unions or bargain collectively, and employers no longer have any responsibility to them beyond the fixed sum of money indicated by the contract signed with the coopera-

tive.³⁴ In 2005 an estimated 150,000 workers belonged to approximately 1,500 cooperatives.³⁵

These practices are part of a global trend of growth in the informal economy, a term describing work that falls outside of a country's legal or regulatory framework. Informal workers are often hired under contracts that make them temporary workers, independent contractors, or subcontractors. Employers are usually not required to provide health care, sick leave, pensions, or other traditional benefits or basic worker rights for such workers. Consequently, informal workers who are not covered under law are more subject to abuse and exploitation by unscrupulous employers.

In one such case, Tejicóndor, a textile firm, fired a group of workers' and transferred their positions to an associated



labor cooperative. This enabled the company to diminish the size of the trade union and evade its obligation to respect freedom of association. A decision of the Constitutional Court overturned judgments favorable to the workers that had been handed down by judges from Medellín.³⁶

The government has found additional legal paths to limit freedom of association. The reformed Law 789 of 2002 modified the legal definition of a company's production unit, allowing a single company to organize into separate production units that are no longer linked for purposes of labor relations. Under this law, workers who are employed by the same company but are in different production units are not permitted to form a single enterprise union, maintain an existing one, or bargain collectively as a unit. The same reform also changed the nature of apprenticeship contracts, excluding as one unit workers employed under these contracts from the scope of collective bargaining agreements. Employers have increased the use of this form of employment, and reduced substantially the pay and conditions for workers under these contracts.

Large employers are also increasingly using the tactic of selling enterprises to avoid company-wide unionization. When a trade union is formed in one of the factories of a large company, the owners divide it, selling it to one of the trademarks of the respective holding company to prevent the union from being able to affiliate workers from the other factories.³⁷

Right to Strike

Colombia's Labor Code also restricts the right to strike. The principal legal obstacles to the exercise of the right to strike identified by the ILO Committee of Experts include the:

- Prohibition of federations and confederations from calling strikes (section 417(i) of the Labor Code);
- Prohibition of strikes, not only in essential services in the strict sense of the term (namely those whose interruption would endanger the life, personal safety or health of the whole or part of the population) but also in a wide range of services which are not necessarily essential (section 450(1)(a) of the Labor Code and Decrees Nos. 414 and 437 of 1952, 1543 of 1955, 1593 of 1959, 1167 of 1963, 57 and 534 of 1967);
- License to dismiss trade union officers who have intervened or participated in an “unlawful” strike (section 450(2) of the Labor Code), including strikes that should be considered lawful under principles of freedom of association; and the
- Power of the Minister of Labor to refer a dispute to arbitration when a strike lasts longer than a specific period (section 448(4) of the Labor Code).

In April 2004, the Colombian government once again used its power to restrict the right to strike in the public sector in a way that has previously drawn criticism from the ILO. On April 22, USO, a national union that

includes oil workers, declared a strike against ECOPEPETROL, the state-owned oil company.

This strike followed the failure to reach agreement after 18 months of collective bargaining and protests over the loss of worker rights under the government's restructuring plan for the company.

On April 23, the Colombian government declared the strike illegal on the grounds that petroleum refining is an “essential service.” This contradicted the ILO jurisprudence on what services are essential, a term restricted to services whose interruption would endanger worker or public safety or health. The International Federation of Chemical, Energy, Mine and General Workers' Unions (ICEM) condemned the decision. “Declaring the strike by members of USO illegal and citing petroleum refining as an essential service to Colombia contradicts ILO jurisprudence on what constitutes a nation's essential services,” wrote ICEM General Secretary Fred Higgs in a letter to Colombian President Alavro Uribe. “Case after case has omitted oil refining from that category.”³⁹

The Colombian Commission of Jurists (CCJ), a human rights NGO with consultative status at the United Nations, called the Colombian government's decision illegal. The CCJ pointed out that both the ILO and the Colombian Constitutional Court had indicated that the labor courts, not the Executive Branch, should decide the legality of strikes. As the strikers' employer, the government could not decide a strike's legality without depriving them of their right to have an impartial third party make such a determination.⁴⁰

By May 4, ECOPETROL had used the declaration of the strike's illegality to fire 22 USO leaders and activists, including Gabriel Alvis, President; Hernando Hernández, Vice President; Danilo Sánchez, General Secretary; and Roberto Schallbach, Secretary.⁴¹ Eventually, 253 union members were fired, including seven members of the union's Executive Committee.⁴² USO continued to advocate on behalf of its workers, and eventually negotiated the severance or reinstatement of all but 33 of the fired workers. In January 2005, 106 workers were reinstated.

Right to Organize and Bargain Collectively

Law 50 of 1990 allows non-union workers and employers to sign collective pacts (*pactos colectivos*). Employers have used this legal mechanism to favor workers who are not union members. Although employers must register collective pacts with the Ministry of Labor, the Ministry exercises no oversight or control over them.⁴³ In other cases, by unilateral decisions of the employer, “statutes for non-unionized workers” are established. These arrangements are not subject to collective bargaining and employers typically use them to obstruct union organization.⁴⁴

For example, an ILO study on the cut flower industry reports the widespread use of collective pacts by employers who “try at whatever cost to avoid the establishment of a trade union in their firms...”⁴⁵ Workers in the cut flower industry found collective pacts used as a weapon against them when they attempted to form a union, UNTRAFLORES, in May of 2001 at the La Celestina and La Vereda plantations. According to members of the union, “The company hit us very hard

because they imposed a collective pact and because of this the pressure was very strong: they took away benefits, transportation expenses, lunch money, seniority and vacation pay from the unionized workers . . . The collective pact was imposed while we were negotiating a contract. They told the workers that the union members were robbing them of I don't know how many pesos per year for union dues . . . and practically forced them to sign the collective pact.” The effect of the pact was to divide the workers into two hostile groups.⁴⁶

In 2001, 149 collective pacts covering 33,580 workers were registered, in comparison with 328 collective bargaining agreements covering 80,985 workers.⁴⁷ Not surprisingly, the benefits obtained by workers under collective pacts were significantly lower than under collective bargaining agreements.⁴⁸ At the same time, the number of arbitration tribunals hearing cases involving denial of the right to collective bargaining shot upwards.

The labor code allows the government to extend the terms of collective bargaining agreements that apply to two-thirds of the firms in an industry to cover workers in the entire industry. However, Article 376 of the code requires that an industrial union must represent more than 50 percent of the workers in each firm to be able to bargain, a provision inconsistent with ILO Convention 98.⁴⁹ Industry-wide agreements have been negotiated only in the banana and electrical industries.⁵⁰

Legal restrictions on the right of public employees to bargain collectively are especially problematic. As noted above, Colombia's constitution provides that international treaties are self-executing once they are incorporated into

Colombian law, and prevail over any contrary provisions of domestic law. Thus legal provisions that restrict the right of public employees to bargain collectively (Article 416 of the Labor Code) should be superseded by ILO Conventions 151 and 154, which entered into force in December 2001 after years of delay in ratification.

Nevertheless, the government refuses to enforce these conventions, arguing that it needs to promulgate regulations to accompany them first. But the government's citation of its own failure to issue regulations as a justification for breaching the conventions runs counter to the most basic principles of law.⁵¹ In any case, on March 19, 2002, the Constitutional Court upheld the Labor Code articles that restrict collective bargaining rights for public employee trade unions.⁵²

A 2005 ENS study describes how employers in the health and manufacturing sectors lower labor costs by undermining contracts and benefits:

“It is common to see hospitals and factories replace their workers who have longer-term contracts that were negotiated by labor unions and provide certain levels of protection and stability with temporary workers sub-contracted through the Associated Labor Cooperatives. This is the case within Social State Companies, and in assembly plants, where thousands of women work without any protections or recourse to seek dignified working conditions.

“In the health sector, the deteriorating situation for the majority of professionals is evident: medics and professional nurses work for minimum wage or less, having

to pay their own social security and left with no manner in which to stand up for their rights or question their conditions. Almost always, these workers are part of cooperatives that are managed by policy directors, who control public clinics and hospitals; as a consequence, workers in these facilities are hired as ‘cooperants’ and are subject to firing at any moment.”⁵³

As seen above, anti-union discrimination by employers is carried out under legal provisions that favor such discrimination. Traditional employer practices such as the dismissal and blacklisting of union leaders are widespread.⁵⁴ The cases of Colombian labor organizations SINTRAEMCALI (public sector workers), USO (petroleum workers), UNTRAFLORES (flower plantation workers), SINTRAMIENERGETICA (coal miners), and SINALTRAINAL (beverage industry workers) demonstrate the hostile environment in which the Colombian labor movement struggles to survive, defend basic worker and human rights, and function in civil society. It is significant that these unions are among the few that have managed to maintain collective bargaining with employers despite the anti-union violence. It appears, however, that unions attempting to exercise this most basic right are increasingly being singled out for retaliation.

Full-scale privatization of Colombia's public services began in earnest after the country's submission to IMF/World Bank economic policies after 1990. The case of EMCALI, a municipal enterprise in Colombia's second largest city, Cali, is illustrative of the difficulty Colombian unions face in addressing these changes.

Governments often cite the supposedly inherent “inefficiency” of public enterprises as a reason to impose privatization. EMCALI, however, the enterprise that provides essential services like water, electricity and telecommunications to the city's residents, had long been known for its relative efficiency. Nevertheless, the Colombian government, determined to eliminate a high profile example of a public enterprise committed to providing essential services at the lowest possible price, undermined that efficiency in order to prepare the ground for its privatization. According to Public Services International (PSI),

“Between 1996 and 1999 the public enterprise EMCALI was transformed from a functioning provider of multiple infrastructural services in Cali, to a bankrupt company ordered to sell its dismantled assets, among them water supply and sanitation services, as well as electricity generation. ... Despite a long history of efficient water services in the area, as well as reliable electricity and telecommunications services, EMCALI accumulated significant debts that brought the corporation under a special intervention regime appointed by the central government. The workers at EMCALI, in opposing the company's privatization, found that the sources of these debts included: an unfavorable contract with the U.S. multinational Intergeren to buy electricity at above market prices, the failure of state entities to pay their bills, and the refusal of the central government to assume its share of pension payments and debt obligations. In fact, the central government was a net debtor to SINTRAEMCALI, the union representing the enterprise's workers.”⁵⁵

On December 25, 2001, about 600 members of SINTRAEMCALI began a peaceful occupation of EMCALI's central administration building to protest the government's militarization of Cali's public services. On December 28, amidst a tense standoff between the unionists and community supporters on the one hand and riot police and soldiers on the other, the government agreed to negotiate with the union. During the following month, however, the unionists were subjected to constant harassment and threats by police and paramilitaries. Nevertheless, SINTRAEMCALI was able to garner a remarkable amount of both local and international support.

Finally, on January 29, 2002, the Colombian government signed a 10-point agreement with the union. The agreement promised that EMCALI would not be privatized, and that no occupiers would face reprisals.⁵⁶ However, on February 11, 2002, gunmen murdered Julio Galeano, an ex-EMCALI worker, protest leader, and SINTRAEMCALI activist of many years as he rode his motorcycle toward EMCALI. Galeano was the seventh SINTRAEMCALI member murdered since 2000.

SINTRAEMCALI had voluntarily sacrificed many benefits won through collective bargaining in order to save the company. But in apparent disregard for the 2002 agreement, President Uribe continued to push EMCALI to restructure, allowing bank representatives to sit on its board of directors in what many observers saw as a step toward privatization.

The violence directed against SINTRAEMCALI continued. On February 21, 2003, unknown men

murdered union member Fredy Perilla Montoya, shooting him six times within 50 meters of the telephone company when he resisted their kidnapping attempt. In May 2003, as negotiations between the union and the Uribe administration over the fate of EMCALI were nearing their end, a bombing at EMCALI's Puerto Mallarino Drinking Water Treatment Plant killed three plant guards who were SINTRAEMCALI members – Nelson López, Wilmer Vergara, and Jorge Vásquez. Ricardo Barragán Ortega, a SINTRAEMCALI member who had played a leading role in union protests, was murdered on January 17, 2004.⁵⁷ In May 2004 SINTRAEMCALI occupied the central administration building in another skirmish over privatization. When union member León Angel Borrero left the vigil outside the building, police brutally beat him and arrested him on terrorism charges.⁵⁸

On May 29, 2004 an agreement was reached to end the occupation. Union consultant Nelson Sánchez noted that, among other measures, the agreement provided for job security for EMCALI workers and a process of conciliation and dialogue over EMCALI's future, including a union meeting with President Uribe. It also promised that protesters would not be subjected to any disciplinary or repressive measures.⁵⁹

But the agreement was not honored. A criminal lawsuit was filed against the union president. In addition, on July 14, 2004, EMCALI fired 60 workers who had participated in the protest, including the union president, vice president, treasurer, and general secretary.⁶⁰ In its 2004 report, the ILO Committee on Freedom of Association called the government to task because the great majority

of investigations of worker rights violations against SINTRAEMCALI remained only at the preliminary stages.⁶¹

Between 2001 and 2004, a total of sixteen SINTRAEMCALI members were murdered.⁶² As of December 2005, no one had been arrested for any of the killings of SINTRAEMCALI leaders, and the conflict at EMCALI remained unresolved.⁶³

Petroleum Workers Fight Violence and Death

The Union Sindical Obrera (petroleum workers union) has been the victim of systematic physical violence and government harassment for many years. Since the 1980s, USO leaders have repeatedly been arrested for exercising basic rights of association and expression. Moreover, the AUC considers USO and its members to be military targets. Eighty-seven USO members were murdered between 1988 and 2002.⁶⁴ Continual harassment by government agents has created a climate in which AUC paramilitaries feel they can attack USO leaders and members with impunity.

For example, on November 30, 2002, paramilitaries kidnapped Aury Sará Marrugo, President of the Cartagena section of USO, and his bodyguard, Enrique Arellano. The AUC paramilitary group claimed responsibility for his kidnapping on December 3 in a letter posted by paramilitary leader Carlos Castaño on the AUC's web site. Both Sará Marrugo and Arellano were found dead, with signs of torture, on December 5.

In addition, in February 2003 government security forces attacked USO members and leaders at their workplace during a difficult and prolonged collective bargaining process. Nine USO members were arrested during the attack. That same year, on December 24 and 25, AUC paramilitaries kidnapped USO leader Rafael Gutiérrez Jiménez and his wife, took them to an AUC camp where they were tortured repeatedly for two days, and told them they were going to be killed. The AUC released the couple on December 26, warning Gutiérrez Jiménez to leave the union if he wanted to ensure his family's future safety.

The worker rights climate did not improve the following year. In February 2004 another USO leader, Rodolfo Vecino, was warned in a series of telephone calls to stop denouncing corruption and promoting the collective



bargaining process, or his family would become a target. When the government called for the use of mandatory arbitration to resolve a collective bargaining dispute, the USO general assembly passed a resolution calling for a strike to protest this action and to demand continued direct negotiations with the employer. In March 2004, in response to a complaint registered by ECOPETROL, the state-owned oil company, the Ministry of Social Protection issued Resolution No. 00936 against the union. The Ministry's resolution required USO to revoke the general assembly's decision, directly violating the right of the union to conduct internal meetings without the interference of the state.

On April 22, 2004, after the bargaining process had completely broken down (see also p. 23), USO declared a strike, which the government ruled illegal. Soon after, ECOPETROL management fired 253 union members and seven executive committee members. On May 26th, the union announced that an agreement had been reached to end the strike. Under the agreement, ECOPETROL would retain control of oil production, and a labor-management commission would be formed to negotiate outstanding issues. Thousands of striking workers were to return to work on May 29. Another labor-management commission was to rule on the reinstatement of the fired workers and union leaders.⁶⁵

In the 337th report of the Committee on Freedom of Association, issued in June 2005, the ILO once again questioned the Colombian government's imposition of mandatory arbitration in this case. The ILO called on the government to change its legislation so that "an independent body which has the confidence of the parties involved" determines the legality or illegality of strikes,

rather than the executive branch itself. The ILO also questioned the government's continued classification of the petroleum industry as an essential service.⁶⁶

In December 2005, the Arbitration Tribunal indicated that negotiations for a new labor contract could reopen after December 8. USO negotiated the severance or reinstatement of all but 33 of the fired workers. In January 2005, 106 workers were reinstated.

Flower Workers Struggle for Rights

Benilda

In May 2001 a group of workers at Benilda (then known as Agrícola Celestina), one of Colombia's largest flower exporters, formed the UNTRAFLORES union to defend themselves from the company's attempt to cut benefits for its 1,400 employees. Management immediately sought to undermine the new union by granting full benefits, including customary food and transportation subsidies, only to non-union workers as part of a collective pact. Management insisted that UNTRAFLORES members must resign from the union and sign the collective pact before they could receive these benefits. Over the next three years, the company denied benefits to union members and repeatedly fired workers for union activism. Union members could not obtain permission to visit the doctor or to carry out union activities that could only be conducted during the workday.

In September 2001, the company dismissed six founding members of UNTRAFLORES and delayed collective bargaining negotiations. The judicial process moved slowly, delaying initial hearings from nine months to a year. Three women leaders were finally reinstated in

November 2002 after a court ruled in their favor. However, the company delayed reinstatement and payment of back wages until February 10, 2003, only to fire them again two weeks later. Two other dismissed leaders were reinstated by court order on June 24, 2003, but the company fired them again that same day, claiming that economic difficulties and lower sales in Europe required personnel cuts, and alluding to "some campaigns that foreign organizations are pursuing to discredit the company." During their brief reinstatement the workers had received lower pay and were excluded from benefits and bonuses.

On August 14, 2003, the union filed six new lawsuits in municipal labor courts. The lawsuits demanded that the company pay union members the same salaries, bonuses, and benefits (including loans and other types of assistance) that most non-union members received. The union also filed a complaint challenging the company's denial of personal leave to unionized workers to attend to family emergencies, a right included in the company's own internal regulations. The company responded with attempts to interfere with union autonomy, appealing to the Ministry of Social Protection to deny leave to the union's leaders. The company also challenged decisions made in the union's 2003 Assembly with the Ministry of Labor.⁶⁸

Since 2001, 24 members of UNTRAFLORES have been dismissed and replaced with workers who receive lower wages and benefits. While the number of employees at this flower exporter is stable, management has used temporary contracts to undermine unionization and reduce wages and benefits, arguing that the company

must reduce staff on the basis of economic difficulties. Increasingly, the company has used subcontractors and imposed temporary, flexible work contracts on the 140 employees who have worked for the company for 12 years and still hold permanent contracts. The temporary contracts have made it much easier for the company to fire workers if they fall ill, become pregnant, or join the union. Despite the Colombian government's promises to investigate these issues, no visible action has been taken, and the union is functionally inoperative.

C.I. Spendor Flowers, LTD.

In late 2004, UNTRAFLORES supported an organizing drive at another flower company, C.I. Splendor Flowers, LTD., which is owned by Dole Foods, Inc. On November 11, a group of 27 Splendor workers formed a union called SINTRASPLENDOR and affiliated to UNTRAFLORES. Within a month, the new union had signed up 250 members who were tired of intolerable workloads, company threats to subcontract out their work, firings of sick and older workers, and a policy of coercing workers to sign a company-dictated collective pact.

The company responded to the organizing drive by illegally firing one of the union's founding members, Gloria Oliveira. The company also threatened to fire other union members, assigned extra work on days the union planned assemblies, used police and soldiers to intimidate the union, and pressured workers to join a company-promoted union called SINALTRAFLORES. Since SINALTRAFLORES is technically an industrial union that was already registered with the Ministry of Social Protection, the company-controlled local affiliate obtained its legal recognition almost instantly. The

company then proceeded to sign an illegal collective bargaining agreement with the union it had created. According to Colombian labor law, only one collective bargaining agreement per work site is permitted. Since the company-controlled union had already signed a contract with management, SINTRASPLENDOR was effectively denied its right to collective bargaining. In late November 2004, the union attempted to hold an assembly in the town where the plantation is located, but was prohibited from doing so by local police, who accused the union of plotting against the company.

Despite these obstacles, SINTRASPLENDOR obtained legal recognition on March 7, 2005.⁶⁹ The company responded by firing an additional 12 union members in May 2005. It also filed an appeal with the Ministry of Social Protection that alleged irregularities in the union's founding assembly, but SINTRASPLENDOR leaders noted that the company's witnesses were members of the company-controlled organization and were not even present at SINTRASPLENDOR's founding assembly.⁷⁰ The union definitively won its legal recognition on August 29, 2005, when the Ministry of Social Protection rejected Splendor Flowers' appeal.

At this time Dole was already coming under fire for its alleged role in a July 14 bus accident which had killed three Splendor Flowers workers, including a SINTRASPLENDOR founding member. Fifty others were injured in the accident. The bus, contracted by the company to bring Splendor Flowers workers to and from work, was overloaded and exceeding the speed limit when it crashed into a truck at 5:20 a.m., according to witnesses. The union reported that the bus driver had

been forced to operate on a tight schedule and was under enormous pressure to arrive on time at the plantations despite the large numbers of workers he was picking up. In September 2005, pressure on Dole increased further when the union and activists in the United States and Europe began to focus on the contradictions between Dole's anti-union attitude and its representation on the Advisory Board of Social Accountability International (SAI). SAI is a multi-stakeholder corporate responsibility initiative whose SA 8000-program espouses a corporate code of conduct that references principles of some ILO standards. Nevertheless, at the end of 2005, Dole was still maintaining that it could not negotiate a collective bargaining agreement with SINTRASPLENDOR until its contract with SINALTRAFLO - the union created by Splendor management - expires in September 2006. The union and its supporters, however, continue to call on Dole to negotiate with SINTRASPLENDOR as a representative trade union, noting that Dole could absorb the contract with SINALTRAFLO into a new contract with SINTRASPLENDOR.

Coal Miners Resist Threats, Killings

SINTRAMIENERGETICA is the union that represents coal miners at Drummond Company, Inc. in the departments of César and Magdalena. The union's case illustrates how systematic violence combines with government and management policies to threaten both the lives of individual unionists and their basic labor rights. Drummond, an Alabama-based mining corporation that operates in Colombia, initially resisted workers' unionizing efforts by instituting a management-directed collective pact in order to discourage union affiliation.

After the union successfully negotiated its first collective bargaining agreement and its membership surpassed 30 percent of the workforce, the company could no longer legally use collective pacts. However, Drummond continued to do so. Despite management resistance, SINTRAMIENERGETICA continued to increase its membership by raising workers' concerns about occupational safety and health benefits and worker safety. The need for improvements in safety was tragically demonstrated in July 2000, when three miners were killed as a mine wall collapsed.

In August 2000, managers and workers participated in a government-organized forum on the role of business and labor in post-conflict Colombia. The forum took place in the San Vicente de Caguán demilitarized area as part of Colombia's peace negotiation process. But the forum did not result in improved respect for the union's rights. In December 2000, after receiving repeated threats from paramilitaries, the union petitioned the Ministry of the Interior to provide protection for its leaders. The Ministry refused, asserting that the union's case was low-risk and therefore unworthy of such measures. The union also asked Drummond management, for the same reason, to permit its union leaders to stay in the company's facilities during periods of conflict. Although Drummond had previously permitted this practice, the company now denied this request.

Soon after the forum, Drummond proposed massive layoffs, claiming that production had decreased and therefore required fewer workers. However, this claim was false, and SINTRAMIENERGETICA successfully argued that Drummond should seek other measures to

increase efficiency in a tripartite public forum in César on March 2, 2001.

On March 12, 2001 - only ten days after the public forum on layoffs at Drummond - local paramilitaries identified union president Valmore Locarno and vice-president Victor Orcasita among a group of mine workers returning home from work. According to witnesses, the paramilitaries stated that “these two have a problem with Drummond” before pulling them off the bus. Outside the bus, the paramilitaries executed Locarno with a bullet to the head, then took Orcasita away; his tortured body was found later that same day.

For six months after the killings of Locarno and Orcasita, the union had no president, as union members believed that any candidate for the post would be the next one killed. However, in mid-September, union financial officer Gustavo Soler volunteered to become the union's president, and, as such, on September 20, requested protection from the Ministry of the Interior. The Ministry did not grant it, but Soler resumed negotiations with management anyway over the need for increased safety for workers. Barely two weeks after becoming president, on October 5, he too was killed, when paramilitaries pulled him off a bus and executed him.

The AUC paramilitaries repeatedly accused the union's leaders of being guerrillas. Government forces took a similar position. Referring to the government-sponsored forum in Caguán, a national police official in César justified the assassination of the union's leaders by stating that they had attended the forum, even though management had also participated without suffering consequences.

In March 2002, lawyers for the International Labor Rights Fund (ILRF) and the United Steelworkers (USW)⁷¹ filed a lawsuit in the United States District Court in Alabama, where Drummond Co. is based, on behalf of SINTRAMIENERGETICA and the surviving family members of the three murdered union leaders. The suit, filed under the Alien Tort Claims Act, alleges that “Drummond's management in Colombia retained and authorized paramilitaries, as well as regular military personnel, to target union leaders for murder, and provided these death squads with financial and material support in order to rid the Drummond plant of the union.”⁷² The lawsuit also alleges that the three leaders were murdered while “engaged in heated negotiations with Drummond over several key issues, including the demand that the company provide better security for workers to protect them from paramilitaries that were based, along with regular military, on Drummond's property. According to several witnesses, the paramilitaries were operating as a private security force to protect Drummond's facilities from the FARC, the leftist guerrillas.”⁷³

On September 29, 2003, unidentified men kidnapped two of the union's leaders, David Vergara and Seth Cure, as they were driving to a union meeting. In response to a campaign launched on behalf of the kidnapped leaders by the USW and the International Labor Rights Fund (ILRF), supporters flooded Drummond and the Colombian government with letters demanding their safe return. The two were released unharmed on October 19, 2003.⁷⁴

headquarters announcing that paramilitaries would kill guerrillas and trade union members, and SINALTRAINAL leaders and members began fleeing Carepa in fear for their lives.

By September of 1995, many more union members had fled, and the entire executive committee had resigned and left Carepa as well. However, despite the fear gripping the remaining members, and the increasingly repressive atmosphere within the plant itself, the union called a general assembly on October 8, 1995, and elected a new executive committee. During the next year, when the union learned of threats from the paramilitaries, it notified both the bottler and Coca-Cola Colombia in writing, asking them to intervene to protect them. When the union presented a new collective bargaining proposal on November 29, 1996, management refused to negotiate,



stating that the union already enjoyed sufficient benefits.⁷⁸

On December 5, 1996, Isidro Gil, a local union leader, was murdered by paramilitaries when he arrived at the Coca-Cola plant in Carepa where he had worked for eight years. Writing in *Dollars & Sense*, Madeleine Baran describes his murder and its aftermath:

“On the morning of December 5, 1996, two members of a paramilitary gang drove a motorcycle to the Carepa Coca-Cola bottling plant in northern Colombia. They fired 10 shots at worker and union activist Isidro Segundo Gil, killing him...Around midnight that night, the paramilitaries looted the local union office and set it on fire...The paramilitary group returned to the plant the next week, lined up the 60 unionized workers, and ordered them to sign a prepared letter of resignation from the union. Everyone did. Two months later, all the workers – including those who had never belonged to the union – were fired...[Gil's] wife, Alcira Gil, protested her husband's killing and demanded reparations from Coca-Cola. She was killed by paramilitaries in 2000, leaving their two daughters orphaned. A Colombian judge later dropped the charges against Gil's alleged killers.”⁷⁹

On June 21, 2001, Oscar Darío Soto, a leader of another Coca-Cola workers union, SINALTRAINBEC, was murdered in Montería, in Córdoba Department. Soto had been the lead negotiator for both SINALTRAINBEC and SINALTRAINAL, which both had a presence at the local Coca-Cola bottler, Embolletadoras

Román, S.A. At the time of Soto's murder, both unions were engaged in difficult collective bargaining negotiations with management.

Lawyers from the International Labor Rights Fund (ILRF) and the United Steelworkers (USW) filed suit on behalf of SINALTRAINAL, the estate of Isidro Gil, and five other union activists, in the U.S. District Court for the Southern District of Florida on July 20, 2001 against a group of defendants that include Coca-Cola USA, Coca-Cola de Colombia, and the bottling plant and its owners. The suit, filed under the Alien Tort Claims Act, alleges that “[T]he paramilitaries were brought into the bottling plants to use violence to exterminate the trade union with the specific consent of the managers of the Coca-Cola bottling plants.” It also alleges that despite repeated demands by the union that Coca-Cola stop the targeting of union leaders at its bottling plants, the company has done nothing “to prevent the open association between paramilitaries and managers of the Coca-Cola bottling plants in Colombia.”⁸⁰ Despite what has been characterized as the “deep financial links” between Coca-Cola and its bottlers,⁸¹ the court dismissed Coca-Cola U.S.A. and Coca-Cola de Colombia from the suit for insufficient control of the Carepa bottling plant.⁸²

The ICFTU reported continued threats and abuse against SINALTRAINAL leaders and members in 2004 following hunger strikes held by union leaders in various Coca-Cola bottling plants between March 15 and 27 to pressure management into having a dialogue. For example, on March 15, Eurípides Yance, President of the Barranquilla branch of SINALTRAINAL, received a

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The government's only response to a request to include Molina in a protection program for union leaders had been to give him two mobile phones.

phone call threatening the strikers. On March 16, shots were fired from two vans at the participants in a protest march in Cali organized by the union. Eberth Suárez, President of the Cali branch of SINALTRAINAL, received threatening calls on his mobile phone. On April 14, Onofre Esquivel, a Nestle employee in Bugalagrande national level SINALTRAINAL leader, was beaten for some three hours at his home by a group of people; Onofre had previously received a death threat from the AUC paramilitaries in a letter dated October 11, 2003, followed by a raid on his home 11 days afterward.⁸³

Repressive activity against the union continued in 2005. The International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations (IUF) reported that on March 28, four local SINALTRAINAL union leaders who worked at Coca-Cola bottling plants in Barranquilla and Santa Marta, Colombia received death threats from the AUC.⁸⁴ The IUF report indicates that an AUC letter dated March 25, signed by the Bananero Block of the Atlantic Coast AUC, stated that union leaders Osvaldo Carmargo, Eurípides Yance, Ramón Camargo, and Germán Cataño had been declared military targets as part of a final operation.⁸⁵

Violence marked the autumn of 2005. The ICFTU reported that on September 11, 2005, SINALTRAINAL leader and CICOLAC (Nestle) worker Luciano Enrique Romero Molina was found dead, bound hand and foot,

Law 142, enacted in 1994, authorized the suspension of collective bargaining agreements in industries slated for privatization, in violation of both Article 53 of the Constitution and ILO Convention 151. Pursuant to this law, the privatization of the electrical energy utilities CORELCA and ELECTRANTA resulted in the bankruptcy of the enterprise, significant costs to the government, and the dismissal of 2,100 workers with no severance pay and little hope of reemployment.⁹⁵ Another electrical utility, ELECTROLIMA, awarded sole-source contracts totaling \$27.5 million for energy production that exceeded demand. These contracts weakened a previously viable enterprise, threatening the payment of pension and severance benefits to its employees.⁹⁶ EMCALI, the public utility of the municipality of Cali, was loaded up with debt by the central government, forcing the retirement of 749 union members with minimal retraining.⁹⁷

As part of a privatization process that began in 1995, the Bogotá Telecommunications Enterprise (ETB) was converted in November 1997 into a 100 percent joint-stock company. The union, which opposed the privatization initiative, presented a list of demands for collective bargaining on October 24 1997. On November 4, the employer dismissed 20 union members and three union officers (including two of those who had negotiated the list of demands), all of whom were covered by trade union immunity (*fuero sindical*), allegedly for having instigated an illegal work stoppage. A lower court subsequently ordered reinstatement, but the Constitutional Court reversed this ruling.⁹⁸

According to Public Services International (PSI), the process of privatizing state water enterprises, financed by loans from the Inter-American Development Bank, has been designed less to reduce costs or improve service delivery than to eliminate workers' collective bargaining rights. Moreover, privatization has been accompanied by systematic violence, including the assassination of five union members.⁹⁹

Despite Colombia's ratification of the ILO conventions covering freedom of association and collective bargaining, Colombian workers clearly do not enjoy these rights in any meaningful way. The adoption of economic policies designed to open the country to foreign investment and to lower labor costs through promoting a union-free environment, combined with a business culture averse to negotiations with workers, and a justice system with impunity for those who commit anti-union violence, have together proven fatal to the exercise of these core labor rights.

Special ILO Mission Visits Colombia in 2005

In November 2004, four international trade union visitors traveling to Colombia to attend a November 2, Coordination and Cooperation Meeting were deported at the Bogotá airport: Victor Báez Mosqueira, General Secretary of ICFTU-ORIT (the regional ICFTU organization); Rodolfo Benítez, Regional Secretary of Union Network International (UNI); Antonio Rodríguez Fritz, Regional Secretary of the International Transport Federation (ITF); and Cameron Duncan, Regional Secretary of Public Services International (PSI). The ICFTU and the global union federations had arranged the meeting with the Colombian trade

unions. According to the ICFTU, officials from the Security Department (DAS) also harassed other international trade union representatives, including H el ene Bouneaud from the French trade union CGT, who was traveling to Colombia to attend the 4th Women's Congress of CUT; she was photographed, fingerprinted, and threatened with deportation.¹⁰⁰

In October 2005, a special ILO mission visited Colombia. It examined over 40 cases submitted by Colombian trade unions on violations of worker rights

by the government and the private sector. The mission's findings included recommendations for a number of measures, including the placement of a permanent ILO presence in Colombia to assist in a process to bring Colombia into compliance with core labor standards.



Endnotes

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- ⁸ *Id.*, p. 21.
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- ¹³ *Id.*, p. 25.
- ¹⁴ *Id.*, p. 9.
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- ²⁵ *Id.*, pp. 6, 7.
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²⁷ Id., Paragraph 538.

²⁸ For example, if the Ministry of Social Protection allowed a company to fire 50 workers without cause due to corporate financial problems (undermining collective bargaining negotiations in the process), the workers could seek a *tutela*, or injunction, from the Constitutional Court to suspend the Ministry's action pending determination of the company's financial status, arguing that the Ministry's permission poses an immediate threat to their labor rights. The injunction, which would be temporary, would establish what measures must be taken before workers could be fired without violating their rights. In this case, the company would have to demonstrate that it is truly in financial straits. The union uses *tutela* when labor law protections are not enforced.

Tutela applies in situations not related to labor law as well. For example, a homeowner whose house is condemned by the city so it can build a road through his or her property could seek a *tutela*, which would protect the homeowner until the city has complied with court-dictated measures.

The word *tutela* also has a more general meaning in the definition of labor law throughout Latin America, including Colombia. Labor law provides *tutela* to workers, or compensatory protection due to unequal power. Hence, labor relations should be governed by labor law, rather than civil or commercial law, which assume equal power, and thereby do not provide *tutela* to either party. The *tutela* that Uribe wants to eliminate is the right to seek an injunction as a specific remedy in the Constitutional Court.

²⁹ ILO Committee on Freedom of Association, Case No. 1787, Report No. 337 (June 2005), para. 539. Available at <http://www.ilo.org/public/english/standards/relm/gb/docs/gb293/pdf/gb-7.pdf>. para. 456.

³⁰ ILO, *Estudio Comparado: Tendencias y contenidos de la negociación colectiva: Fortalecimiento de las Organizaciones Sindicales de los Países Andinos*, Lima: 1998. ch. 1. Available at <http://www.oitandina.org.pe/publ/regional/doc88/>.

³¹ Alvaro Delgado, *Retos del sindicalismo colombiano* (February 2001), pp. 2-4. Available at www.fescol.org.co/Vlibrary/default.htm.

³² U.S. Department of State, *Country Report on Human Rights - 2005* (March 8, 2006). Available at <http://www.state.gov/g/drl/rls/hrrpt/2004/41754.htm>, p. 28.

³³ *Report to the 90th International Labor Conference* submitted by the Colombian trade union federations, June 3-20, 2002. Available at <http://www.ilo.org/public/english/standards/relm/ilc/ilc90/reports.htm>.

³⁴ Id. See also ILO CFA, Case No. 2226, Report No. 331 (2003) (dismissal of union members with the intent of replacing them with cooperatives).

³⁵ U.S. Department of State, *Country Reports on Human Rights Practices - 2005*, (March 8, 2006), Available at <http://www.state.gov/g/drl/rls/hrrpt/2004/41754.htm>, p. 30.

³⁶ *Report to the 90th International Labor Conference* submitted by the Colombian trade union federations, June 3-20, 2002. Available at <http://www.ilo.org/public/english/standards/relm/ilc/ilc90/reports.htm>.

³⁷ ILO Committee on Freedom of Association, *Report No. 322*, Case No. 2046 (2000), ¶¶ 111-112. ILO Committee on Freedom of Association, *Report No. 322*, Case No. 2046 (2000), ¶¶ 111-112.

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- ⁴⁵ Stefano Farné, *Employment and Working Conditions in the Colombian Flower Industry*, ILO Sectoral Activities Programme, Industrial Activities Branch, Working Paper, SAP 2.75/WP.129 (November 1998).
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- ⁴⁹ ILO, *Estudio Comparado: Tendencias y Contenidos de la Negociación Colectiva*, ch. 1.
- ⁵⁰ Id.; see Vásquez Fernández, *Contenidos y Tendencias de la Negociación Colectiva*, p. 6.
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CHAPTER 3

Discrimination in the Workplace, Child Labor and Forced Labor

Discrimination

Gender Discrimination

Colombia has ratified ILO conventions 111 (workplace discrimination) and 100 (equal remuneration). Its 1991 Constitution prohibits discrimination based on sex, race, national or family origin, language, religion, philosophy or political opinion. The Constitution obligates the state to adopt a proactive stance in order to eliminate discrimination. Moreover, the Labor Code includes provisions to prohibit workplace discrimination in general (Article 10), and specifically in remuneration (Articles 143 and 74).

However, the Labor Code does not fully comply with ILO Convention 100. It prohibits women from working in certain activities considered dangerous or too strenuous (Article 242), such as underground mining. It also fails to meet the guidelines on remuneration. The ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR) has repeatedly asked the Colombian government to amend its Labor Code to bring it into compliance:

“For several years the Committee has been pointing to the need to amend the Labor Code in order to establish expressly the principle of equal remuneration for work of equal value so as to bring the national legislation into conformity with the Convention. The Committee notes that Section 5 of Act No. 823 of 10 July 2003 establishing rules on equal opportunities for women

lays down a principle which is narrower than that of the Convention in that it refers to equal pay for "equal work" and not "work of equal value," and thus does not provide for the possibility of comparing work which is different but warrants equal pay. The Committee asks the Government to consider amending the above mentioned provision in order to bring it into line with the principle enshrined in Article 2, paragraph 1, of the Convention.”¹

In practice, Colombian women face serious obstacles to full and equal participation in the workplace. At a time when widespread violence has thrust many women into the role of breadwinner for their families, structural adjustment has dictated severe cutbacks in public spending, including in those programs designed to assist women in confronting these new responsibilities and to protect them from reprisals on the part of those whose interests are threatened by women's increasing participation.²

The 2005 U.S. State Department Country Reports on Human Rights Practices states that discrimination against women remained a persistent problem:

“Women faced hiring discrimination, were disproportionately affected by unemployment, and had salaries that generally were incompatible with their education and experience. Female workers in rural areas were affected most by wage discrimination and unemploy-

ment. Women also were affected disproportionately by the internal armed conflict, making up 58 percent of internally displaced persons in the country.”³

On average, according to a 2005 ENS study, women workers in Colombia receive 30 percent less in wages than male workers.⁴ Moreover, the majority of women in Colombia's labor force – some 60 percent – work within the informal economy, which is marked by a lack of worker rights and protections.⁵ Approximately 86 percent of workers categorized as self-employed are women.⁶ Thus women are disproportionately affected by the low wages, instability, and lack of worker protections that characterize informal work (see Chapter 2, p. 22).

The gender-based discrimination faced by women is well illustrated by Colombia's fresh-cut flower industry, which generates approximately \$600 million in export revenue per year (Colombia is the second largest fresh-cut flower exporter in the world, after Holland, and the largest supplier to the U.S. market). About 80,000 women work in the flower industry, comprising about 70 percent of its workforce. Most of the industry is located on the outskirts of Bogotá, in the Sabana region.

Female flower workers who become pregnant are routinely fired without benefits, including the 80-day paid maternity leave they are entitled to by law.⁷ CACTUS, a Colombian NGO, has advocated for years on behalf of flower workers, particularly in the Sabana region. Former Executive Director Laura Rangel discusses firing of pregnant workers in Tocancipa in a newspaper interview: “We deal with around 60 new cases every month, and well over half of them concern dismissal linked to pregnancy.”⁸

The article goes on to say that “Mother's Day may generate windfall profits, but the Colombian flower industry views pregnancy and motherhood as a 'crime' meriting instant dismissal.”⁹

Colombia has no laws prohibiting sexual harassment, and in 2005, it remained a pervasive problem.¹⁰ Colombian women are also victimized by restrictive abortion laws. Human Rights Watch reports that Colombian women who have abortions can face up to four and a half years in jail – even if they have become pregnant as a result of rape or if the pregnancy endangers their own lives.¹¹ In December 2005, the New York Times reported that a Colombian lawyer, Mónica Roa, has filed a lawsuit with Colombia's Supreme Court. The suit challenges the abortion law, seeking to legalize abortion when “a



mother's life is in danger, when the fetus is expected to die of abnormalities or when the pregnancy resulted from rape.”¹²

In addition to these types of challenges, women workers in Colombia may at times face job requirements that have nothing to do with their professional qualifications. For example, employers advertising for secretaries or receptionists in the newspaper may ask for someone who is “good-looking.” In a recent ad, for example, a prospective employer sought the following qualifications in an assistant: “young woman, tall, not over 21-years-old.”¹³

Discrimination Against “Community Mothers”

Despite its legal mandate to protect women from discrimination, the government itself actively participates in their exclusion by failing to recognize state-organized child care as a form of real work. Approximately 87,000 Colombian women work as “Community Mothers” in a program instituted by the Colombian government to provide child care for working mothers who cannot afford to pay for the service. Since the Colombian Institute for Family Welfare (ICBF) started the program in the mid-1980s, the demand has mushroomed, particularly as the armed conflict has left many women as the sole providers for their families. As of 2001, the service was reaching some 1.3 million low-income children.

In 1998, UNICEF, which helps fund the program, reported that,

“The \$55 million ICBF programme now reaches 60 percent of very needy children in 1,042 towns in a country where, according to figures provided by the

United Nations Development Programme (UNDP), one person in five gets by on less than two dollars a day....Each mother takes about fifteen children into her home and gets the equivalent of about half the legal minimum wage (about \$130 a month) and the right to social security and a pension. Apart from food for her group (which she can also give to her own children), the ICBF provides utensils and a few staple items. It also grants a small loan to install separate washing and toilet facilities for the children and to improve hygiene in the kitchen, the eating areas, the bedrooms and the courtyard, where the children spend most of their time. About a million and a half children, aged from two to seven, are looked after and socialized in this way before they go to school, while their real mothers are out at work.”¹⁴

Since 1995, the U.N. Committee on Economic, Social and Cultural Rights (CESCR) has requested that the Colombian government recognize the Community Mothers as salaried workers. The CESCR reiterated its request in 2001 at its sixty-fourth meeting. The representative of Colombia at the meeting asserted that the government had regularized their status by registering them with Social Security. Moreover, he complained that the program “had developed to such an extent that it had come to be viewed more as a program for the employment of women than for the assistance of children.”¹⁵

Though they may be registered with Social Security, the status of Community Mothers is anything but regular. The government refuses to recognize them for what they are: public employees providing a vital public service. It classifies them as volunteers, and pays them a stipend plus a “bonus” for each child they care for, all of which

amounts to half the minimum wage, and denies them the right to collective bargaining. The mothers themselves must contribute part of their pay to Social Security, or be denied health care for themselves and their families, and many can't afford to contribute.¹⁶ Writing for Colombia Journal Online, Victoria Maldonado described their struggle to get the state to recognize their labor rights:

“The struggle for Community Mothers' labor rights was born virtually with the creation of the programs in 1988. The Community Mothers are organized in three unions: SINTRACIHOBÍ [the Union of Welfare Home Workers], which was founded in 1988 in Ciudad Bolívar; the Association of Community Mothers for a Better Colombia (AMCOLOMBIA), which began in 1991; and the local District Movement of Neighborhood Homes (SINTRADISTRITALES), started in 1994. While these organizations differ in their approach, they agree completely in their final objectives: job stability, a legal minimum wage, social security and benefits. They also seek to improve the service of the Community Homes and Neighborhood Houses, to increase their outreach and to better the working conditions for the Community and Preschool Mothers.

“In August 2000, the combined union struggle reached a crucial point with the filing of a lawsuit before the Constitutional Court. The suit challenged the legality of the bonus given to the Community Mothers, and called for the recognition of the labor rights of the Community and Preschool Mothers' rights as workers. The suit focused on the bonus because ‘it violated the fundamental rights consecrated in the Constitution, and in the International Pact of the Economic, Social, and Cultural Rights [CESCR], the Convention

Against all Forms of Discrimination Against Women [CEDAW] and of conventions of the International Labor Organization, which the Colombian Government has ratified.’ The lawsuit received ample attention, with a hearing at a national level and a national meeting at which the Community Mothers themselves decided to endorse it.

“In January 2001, the court ruled against the lawsuit, very likely not wanting to commit itself to decisions that had to do with public spending.”¹⁷

Violence and Discrimination

ENS reports that in 2005, women trade unionists were victims of 15 murders, 102 death threats, 10 arbitrary detentions, 15 cases of harassment and persecution for union activity, two attempted murders, seven displacements and one kidnapping.¹⁸ The violence is not subtle; on April 1, 2005, Octavia Ramirez, a teacher and union member, died after being shot five times in front of her students. Adriana Francisca Padilla, a teacher and union member in Santa Marta who was eight months pregnant, was shot to death, along with her unborn child, on October 29, 2005.¹⁹

ENS analysts assert that violence against women union leaders and members must be read within a symbolic, political, and cultural context. Anti-union violence directed against women in Colombia is often generalized, trivialized, or simply attributed to gender discrimination. In this way, ENS points out, “union women end up being victims of two [types of] historical discrimination...they are affected by a patriarchal and chauvinistic culture that is also anti-union.”²⁰

Tribal Peoples Convention) and its own constitution to fully consult with indigenous people before approving projects that could negatively affect their lives and culture.²⁷ Indigenous communities have also been subject to forcible recruitment by illegal armed groups, restricted freedom of movement, and violence.²⁸

Child Labor

Colombia has ratified ILO Convention 138 on the Minimum Age for Admission to Employment and Convention 182 on the Worst Forms of Child Labor. Since 2002, the government of Colombia has been a member of the ILO's International Program on the Elimination of Child Labor (ILO-IPEC).

Colombia's constitution prohibits children under 14 from working in most occupations, as does the Labor Code, though there are certain exceptions under which 12- and 13-year-olds can be employed with permission from their parents and the labor authorities. The constitution makes school attendance compulsory for children between the ages of five and 15, and the government estimated that over eight million children between the ages of six and 15 attended school in 2005. However, although the government covered basic costs for primary education, many families had difficulty paying for school-related expenses such as matriculation fees beyond age 15, books, school supplies, and "transportation costs that often were prohibitive, particularly for the rural poor."²⁹

In addition, as is common throughout the developing world, many families in Colombia depend on income earned by their children to make ends meet, and child labor is a serious problem, primarily in the informal

economy, and especially in agriculture (including small production for commercial consumption). Children are also trafficked for sexual exploitation, and are forcibly recruited and used by paramilitaries and guerrillas as soldiers (see p. 52).³⁰

The Colombian Family Welfare Institute reported that at least 2.5 million children were working in Colombia in 2005; only one in five was believed to be working legally.³¹ Only 38 percent of working children attended school.³² The Colombian government itself estimates that almost 15 percent of Colombian children work outside the home.³³

According to the U.S. State Department, "Although children are prohibited from working in a number of specific occupations, including mining and construction, in practice, these requirements largely were ignored."³⁴ The



Colombian Institute for Children and Families reports that 300,000 children work in illegal mining operations.³⁵ Children also participate in the drug trade as coca-leaf pickers. The Women's Committee for Refugee Women and Children reports that,

“The use of child labor on coca (the raw material of cocaine) farms is also connected to the conflict through the central role that drug profits play in fueling the violence. In addition, reports from Colombia indicate that in many cases, the first contact that young people may have with armed groups is through their work harvesting coca leaves. Estimates of the number of child workers exploited as harvesters of coca leaf vary widely. The [Colombian Human Rights] Ombudsman reports an estimate of 200,000, versus a 700,000 figure cited by the U.S. State Department from a Catholic Church study. According to a 2001 study by UNICEF in Putamayo, 41,000 children under age 15 were working in coca leaf processing plants. Parish priests reported that up to 85 percent of the children in local schools in the area had chemical burns, which they most likely suffered during the processing of coca leaves, which requires the use of caustic soda and sulfuric acid.”³⁶

The Colombian government has a significant but inadequate infrastructure for enforcing child labor laws. According to the U.S. Department of Labor,

“The Ministry of Social Protection..., the ICBF [Colombian Institute for Family Welfare], the Minors' Police, the Prosecutor's Office for the Protection of the Child and Family, and Family Commissioners are the

“*Parish priests reported that up to 85 percent of the children in local schools in the area had chemical burns, which they most likely suffered during the processing of coca leaves, which requires the use of caustic soda and sulfuric acid.*”

entities authorized to implement and enforce the country's child labor laws and regulations. The Ministry of Social Protection is responsible for conducting child labor inspections, but the system lacks resources and is only able to cover a small percentage of the child labor force employed in the formal sector. The Ministry estimates that only five percent of workplaces that employ children obtain the required work permits.”³⁷

During the past year, the National Committee for the Eradication of Child Labor studied the issue and conducted training on legislation and enforcement.³⁸ In December 2005, it was instrumental in presenting new legislation that prohibited children from performing 104 types of work considered unsuitable for children under 18.³⁹ The legislation was passed, but the government's enforcement system will have to be strengthened in order for the new law to be effective in curbing child labor.

Forced Labor

Colombia has ratified both ILO conventions 29 and 105, the standards that deal with forced labor. However, the recruitment of child soldiers by paramilitary and guerrilla groups is a significant problem. In 2005, according to the U.S. Department of State's Country Reports on Human Rights Practices, although “there were no reports of

forced child labor in the formal economy, several thousand children were forced to serve as paramilitary or guerrilla combatants, . . . prostitutes, . . . or coca pickers.”⁴⁰ In addition, paramilitaries and guerrillas reportedly used forced labor, including child labor, in areas outside government control.⁴¹

A Human Rights Watch study describes the brutalization of child soldiers, some as young as eight:

“These children had special duties, like ferrying supplies and information, acting as advance early warning guards, or even carrying explosives. . . . By the time they are thirteen, most child recruits have been trained in the use of automatic weapons, grenades, mortars, and explosives. In the guerrilla forces, children learn how to assemble and launch gas cylinder bombs. In both the guerrillas and paramilitaries, they study the assembly of land mines, known as ‘foot-breakers’ (quiebrapatras), then apply that knowledge by planting deadly killing fields. Usually, their first experience of combat comes soon after. . . .”

“Children do not only risk their lives in combat. They are also expected to participate in the atrocities that have become a hallmark of the Colombian conflict. Human Rights Watch interviewed children who, as trainees, were forced to watch captives being tortured. Others were made to shoot captives as a test of valor. Some participated in assassinations of political figures and in ‘social cleansing’ killings of drug abusers and petty thieves. Still others were ordered to execute comrades – even friends – captured while trying to run away.”⁴²

While the Colombian army no longer recruits minors, it still employs them as informants, potentially placing their lives at risk.⁴³

Women, Children Trafficked To Europe, Asia for Sex

In addition to these issues, the trafficking of women, girls, and in some cases, boys, for the purpose of sexual exploitation is a significant and growing problem in Colombia. Although the law prohibits trafficking in persons, reports indicated that people were trafficked from, through, and within the country.⁴⁴ The 2005 U.S. State Department Country Reports on Human Rights Practices notes that Colombia is:

“a source for trafficking in persons, primarily for sexual purposes. . . . Destination countries included Spain, Japan, Hong Kong, the United States, and other South American countries. The vast majority of trafficking victims were young women, although children and young men were also at risk. Internal trafficking of women and children from rural to urban areas for sexual exploitation and forced labor remained a serious problem. Victims also transited the country from other South American countries on their way to Europe and the United States.

“Many traffickers disclosed the sexual nature of the work they offered but concealed information about working conditions, clientele, freedom of movement, and compensation. Others disguised their intent by portraying themselves as modeling agents, offering marriage brokerage services, or operating lottery or bingo scams with free trips as prizes. Recruiters

reportedly loitered outside high schools, shopping malls, and parks to lure adolescents into accepting nonexistent jobs abroad. Most traffickers were well-organized and linked to narcotics or other criminal organizations. The armed conflict created situations of vulnerability for a large number of internal trafficking victims.”⁴⁵

Outlook Compromised by Armed Conflict

In December 2001, the Mayor of Bogotá instituted an 11:00 PM curfew for minors in order to fight child prostitution.⁴⁶ Such measures, however, ignore the fact that thousands of children continue to live on the streets of

Bogotá and other Colombian cities because of poverty and forced displacement.⁴⁷

The outlook for women workers, Afro-Colombian and indigenous peoples, and Colombia's children is increasingly compromised by the armed conflict in Colombia. Until Colombia takes decisive steps to end the conflict, restore the rule of law, and direct attention toward ending discrimination, forced labor, and trafficking – in addition to supporting the needs of its most disadvantaged workers and educating its children – the country will continue to place its own future at risk.

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CHAPTER 4

Advancing Worker Rights in Colombia

Prospects for Peace: the Colombian Government's Strategy

Colombia is not in compliance with ILO core labor standards on freedom of association, the right to organize and bargain collectively, and the elimination of discrimination, child labor, and forced labor. In fact, Colombia is not even in compliance with the most basic human rights. Accordingly, achieving respect for worker rights in Colombia will require not only addressing the typical needs of reforming labor law to meet international core labor standards while improving enforcement. It will also require an end to the violence and impunity stemming from a protracted armed conflict that has degenerated into military camps eager to protect their drug profits. Carlos Gaviria, a Colombian senator and Uribe critic, warns that impunity cannot be part of a just peace:

“I believe in the search for peace through negotiation and dialogue. This does not mean that peace should be sought at any price. If we are going to rebuild our destroyed society, the message can't be that it can be rebuilt from a base of impunity.”¹

Since late 2002, the number of trade unionists murdered each year in Colombia has fallen significantly. According to ENS, 70 trade unionists were murdered in 2005, while 94 were killed in 2004, 91 in 2003, and 184 in 2002.² The U.S. Bush administration asserts that the decrease in trade union murders is due to the Colombian government's increased efforts to enact protection measures for threatened union members.³ While a welcome develop-

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ment, the drop does not appear to be linked to a decrease in threats and displacements of unionists, nor to any serious efforts to address impunity – two essential factors in building a sustainable response to violence and human rights abuses.

A more likely explanation for the decrease is that it reflects a change in tactics by paramilitary groups, probably for two reasons. First, violence against trade unions has attracted much international attention in the last several years, embarrassing the government, which has pressured paramilitary groups to reduce violence against this particular civilian target. Secondly, in late 2002, the Colombian government offered to negotiate a peace accord with the paramilitaries. The AUC responded by announcing a unilateral ceasefire as part of its effort to obtain amnesty for its past crimes.⁴

After Uribe assumed office, the government itself increased its role in repressing unions through arrests and the application of laws that restrict union activities. For example, on August 21, 2003, in the city of Saravena (located in the oil-rich Arauca Department in one of the Rehabilitation and Consolidation Zones), soldiers and police began kicking in doors at 4:00 a.m. and arresting people. At least 2,000 people were detained, although

only 85 people were officially arrested. Thirty-five were released without charges; 40 of the remaining 50 were trade unionists, accused of collaborating with the insurgency.⁵

The Arauca repression continued in 2004 when, on August 5, soldiers of the Reveiz Pizarro mechanized group, a unit of the Colombian army, murdered three well-known Arauca trade union leaders: Leonel Goyeneche, treasurer of the Arauca branch of CUT; Jorge Eduardo Prieto, local president of the health care workers union, ANTHOC; and Héctor Alirio Martínez, local president of the agricultural workers union, ANUC. The soldiers also arrested Samuel Morales Flores, president of the Arauca branch of CUT, and Raquel Castro, a member of the Arauca teachers union, ASEDAR. The Inter-American Human Rights Commission had ordered the Colombian government to provide protective measures for two of the victims prior to their murder.⁶

In July 2005 the prosecutor general indicted Commander of the Mobile Battalion Reveis Pizarro; Colonel Luis Francisco Medina; Captain Luis Eduardo Castillo; Captain Hisnardo Alberto Zambrano of the army's 18th Brigade; and one civilian for their role in the Arauca killings. The case was still in progress at the end of 2005. In addition, in September 2005, the Office of the Inspector General opened a disciplinary investigation on the case regarding the actions of a colonel, a second lieutenant, and three soldiers in the Pizarro group. The investigation was still open at year's end.⁷

It remains to be seen whether the government will be able to halt the killing of trade unionists and bring their murderers to justice. Its failure to do so would be not

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only tragic, but would also bode ill for the development of civil society and democratic institutions in Colombia. Elections alone do not confer the status of democracy. The elimination of grassroots voices that represent workers and their families destroys Colombia's opportunity to build a peaceful, just society where citizens do not have to fear death when they go to work. By condoning the ongoing practice of murdering and threatening trade



unionists, Colombia is turning its back on the rule of law, and its best hope for democratic growth.

U.S.-Colombia Engagement: Colombia Third in U.S. Military Aid

Since the late 1990s, the U.S. government, with bipartisan support, has become increasingly involved in Colombia's counterinsurgency conflict. Before September 11, 2001, the U.S. linked its Colombia policy to the U.S.-led war on drugs and Colombia's long-standing internal armed conflict. Since then, the U.S. war on terrorism has entrenched the policy of providing massive aid to Colombia's military forces. Colombia is now the third largest recipient of U.S. military aid, after Israel and Egypt.

However, it is unlikely that a focus on military aid will either bring peace or halt the drug trafficking. The root causes of Colombia's complex internal conflict lie more in longstanding social inequities than in international terrorism or the drug trade. And while it is true that the drug trade has infiltrated every facet of Colombian politics, diverse sources suggest that policies aimed at reducing the demand for illicit drugs in the U.S. and Europe would be more effective than military solutions in the struggle against drug trafficking.⁸

In 2000, the U.S. government began funding Plan Colombia, a controversial Colombian government initiative that combined counterinsurgency and anti-narcotics activities with limited economic reconstruction programs. The U.S. government supported the idea as a means through which the international community, and especially the U.S., could support the Colombian peace

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process. The initiative began with a primary focus on counter-narcotics, and the Clinton administration assured Congress that the U.S. would not involve itself in Colombia's counterinsurgency operations.⁹

Nonetheless, in 2002 the Bush administration added counter-terrorism to its list of purposes for Plan Colombia. Given that both of Colombia's major guerrilla groups, as well as the paramilitary AUC, are listed by the U.S. Department of State as foreign terrorist organizations, the change in purpose effectively involves the U.S. directly in Colombia's decades-old internal armed conflict. As the Washington Office on Latin America (WOLA) put it:

"The risk of escalation is magnified by Bush administration rhetoric depicting Colombia as a crucial theater in the post-September 11 'war on terror.' Such language obscures the true nature of the Colombian conflict... [and] ...fosters the misunderstanding that deeper U.S. military engagement in Colombia is justified - indeed, even required - as part of the effort against al Qaeda and its offshoots. But the Colombian conflict has its own history and dynamic. ... The internal armed conflict in Colombia is, and should be, of great concern to the United States, and high priority should be placed on finding ways to bring an end to the conflict and to minimize the bloodshed in the meantime. But casting

Colombia as a battlefield in the global war on terror will not facilitate reaching these goals.”¹⁰

In 2003, the Bush Administration expanded U.S. military engagement in Colombia to provide aid and U.S. troops to help protect the Caño Limón–Coveñas oil pipeline, which carries oil from the Caño Limón oilfield in Arauca to the Atlantic Coast. U.S.-based Occidental Petroleum owns over 40 percent of the oil that flows through this pipeline. This was the first time that a U.S. aid package for Colombia included funds to protect private corporate infrastructure.¹¹ Some observers have suggested that oil may be as significant a factor as cocaine in influencing U.S. policy on Colombia.¹²

In 2004, Congress increased the number of U.S. troops that can be stationed in Colombia from 400 to 800, marking a U.S. military escalation there. At the same time, Congress increased the allowable number of U.S. civilian contractors from 400 to 600.

Since its inception, the bulk of U.S. aid under Plan Colombia has consisted of military and police aid. Overall U.S. aid to Colombia between 2000 and 2004 totaled over \$3.2 billion, more than \$2.5 billion, or 80 percent, in military and police aid.¹³ Although Plan Colombia officially ended after September 2005, the Bush Administration has requested and received funding for the next fiscal year that is on par with previous years, marking the initiation of the second de facto phase of Plan Colombia.

The international community doubtlessly has a large role to play in promoting peace in Colombia. However, many

human rights advocates view Plan Colombia as ineffective because it identifies narcotics trafficking and terrorism as root causes of the conflict, while ignoring the key role played by the Colombian government historically and at present. They believe that military and police aid, the largest component of U.S. aid under Plan Colombia, can only exacerbate the armed conflict under current conditions.

Current U.S. policy ignores the eventual political impact of providing financial support to a Colombian military which abuses that support by remaining closely linked to the paramilitary groups responsible for most of the killings of trade unionists and other human rights defenders. People cannot build a democratic system based on the rule of law if the majority of the authorities around them abuse power, fail to protect their rights, and are responsible - whether directly or indirectly - for killing innocents and crushing the voices that call for human rights. As CUT Executive Committee member Alfonso Velasquez has stated, “The most important thing that North American activists seeking to support trade unions in Colombia can do is to work to change U.S. policy towards Colombia, especially its emphasis on military and police aid.”¹⁴

U.S. Trade Policy: Proposed Labor Text a Major Setback

In the context of massive violations of the rights of trade unionists and other human rights defenders and a long-standing, complex armed conflict, the current U.S. administration is seeking to expand trade with Colombia, citing in part the need to offer export alternatives to drugs. Colombia, along with Ecuador, Bolivia and Peru,

receives duty-free benefits under the Andean Trade Preference and Drug Eradication Act (ATPDEA) as well as the Generalized System of Preferences (GSP).

Both trade programs contain worker rights clauses mandated by the U.S. Congress which have provided potential leverage for improving worker rights in Colombia. The ATPDEA and GSP require the government of Colombia to be 'taking steps' to afford internationally recognized workers' rights. But even under the most charitable interpretation of the law, Colombia has failed to meet its obligations to afford these rights under both programs.

On February 27, 2006, the U.S. and Colombian governments concluded negotiations for the U.S.-Colombia Free Trade Agreement (FTA). The negotiations were contentious and marked by massive protests in the region by farmers, peasants and workers.

The labor provisions of the U.S. – Colombia FTA, like those of the Central American Free Trade Agreement (CAFTA), represent a major step back from those contained in ATPDEA and GSP, requiring compliance only with national law rather than with ILO standards. The FTA includes some transparency measures, such as open public hearings, public release of legal submissions by parties, special labor expertise, and opportunities for third parties to submit views. The FTA does provide for monetary penalties for enforcement. However, like CAFTA, the modest fines allowable for labor violations are weaker than remedies available for violations of commercial provisions. In addition, since any fines collected are returned to the violating country under

vague terms, the provisions fail to ensure that the violations will be remedied, that meaningful trade sanctions can be applied if fines are not paid, or that overall enforcement of labor rights will be strengthened.

The administration has also included some controversial investor-protection language based on that included in the North American Free Trade Agreement (NAFTA) in the free trade agreement with Colombia. NAFTA's provisions allow multinational and local corporations to sue governments for enacting laws that threaten their potential profits.¹⁵ These and other provisions undermine democracy and each nation's ability to protect its internal interests, and provide a further incentive for governments to weaken laws that protect worker rights, the environment, or public health.¹⁶

Colombian Unions Link Policies To Repression of Workers

Colombian trade unions have often asserted that U.S. aid, trade, and investment policies contribute significantly to the repression of workers in Colombia. They believe that these policies are intimately linked to the violence and impunity that plague their movement. They oppose the proposed FTA because the agreement will strengthen and solidify economic policy measures – supported by the U.S. and the multilateral financial institutions – that have already had an adverse economic impact on Colombia and weakened worker and social protections. The unions say that continuing down this road will lead to further deindustrialization and social exclusion in Colombia. Testifying before the U.S. Trade Representative (USTR) in March 2004, Carlos Rodríguez, President of CUT,

stated that the free trade agreement will “asphyxiate our economy and dilute labor rights.”¹⁷

The disconnect between U.S. democracy promotion policy and U.S. practice in other policy areas continues to drive a wedge between the U.S. and the Colombian civil society organizations that could help bring about the peace that each desires. Today, deepening U.S. government engagement in Colombia through major increases in military aid, a new trade initiative, and extensive U.S. investment in the country provides direct U.S. linkages to the worker rights situation in Colombia. Because its foreign aid is so substantial in Colombia, the U.S. has unique opportunities to encourage both the peaceful resolution of the conflict and a climate that supports freedom of association in Colombia. Conversely, the U.S. will bear substantial responsibility if its policies contribute toward making the situation worse.

By excluding meaningful labor rights protection mechanisms, free trade agreements between the U.S. and developing countries are likely to fuel the downward spiral in global wages and employment prompted by the global corporate search for the cheapest wages and lowest (usually called flexible) labor standards for their production. However, the U.S. can still choose to use its considerable leverage to promote democratic development by demanding that its trading partners in the developing world increase their respect for labor rights in exchange for enhanced access to the U.S. market. In the words of Sandra Polaski, Senior Associate at the Carnegie Endowment for International Peace,

“Bilateral trade agreements that include labor protections can produce important improvements in outcomes for the developing country party to the agreement, since the increased access to a rich country market and tariff reductions can offset incentives for producers or buyers to go to other countries that allow labor rights violations but have lesser market access. Regional trade-labor agreements offer similar benefits, but on a broader scale. Ultimately, an enforceable multilateral worker rights regime at the global level would be the optimal scale to distribute the gains from trade more broadly across and within countries around the world. Such a regime would allow developing countries themselves to ensure that competitors did not cheat through unacceptable worker exploitation.”¹⁸

Role of Multinational Corporations Examined

The push to ratify a free trade agreement that will expand foreign investment in Colombia comes at a time when serious questions have already arisen about the role of U.S. multinational corporations there. It has long been understood that foreign companies have provided protection payments to paramilitary and guerrilla groups, depending on which group is charged with protecting company operations in a particular geographical territory. Ron Oswald, general secretary of the International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations (IUF), which has affiliates in Colombia, explains:

“It's certainly a common understanding that in order to do business in Colombia, payments have to be made

for at best security, or at worst extortion. The alternative, of course, is not to do business in Colombia.”¹⁹

In May 2004, Chiquita Brands International, the world's largest banana company, became the first company to acknowledge protection payments when it revealed that it has been the subject of a U.S. Department of Justice investigation into this practice. The company said it alerted the Justice Department to the payments back in April 2003 when it became aware that the recipient of the payoffs was on the State Department's list of foreign terrorist organizations and that such payments were therefore against the law. The majority of Chiquita's banana production in Colombia has been located in the Urabá region of Antioquia Department, where the AUC paramilitary group is active.²⁰

Worse, some reports indicate that U.S.-based multinationals have collaborated with the AUC paramilitary group in Colombia (designated by the U.S. Department of State as a foreign terrorist organization) in order to deny their workers the right to organize trade unions and bargain collectively, including through the use of murder, torture and kidnapping. Human rights and labor organizations in the United States, including the International Labor Rights Fund (ILRF) and the United Steelworkers (USW),²¹ have assisted the families of murdered trade unionists and their colleagues in seeking redress against multinationals under the Alien Tort Claims Act (ATCA), which permits aliens to sue in U.S. courts for harm caused by violations of international human rights norms.

For example, as discussed in Chapter Two, SINALTRAINAL, the estate of a murdered trade unionist and

several other union leaders have sued Coca-Cola, its Colombian subsidiary and one of its Colombian bottlers under the ATCA over the defendants' alleged involvement in the murder.²² The estates of three murdered trade unionists have sued the Alabama-based Drummond Company under the ATCA, alleging the company's active support of paramilitaries who murdered three trade unionists at a company-owned Colombian mine.²³ In addition, family members whose relatives were killed during an aerial security raid by the Colombian military to protect Occidental Petroleum's oil pipeline in Santo Domingo (a co-venture of the company and the Colombian government), have sued Occidental Petroleum and its security firm, AirScan, over their alleged participation with the military in carrying out the raid.²⁴

Workers at multinational corporations from other countries have also been impacted by Colombia's climate of anti-union impunity. According to the food-industry workers' union, SINALTRAINAL, at least 10 leaders and activists at Nestle operations have been murdered since 1986.²⁵ The latest was Luciano Enrique Romero Molina, a union leader who received threats and was subsequently found dead, bound and with evidence of torture and stab wounds (See Chapter 2, p. 35).²⁶

Many foreign companies have investments in the Colombian oil industry, which depends on military control for its smooth operation. REPSOL-YPF (a Spanish oil company), for example, operates the Caño Limón-Coveñas oil pipeline with U.S. based Occidental Petroleum, and has expanded oil production in the conflict-plagued Arauca Department, where the oil

workers' union, USO, finds it all but impossible to organize new workers because of the paramilitaries' ubiquitous presence. The conflict has promoted environmental devastation in the region and increased military and paramilitary repression of the local population. Both the ELN and FARC guerrilla groups have attacked the Caño Limón-Coveñas oil pipeline hundreds of times since it started operating in 1986, resulting in the spilling of some 2.5 million barrels of oil onto the ground and into rivers.²⁷

Next Steps for Worker Rights

Despite the grave nature of the current situation, substantial steps can be taken now to improve respect for worker rights in Colombia. While the role of Colombian workers is paramount in advocating for their rights, the role of the Colombian government, with the support of the U.S. government and the international community, is critical. Multinational employers, international financial institutions, and the international trade union community can also play key roles in ensuring respect for worker rights. Ultimately, however, ensuring respect for worker rights in the Colombian context cannot be separated from securing a just peace and building a new society based on civil liberties, the rule of law, the participation of civil society, and accountable governance.

The Role of the Colombian Government

The Colombian government can halt human and worker rights violations and ensure respect for worker rights by bringing its law and practice into harmony with core labor standards. The most important steps would ensure compliance with principles of freedom of association and

the right to organize and bargain collectively in the following ways:

- Protect workers' right to freedom of association and the right to organize and bargain collectively by applying and enforcing ILO Conventions 87 and 98 in law and practice as follows:
 - Protect the human and civil rights of trade unionists by:
 - Immediately severing all ties between the military and paramilitaries, beginning with the specific cases identified in the reports of human rights organizations;
 - Enhancing protection programs for union leaders by providing adequate funding, improving inter-institutional coordination, developing clear criteria and procedures for risk evaluation and provision of protective measures, protecting confidentiality of records, improving transparency of decision-making, and ending delays in the delivery of needed protection services;
 - Investigating, arresting, prosecuting, convicting, and punishing the persons responsible for the killings of approximately 4,000 trade unionists since 1986. The Human Rights Unit of the Attorney General's office must be given a clear mandate, autonomy, adequate protection, and resources to prosecute violations of trade unionists' human rights including assassinations, attacks, kidnappings, and threats; and

- Ensuring that the demobilization of illegal armed groups is not carried out in such a way as to deny victims their right to justice and reparations.
- Work cooperatively with the ILO, based on the findings of its October 2005 mission, to develop and implement a process aimed at bringing Colombia into compliance with core labor standards.
- Eliminate obstacles to legalizing unions and enforce the right to organize and bargain collectively by:
 - Enforcing constitutional provisions implementing ILO Conventions 151 and 154 and those that prevent employers, including state employers, from using subcontracting, collective pacts, and cooperatives to undermine freedom of association and collective bargaining. This includes the elimination of mechanisms such as changes in the definition of company production units and in apprenticeship contracts, which limit the right of workers to bargain collectively;
 - Effectively regulating the use of labor subcontracting and temporary, civil, and commercial contracts, to prevent their use to impede freedom of association or to avoid labor law protections of workers and employer responsibilities;
 - Promoting collective bargaining, including bargaining at the industry level, with ILO technical assistance;
 - Enacting and enforcing legal reforms to guarantee the rights of public sector workers to bargain collectively and to strike, defining clearly which public services are “essential” in accordance with ILO standards, and establishing an impartial mechanism for determining the legality of strikes; and
 - Reforming Article 417 of the Labor Code, which prohibits strikes by second and third level organizations (federations and confederations), ostensibly to avoid political strikes. This provision does not allow unions federated within a sector-specific organization to strike for sector-wide conditions, or to strike in support of other unions of the same sector in conflict.
- Reform law 790 of 2002, which eliminated the Ministry of Labor and relegated labor oversight to a department of the Ministry of Social Protection (MSP). Then, restore the abolished Ministry of Labor and strengthen its capacity to inspect workplaces, enforce labor laws, and promote tripartite resolution of conflicts.

The Colombian government can also promote compliance with core labor standards on the elimination of discrimination, child labor, and forced labor by taking the following steps:

- Eliminate gender, ethnic and racial workplace discrimination in law and practice as follows:

- Amend the Labor Code, in accordance with ILO recommendations, to establish expressly the principle of equal remuneration for work of equal value;
 - Enforce laws against sexual discrimination, applying sanctions that serve as deterrents to offenders;
 - Restore funding or develop new initiatives for programs designed to assist women in confronting their new responsibilities as breadwinners and to protect them from reprisals by those whose interests are threatened by their increasing participation in economic activity;
 - Recognize state-organized child care as a form of real work, in particular recognizing child care workers (“Community Mothers”) as public employees providing a vital public service, with full salaries, benefits, and collective bargaining rights; and
 - Enforce the 1994 resolution restricting the requirement for pregnancy tests to obtain employment in the public and private sectors, and impose adequate sanctions that serve as deterrents to employers who violate the law by refusing employment to pregnant women, firing pregnant women, or depriving them of their legal paid maternity leave.
- Apply and enforce ILO core labor standards to eliminate child labor and forced labor as follows:
 - Effectively enforce national laws restricting child labor, with ILO technical assistance;
 - Strengthen the enforcement system for child labor laws, including an increase in the number of trained child labor inspectors and the resources they need to conduct inspections;
 - Improve the enforcement of laws that protect children from dangerous work, through administrative and judicial procedures and the application of sanctions that serve as deterrents for offenders;
 - Adopt measures and direct resources toward programs that help eliminate obstacles that keep children from going to school, including education subsidies and employment training and job creation programs for parents;
 - Demonstrate respect for Colombia's children by taking decisive measures to halt the recruitment of child soldiers by paramilitary and guerrilla groups. Fund programs that support their re-integration with society and preparation for non-violent life. In addition, halt the employment of children as army informants; and
 - Work with governments of destination countries for trafficking in persons to end the trafficking of Colombian women, children, and young men.

The Role of Colombian Workers

Colombian workers play and can continue to play a significant role in building the institutions that create and sustain respect for and compliance with fundamental worker rights in the following ways:

- Seek effective strategies to organize new members and bargain on their behalf, combining national mechanisms for protection of labor rights with international instruments and a global spotlight on Colombia to ensure better possibilities of survival of both the organizations and the workers themselves, when they choose to exercise their right to freedom of association.
- Continue the process of unification and trade union restructuring to create a united union movement that represents workers at the workplace, before their industry and sector-wide counterparts, and on the national policy-making level.
- Formulate and advocate technically sound positions and proposals on public policies impacting Colombian workers, including national wage setting, labor law reform and application, issues of threats and violence against unionists, protection of fundamental human and labor rights, trade policy and negotiations of trade agreements, policies on the military and paramilitary forces in Colombia and others.
- Build national and international alliances with unions, labor support organizations, human rights NGOs, solidarity groups, academics and others to fortify common positions on issues affecting workers, including human and labor rights violations, trade agreements, and Colombian and U.S. policies on the military and paramilitary actors operating inside Colombia.
- Work through ICFTU / ORIT, the global union federations, and the workers' group at the ILO to sustain an

ongoing focus on violations of workers' fundamental rights in Colombia and to bring about pressure to implement sustainable structural remedies.

- Where broadly supported by the labor movement, make use of worker rights compliance mechanisms in existing trade programs (such as ATPDEA and GSP) to improve protection of worker rights in Colombia.

The Role of the U.S. Government

Steps the U.S. can take to promote peace and worker rights in Colombia include:

- Reshape U.S. foreign assistance strategy and trade policy to aim more directly at facilitating the end of the conflict and the rebirth of respect for basic worker rights in Colombia. Specifically, this means:
 - Terminate military aid to Colombia and support programs and policies that promote democratic education and reform, particularly those that:
 - Build accountability among the judicial, legislative, and executive branches of government, the military and police;
 - Build capacity among nascent and struggling civil society organizations (including trade unions) and enforcement and inspection agencies;
 - Provide resources for public education on conflict resolution and human and worker rights and for programs to train national, regional, and local

government officials on the practical application of those principles.

- Provide help for the re-integration into society of children who have been trained to live a violent life;
 - Provide resources to assist women who are new entrants into the workforce; and
 - Encourage and enable families to keep their children in school;
- Condition other economic aid on significant improvements in respect for human rights, including significant steps to end impunity and worker rights violations;
 - Balance economic development policy with democratic development imperatives, ensuring that the U.S. does not encourage the pursuit of economic development at the expense of democratic institutions, including independent trade unions;
 - Redirect the U.S. war on drugs to address consumer demand in the U.S. through increased funding for drug treatment for low-income users; more public support for drug awareness education; increased funding for public education; and public policies geared towards full employment;
 - Renegotiate the U.S.- Colombia Free Trade Agreement to strengthen the worker rights provisions as follows:
 - Negotiate a strengthened labor rights chapter that binds Colombia to maintain its laws in compliance with ILO standards and not to weaken those laws in order to increase trade or investment;
 - Negotiate stronger and more effective dispute resolution and enforcement procedures. Such procedures should be the same as those used to enforce the commercial provisions in the agreement and should be designed to ensure that violations are remedied and that penalties are strong enough to serve as deterrents; and
 - Establish a cooperative effort between U.S. government agencies, members of Congress, unions, and human rights organizations to develop a list of the changes necessary to bring Colombian labor law into compliance with ILO core labor standards, and the changes needed to address enforcement and impunity problems in the region.
 - Hold U.S. multinational corporations in Colombia accountable through available legal means for any participation in violence against trade unionists; and
 - Intensify efforts to bring U.S. laws and practices into conformity with core labor standards, thereby exercising leadership by example.

The Role of the International Community

The international community, particularly the donor community, can also play a highly significant role in encouraging a peaceful settlement of the conflict in

Colombia and the development of an environment where worker rights can thrive. First, donor countries can assess how well they are enforcing their own laws aimed at the elimination of drug and human trafficking. Remedial measures should seek to diminish internal demand for drugs or trafficked workers, improving the enforcement of existing laws against trafficking, or strengthening such laws where needed.

Donors can also evaluate their foreign assistance policies to ensure that their foreign aid strategies are not, however unintentionally, contributing to the violence in Colombia, and can increase support for the strengthening of civil society development and accountability in government institutions. They can also encourage the multinational companies based in their countries to respect worker rights wherever they operate abroad.



As ILO members, donor countries can be responsible global citizens by ensuring that their bilateral policies in every sphere promote respect for and enforcement of human and worker rights. In addition, as participating members of international financial institutions, they can support economic development policies that do not sacrifice democratic development for anticipated short-term economic gains. Instead, they can support the pursuit of economic development hand-in-hand with democratic development and political stability, with integrated strategies that work toward strengthening democratic institutions around the world.

The Role of Multinational Corporations

Multinational companies have an inherent interest in promoting sustainable economic growth and stable governance to secure their own long-term prosperity. The past century's history does not provide a good track record of sustained economic prosperity for governments that systematically repress human rights. Democracies, on the other hand, with thriving trade union movements, have traditionally provided the best terrain for sustainable economic growth and political stability. Therefore multinational companies can promote worker rights not only from an ethical standpoint, but a pragmatic one. Ultimately, what's good for workers will also be good for business.

Recognizing these principles, multinational companies must not use any violent or terrorist organization or any government authority to curtail the formation of unions or thwart workers' efforts to exercise their fundamental worker rights. Rather, they can denounce the use of

violence by any entity. Companies can also allow their own employees to fully exercise their rights without discouraging them from doing so or interfering in any way. This includes allowing workers to hold meetings without management presence, harassment, or interference, providing on-site space for union meetings, allowing workers to elect their own representatives, and engaging with those representatives in a good faith effort to bargain, all without fear of retaliation. Similar policies can be required of all business partners up and down the supply chain.

Companies with codes of conduct that call for respecting worker rights can enforce them, and, in cases where codes do not meet core labor standards, can strive to exceed them. They can promote greater transparency in their operations, and actively search for ways to end any practices that have fed corruption, such as bribing government officials or others. They can change anti-union regulations or practices, and be open to the work of human and labor rights organizations that evaluate their workplace practices. Companies that do not have codes of conduct can make every effort to ensure that their policies and practices comply with core labor standards.

Finally, companies can encourage the Colombian government to enforce worker rights, to reform the laws that are not in compliance with ILO core labor standards, and to develop mechanisms of accountability that diminish the pressure to contribute to corruption. In some cases companies have resolved specific labor conflicts through good-faith negotiations with their

workers, pointing towards the possibility of significant advances in Colombian labor relations.²⁸

The Role of Trade Union Solidarity

The international labor movement can also help Colombian workers secure freedom of association, the right to organize and bargain collectively, and end discrimination, child labor, and forced labor in numerous ways. Union observers have identified the following areas as key:

- Support the efforts of the ICFTU/ORIT to raise worker rights issues with the Colombian government and communicate with ORIT regarding their progress.
- Support efforts of global union federations (GUFs) to increase bargaining power for workers among individual companies in Colombia.
- Strengthen domestic and international alliances, networks, and coalitions among unions, labor NGOs, human rights groups, legal advocacy organizations, other civil society organizations, and the academic community to support worker rights along with an end to violence in Colombia. U.S. trade unions and others should stand behind Colombian trade unionists in their struggle for human and worker rights.
- Expand cooperation to promote the inclusion of respect for worker rights in bilateral, multilateral, and global trade agreements, and to encourage international financial institutions to support economic reform policies that protect human and worker rights.

- Assist the Colombian trade union movement in making full use of international mechanisms to draw attention to the plight of workers in Colombia, including ILO and U.N. complaint processes, trade provisions that require respect for worker rights, as well as tracking companies' compliance with OECD Guidelines for Multinational Enterprises and their own corporate codes of conduct.
- Respond to requests of Colombian trade unions for assistance in building expertise and capacity and, while violence is still the predominant form of governance, give protective support for workers who seek to exercise their basic union rights.
- Intensify efforts to bring U.S. laws and practices into conformity with core labor standards, thereby exercising leadership by example.

Colombia in the 21st Century

Today, for many observers in the outside world, Colombia represents an image of chaos and violence, a country that kills its own and displaces massive numbers of its people who flee the ravages of armed conflict. For trade unionists around the world, Colombia is also known as the most dangerous country in which to operate. To ensure respect for worker rights in Colombia and an end to violence against trade unionists, Colombia must negotiate a just peace, build a fair economy, establish the rule of law, and create a democratic environment, with the support of the international community.

Achieving this will require courageous commitment to change by the Colombian government, ongoing representation of workers' interests by Colombian unions, and decisive steps on the part of all other actors in Colombia's political and economic life. This is especially true of the U.S., which must rethink its war on drugs to grapple with the domestic consumer demand that fuels the armed conflict in Colombia. These are not easy or overnight tasks. But until sincere efforts are made, the hopes of Colombian workers for peace, prosperity, and

Endnotes

- ¹ Gary Marx, "Militias Told to Give Up Guns, Way of Life," *Chicago Tribune*, November 26, 2003.
- ² Escuela Nacional Sindical, *Informe sobre la Violación a los Derechos Humanos de los y las Sindicalistas Colombianas en el Año 2005* (March 15, 2006), Available at http://www.ens.org.co/aa/img_upload/40785cb6c10f663e3ec6ea7ea03aaa15/INFORME_DE_DDHH_DE_SINDICALISTAS__COLOMBIANOS_EN_EL_2005.pdf, p. 5.
Also see ENS, final report 2004. *Informe Sobre la Violación a los Derechos Humanos de los Sindicalistas Colombianos Enero 1- 31 de Diciembre 2004*. Available at http://www.ens.org.co/aa/img_upload/45bdec76fa6b8848acf029430d10bb5a/ddhhens.pdf.
- ³ In a March 26, 2003 letter to U.S. Rep. Raúl Grijalva, U.S. Ambassador to Colombia Anne Patterson wrote, "Largely due to the increased efforts of [the protection program run by the Colombian Interior Ministry], killings of trade unionists have dropped significantly since the Uribe government took office." Cited in US/LEAP, *Violence Against Colombian Trade Unionists Bulletin #7*, May 2003. Available at <http://www.usleap.org/Resources/Vactub7f.PDF>.
- ⁴ Both of these reasons were acknowledged by Dr. Carlos Franco, Coordinator of the Presidential Human Rights Program in Colombia, in a meeting he held with a visiting delegation of U.S. trade unionists sponsored by the AFL-CIO Solidarity Center and US/LEAP in March, 2003.
- ⁵ U.S. Department of State, *Country Reports on Human Rights Practices - 2003*, February 25, 2004. Available at <http://www.state.gov/g/drl/rls/hrrpt/2003/27891.htm>.
- ⁶ In the days following the incident, the army and high-level government officials claimed the three murdered trade unionists were leaders of the ELN guerrilla group who had died after opening fire on soldiers who were attempting to arrest them for sedition. However, as local and international outcries mounted, the Attorney General's office ordered the arrest of three soldiers who participated in the crime, as well as a demobilized ELN member who had accompanied them, and refuted the army's claim that the three had died in combat. Witnesses came forward stating that the three had been taken out of the home of one of the victims and murdered in cold blood, and forensic evidence indicated that the soldiers had tampered with the crime scene. See *Colombia Week #62*, August 9, 2004. Available at www.colombiaweek.org. See also ENS final report 2004; *El Tiempo*, September 6, 2004 and October 2, 2004; and Equipo Nizkor, October 2, 2004 (<http://www.derechos.org/nizkor/colombia/doc/arauca15.html>).
- ⁷ See U.S. Department of State, *Country Reports on Human Rights Practices - 2005* (March 8, 2006), p. 11. Available at <http://www.state.gov/g/drl/rls/hrrpt/2005/61721.htm>.
- ⁸ Rydell & Evering, *Controlling Cocaine*, Prepared for the Office of National Drug Control Policy and the United States Army (Santa Monica, CA: The RAND Corporation, 1994.)
- ⁹ WOLA, *Plan Colombia: Three Year Anniversary Report Card*, 2003 (n.d.). Available at http://www.wola.org/Colombia/plan_col_report_card03.pdf.
- ¹⁰ WOLA, *Memorandum*, May 10, 2004. Available at http://www.wola.org/Colombia/troop_cap_memo.htm.
- ¹¹ American Friends Service Committee, *The Costs of Doing Business: How Oil, U.S. Militarization and Corporate Activity Intersect in Colombia*. (n.d.). Available at <http://www.afsc.org/colombiaoil/Default.htm>. Full report available at <http://www.afsc.org/colombiaoil/CostsofDoingBusiness.pdf>. Accessed 12/19/05.

- ¹² Id.
- ¹³ Center for International Policy, *U.S. Aid to Colombia since 1997: Summary Tables*. Available at <http://ciponline.org/colombia/aidtable.htm>, updated February 7, 2005.
- ¹⁴ From a series of informal interviews with field researchers, 2004.
- ¹⁵ Karen Hansen-Kuhn, *Andean FTA: Threats to Development*, The Development Gap (undated, 2004). Available at <http://www.developmentgap.org/docs/Andean%20FTA%2072204.pdf>.
- ¹⁶ Karen Hansen-Kuhn, *Free Trade Area of the Americas*, Foreign Policy in Focus, April 2001, Vol. 6 #12. Available at <http://www.developmentgap.org/focustr.html>
- ¹⁷ CUT, *Testimonio de Carlos Rodríguez*, March 18, 2004. Available online at <http://www.cut.org.co/pdf/TESTIMONIO.pdf>
- ¹⁸ Sandra Polaski, *Trade and Labor Standards: A Strategy for Developing Countries*, Trade, Equity, and Development Project, Carnegie Endowment for International Peace, January 2002. Available at http://www.carnegieendowment.org/pdf/files/Polaski_Trade_English.pdf.
- ¹⁹ Interview, *Cincinnati Enquirer*, May 11, 2004.
- ²⁰ In June 2004, Chiquita sold its banana operations in Colombia to a national producer that agreed to respect the existing union contract for eight years. Chiquita also agreed to buy fruit from the producer for a similar time period.
- ²¹ The full name of the union is United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union.
- ²² As discussed in Chapter Two, the district court has dismissed Coca-Cola and its Colombian subsidiary from the case. See *SINALTRAINAL v. Coca-Cola*, 256 F. Supp. 2d 1345 (S.D. Fl. 2003). *As of the time this report went to press, the case (01-3208-CIV-Martinez/Dube) was still pending.*
- ²³ This case was pending in U.S. District Court for the Northern District of Alabama (CV-02-BE-0665-W) at the time this report went to press. See *Estate of Rodriguez v. Drummond Co*, 256 F. Supp. 2d 1250 (N.D. Ala. 2003).
- ²⁴ The U.S. District Court for the Northern District of Alabama dismissed this case in 2003 on the grounds that it raised a non-justifiable political question. *Mujica v. Occidental Petroleum Corp.*, 381 F. Supp. 2d 1164 (2005). Plaintiffs have appealed that ruling to the U.S. Court of Appeals for the Ninth Circuit.
- ²⁵ Nestle has operated in Colombia for more than 60 years.
- ²⁶ International Labor Rights Fund: “Regional Leader of SINALTRAINAL Assassinated”, September 10, 2005. Available at http://www.laborrights.org/press/luciano_assassination_091005.htm.
- ²⁷ American Friends Service Committee, *Caño Limon Oilfield, Arauca: Costs of Doing Business*, Available at http://www.afsc.org/colombiaoil/oil_2.htm.
- ²⁸ See José Fernando Torres and Carlos José Guarnizo, *En la Búsqueda del Mejoramiento de las Relaciones Laborales: Lecciones Extraídas de la Investigación de Siete Casos Colombianos*, Proyecto Mejoramiento de las Relaciones Laborales en Colombia, ILO/USDOL, May 2004.

GLOSSARY

ACHR	American Convention on Human Rights “Pact of San José”
AMCOLOMBIA	Association of Community Mothers for a Better Colombia
ATCA	Alien Tort Claims Act
ATPDEA	Andean Trade Preference and Drug Eradication Act
AUC	<i>Autodefensas Unidas de Colombia</i> or United Self-Defense Forces of Colombia
CAFTA	Central American Free Trade Agreement
CCJ	Colombian Commission of Jurists
CEACR	ILO Committee of Experts on the Application of Conventions and Recommendations
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
CERD	International Convention on the Elimination of All Forms of Racial Discrimination
CESCR	U.N. Committee on Economic, Social and Cultural Rights
CFA	ILO Committee on Freedom of Association
CGT	General Confederation of Workers
CGTD	General Confederation of Democratic Workers
CICOLAC	Nestle
CRC	U.N. Convention on the Rights of the Child
CRER	Colombian Interior Ministry’s Committee on Risk Regulation and Evaluation
CSTC	Union Federation of Workers of Colombia
CTC	Confederation of Workers of Colombia
CTI	<i>Cuerpo Técnico de Investigaciones</i> (Technical Investigations Unit)
CUT	Unitary Workers Confederation
CWA	Communications Workers of America
DAS	Administrative Department of Security-Colombia’s secret police
ELN	National Liberation Army
ENS	<i>Escuela Nacional Sindical</i> , National Labor School
ETB	Bogotá Telecommunications Enterprise
FARC	Colombian Revolutionary Armed Forces
FECODE	Colombian Federation of Educators
FTA	Free Trade Agreement
GDP	Gross Domestic Product
GSP	Generalized System of Preferences
GUFs	Global Union Federations
ICBF	Colombian Institute for Family Welfare
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights

GLOSSARY

ICFTU	International Confederation of Free Trade Unions
ICFTU-ORIT	ICFTU regional organization for the Americas (Organización Regional Interamericana de Trabajadores)
ILO-IPEC	International Program on the Elimination of Child Labor
ILRF	International Labor Rights Fund
IMF	International Monetary Fund
ITF	International Transport Federation
IUF	International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations
MSP	Ministry of Social Protection
NAFTA	North American Free Trade Agreement
OECD	Organization for Economic Cooperation and Development
PSI	Public Services International
SAI	Social Accountability International
SINALTRAINAL	Beverage Industry Workers Union
SINTRADISTRITALES	District Movement of Neighborhood Homes
SINTRAEMCALI	Public Sector Workers Union
SINTRAMIENERGETICA	Coal Miners Union
Solidarity Center	American Center for International Labor Solidarity
UMWA	United Mine Workers of America
UNDP	United Nations Development Programme
UNI	Union Network International
UNTRAFLORES	Flower Plantation Workers Union
US/LEAP	U.S./Labor Education in the Americas Project
USO	Petroleum Workers Union
USTR	U.S. Trade Representative
USW	United Steelworkers (United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union)
UTC	Union of Workers of Colombia
WB	World Bank
WCL	World Confederation of Labor

AREA MAP



For too long, Americans have turned a blind eye to workers' rights and violence against union organizers in third world countries. I hope this timely analysis of our counter-narcotic, trade, and military policies toward Colombia will influence key decision makers in Washington and throughout the world, and maybe help save the lives of labor rights activists and their families.

The Honorable Lane Evans
U.S. House of Representatives
17th District, Illinois

This, the latest in the Solidarity Center's "Justice for All" series, is a well-researched and vivid account of the most brutal repression of trade unionists in the world today. Employing various means, from legislation, the courts, the military and links with highly-organized and deadly paramilitary forces, the Colombian government has systematically prevented workers from exercising their human right to form and belong to a trade union. At the same time, the U.S. government often turned a blind eye as the repression continued, and instead spent billions to support a military solution to a conflict with its roots in social inequality. I highly recommend this book to anyone who wants to better understand what is happening in Colombia, who is involved, and how the repression can be stopped.

Joy Olsen
Executive Director
Washington Office on Latin America (WOLA)

The Communications Workers of America (CWA) welcomes this important AFL-CIO Solidarity Center publication as an insightful analysis of labor rights violations in Colombia and the direct connection between union activism and violence aimed at workers and union members. This document depicts the violence toward unionists, not just as an unfortunate consequence of an internal armed conflict, but as direct repression against workers who speak up for fairness, broad participation and their right to belong to a union - bedrocks of democracy and just societies. Members of CWA District One, through the Eduardo Diaz Solidarity Fund, have long supported the rights of workers in Colombia to join unions and bargain collective agreements for fair conditions and treatment. Today CWA expresses its solidarity with Colombian workers and salutes the AFL-CIO Solidarity Center for casting light on the ongoing struggle for worker rights and the global demand for an end to violence and impunity in Colombia.

Larry Cohen
President
Communications Workers of America (CWA)

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