

**REPUBLIC OF COLOMBIA**

**LABOR RIGHTS REPORT**

**September 2011**

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## Executive Summary

This report provides an overview of labor rights in Colombia in response to the requirement of the *Trade Act of 2002* that the President provide a “meaningful labor rights report” concerning each country with which a free trade agreement is under consideration. The report focuses on important changes that have occurred in recent years, identifies ongoing issues, and discusses the commitments made by the Government of Colombia and the actions it has already taken under the “Colombian Action Plan related to Labor Rights” (“Action Plan”). The Action Plan was announced on April 7, 2011, by President Barack Obama and President Juan Manuel Santos. The Action Plan sets out the specific steps the Government of Colombia has committed to take to address concerns regarding Colombian labor laws and practices and the protection of labor rights.

This report is divided into three sections. Section One provides an introduction to the report. Section Two identifies “Issues of Note,” which are areas of concern with regard to labor laws and practices, and notes changes made by the Government of Colombia during recent years. The section also describes the Colombian Action Plan, which includes a broad range of initiatives to address these areas of concern.

Among the significant changes, Colombia has committed or has already taken steps to:

- Re-establish a separate Ministry of Labor and double the number of labor inspectors to enhance enforcement efforts;
- Accelerate and strengthen reforms to combat the misuse of associated worker cooperatives to deny workers their rights under Colombian law; and
- Establish criminal penalties for employers who undermine the right to organize and bargain collectively, including through collective pacts.

While Colombia has taken substantial steps to improve protection of worker rights, the International Labor Organization (ILO) continues to express concerns in several areas. This report notes those concerns, referencing in each instance the relevant jurisprudence and recommendations from the ILO Committee of Experts on the Application of Conventions and Recommendations and the ILO Committee on Freedom of Association.

As part of the Action Plan, the Government of Colombia has requested the assistance of the ILO to facilitate the implementation of the steps in that plan related to Colombia’s labor law. The ILO was also asked to facilitate a Tripartite Process, bringing together the Government, employers and trade unions, with the goal of ensuring the full protection of labor rights and compliance with labor laws.

In light of the history of violence against trade unionists in Colombia, Section Three, “Labor Violence and Impunity,” describes progress and remaining challenges in combating ongoing violence and intimidation of labor activists. The report notes that the Action Plan includes improvements to a protection program to shield trade unionists from

violence and a separate program to protect teachers, as teachers have been particular targets of violence. The section also describes the detailed steps included in the Action Plan to prosecute anti-trade union crimes.

Overall, this report finds that, while violence against trade unionists and the abuse of workers' rights remain significant challenges, the Government of Colombia's recent and proposed reforms on these issues demonstrate a strong and comprehensive commitment to protect workers' rights, to ensure that trade union activists can exercise their fundamental rights without fear of retaliation and that those who commit violence against trade unionists will be prosecuted.

## 1. Introduction

This report on labor rights in Colombia has been prepared pursuant to section 2102(c)(8) of the Trade Act of 2002 (“Trade Act”) (Pub. L. No. 107-210). The Trade Act provides that the President shall:

[i]n connection with any trade negotiations entered into under this Act, submit to the Committee of Ways and Means of the House of Representatives and the Committee on Finance of the Senate a meaningful labor rights report of the country, or countries, with respect to which the President is negotiating.

The President, by Executive Order 13277 (67 Fed. Reg. 70305 (Nov. 21, 2002)), assigned the above responsibilities to the Secretary of Labor and provided that they be carried out in consultation with the Secretary of State and the U.S. Trade Representative (USTR). The Secretary of Labor subsequently provided that such responsibilities would be carried out by the Secretary of State, the USTR, and the Secretary of Labor (67 Fed. Reg. 77812 (Dec. 19, 2002)).

This report examines the current situation and highlights the most important recent changes. For the purposes of this report, labor rights are identified as internationally recognized labor rights contained in the definition of “labor laws” under Chapter 17, the Labor Chapter of the Colombia TPA.<sup>1</sup> These rights are:

- a. freedom of association;
- b. the effective recognition of the right to collective bargaining;
- c. the elimination of all forms of forced or compulsory labor;
- d. the effective abolition of child labor, a prohibition on the worst forms of child labor, and other labor protections for children and minors;
- e. the elimination of discrimination in respect of employment and occupation;
- and
- f. acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health.

This report does not attempt a comprehensive review of labor laws and practices, but rather draws attention to important developments of recent years. It identifies ongoing issues and discusses the Government of Colombia’s Action Plan commitments to take specific steps needed to bring Colombian labor laws and practices into greater conformity with internationally recognized labor rights. The Action Plan was announced on April 7, 2011 by President Barack Obama and President Juan Manuel Santos.<sup>2</sup>

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<sup>1</sup> *United States-Colombia Trade Promotion Agreement* (Colombia TPA), Article 17.8, [http://www.ustr.gov/sites/default/files/uploads/agreements/fta/colombia/asset\\_upload\\_file993\\_10146.pdf](http://www.ustr.gov/sites/default/files/uploads/agreements/fta/colombia/asset_upload_file993_10146.pdf)

<sup>2</sup> The Action Plan is available at: [http://www.ustr.gov/webfm\\_send/2787](http://www.ustr.gov/webfm_send/2787).

The second section of this report, “Issues of Note,” identifies areas of concern and notes recent changes to related law and practice made by the Government of Colombia. These notable areas include: Associated Work Cooperatives, Collective Pacts, Prohibitions on the Right to Strike, Temporary Service Agencies, Freedom of Association and Collective Bargaining, the reconstitution of the Ministry of Labor in Colombia and several other significant developments on labor rights. For each area, this section details related specific steps included in the Action Plan. The third section of the report focuses on remaining challenges and progress made in combating violence against Colombian trade unionists and efforts to prosecute the perpetrators. The report notes the steps in the Action Plan to improve protections from violence for trade unionists and to prosecute anti-trade union crimes.

## 2. Issues of Note

This section discusses issues of concern identified by the U.S. Government and by the ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR), the ILO Committee on Freedom of Association (CFA) and labor rights groups. The section describes recent labor reforms carried out by the Government of Colombia and the commitments that the Government of Colombia has made and is in the process of undertaking as part of the Action Plan to address remaining concerns.

The Action Plan provides mechanisms for oversight by the two governments as the plan is implemented. In addition, the Government of Colombia has launched a Tripartite Process with trade unions and employers to work on implementation of the Plan and promote improved and effective social dialogue on labor issues. The Government has also requested the ILO to provide technical assistance to help in the implementation of the Action Plan and to foster the Tripartite Process, with the goal of ensuring full protection of labor rights and compliance with labor laws.

### 2.1 Associated Work Cooperatives

Colombian law allows for workers to join together in self-governed, autonomous enterprises known as Associated Work Cooperatives (*Cooperativos de Trabajo Asociado* - CTAs). Several Colombian laws contain provisions and operating criteria intended to ensure that CTAs are democratically controlled and are not misused to avoid direct employment relationships.<sup>3</sup> Until late 2010, penalties for violating such provisions and criteria were enforced only against violating CTAs, rather than the third-party employers who benefited from the prohibited practices. The ILO also considered that enforcement of the existing laws was inadequate.<sup>4</sup>

As a result, CTAs became a vehicle widely used by employers to end direct employment relationships with their workforces, while retaining the same or other workers through

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<sup>3</sup> Government of Colombia, *Por la cual se actualiza la Legislación Cooperativa, Ley 79 de 1988*, as published in *Diario Oficial*, no. 38,648 (January 10, 1989) [hereinafter *Ley 79*], Article 59; available from [ftp://ftp.camara.gov.co/camara/basedoc/ley/1988/ley\\_0079\\_1988.html](http://ftp.camara.gov.co/camara/basedoc/ley/1988/ley_0079_1988.html). See also Government of Colombia, *Por el cual se reglamenta la organización y funcionamiento de las Cooperativas y Precooperativas de Trabajo Asociado, Decreto Número 4588 de 2006*, as published in *Diario Oficial* no. 46,494 (December 27, 2006)[hereinafter *Decreto 4588*], Articles 4 and 5; available from [http://www.dnp.gov.co/PortalWeb/Portals/0/archivos/documentos/DDS/Empleo\\_Seguridad\\_Social/Decreto%20No.4588%20de%202006.pdf](http://www.dnp.gov.co/PortalWeb/Portals/0/archivos/documentos/DDS/Empleo_Seguridad_Social/Decreto%20No.4588%20de%202006.pdf). See also Government of Colombia, *Por medio de la cual se precisan los elementos estructurales de las contribuciones a la seguridad social, Ley 1233 de 2008*, as published in *Diario Oficial*, no. 47,058 (July 22, 2008) [hereinafter *Ley 1233*], Article 12; available from <http://www.alcaldiabogota.gov.co/sisjur/normas/Normal.jsp?i=31586>.

<sup>4</sup> See International Labor Conference, *2011 Report of the CEACR*, 518; available from [http://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---relconf/documents/meetingdocument/wcms\\_151556.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_151556.pdf).

CTAs and continuing to act as their *de facto* employers,<sup>5</sup> for example by engaging in prohibited practices to control the workers' schedules, assign duties, determine terms and conditions of employment and make personnel decisions.<sup>6</sup> As members of cooperatives, the workers are vulnerable to exploitation because CTA members are considered cooperative "owners," rather than workers, and are thus excluded from many Labor Code protections.<sup>7</sup> This status also denies workers the right to form unions and bargain with their *de facto* employers. The ILO has consistently asked the Government of Colombia to reform laws and improve enforcement in order to end misuse of CTAs to impede workers' rights to associate and bargain collectively.<sup>8</sup>

**Existing Laws and Practice Governing Cooperatives:** Under Colombian law, a minimum of 10 workers is required to form a CTA.<sup>9</sup> Laws governing CTAs also provide that CTA operations must ensure democratic participation of members and establish an internal governance structure and that CTA leaders and officers must be independently elected.<sup>10</sup> The laws also require that a CTA own, possess or control its means of production.<sup>11</sup> Legislation governing CTAs bans the associations from engaging in "labor intermediation,"<sup>12</sup> prohibits cooperatives from acting as temporary service agencies and requires compliance with a range of specifically articulated criteria for CTA operation.<sup>13</sup> Since 2008, Colombian law has extended to CTA members the Labor Code guarantees governing minimum wage and social security, including health care, pensions, and workers' compensation.<sup>14</sup>

Under Colombian law, third-party employers are prohibited from interfering in the operation or organization of cooperatives.<sup>15</sup> When a third-party employer engages a CTA for labor intermediation or as a temporary service agency, that employer is jointly liable for the economic obligations owed to the CTA associates and the CTA's legal authorization to operate can be revoked. When a third-party employer illegally assumes control of internal CTA governance and discipline, the affected associates may be considered direct employees of that employer under the law.<sup>16</sup>

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<sup>5</sup> Stefano Farné, "Las cooperativas de trabajo asociado en Colombia: balance de la política gubernamental 2002-2007," *Revista de Economía Institucional*, vol. 10, issue 18 (2008), pp. 263, 266-67, and 269; available from <http://dialnet.unirioja.es/servlet/articulo?codigo=2667581>.

<sup>6</sup> Farné, "Las cooperativas de trabajo asociado en Colombia," 270. See also Escuela Nacional Sindical (ENS), *Maneras y atajos de las Cooperativas de Trabajo Asociado para precarizar condiciones laborales*, December 15, 2010, pp. 3, 5, and 7; available from <http://www.ens.org.co/index.shtml?apc=Na--:2;-:;&x=20166252>.

<sup>7</sup> *Decreto 4588*, Article 10.

<sup>8</sup> Conclusions of the High Level Tripartite Mission to Colombia, February 14-18, 2011, p. 4, available from <http://www.cut.org.co/images/stories/file/Document.pdf>.

<sup>9</sup> *Decreto 4588*, Article 4.

<sup>10</sup> *Ley 79*, Articles 5, 19, 29, 30, and 71.

<sup>11</sup> *Decreto 4588*, Article 8.

<sup>12</sup> "Labor intermediation" is understood as the practice of serving as a *de facto* employment agency to send workers to perform labor services to third-party employers rather than as independent member-owned businesses.

<sup>13</sup> *Decreto 4588*, Article 17. See also *Ley 1233*, Articles 7.1 and 7.3

<sup>14</sup> *Ley 1233*, Articles 3 and 6.

<sup>15</sup> *Decreto 4588*, Article 18

<sup>16</sup> *Decreto 4588*, Articles 16 and 17; *Ley 1233*, Articles 7.3 and 7.4.



Cooperatives are also legally understood to include “pre-cooperatives,” which have similar characteristics as cooperatives but are meant to be transitional, operating for only five years with possible extensions and requiring only five members instead of ten. By law, a pre-cooperative, unlike a cooperative, must have a sponsor that provides financial and technical support and training and participates in its administration and control.<sup>17</sup> These requirements create the potential for the establishment of employer-dominated pre-cooperatives, since the “sponsors” are typically employers who then hire the members of the pre-cooperative. Pre-cooperative members are thus more vulnerable than cooperative members to being denied their rights under labor law, including their ability to form unions. There are presently 341 pre-cooperatives authorized and registered.<sup>18</sup>

The use of CTAs has increased dramatically over the last decade,<sup>19</sup> with growth particularly pronounced in the sugar, palm oil and port sectors.<sup>20</sup> For example, the Colombian Sugar Industry Association, ASOCAÑA, estimates that nearly 70 percent of its cane cutters nationwide are now members of CTAs.<sup>21</sup> FEDEPALMA, the Colombian Palm Oil Association, estimates that about 35 percent of its palm workers are employed through cooperatives.<sup>22</sup> According to the Ministry of Social Protection (MSP) there are currently 4,555 CTAs in Colombia.<sup>23</sup>

Because CTA members are considered joint owners of the cooperative, rather than workers, and their right to organize is thus not protected under law, violations of freedom of association have been prevalent in sectors where CTA use is widespread.<sup>24</sup> In the palm oil sector, for instance, some employers reportedly assign their managerial personnel to run the CTA board elections and set limits on the total number of CTA associates in order to maintain control, including for the purpose of avoiding unions.<sup>25</sup> Similar practices are reported in the port and sugar sectors.<sup>26</sup>

A recent ILO High Level Tripartite Mission to Colombia concluded that CTAs had contributed significantly to the drastic reduction in Colombian trade union density,<sup>27</sup>

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<sup>17</sup> Ley 79, Articles 124-129.

<sup>18</sup> E-mail from MSP Official to U.S. Embassy-Bogotá, April 11, 2011

<sup>19</sup> Farné, “Las cooperativas de trabajo asociado en Colombia,” p. 265.

<sup>20</sup> Farné “Las cooperativas de trabajo asociado en Colombia,” p. 270. See also ENS, *Maneras y atajos de las Cooperativas de Trabajo Asociado para precarizar condiciones laborales*, pp. 1, 3, 5, 7, and 10.

<sup>21</sup> ASOCAÑA notes that 6,967 cane cutters out of a total of 10,997 workers belong to CTAs. ASOCAÑA, “The Colombian Sugar Sector is committed to Human Rights and Sustainable Development,” [document delivered to US officials Feb. 2011]. Other researchers have found that in the Valle del Cauca alone, there are approximately 10,000 CTA members working in the sugar industry. See Perez Rincon and Alvarez Roa, *Deuda social y ambiental del negocio de la caña de azúcar en Colombia* (Bogotá: Grupo Semillas, 2009), 45; available from <http://www.semillas.org.co/sitio.shtml?apc=11---&x=20156449>.

<sup>22</sup> Communication from FEDEPALMA to US Embassy-Bogotá, February, 2011.

<sup>23</sup> Email from MSP Official to US Embassy-Bogotá, April 11, 2011.

<sup>24</sup> See ENS, *Maneras y atajos de las Cooperativas de Trabajo Asociado para precarizar condiciones laborales*, p. 2.

<sup>25</sup> *Ibid.*, pp. 5 and 7

<sup>26</sup> *Ibid.*, pp. 3, 7, and 8.

<sup>27</sup> Conclusions of the ILO High Level Tripartite Mission to Colombia, February 14-18 2011, p. 4.

currently estimated at 4.4 percent of the labor force.<sup>28</sup> The ILO Mission called for “renewed legislative and enforcement measures to put an end to the labor intermediary activities of cooperatives (CTAs), and all other legal and practical obstacles to freedom of association and collective bargaining.”<sup>29</sup>

The Colombian Government, under President Juan Manuel Santos, shares concerns about the misuse of cooperatives.<sup>30</sup> In response to the growing use of cooperatives to undermine workers’ rights, the Santos Administration proposed reforms to the laws governing cooperatives and in 2010 the Colombian Congress adopted Law 1429, the “Law on Formalization and Generation of Employment.” Article 63 of the law prohibits private and public employers from using cooperatives to act as labor intermediaries to provide labor for “permanent core functions” of the user employer. Article 63 also prohibits misuse by the user employer of any other kind of labor relationship that affects workers’ constitutional or labor law rights to carry out “permanent core functions.” For the first time, the law establishes significant fines (up to 5,000 monthly minimum wages, equal to approximately U.S. \$1.4 million) for user employers as well as CTAs that violate the prohibitions. A CTA implicated in the violation of Article 63 is subject to dissolution and liquidation under the law.<sup>31</sup>

**Action Plan:** When adopted in December 2010, Article 63 was scheduled to enter into force on July 1, 2013. However the Santos Administration introduced legislation to accelerate the effective date, which the Colombian Congress approved on April 26, 2011. All provisions of Article 63 took immediate effect upon the signature of President Santos on June 16, 2011.

Meeting its commitment under the Action Plan, the Government of Colombia issued regulations to implement Article 63 on June 8, 2011. As set out in the Action Plan, the regulations contain clear and sufficiently broad definitions of “permanent core function” and “labor intermediation” to adequately address CTA abuses. The regulations also clarify earlier cooperatives laws and ensure coherence among these laws and the new provisions. In order to promote compliance, the regulations allow for the adjustment of fines where an employer agrees to create and maintain a direct employment relationship with the affected workers. Fines are set higher for repeat offenders and large-scale violators. The Government has committed to strictly apply and enforce legal requirements that only cooperatives that are autonomous, exhibit financial independence and own their methods of production, capital and assets will be permitted to operate. Further, cooperatives’ members must have autonomy in conducting their work and must

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<sup>28</sup> U.S. Department of State, *Country Reports on Human Rights Practices 2010 - Colombia*, Section 7, Washington, D.C., April 8, 2011; available at <http://www.state.gov/g/drl/rls/hrrpt/2010/wha/154499.htm>.

<sup>29</sup> Conclusions of the ILO High Level Tripartite Mission to Colombia, February 14-18, 2011, p. 4.

<sup>30</sup> See e.g. the statement of Colombian Vice-President Angelino Garzon that “associated work cooperatives are the principal violators of labor rights.” November 4, 2010, Bogota; available from <http://www.vicpresidencia.gov.co/Noticias/2010/Paginas/101104a.aspx>.

<sup>31</sup> Government of Colombia, *Por la cual se expide la Ley de Formalización y Generación de Empleo, Ley 1429 de 2010*, as published in *Diario Oficial*, no. 47,937 (December 29, 2010) Article 63; available from [http://www.secretariasenado.gov.co/senado/basedoc/ley/2010/ley\\_1429\\_2010.html](http://www.secretariasenado.gov.co/senado/basedoc/ley/2010/ley_1429_2010.html).

share in the economic proceeds of the cooperative. Cooperatives may not be involved in any form of labor intermediation.

The Government of Colombia committed to develop and conduct an outreach program to inform and advise workers of their rights as members of CTAs, including the remedies and courses of action available to enforce recognition of a direct employment relationship when one is deemed to exist. The initial phase of the outreach program began as of June 15, 2011.

To improve enforcement of laws governing cooperatives, the Colombian Government committed to hire and train 100 new inspectors dedicated exclusively to enforcing CTA laws, 50 of which are to be hired in 2011, with an additional 50 hired in 2012. The Government has also committed to prioritize labor inspections, and the hiring of new inspectors, for those sectors in which employment relationships have been widely abused, including palm oil, sugar, mines, ports, and flowers.

## 2.2 Collective Pacts

There are two types of collective employment contracts under the Colombian Labor Code: collective conventions and collective pacts. A collective convention is a contract negotiated with a duly formed union, and would be termed a collective bargaining agreement in the United States. A collective pact is an agreement concluded by an employer with non-union workers.<sup>32</sup>

**Existing Law and Practice Governing Collective Pacts:** Under Colombian law, collective pacts are legally permissible when a union represents one-third or less of a company's workforce.<sup>33</sup> When a union represents more than one third of a company's workers, collective pacts are banned and any collective convention negotiated between the union and the employer covers all workers in the enterprise.<sup>34</sup>

The Constitutional Court of Colombia has ruled that an employer's freedom to enter into collective pacts "cannot be exercised or utilized by the employer to affect the fundamental rights of workers and the unions."<sup>35</sup> The Court has also declared that terms and conditions offered by employers through a collective pact must be the same as those offered to organized workers through collective bargaining.<sup>36</sup>

Examining the situation in Colombia, the ILO CEACR has observed "that direct negotiations with workers should only be possible in the absence of trade union

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<sup>32</sup> Government of Colombia, *Código Sustantivo del Trabajo*, Articles 467 and 481; available from [http://www.secretariasenado.gov.co/senado/basedoc/codigo/codigo\\_sustantivo\\_trabajo.html#1](http://www.secretariasenado.gov.co/senado/basedoc/codigo/codigo_sustantivo_trabajo.html#1).

<sup>33</sup> *Código Sustantivo del Trabajo*, Article 481.

<sup>34</sup> *Código Sustantivo del Trabajo*, Articles 481 and 471.

<sup>35</sup> Constitutional Court Decision SU-342, Sec. IV(6), August 2, 1995; available from <http://www.corteconstitucional.gov.co/relatoria/1995/SU342-95.htm>.

<sup>36</sup> Constitutional Court Decision, T-345, Sec. 4 (also citing prior holdings), May 10, 2007; available from <http://www.corteconstitucional.gov.co/relatoria/2007/T-345-07.htm>.

organizations.”<sup>37</sup> The CEACR has also raised concerns regarding the application of the law governing collective pacts in Colombia, referring “to enterprise, government and judicial practices giving preference to collective accords with non-unionized workers, disregarding collective agreements and existing trade unions.”<sup>38</sup>

The ILO CFA has generally observed that “direct negotiation between the undertaking and its employees, by-passing representative organizations where these exist, might in certain cases be detrimental to the principle that negotiation between employers and organizations of workers should be encouraged and promoted.”<sup>39</sup> The high-level ILO tripartite mission to Colombia in 2005 observed that union members were frequently encouraged by employers to drop their union affiliation and sign a collective pact instead.<sup>40</sup>

The ILO CEACR has noted the low rate of collective bargaining in Colombia, citing a total of 256 collective conventions in 2008, covering only 1.2 percent of workers.<sup>41</sup> Colombian unionists have expressed concern over the increasing prevalence of collective pacts and what they perceive to be a corresponding decline in the number of workers covered by collective bargaining by unions.<sup>42</sup> As of February 2011, there were 2,015 collective pacts, covering 227,830 workers; 151 of the pacts, roughly 7.5 percent, covered workplaces where a union was also present.<sup>43</sup>

**Action Plan:** The Colombian Government submitted legislation to the Colombian Congress to establish criminal penalties, including imprisonment, for employers that undermine the right to organize and bargain collectively. The reform was approved by Congress on June 1 of this year and was signed by President Santos on June 24, 2011. It includes a provision making it a crime to offer a collective pact to non-union workers that has superior terms to those offered to union workers. The penalties can include imprisonment of up to five years and fines of up to 500 times the minimum wage for certain conduct.<sup>44</sup> Under the Action Plan, the Government had committed to seek enactment of this legislation by June 15, 2011, and upon passage of the legislation, to conduct a public outreach campaign to promote awareness of the law. The Government has committed to implement a robust enforcement regime, including preventive

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<sup>37</sup> International Labor Conference, *2004 Report of the CEACR*, 60; available from <http://www.ilo.org/public/english/standards/relm/ilc/ilc92/pdf/rep-iii-1a.pdf>. See also International Labor Conference, *2010 Report of the CEACR*, 107; available from [http://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---relconf/documents/meetingdocument/wcms\\_123424.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_123424.pdf).

<sup>38</sup> International Labor Conference, *2004 Report of the CEACR*, 60.

<sup>39</sup> ILO CFA, *Digest of Decisions*, 2006, para. 945; available from [http://www.ilo.org/wcmsp5/groups/public/@ed\\_norm/@normes/documents/publication/wcms\\_090632.pdf](http://www.ilo.org/wcmsp5/groups/public/@ed_norm/@normes/documents/publication/wcms_090632.pdf).

<sup>40</sup> International Labor Conference, *2006 Report of the CEACR*, 74; available from [http://www.ilo.org/public/libdoc/ilo/P/09661/09661\(2006\)1A.pdf](http://www.ilo.org/public/libdoc/ilo/P/09661/09661(2006)1A.pdf)

<sup>41</sup> International Labor Conference, *2010 Report of the CEACR*, 107.

<sup>42</sup> Tarsicio Mora Godoy, President of CUT Colombia, Speech to Trade Union Confederation (TUC) Congress, Sept. 10, 2008, available from [https://www.tuc.org.uk/the\\_tuc/tuc-15338-f0.cfm](https://www.tuc.org.uk/the_tuc/tuc-15338-f0.cfm).

<sup>43</sup> Email from Official of MPS to US Embassy-Bogotá, April 11, 2011.

<sup>44</sup> As of April 2011, the minimum wage was approximately \$285 per month, resulting in a maximum fine of approximately \$171,384. U.S. Dept. of State, *2010 Human Rights Report: Colombia*, April 8, 2011, sec. 7(e) (citing a minimum wage of \$285).

inspections, and to provide quarterly reports to interested parties. The Government is also requesting technical assistance from the ILO to monitor the use of collective pacts.

### 2.3 Prohibitions on the Right to Strike

The Labor Code bans strikes by employees in public services, defined as “all organized activity necessary to satisfy public welfare needs in a regular and continuous form, whether carried out by the State directly or indirectly, or by private persons.”<sup>45</sup> The ILO CEACR has repeatedly commented that the services in which strikes are banned under Colombian law include “not only . . . essential services in the strict sense of the term [services the interruption of which would endanger the life, personal safety or health of the whole or part of the population] but also . . . a wide range of services which are not necessarily essential” and in which, therefore, strikes should be permitted.<sup>46</sup> Such non-essential services in which strikes are banned include, for example, ground, air, and water transportation; telecommunications; social assistance establishments; all levels and branches of government; and the petroleum industry.<sup>47</sup>

Until 2008, the salt sector was also identified under Colombian law as a public service in which strikes were banned. In a 2008 ruling, however, the Constitutional Court declared the ban unconstitutional, citing the unitary nature of the Colombian legal system, which requires that the Labor Code comply with both the Constitution and ratified international conventions.<sup>48</sup> Similarly, in 2009, the Supreme Court struck down the designation of rail transport of coal as an essential public service, based largely on the same reasoning followed by the Constitutional Court in 2008.<sup>49</sup>

**Action Plan:** The Government of Colombia has committed to collect the body of Colombian doctrine, case law and jurisprudence narrowing the definition of essential services and disseminate this information as well as relevant guidelines to labor inspectors, the judicial branch, unions and employers.

### 2.4 Temporary Service Agencies

Colombian law authorizes Temporary Service Agencies (*Empresas de Servicios Temporales* - ESTs) to serve as labor contractors to fulfill employer demands for temporary workers.<sup>50</sup> The law includes provisions to prevent the use of ESTs to

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<sup>45</sup> *Código Sustantivo del Trabajo*, Articles 430 and 450.

<sup>46</sup> See e.g. International Labor Conference, *2005 Report of the CEACR*, 50; available from <http://www.ilo.org/public/english/standards/relm/ilc/ilc93/pdf/rep-iii-1a.pdf>.

<sup>47</sup> See *Código Sustantivo del Trabajo*, Article 430. For ILO commentary on strike prohibitions, see ILO CFA, *Digest of Decisions*, 2006, para. 587.

<sup>48</sup> Constitutional Court Decision C-691, Section VII, para. 2, July 9, 2008; available from <http://www.corteconstitucional.gov.co/relatoria/2008/C-691-08.htm>.

<sup>49</sup> Supreme Court of Justice, Labour Cassation Court, Ruling No. 40428 (June 3, 2009), pp. 59 and 61; available from <http://mps.minproteccionsocial.gov.co/vbecontent/library/documents/DocNewsNo14861DocumentNo10388.doc>.

<sup>50</sup> Government of Colombia, *Por la cual se introducen reformas al Código Sustantivo del Trabajo y se dictan otras disposiciones*, Ley 50 de 1990 (December 28, 1990), as published in *Diario Oficial*, no. 39,618

undermine workers' rights, including limits on the types of work that can be performed by ESTs and the number of times EST contracts can be renewed. The use of ESTs has expanded in the Colombian labor market over recent years and enforcement of the law has reportedly been inconsistent.<sup>51</sup>

EST workers are considered direct employees of the EST but not of the contracting third party employer.<sup>52</sup> While workers' rights to associate and bargaining collectively are protected with respect to the EST, these rights are not protected with respect to the third party employer. In addition, as ESTs are hired only on a temporary basis, EST workers' employment can be precarious, which can make them more vulnerable than permanent workers and less likely to exercise their rights to associate and bargain collectively. The ILO CFA has expressed concern that contractors may use ESTs as a way to evade in practice the rights of workers to freedom of association and collective bargaining.<sup>53</sup>

**Existing Laws and Practice Governing ESTs:** Colombian law limits the contracting of temporary employees through ESTs to the following situations: 1) for occasional, unforeseen, or transitory work; 2) to substitute for personnel on vacation or on medical leave for illness or maternity; and 3) to address surges in production, transport or sales, in the periods of peak harvests and in the provision of services, for a period of no longer than six months, with the possibility of an extension for no more than an additional six months.<sup>54</sup> The law also prohibits ESTs from providing workers to replace striking workers.<sup>55</sup>

An employer may hire an EST to send workers to the employer's worksite or to perform the work at facilities owned by the EST within the limits noted above. (As noted above, Colombian law prohibits cooperatives from engaging in these functions that are permitted

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(January 1, 1991), [hereinafter *Ley 50 de 1990*], Article 71; available from <http://www.alcaldiabogota.gov.co/sisjur/normas/Norma1.jsp?i=281>. Law 50 forms an integral part of the *Código Sustantivo del Trabajo*. See also *Por el cual se reglamenta el ejercicio de la actividad de las empresas de servicios temporales y se dictan otras disposiciones, Decreto 4369 de 2006*, as published in *Diario Oficial no. 46,472* (December 4, 2006) [hereinafter *Decreto 4369*], Article 2 and 6; available from <http://www.minproteccionsocial.gov.co/Normatividad/DECRETO%204369%20de%202006.pdf>.

<sup>51</sup> See *Empresas 'Piratas' De Empleo Temporal Engañan A Desempleados*, Caracol News Agency, [online], August 1, 2007; available from <http://www.radiocaracol.com/nota.aspx?id=461367>. The Colombian Association of Temporary Service Agencies (ACOSSET) estimates that by January of 2010, EST's had grown by 5.22 percent over the previous year. ACOSSET, *En Epoca de Recesión Aumenta El Empleo*, 2010; available from <http://www.aliadolaboral.com/personas/se4/BancoConocimiento/P/p-empleo-empresas-temporales-aumento/p-empleo-empresas-temporales-aumento.aspx?CodSeccion=20>. The MSP reports that at the end of 2009, there were at least 866,158 workers contracted by these agencies. 151,884 were working directly on site for industrial employers, constituting 17.5 percent of the manufacturing sector labor force. MSP, *Oferta y Demanda de Mano de Obra en Empresas de Servicios Temporales en Colombia*, 2009; available from: [www.minproteccionsocial.gov.co](http://www.minproteccionsocial.gov.co).

<sup>52</sup> *Ley 50 de 1990*, Article 71. See also *Decreto 4369 of 2006*, Article 2.

<sup>53</sup> See e.g. ILO CFA, *Report 351, Nov. 19, 2008*, para. 572; available from [http://www.ilo.org/gb/GBSessions/lang--en/docName--WCMS\\_100625/index.htm](http://www.ilo.org/gb/GBSessions/lang--en/docName--WCMS_100625/index.htm). See also ILO CFA, *Digest of Decisions, 2006*, paras. 255 and 906 for general ILO observation that temporary workers also have the right to freedom of association and collective bargaining.

<sup>54</sup> *Ley 50 de 1990*, Article 77. See also *Decreto 4369 de 2006*, Article 6.

<sup>55</sup> *Ley 50 de 1990*, Article 89. See also *Decreto 4369 de 2006*, Article 22.8.

for ESTs.) When EST employees work on-site, the law requires that they be paid the same salary as permanent employees at the worksite performing the same work and must receive many of the same benefits, including those related to transportation, food and recreation.<sup>56</sup> ESTs cannot provide services to third-party employers that have economic ties to the EST.<sup>57</sup>

The MSP is responsible for enforcing Colombian laws governing Temporary Service Agencies, and the MSP must authorize ESTs to operate.<sup>58</sup> The MSP is required to deny an EST operating authorization if any of its proprietors, administrators or legal representatives has been associated with another EST whose operating authorization was suspended or terminated for legal violations over the previous five years.<sup>59</sup>

Where abuses of the EST laws are found, the MSP is charged with imposing fines on both the violating EST and the third-party employer. MSP fines are authorized for up to 100 monthly minimum wages for each violation,<sup>60</sup> and repeated violations may result in suspension or cancellation of the EST authorization.<sup>61</sup>

An insufficient number of labor inspectors has reportedly limited the capacity of the MSP to monitor and uncover illegal practices.<sup>62</sup> Labor rights groups claim that fines imposed by the MSP against violating ESTs and third-party employers may be too low to dissuade potential violators.<sup>63</sup> Some reports indicate that as many as 350,000 Colombian workers have been employed by unauthorized ESTs in recent years.<sup>64</sup>

**Action Plan:** In response to concerns that ESTs may be used unlawfully to circumvent labor rights, the Government of Colombia has committed to strengthen enforcement of Colombian laws governing ESTs. The Government has committed to improve the inspection process, provide a new training program for labor inspectors on enforcement of EST-related laws and build databases to identify regions and sectors where there has been abuse. The Government has also committed to create a monitoring and reporting mechanism through which interested parties can verify progress and compliance by ESTs with labor laws. The MSP will issue quarterly reports that include the results of the measures taken to improve enforcement, such as preventative inspections, penalties, fines, cancellation of licenses and permits, and a list of ESTs found to be in violation.

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<sup>56</sup> *Decreto 4369 de 2006*, Article 5. See also *Ley 50 de 1990*, Article 77.

<sup>57</sup> *Ley 50 de 1990*, Article 80. See also *Decreto 4369 de 2006*, Article 22.7.

<sup>58</sup> *Ley 50 de 1990*, Articles 82, 83 and 85.

<sup>59</sup> *Ley 50 de 1990*, Article 90.

<sup>60</sup> *Decreto 4369 de 2006*, Article 20.1.

<sup>61</sup> *Decreto 4369 de 2006*, Articles 21 and 22.

<sup>62</sup> ENS, *Maneras y Atajos de las Cooperativas de Trabajo Asociado para Precarizar Condiciones Laborales*.

<sup>63</sup> The American Federation of Labor & Congress of Industrial Organizations, *Comments Concerning the Pending Free Trade Agreement with Colombia*, Sept. 15, 2009, p. 29; available from <http://www.citizen.org/documents/afl-cio-comments-on-colombia-fta.pdf> [hereinafter AFL-CIO Comments].

<sup>64</sup> *Empresas 'Piratas' De Empleo Temporal Engañan A Desempleados*, Caracol News Agency.

## 2.5 Freedom of Association and Collective Bargaining

As noted above, the percentage of workers organized in trade unions has declined steadily in Colombia over recent decades. In 2010, approximately 820,000 workers (4.4 percent of the workforce of 18.4 million) were union members<sup>65</sup>. According to the ILO, only 1.2 percent of the workforce was covered by a collective bargaining agreement in 2008.<sup>66</sup> The reasons for the decline in union membership and collective bargaining are numerous and varied, including some of the issues described above. The High-level ILO Mission to Colombia in February 2011 expressed concern at the “repeated and detailed information it received concerning acts of anti-union discrimination at the enterprise level . . . as well as the failure to take effective action to stop it.”<sup>67</sup>

**Action Plan:** To address these concerns, the Government of Colombia submitted legislation to the Colombian Congress to establish criminal penalties, including imprisonment, for employers that undermine the right to organize and bargain collectively. The reform was approved by Congress and signed by President Santos on June 24, 2011. It establishes both fines and imprisonment for actions such as impeding or preventing workers from meeting, threatening reprisal for strikes or association, and offering a collective pact to non-union workers with better conditions than those offered to union workers. The penalties can include imprisonment of up to five years and fines of up to 500 times the minimum wage, for certain conduct.

## 2.6 Ministry of Labor

In 2003, the Government of Colombia merged the Ministry of Labor and Social Security and the Ministry of Health to form the current Ministry of Social Protection (MSP). Since that time, the MSP Vice-Minister for Labor Affairs has overseen the three divisions of the Ministry that are responsible for labor policy development and implementation of Colombian labor laws.<sup>68</sup> The three divisions are the General Directorate for Labor Protection, the General Directorate for Employment Promotion, and the Labor Inspectorate.

Labor rights groups have asserted that the MSP is “markedly weaker” than its Ministry of Labor predecessors.<sup>69</sup> The ILO’s CEACR has also articulated a number of specific concerns regarding the MSP’s capacity to uphold internationally recognized workers’ rights in Colombia. These include concerns that mechanisms for notification to the labor inspectorate of industrial accidents and cases of occupational disease may be insufficient; that inspectors are tasked with too many responsibilities, interfering with the discharge of

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<sup>65</sup> U.S. Department of State, *Country Reports on Human Rights Practices 2010 - Colombia*, Section 7, Washington, D.C., April 8, 2011.

<sup>66</sup> International Labor Conference, *2010 Report of the CEACR*, 107.

<sup>67</sup> Conclusions of the ILO High Level Tripartite Mission to Colombia, February 14-18 2011, p. 4.

<sup>68</sup> Government of Colombia, *Por el cual se determinan los objetivos, la estructura orgánica y las funciones del Ministerio de la Protección Social y se dictan otras disposiciones, Decreto 205 de 2003*, as published in *Diario Oficial*, no. 45.086 (February 3, 2003), Articles 27, 28, and 29; available from: [http://www.secretariassenado.gov.co/senado/basedoc/decreto/2003/decreto\\_0205\\_2003.html](http://www.secretariassenado.gov.co/senado/basedoc/decreto/2003/decreto_0205_2003.html).

<sup>69</sup> AFL-CIO Comments, p.36.



their principal duties; and that initial inspector training and subsequent training during employment, including on risk assessment and workplace access, need strengthening.<sup>70</sup> Partly in response to such criticisms, the Government of Colombia introduced legislation, signed into law by President Santos on May 4, 2011, to reconstitute a separate Ministry of Labor.<sup>71</sup>

**Action Plan:** In addition to establishing a separate Ministry of Labor, the Government has committed to double the size of the labor inspectorate by hiring 480 new inspectors over a four-year period, with the hiring and training of the first 100 new inspectors to be completed in 2011.<sup>72</sup> An additional 100 labor inspectors will be hired in 2012. The Government has also committed to establish systems for filing anonymous labor complaints, including by creating a toll-free telephone hotline and a new web-based filing mechanism. The Government has committed to improve and extend the mediation and conflict resolution system which has been operated by the MSP, including through workshops on alternative dispute resolution for labor inspectors and additional resources for regional offices, worker and employer conflict resolution trainings and outreach.

## 2.7 Other Recent Labor Law Developments

**Determination of Legality of a Strike:** Prior to 2008, the Colombian Ministry of Social Protection was charged with determining the legality of a labor strike. The ILO CEACR had commented “that a declaration of illegality of a strike should be made by the judicial authority or an independent authority, not by the Ministry of Labour.”<sup>73</sup> In addition, the ILO CFA has observed generally that “responsibility for declaring a strike illegal should not lie with the government, but with an independent body which has the confidence of the parties involved.”<sup>74</sup> Law No. 1210 of 2008 transferred the authority to rule on the legality of a strike to the judiciary by amending Article 451 of the Labor Code to provide

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<sup>70</sup> International Labor Conference, *2011 Report of the CEACR*, 517-518.

<sup>71</sup> Embassy of Colombia, “Ensuring Justice and Protecting Labor and Human Rights in Colombia,” [online]; available from [http://colombiaemb.org/docs/Colombia%20Kit/2010/11-16-10\\_I%20E%20-%20Labor%20Rights%20and%20Impunity.pdf](http://colombiaemb.org/docs/Colombia%20Kit/2010/11-16-10_I%20E%20-%20Labor%20Rights%20and%20Impunity.pdf). See also *Informe de Conciliación al Proyecto de Ley 53 de 2010 Cámara, 166 de 2010 Senado*. See also Colombia Reports, “Separation of Colombian Ministries Approved,” April 7, 2011 [online] available from: <http://colombiareports.com/colombia-news/news/15449-separation-of-colombian-ministries-approved.html>. See also Colombia Reports, “Senate Approves Bill for New Government Powers,” March 16, 2011 [online] available from: <http://colombiareports.com/colombia-news/news/14924-senate-approves-bill-for-new-government-powers.html>.

<sup>72</sup> See Action Plan, p. 1 *supra* note 3 at p. 1. At the end of December 2006, the Inspectorate employed 274 out of a possible 289 budgeted posts, MPS, “*Citación e información necesaria para el informe sobre Derecho Laboral en Colombia*” (Email communication attachment, September 21, 2007, U.S. Embassy-Bogota), 1, 3, 5. The U.S. State Department reported 423 labor inspectors in 2010. See U.S. Dept. of State, *2010 Human Rights Report: Colombia*, April 8, 2011, sec. 7(d).

<sup>73</sup> ILO, CEACR, *Individual Observation, Freedom of Association and Protection of the Right to Organise, 1948, Convention No. 87, Colombia (ratification: 1976)* [online], 2000; available from <http://www.ilo.org/ilolex/cgi-lex/pdconv.pl?host=status01&textbase=iloeng&document=5067&chapter=6&query=Colombia%40ref&highlight=&querytype=bool>.

<sup>74</sup> ILO CFA, *Digest of Decisions*, 2006, para. 628.

that “the legality or unlawful nature of a collective work suspension or stoppage shall be declared by the judicial authorities in a priority procedure.”<sup>75</sup>

**Registration of Trade Unions:** Prior to a Constitutional Court ruling in 2008, union registration procedures were administered by the MSP. The procedures were reportedly very slow and official union recognition could sometimes take years.<sup>76</sup> Labor rights groups additionally contended that the Government abused the requirements to slow or deny registration to new unions.<sup>77</sup> The ILO CEACR noted that there were a high number of seemingly arbitrary rejections of union registration documents and called on the government to amend its laws to ensure that the administrative authority would not have undue discretion in the union registration process.<sup>78</sup> However, Resolution No. 626 of 2008, instead expanded the grounds on which the MSP could refuse to register a union to include “that the trade union organization has been established for purposes that are different from those deriving from the fundamental right of association.”<sup>79</sup> In a 2008 ruling, the Constitutional Court found the new grounds for denying union registration established in Resolution 626 to violate both the Constitution of Colombia and ILO Convention No. 87.<sup>80</sup> The Court further ruled that the constitutional provisions requiring unions to register with the MSP served only as a *pro forma* registration requirement and did not justify the MSP in denying or approving a union’s registration documents. The ruling removed a significant obstacle to union registration. In accordance with the Court’s ruling, the Government of Colombia has clarified that Resolution 626 of 2008 is inapplicable. MSP officials are now depositing union documents in the register without the restrictive prior controls and procedures.<sup>81</sup> Labor rights groups have confirmed that the MSP is largely following the new procedures for depositing union registration documents.<sup>82</sup>

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<sup>75</sup> Government of Colombia, *Por la cual se modifican parcialmente los artículos 448 numeral 4 y 451 del Código Sustantivo del Trabajo y 2 del Código Procesal del Trabajo y de la Seguridad Social y se crea el artículo 129A del Código Procesal del Trabajo y de la Seguridad Social y se dictan otras disposiciones, Ley 1210 de 2008*, as published in *Diario Oficial* no. 47,050 (July 14, 2008)[hereinafter *Ley 1210*], Article 2; available from [http://www.secretariasenado.gov.co/senado/basedoc/ley/2008/ley\\_1210\\_2008.html](http://www.secretariasenado.gov.co/senado/basedoc/ley/2008/ley_1210_2008.html). Section 1(2) of the Act empowered the President of the Republic to order the cessation of a strike if there was a prior favorable ruling of the Supreme Court. The Constitutional Court declared that section of the act unconstitutional. Constitutional Court, C-349 (May 20, 2009), sec. III “Resuelve;” available from <http://www.corteconstitucional.gov.co/relatoria/2009/C-349-09.htm>.

<sup>76</sup> U.S. Department of State, *2004 Country Report on Human Rights Practices - Colombia*, Feb. 28, 2005, Section 6a; available from <http://www.state.gov/g/drl/rls/hrrpt/2004/41754.htm>.

<sup>77</sup> For example, in 2005, the World Confederation of Labor (WCL) and other unions asserted to the ILO CEACR that the Government rejected registrations at the behest of employers. International Labor Conference, *2005 Report of the CEACR*, 51.

<sup>78</sup> See International Labor Conference, *2008 Report of the CEACR*, 96; available from [http://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---relconf/documents/meetingdocument/wcms\\_090991.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_090991.pdf).

<sup>79</sup> Government of Colombia, *Por la cual se deroga la Resolución 1651 de 2007 y se modifican los artículos 2°, 3° y 5° de la Resolución 01875 de 2002, Resolución 626 de 2008*, as published in *Diario Oficial* no. 46,914 (Feb. 26, 2008), Article 2; available from <http://mps.minproteccionsocial.gov.co/vbecontent/VerImp.asp?ID=17501&IDCompany=3>.

<sup>80</sup> See Constitutional Court, C-695 (July 9, 2008), sec. VI, para. 22; available from <http://www.corteconstitucional.gov.co/relatoria/2008/C-695-08.htm>.

<sup>81</sup> International Labor Conference, *2010 Report of the CEACR*, 104.

<sup>82</sup> See e.g., AFL-CIO Comments, pp. 22-23.

**Compulsory Arbitration:** Between 1990 and 2008, Article 448(4) of the Colombian Labor Code allowed the Ministry of Labor (and then its successor MSP) to refer a dispute to an arbitration tribunal when a strike lasted for more than 60 calendar days.<sup>83</sup> The ILO CEACR repeatedly expressed concern that this provision was contrary to international standards on freedom of association.<sup>84</sup> The ILO CFA explicitly requested the Government of Colombia to take steps to amend Article 448 to provide that compulsory arbitration to end a collective labor dispute and a strike is acceptable only at the request of both parties involved in the dispute; if the strike involves public servants exercising authority in the name of the State; or if the strike affects essential services.<sup>85</sup>

Law No. 1210 of 2008, discussed above, amended Labor Code Article 448(4). The amended section now states that, following a mandatory five-day conciliation period, “both parties shall request” the MPS to convene an arbitration board.<sup>86</sup> The Government of Colombia has subsequently clarified that such a request must be made voluntarily by both parties and therefore does not provide for compulsory arbitration.<sup>87</sup>

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<sup>83</sup> See *Ley 50 de 1990*, Article 63(4)(repealed by *Ley 1210 of 2008*, Article 1). See also ILO CFA, *Report 314 (March 1999)*, paras. 68, 69, and 75; available from <http://www.ilo.org/public/english/standards/relm/gb/docs/gb274/gb-8-2.htm>.

<sup>84</sup> See, e.g., ILO CEACR, *Individual Observation, Freedom of Association and Protection of the Right to Organize, 1948, Colombia (ratification: 1976)*[online], 1991; available from <http://www.ilo.org/ilolex/cgi-lex/pdconv.pl?host=status01&textbase=iloeng&document=830&chapter=6&query=Colombia%40ref&highlight=&querytype=bool>.

<sup>85</sup> ILO CFA, *Report 314*, paras. 75 and 77(c). See also ILO CFA, *Digest of Decisions, 2006*, paras. 565-567.

<sup>86</sup> *Código Sustantivo del Trabajo*, Article 448(4).

<sup>87</sup> See International Labor Conference, *2010 Report of the CEACR*, 105. The CEACR observed that this interpretation was also confirmed to the High Level ILO mission, which visited Colombia in October 2009.

### 3. Labor Violence and Impunity

This section describes concerns about violence against trade unionists and prosecution of the perpetrators and recent commitments made and steps taken by the Government of Colombia to address the issue. It provides an overview on violence levels; examines issues of justice and impunity, including investigations, prosecutions, convictions, sentencing, and victims' rights; and describes current and newly launched efforts to protect at-risk union members.

The administration of Colombian President Santos has publicly recognized the significant problem of anti-union violence and impunity.<sup>88</sup> Under the Action Plan of April 7, 2011, the Government of Colombia committed to take substantial and concrete measures to address the problem, discussed below.

#### 3.1 Recent History of Violence

Historically, there has been “an extremely serious problem of violence [against trade unionists] in Colombia,”<sup>89</sup> largely perpetrated by illegally armed groups. This has occurred in the context of a long history of violent conflict in Colombia, which surged with great intensity from the mid-1980s, with armed confrontations between revolutionary guerrillas and newly created paramilitary organizations, funded by the proceeds of illicit drug production and trafficking. Trade unionists, along with other social and political leaders, became the targets of violence committed by these armed groups.<sup>90</sup>

The levels of violence in general and labor violence in Colombia have fallen substantially since 2005.<sup>91</sup> According to the Escuela Nacional Sindical (ENS),<sup>92</sup> although there was a significant drop in the murder of Colombian trade unionists from 2002 to 2007, falling from 191 to 39 per year, murders have increased again during the last three years, with 52 murders in 2008, 47 in 2009, and 51 in 2010.<sup>93</sup> According to the Colombian

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<sup>88</sup> “Frente para erradicar crimines de sindicalistas, propone A. Garzón”, *El Tiempo*, Bogota, January 24, 2011, [http://www.eltiempo.com/mundo/estados-unidos/ARTICULO-WEB-NEW\\_NOTA\\_INTERIOR-8796317.html](http://www.eltiempo.com/mundo/estados-unidos/ARTICULO-WEB-NEW_NOTA_INTERIOR-8796317.html).

<sup>89</sup> ILO CFA, *Report 343(November 16, 2006)*, para. 418; available from [http://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---relconf/documents/meetingdocument/wcms\\_gb\\_297\\_10\\_en.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_gb_297_10_en.pdf).

<sup>90</sup> Fernan E. Gonzalez, “The Colombian Conflict in Historic Perspective”, *Conciliation Resources*, 2004, <http://www.c-r.org/our-work/accord/colombia/historical-perspective.php>.

<sup>91</sup> Conclusions of the ILO High-Level Tripartite Mission to Colombia, February 14-18, 2011, p. 2.

<sup>92</sup> The ENS was founded in Medellin in 1982, and is a labor research center consisting of academics, lawyers, economists and professional researchers, who investigate and publish widely on every aspect of Colombian labor relations, labor law, and Colombian compliance with international labor standards.

<sup>93</sup> ENS, “Violencia antisindical e impunidad durante los 8 años del Gobierno Uribe”, 2010, [www.uniglobalunion.org/.../Balance%20Gobierno%20Uribe.%20Violencia%20antisindical%20e%20impunidad.Textos%ENS](http://www.uniglobalunion.org/.../Balance%20Gobierno%20Uribe.%20Violencia%20antisindical%20e%20impunidad.Textos%ENS); ENS, “En 2010 fueron asesinados 51 sindicalistas en Colombia”, 2010, [www.ddhh\\_colombia.org/.../noticias%20sindicales/informeescuela11032011.PDG](http://www.ddhh_colombia.org/.../noticias%20sindicales/informeescuela11032011.PDG).

Government, the number of murders of trade unionists was 26 in 2007, 39 in 2008 and 28 in 2009.<sup>94</sup>

According to the ENS, forms of violence against trade unionists other than murder have been rising.<sup>95</sup> The ENS reports that in 2010 there were seven cases of forced disappearances, 21 assassination attempts, 35 forced displacements, five kidnappings, three arbitrary detentions and 338 death threats against trade unionists.<sup>96</sup>

### 3.2 Investigations, Prosecutions, Convictions, and Sentencing

Colombian Government sources indicate 353 convictions in cases involving the murder of trade unionists over the last 25 years.<sup>97</sup> According to the ENS, in 95.6 percent of cases involving the murder of trade unionists since 1986, there have been no convictions.<sup>98</sup> The ILO described the “situation of impunity” as “intolerable” in 2002.<sup>99</sup>

In response to the continued problem of labor violence and few convictions of perpetrators, in 2006 the Colombian Prosecutor General’s Office established a Labor Sub-Unit of the Human Rights Unit, devoted exclusively to the investigation and prosecution of violent acts committed against trade unionists. That year, the Government of Colombia also designated three special judges from the existing criminal justice system to rule on criminal cases involving anti-union violence.<sup>100</sup> Although there has

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<sup>94</sup> Ministerio de la Protección Social y Fiscalía General de la Nación (Prosecutor General), *Colombia: Un país comprometido con la actividad sindical y el cumplimiento de estándares laborales internacionales*, Bogota, 2010, [www.cancilleria.gov.co/...110-06-24+Sindicalismo+singles+diseñado+Rendon.pdf](http://www.cancilleria.gov.co/...110-06-24+Sindicalismo+singles+diseñado+Rendon.pdf). The discrepancy between the Colombian government and the ENS is due to the differing research methodologies. The MPS tends to concentrate on trade union leadership or on rank-and-file members who have assumed formal trade union functions, while the ENS applies a more expansive standard of workers engaged in trade union activity. See U.S. Department of State, “Country Reports – 2009: Colombia”, Section 7 and ENS/Comision Colombiana de Juristas (CCJ), “Que os duelan las sangres ignoradas – Informe sobre violaciones a los derechos humanos de los y las sindicalistas y la situación de impunidad, 2009-2010 y 2002-2010”, October, 2010, [www.coljuristas.org/documentos/libros\\_e\\_informes/informe\\_sobre\\_violaciones\\_a\\_los\\_ddhh\\_de\\_los\\_y\\_las\\_sindicalistas.html](http://www.coljuristas.org/documentos/libros_e_informes/informe_sobre_violaciones_a_los_ddhh_de_los_y_las_sindicalistas.html)

<sup>95</sup> ENS, “Violencia antisindical e impunidad durante los 8 años del Gobierno Uribe”, 2010.

<sup>96</sup> According to the ENS, the number of death threats against trade unionists rose from a total of 1,298 between August 7, 2002 and August 6, 2006 to 1,348 between August 7, 2006 and August 6, 2010; forced displacements went up from 146 (August 7, 2002-August 6, 2006) to 388 (August 7, 2006 - August 6, 2010); attempted murders increased from 43 (August 7, 2002-August 6, 2006) to 53 (August 7, 2006 - August 6, 2010); and reported cases of torture rose from eight cases (August 7, 2002-August 6, 2006) to 12 (August 7, 2006 – August 6, 2010). ENS, “Violencia antisindical e impunidad durante los 8 años del Gobierno Uribe”, 2010,

[http://www.uniglobalunion.org/Apps/UNINews.nsf/vwLkpById/8424D3037246F0F8C1257786000EDD7B/\\$FILE/Balance+Gobierno+Uribe.+Violencia+antisindical+e+impunidad.Textos+ENS.pdf](http://www.uniglobalunion.org/Apps/UNINews.nsf/vwLkpById/8424D3037246F0F8C1257786000EDD7B/$FILE/Balance+Gobierno+Uribe.+Violencia+antisindical+e+impunidad.Textos+ENS.pdf).

<sup>97</sup> See U.S. Department of State, *Country Reports on Human Rights Practices 2010 – Colombia*, Section 7 (a), Washington, D.C., April 8, 2011, and “Colombia – un país comprometido con la actividad sindical y el cumplimiento de estándares laborales internacionales”, Ministerio de la Protección Social y la Fiscalía General de la Nación, 2010.

<sup>98</sup> ENS, “Violencia antisindical e impunidad durante los 8 años del Gobierno Uribe”, 2010.

<sup>99</sup> ILO CFA, *Report 329 (November 2002)*, para. 379; available from <http://www.ilo.org/public/english/standards/relm/gb/docs/gb285/pdf/gb-9-i.pdf>.

<sup>100</sup> ENS/CCJ, “Que os duelan las sangres ignoradas”, October, 2010, pp. 57-65.

been an increase in convictions since 2006, most murders and other cases of violence against trade unionists remain unsolved. In addition, few cases of non-lethal violence, including death threats, are effectively investigated.<sup>101</sup>

The ILO's supervisory bodies have found a direct connection between violence against trade unionists and violation of workers' right to freedom of association and collective bargaining. The ILO CFA has stated that "[a] genuinely free and independent trade union movement cannot develop in a climate of violence and uncertainty" and has further noted that "[a] climate of violence, such as that surrounding the murder or disappearance of trade union leaders, . . . constitutes a serious obstacle to the exercise of trade union rights." The ILO CFA has held that "such acts require severe measures to be taken by the authorities,"<sup>102</sup> and has also noted:

In the event that judicial investigations into the murder and disappearance of trade unionists are rarely successful, the Committee 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.<sup>103</sup>

In March 2009 in a case concerning Colombia, the ILO CFA reiterated these conclusions and emphasized the Colombian government's responsibility to end the violence and impunity.<sup>104</sup> In February 2011, an ILO High Level Tripartite Mission to Colombia similarly stated that "ending impunity is the strongest deterrent to acts of violence in the future."<sup>105</sup>

In the cases where convictions were obtained, there have been concerns expressed about the investigative methodology used to obtain them, including failure to fully explore possible anti-union motive; failure to investigate potential intellectual authors, in particular in cases involving plea bargains and confessions; and failure to examine similar cases together as a pattern.<sup>106</sup> In approximately 34 percent of labor violence cases, the defendants were convicted *in absentia* and are therefore still at large.<sup>107</sup> A Colombian

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<sup>101</sup> ENS/CCJ, "Que os duelan las sangres ignoradas", October, 2010, pp. 62-63. See also U.S. Department of State, "Country Reports – 2005: Colombia," Section 6.

<sup>102</sup> See, e.g., ILO CFA, *Digest of Decisions*, 2006, paras. 45 and 46.

<sup>103</sup> *Ibid.*, para. 51.

<sup>104</sup> ILO CFA Case No. 1787, Report No. 356, Geneva, 2009. This case has been reviewed by the CFA since the 1990's, and was filed by the international trade union movement and the Colombian trade union centrals. It is the leading consolidated case in the ILO system concerning labor violence in Colombia, and the CFA has issued authoritative conclusions and recommendations on the subject during the course of review.

<sup>105</sup> Conclusions of the ILO High Level Tripartite Mission to Colombia, February 14-18, 2011, p. 3.

<sup>106</sup> US-LEAP, "Colombia: Falling Further Behind in the Fight Against the Impunity of Anti-Union Violence," p. 10,

<http://www.usleap.org/files/2009%20Annual%20Impunity%20Report%20Final%20Web.pdf>.

<sup>107</sup> See Mary Jane Bolle, "Proposed Colombia Free Trade Agreement: Labor Issues", CRS, Washington, D.C., January 22, 2010, p. 6, fn. 16, [www.policyarchive.org/handle/10207/bitstreams/19160.pdf](http://www.policyarchive.org/handle/10207/bitstreams/19160.pdf), citing the Embassy of Colombia, *Colombia: An Update on Actions to Strengthen the Rights and Protections for*

Commission of Jurists (CCJ) study that examined 150 cases of anti-union violence from 2002 to 2008<sup>108</sup> found that in only ten percent of the cases had a full examination been conducted of the victim's union activity and the possible relevancy of that activity to the crime at issue.<sup>109</sup>

A number of factors contribute to the shortfalls in the number and quality of convictions obtained, including resource and staffing shortages for the Prosecutor General's Office; inadequate training for judicial police, who generally are the first at the scene of union homicides; and lack of internal coordination between units working on such cases.

Of the 2,857 murders of trade unionists since 1986 reported by the ENS, 1,387 have been assigned to the special Labor Rights Sub-Unit.<sup>110</sup> The status of the unassigned cases remains unclear. Reportedly, of the assigned cases, about 1,150 are actively under investigation or prosecution; most are still in the preliminary stage of investigation, meaning there is no identification of suspects. There are no criminal files in 194 cases, indicating that investigations have not yet been launched.<sup>111</sup> The Prosecutor General's Office moved forward with indictments and prosecutions in 12.3 percent of the 1,150 cases according to the ENS and CCJ.<sup>112</sup> As noted above, the Colombian Government has reported 353 convictions in cases involving the assassination of trade unionists over the last 25 years.<sup>113</sup>

In order to address the large number of unresolved cases, in 2006 the Government of Colombia and the three national trade union centrals, with the assistance of the ILO, identified 185 priority cases of trade unionist murders.<sup>114</sup> Of those, about half are still in the first stage of investigation, without suspects having been identified. Final rulings have been issued in 22.7 percent of the priority cases.<sup>115</sup>

There are a number of factors that contribute to the lack of prosecutions. The Prosecutor General's Office lacks sufficient staff and resources and, in particular, faces a shortage of

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*Trade Unions*, May 2008, p. 14; *Recent Progress in Labor in Colombia*, June 2008; and Colombia Embassy letter to the Honorable George Miller, November 5, 2008, attachment 5, p. 4

<sup>108</sup> Including, but not limited to homicides.

<sup>109</sup> ENS/CCJ, "Que os duelan las sangres ignoradas", October, 2010, pp. 65-66. The Colombian Commission of Jurists was founded in 1988 in Bogota and is directly affiliated with the International Commission of Jurists in Geneva. It is a research, monitoring and advocacy body on human rights in Colombia, and includes some of the nation's leading attorneys and researchers.

<sup>110</sup> The ENS and CCJ put the figure at 1,344; the government at 1,387. See *El Comercio y la Sociedad Entre Estados Unidos y Colombia*. The White House, [www.whitehouse.gov](http://www.whitehouse.gov), April 15, 2011, p. 6 and ENS/CCJ, "Que os duelan las sangres ignoradas", October, 2010, p. 63.

<sup>111</sup> ENS/CCJ, "Que os duelan las sangres ignoradas", October 2010, p. 63

<sup>112</sup> *Ibid.*

<sup>113</sup> U.S. Department of State, *Country Report – Colombia, 2010*, Section 7(a). See also "Colombia – un país comprometido con la actividad sindical y el cumplimiento de estándares laborales internacionales", Ministerio de la Protección Social y la Fiscalía General de la Nación, 2010.

<sup>114</sup> "Colombia – un país comprometido con la actividad sindical y el cumplimiento de estándares laborales internacionales", Ministerio de la Protección Social y la Fiscalía General de la Nación, 2010. The union centrals concluded that rapid prosecution and convictions in these particular instances would produce an important deterrent effect.

<sup>115</sup> *Ibid.*

prosecutors, investigators, and judicial police, especially at the regional level.<sup>116</sup> During an ILO 2009 mission to Colombia, the Colombian Government acknowledged insufficient resources for the Prosecutor General's Office, specifically citing the Labor Rights Sub-Unit.<sup>117</sup> In addition, the judicial police lack sufficient training on crime scene management, preservation of evidence and other investigative techniques necessary to facilitate effective and successful investigations and prosecutions in cases of labor violence.

There is also a lack of coordination within the Labor Rights Sub-Unit and between the Labor Rights Sub-Unit and the Justice and Peace Sub-Unit of the Prosecutor General's Office. As a result, cases involving the same regions, industrial sectors, or unions are not being sufficiently investigated together, impeding detection of similarities that could assist in identifying possible anti-union motives and related perpetrators, including intellectual authors, across cases. For example, in 2009, there were convictions in seven cases involving assassination of trade unionists in the health care industry. Three of the cases involved murders on the Caribbean coast (Barranquilla and Santa Marta), but neither the National Police nor the Prosecutor General's Office investigated the possible relationship between these assassinations, although all occurred after the victims tried to fight the privatization of their hospitals.<sup>118</sup> According to the Inter-American Court on Human Rights, a systematic and contextual method of investigation and prosecution is essential to combating impunity in Colombia.<sup>119</sup>

A substantial number of the convictions in cases of trade unionist murders are the result of the application of the 2005 Justice and Peace Law, which has served as a legal framework for the demobilization of paramilitary groups and is largely administered by the Justice and Peace Sub-Unit of the Prosecutor General's Office.<sup>120</sup> This law offers reduced prison sentences of five to eight years to members of armed groups who agree to demobilize and confess all their crimes, including violent acts against trade unionists.<sup>121</sup> Although the Justice and Peace process has helped secure convictions, the paramilitary confessions are often general and fail to identify other accomplices or the specific circumstances of the crimes, resulting in convictions based on voluntary statements rather

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<sup>116</sup> *El Comercio y la Sociedad Entre Estados Unidos y Colombia*, The White House, [www.whitehouse.gov](http://www.whitehouse.gov), April 15, 2011, p. 6.

<sup>117</sup> See ILO Mission Report on Colombia, December 15, 2009, pp. 4- 5.

<sup>118</sup> US-LEAP, "Colombia: Falling Further Behind in the Fight Against the Impunity of Anti-Union Violence", December 22, 2010. p. 23.

<sup>119</sup> "Case of the La Rochela Massacre", IACHR, Merits, Reparations and Costs, Series C, No. 163, paragraph 76, judgment of May 11, 2007, [www.corteidh.or.cr/docs/informes/eng2008.pdf](http://www.corteidh.or.cr/docs/informes/eng2008.pdf). See also US-LEAP, "Colombia: Falling Further Behind in the Fight Against the Impunity of Anti-Union Violence", p. 22, fn. 57.

<sup>120</sup> Prosecutor General's Office of Colombia, Human Rights Unit, Subunit on Crimes against Trade Unionists, "Case No. 1787 Progress Report", July 20, 2009, [www.colombiaemb.org/...EMBASSY%20OF%20COLOMBIA%20MATERIAL%20ON%20LABOR%](http://www.colombiaemb.org/...EMBASSY%20OF%20COLOMBIA%20MATERIAL%20ON%20LABOR%).

<sup>121</sup> *Por la cual se dictan disposiciones para la reincorporacion de miembros de grupos armados organizados*, Ley 975, Article 3, Diario Oficial No. 45.980, July 25, 2005, [http://www.fiscalia.gov.co/justiciapaz/Documentos/LEY\\_975\\_concordada.pdf](http://www.fiscalia.gov.co/justiciapaz/Documentos/LEY_975_concordada.pdf).



than independent investigations that might lead to other intellectual or material authors and a more complete understanding of the cases.<sup>122</sup>

### 3.3 Recent Developments and Action Plan

In recognition of the serious, ongoing problems of labor violence and impunity, in 2009 the Colombian Government passed Law 1309, which increased penalties and promoted improved prosecutions in cases of labor violence. Law 1309 expanded the category of crimes requiring a minimum sentence of 40 years to include violent crimes against union members. The law also expanded the category of aggravated threats to include threats against union members, thereby increasing potential prison terms for the convicted perpetrators of such threats. The law also increased from 20 to 30 years the statute of limitations in cases of union-related assassinations.<sup>123</sup>

Under the Action Plan, the Government of Colombia has made and is in the process of implementing a series of important commitments to protect trade union activists and threatened teachers and to address concerns related to the investigation and prosecution of labor violence cases, described below in 3.3.2.

#### 3.3.1 Protection of Threatened Trade Union Activists and Teachers

The Colombian Ministry of Interior and Justice (MIJ) has maintained a protection program for human rights advocates, including trade unionists, since 1997.<sup>124</sup> There are two major criteria for eligibility: the existence of imminent risk of violence against the life, integrity, security or liberty of the trade unionist; and that the trade unionist be a leader of his or her labor organization or a trade union activist.<sup>125</sup> In practice, the Government has limited the program to leaders and executive board members of unions. As of 2010, the program covered 1,454 unionists, constituting 13.5 percent of protection program participants.<sup>126</sup> Separate protection regimes are offered for workers in the petroleum sector (United Workers Union) and teachers (Colombian Federation of

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<sup>122</sup> US-LEAP, “Colombia: Falling Further Behind in the Fight Against the Impunity of Anti-Union Violence”, p.10.

<sup>123</sup> *Ley 1309 de 2009, por la cual se modifica la ley 599 de 2000 relativa a las conductas punibles que atentan contra los bienes jurídicamente protegidos de los miembros de una organización sindical legalmente reconocida*, Articles 1, 3, and 6. Diario Oficial no. 47.392 (June 26, 2009), [http://www.secretariassenado.gov.co/senado/basedoc/ley/2009/ley\\_1309\\_2009.html](http://www.secretariassenado.gov.co/senado/basedoc/ley/2009/ley_1309_2009.html)

<sup>124</sup> Ministerio del Interior y de Justicia (MIJ), *Programa de Protección de Derechos Humanos del Ministerio del Interior y de Justicia*, 2010, <http://www.mij.gov.co>.

<sup>125</sup> Law 418 of 1997, Article 81, Diario Oficial No. 43.201, December 26, 1997, *Por la cual se consagran unos instrumentos para la búsqueda de la convivencia, la eficacia de la justicia y se dictan otras disposiciones*, amended by Law 782 of 2002, [http://www.secretariassenado.gov.co/senado/basedoc/ley/1997/ley\\_0418\\_1997\\_pr001.html#81](http://www.secretariassenado.gov.co/senado/basedoc/ley/1997/ley_0418_1997_pr001.html#81). See also Decree 1740 of 2010, establishing regulations for Article 81, Law 418, <http://www.dmsjuridica.com/CODIOGOS/LEGISLACION/decretos/2010/1740.htm>.

<sup>126</sup> MIJ, *Programa de Protección*, 2010.

Educators), because trade unionists in these sectors have been subject to higher levels of violence.<sup>127</sup>

The MIJ regime provides two kinds of protection for trade union participants, depending on the results of a risk assessment conducted by the National Police: soft measures, including access to communication equipment, such as cell phones, occasional transit to minimize danger and temporary relocations; and hard measures, including bodyguards, bullet-proof vests, armored vehicles and relocation out of the country, either temporary or long-term.<sup>128</sup>

Two of Colombia's three national labor centrals, the Unitary Central of Workers (CUT) and CTC (Confederation of Colombian Workers), have raised concerns about the MIJ protection program. They have noted that while over 75 percent of the victims of labor violence have been rank and file members engaging in union activity or workers attempting to organize into unions, the MIJ program has been limited, in practice, to union leaders. The CUT and the CTC have also criticized the risk assessments performed by the National Police for requiring a clearly articulated and proven threat of death or severe bodily harm, which is lacking in most cases, prior to designation of an "extraordinary risk" which is required for protection program eligibility.<sup>129</sup> They claim that National Police risk assessments often do not take into consideration relevant community-specific and region-specific circumstances.<sup>130</sup> The two labor centrals have also raised concerns that the initial risk assessments on which protection program eligibility is based suffer from chronic delays and backlogs. Although Colombian law requires the National Police to make a risk determination within 30 days,<sup>131</sup> deliberations often last for months.<sup>132</sup> In March 2011, the MIJ was informed by the National Police that the assessment backlog totaled 1,040 cases, 304 of which were applications for protection by trade unionists.<sup>133</sup>

Teachers have been particular targets of violence. Of the total number of trade union murders from 1986 to the present, one-third (946) have been leaders or members of the Colombian Federation of Educators (FECODE).<sup>134</sup> The Government of Colombia instituted a system of special protection measures for teachers in 1992.<sup>135</sup> Between 1992 and 2010, if a teacher reported to the relevant local Ministry of Education that he or she

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<sup>127</sup> Informe de la CUT y de la CTC a la Misión de Alto Nivel de la OIT, "Solo Anuncios No Son Resultados", Bogota, February 14, 2011, p. 8. [www.fecode.edu.co/pdf/cut/informedelacut-ctc140211\\_misionOIT.pdf](http://www.fecode.edu.co/pdf/cut/informedelacut-ctc140211_misionOIT.pdf)

<sup>128</sup> Ibid, p. 8.

<sup>129</sup> Ibid., p. 8.

<sup>130</sup> "Observaciones de la FLIP al Decreto 1740 de 2010 del Ministerio del Interior Sobre Programa de Protección." Fundación Para La Libertad De Prensa (FLIP), FLIP, Bogota, 2010, [www.flip.org.co/resources/documents/1a528917f9ff8bec1180873cd9340ae4.pdf](http://www.flip.org.co/resources/documents/1a528917f9ff8bec1180873cd9340ae4.pdf)

<sup>131</sup> Article 26, Decree 1740 of 2010.

<sup>132</sup> Observaciones de la FLIP al Decreto 1740 de 2010.

<sup>133</sup> Communication by the MIJ to the U.S. Embassy, March, 2011.

<sup>134</sup> Banco de Datos de Derechos Humanos, ENS y Datos recopilados por FECODE, as cited in Informe de la CUT y de la CTC a la OIT, February 14, 2011, p. 11.

<sup>135</sup> Decreto 1645 de 1992, Ministerio de Educación Nacional y Presidente de la Republica de Colombia, Diario Oficial no. 40.622 (October 13, 1992),

had received threats of violence and presented appropriate documentation, the teacher would be automatically transferred to another school district while the threat was evaluated, and permanently thereafter if the threat was confirmed.<sup>136</sup> In 2010, however, the Ministry of Education changed the protection program significantly.<sup>137</sup> Under Resolution 1240 of 2010, a teacher alleging threats of violence would be provisionally transferred for two months, pending completion of the risk assessment. If it was determined that the teacher faced “ordinary risk” rather than “extraordinary risk”, the teacher would be returned to his or her home district and denied salary for the period of transfer.<sup>138</sup> FECODE expressed serious concern about the change, arguing that it put teachers at greater risk because they could not afford to face the potential financial hardship of denial of compensation.

**Action Plan:** In response to these concerns, the Government of Colombia has committed to and has begun to take a series of specific steps to improve the protection program for union activists. In April 2011, the MIJ issued Ministerial Resolution 716 of 2011, broadening the scope of the protection program to cover all labor activists, including those engaged in advocating for worker rights at the workplace level and workers engaged in active efforts to form a union. The Resolution also extends coverage to former union leaders and activists who are determined to be under extraordinary risk because of their past union activities. The Government of Colombia has committed to plan and budget for the additional resources necessary to support the resulting expansion of the protection program and to consult with the relevant unions to verify the status of the individuals seeking protection.

With regard to the teacher protection program, the Government of Colombia has amended the program to eliminate any pecuniary sanctions against teachers who are transferred provisionally under the program, but later found not to be under extraordinary risk.

Under the Action Plan, the Government launched an emergency effort to eliminate the backlog of risk assessments with respect to applications for protection filed by union members, which it completed by July 30, 2011. The Government has committed to henceforth comply with the legal requirement to process all risk assessments within a 30-day period.

The Government of Colombia has implemented a commitment to reform the scope and functioning of the interagency advisory committee on protection and risk assessments by September 15, 2011. The committee is being reconstituted to include not only representatives of the National Police but also the Inspector General’s Office and the

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<sup>136</sup> Ibid., Articles 6-8.

<sup>137</sup> Resolución 1240 de 2010, [http://www.mineducacion.gov.co/1621/articles-219224\\_archivo\\_pdf\\_res1240.pdf](http://www.mineducacion.gov.co/1621/articles-219224_archivo_pdf_res1240.pdf).

<sup>138</sup> Ibid., Artículo 8. Resolution 1240 of 2010 also states that it is explicitly revoking Decree No. 3222 of 2003. This earlier decree provided for salaries to be sustained during the transfer, as well as the costs of the transfer being covered. See Decreto 3222 de 2003, Articles 4, 5, and 6, [http://www.mineducacion.gov.co/162/articles-85993\\_archivo\\_pdf.pdf](http://www.mineducacion.gov.co/162/articles-85993_archivo_pdf.pdf).

Public Defender's Office to broaden the expertise and perspectives that are brought to the task.

### 3.3.2 Investigation and Prosecution of Labor Violence Cases

**Action Plan:** In April 2011, the Prosecutor General's Office issued a directive to regional directors of prosecutors, to the national prosecutorial units and to the National Directorate of the Technical Investigative Body (CTI)<sup>139</sup> instructing them that in all murder cases, they must immediately report the victim's identity to headquarters in order to: check union affiliation status with the MSP; and take all urgent actions necessary to determine the motive for the murder and, specifically, any relationship between the victim's status as a union member and the violence committed.<sup>140</sup> In April 2011, the Prosecutor General's Office also issued a directive to the chiefs of the Units of Justice and Peace and Human Rights, directing them to more effectively share evidence and information about cases involving labor violence.<sup>141</sup>

Under the Action Plan, the Government of Colombia committed to assign an additional 95 National Police as full-time judicial police investigators dedicated exclusively to cases of labor violence. In April 2011, the Government assigned 100 National Police to those responsibilities in fulfillment of the Action Plan commitment. The Prosecutor General's Office will develop a plan and identify specific budgetary needs to strengthen the institutional capabilities and the number of prosecutors and judicial police investigators assigned to process labor cases in the regional office based on an assessment of structural weaknesses or lack of sufficient resources. The Colombian Government has also committed to seek funding for the plan in the 2012 budget.

The Prosecutor General's Office has also committed to work to enhance the training of judicial police investigators and prosecutors on crime scene management, as well as jointly training them in investigative techniques with specific reference to the issues involved in cases of violence against trade unionists. The Office has drafted an analysis of closed cases of homicides of union members and activists in order to extract lessons that can be used to improve the guidelines and protocols for effectively investigating and prosecuting future cases. The Office will make the analysis public as soon as it is finalized.

The Prosecutor General's Office has also committed to meet with union confederations and the ENS to reconcile discrepancies between databases on unionist homicide cases

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<sup>139</sup> The Cuerpo Técnico de Investigación (CTI), or Technical Investigative Body, is part of the Prosecutor General's Office, and determines policies and strategies related with the functions of the Judicial Police (a section of the National Police), including crime investigation, forensics, the use of genetic information, and the management of technical information for criminal investigations. See Dirección Nacional del Cuerpo Técnico de Investigación, <http://www.fiscalia.gov.co>.

<sup>140</sup> Memorando del Director Nacional de Fiscalías a los Directores Seccionales, *Verificación Víctimas Sindicales*, Bogotá, 2011.

<sup>141</sup> Memorando del Director Nacional de Fiscalías a los Jefes Unidad Nacional Justicia y Paz y la Unidad Nacional de Derechos Humanos, *Intercambio Información Víctimas Sindicalistas, Docentes, Periodistas y Demas Personas Protegidas por los DDHH y el DIH*, Bogotá, 2011.

and will provide guidance to prosecutors to accelerate action on those cases with leads and to provisionally close cold cases.

### 3.3.3 Victims' Rights

Lack of reparation for victims of labor violence and their families and a lack of transparency regarding investigations, prosecutions, and convictions in labor violence cases have been significant concerns, particularly for labor rights groups.<sup>142</sup> Victims and their families have reported finding it difficult to obtain information on the status of labor violence investigations and prosecutions, including procedural posture of the cases, evidence of anti-union motive, formal charges and arrests. Once such cases have been concluded, victims, their families and trade unions have been able to obtain only limited information. They have had difficulty in ascertaining critical details about the role of convicted perpetrators, whether convictions were obtained *in absentia*, and whether sentences were imposed and enforced.<sup>143</sup>

On June 10, 2011, President Santos signed into law the Victims and Land Restitution Law. The law offers reparations to victims of violence due to the internal armed conflict, which would include individual trade unionists and their families, and provides for restitution of land to families displaced due to the internal armed conflict. The law provides a broad definition of victims and is intended to include victims of state agents; calls for special guarantees and protection measures, within the framework of assistance and reparations, for those considered to be “at greater risk,” defined to include union members and other specific categories of victims; inverts the burden of proof in land restitution cases in favor of displaced victims; and creates expedited channels for restitution.<sup>144</sup>

**Action Plan:** The Government of Colombia has committed to take additional measures for victims of labor violence. Under the Action Plan, the Prosecutor General’s Office will establish victims’ assistance centers specializing in human rights cases, including labor cases. The centers will be staffed by professionals with expertise on human rights and labor issues. The Prosecutor General’s Office will direct these centers and authorize them to share information with the victims and their families about the status of their

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<sup>142</sup> See ILO Mission Report on Colombia, December 15, 2009, p. 4; and US-LEAP, “Colombia: Falling Further Behind in the Fight Against the Impunity of Anti-Union Violence”, pp. 11, 17, 18, and 19. See also *Informe sobre la situación de derechos humanos de las y los sindicalistas en Colombia*, CUT-Colombia, Bogota, September, 2009, pp. 32 and 33, [www.coljuristas.org/documentos/libros...informes/inf\\_2009\\_n3.html](http://www.coljuristas.org/documentos/libros...informes/inf_2009_n3.html).

<sup>143</sup> See US-LEAP, “Colombia: Falling Further Behind in the Fight Against the Impunity of Anti-Union Violence”, pp. 9 - 11, and 17 – 19. See also AFL-CIO Comments, p. 4.

<sup>144</sup> Law 1448 of 2011, “*Por la cual se dictan medidas de atención, asistencia y reparación integral a las víctimas de violaciones a los derechos humanos e infracciones al derecho internacional humanitario y se dictan otras disposiciones*”, broadly defines eligible victims as those who have “suffered violations of their fundamental rights, from acts committed since January 1, 1985, and such violations are the results of infractions of international human rights law or of grave and manifest violations of international human rights law norms, as a result of the internal armed conflict.” Article 3. See also Article 13, <http://wsp.presidencia.gov.co/Normativa/Leyes/Paginas/2011.aspx>.

cases, as well as provide legal and psychological support. The Prosecutor General's Office will also improve public reporting with respect to closed cases.