INTERNATIONAL TRADE UNION CONFEDERATION

(ITUC)

INTERNATIONALLY-RECOGNISED CORE LABOUR STANDARDS IN COLOMBIA

REPORT FOR THE WTO GENERAL COUNCIL REVIEW OF THE TRADE POLICIES OF COLOMBIA

(Geneva, 22 - 24 November 2006)

EXECUTIVE SUMMARY

Even though it has ratified all eight ILO core labour standards, Colombia holds the sad record of being the country in which the most men and women have been murdered for their engagement in trade union activities. Over the last 4 years, the number of violations of human and trade union rights by state security bodies has increased. If attempts have been made to improve the protection of trade unionists, those are largely insufficient. The systematic and selective violence against trade unionists in a climate of impunity remains the largest obstacle to workers' rights in Colombia today. Attacks on the right to strike, to bargain collectively, and to form and join a union are persistent and pervasive. The government has, on several occasions, sought to weaken the unions, tarnish their image and discourage their membership. As a result trade unions and collective agreements are under serious threat.

Discrimination in employment is a source of concern. In addition to gender discrimination, Afro-Colombians and indigenous people are disproportionately represented among the unemployed, underemployed and the poor. The government has not taken sufficient measures to eliminate all forms of discrimination.

The legal provisions on child labour are not enforced for children engaged in informal work. The worst forms of child labour occur in Colombia with half a million children working either in mines or in coca plantations. In addition, an estimated 35,000 children are involved in prostitution.

Forced labour occurs in this country in the form of trafficking of human beings, mainly for the purpose of prostitution. There are more than 10,000 children being forcibly recruited as combatants by armed groups. The government has failed to address these issues in a satisfactory way.

INTERNATIONALLY-RECOGNISED CORE LABOUR STANDARDS IN COLOMBIA

Introduction

This report on the respect of internationally recognised core labour standards in Colombia is one of the series the ITUC is producing in accordance with the Ministerial Declaration adopted at the first Ministerial Conference of the World Trade Organisation (WTO) (Singapore, 9-13 December 1996) in which the Ministers stated: "We renew our commitment to the observance of internationally recognised core labour standards." The fourth Ministerial Conference (Doha, 9-14 November 2001) reaffirmed this commitment. These standards were further upheld in the International Labour Organisation (ILO) Declaration on Fundamental Principles and Rights at Work adopted by the 174 member countries of the ILO at the International Labour Conference in June 1998.

The ITUC's affiliates in Colombia are the Central Unitaria de los Trabajadores (CUT), the Confederación de Trabajadores de Colombia (CTC) and the Confederación General de Trabajadores (CGT).

Colombia has a relatively diversified economy. Agriculture accounts for around 14% of GDP and manufacturing for about 16% of GDP. The principal agricultural activities are cattle rearing and coffee growing. Industrial activity, concentrated around the cities of Medellin, Bogota, Cali, Barranquilla and Cartagena, is dominated by a small number of large private conglomerates, which account for the biggest share of output, and a plethora of small and medium-sized enterprises. Processed food, beverages, textiles, clothing and chemicals are the main manufactures. Mining (accounting for 4.5% of GDP) is the most export-oriented activity in the country, making up about two-fifths of total exports. Oil, extracted from large fields in the eastern plains, and coal, produced in the Guajira peninsula, are the two principal mining activities. Construction, a major employer of unskilled labour, accounts for 4.5% of GDP. Financial services represent close to 18% of GDP. Retail commerce which accounts for around 11% of GDP is mostly dominated by the big supermarkets in the largest cities. Telecommunications accounts for 4% of GDP.

Major exports consist of petroleum and petroleum products (about 26% of all exports in 2005), coal (about 12%) and coffee (about 7%). The leading export markets are the US accounting for about 40% of all Colombian exports in 2005, followed by Venezuela (about 20% of all exports) and Ecuador (about 6%).

Major imports consist of intermediate goods (about 45% of all imports in 2005), capital goods (36%) and consumer goods (about 19%). The leading supplier markets in 2005 were the US (covering about 28% of all imports in Colombia), Venezuela (6.5%) and Mexico (6%).

Colombia is a member of the Andean Community of Nations ("*Comunidad Andina de Naciones*", or CAN) together with Peru, Ecuador and Bolivia. In April 2006, Venezuela withdrew from the Cartagena Agreement, the founding document of the CAN. However through a memorandum of understanding, the trade advantages received and granted to the parties pursuant to the Andean Liberalization Programme will remain fully effective. Chile, who has recently joined the group of CAN associated members, has also signed a trade agreement with the Andean Community. Since July 2004 a trade agreement between Mercosur and the Andean Community has become effective.

Colombia is also a member of the G-3, a free trade agreement with Mexico and Venezuela that came into effect on January 1995. Colombia has signed trade agreements with the CARICOM (Caribbean Community) and all the Spanish speaking countries of Central America.

In the framework of the EU special incentive arrangement for sustainable development and good governance (GSP+), Colombia has been granted preferential access to the EU markets.

In February 2006, Colombia signed a bilateral free trade agreement with the US to eliminate tariffs and other barriers to goods and services circulating between the two countries. The agreement has not yet been ratified, however and so has not yet come into force.

I. Freedom of Association and the Right to Collective Bargaining

In 1976, Colombia ratified both ILO Convention No. 87 (1948), the Freedom of Association and Protection of the Right to Organise Convention and ILO Convention No. 98 (1949), the Right to Organise and Collective Bargaining Convention.

Freedom of association and the rights to organise, to bargain collectively and to strike are enshrined in the Colombian Constitution adopted in 1991. However a number of laws and mechanisms, both legal and illegal, limit these rights. In law and practice, Colombia violates the most basic principles of freedom of association and the right to organise and bargain collectively.

On June 1, 2006 a Tripartite Agreement on Freedom of Association and Democracy was signed at the ILO headquarters in Geneva by the Colombian Government, employers and the three Colombian trade unions (CUT, CGT and CTC). The key point in that agreement was the

establishment in Colombia of a Permanent ILO Representation whose main mission would be to promote and protect the fundamental rights of workers, and more particularly their rights to life, freedom of association, freedom of expression and free collective bargaining, and to ensure compliance with ILO policies. The government and the social partners have agreed to open the ILO Office on November 23, 2006.

Violence against trade unionists

Colombian trade unionists whether leaders or grassroots members, are victims of selective, systematic and persistent violence. These acts of violence, surrounded by a grave level of impunity, include murders, kidnappings, attempted assassinations, disappearances, threats, detentions, tortures and forced displacement. In a significant number of cases the violence against trade union members occurs during serious labour disputes. As a direct consequence of this violence, trade union membership has sharply dropped over the years to account for only 4.6 per cent of the national workforce. In 2004, barely 1.17% of the workforce was covered by collective agreements. Indeed, the largest obstacle to workers' rights in Colombia today is the climate of violence with impunity.

99 trade unionists were murdered in 2004 and 70 in 2005. As of 7 November, 53 unionists had been assassinated so far in 2006. Although there has been a decrease in the number of murders, death threats, and forced and arbitrary disappearances, the Escuela Nacional Sindical (ENS), a recognized NGO, points to a significant increase (82%) of harassment and persecution while the number of abductions of trade union members rose by 20% between 2004 and 2005. Equally preoccupying is the increase (27%) in the number of assassinated trade unionists during the first four months of the year 2006 compared to the first four months of 2005. The increased involvement of state authorities in human and trade union rights' violations needs to be underlined. The education sector is the one worst hit by anti-union violence. In 2005, 44 of the 70 trade unionists killed were working in the education sector which also accounted for 72% of all violations committed against union members during the year. The departments of Antioquia, Valle del Cauca and Santander were the most dangerous areas for trade union activity.

In 2005, women trade unionists were the victims of 15 murders, 102 death threats, ten arbitrary arrests, 15 cases of harassment and persecution for union activities, 2 attempted murders, 7 forced removals and one abduction.

As a response to this intolerable situation, specific programmes such as the establishment of a Commission for the Regulation and Evaluation of Risks and the National Security and Citizens' Coexistence Fund have been set up by the Government. In addition an investigation unit was established

within the Office of the Attorney-General devoted exclusively to investigate violations of the human rights of trade unionists. Since January 2005 the functions of the office of the Attorney-General have been confined to investigation and it no longer exercises jurisdictional responsibility. However as of this date, these measures have failed to yield tangible results, and in its observation of 2006 the ILO Committee of Experts on the Application of Conventions and Recommendations notes that "*the trade union movement in Colombia continues to be confronted by a situation of grave violence, and that murders of trade union leaders and their members continue and that their security is permanently under threat*".

Likewise little progress has been registered with regard to the climate of impunity which surrounded these acts of violence. In 2006 the same Committee of the ILO said that it "*observes once again that impunity continues to prevail*". This conclusion was also drawn by the ILO high level tripartite delegation that visited Colombia in October 2005. Indeed, the vast majority of violations, i.e. over 99 per cent of reported cases, remain unpunished and many murder cases are not investigated.The ILO reports that during the period between 2002 and 2004 convictions were only achieved in 4 cases. In its June 2005 report on Colombia the ILO Committee on Freedom of Association, while noting that most investigations had not progressed beyond the preliminary stage and many had been dismissed for lack of evidence, "*urges the government in the strongest terms to take the necessary measures to carry on with the investigations which have begun and to put an end to the intolerable situation of impunity so as to punish effectively all those responsible*". In addition to the fact that few investigations yield results, legal punishment is not enforced and reparation for the victims is non-existent. This almost complete impunity occurs because, in most cases, the perpetrator cannot be identified or evidence is insufficient, and the Colombian government takes no immediate measures to conduct a comprehensive investigation of all cases of violence.

Equally preoccupying is the adoption of Act 975 of 2005 on Justice and Peace which contains measures to facilitate the reintegration of members of illegal armed groups into civilian life. This Act has been widely criticized, including by the UN High Commissioner for Human Rights in Colombia, for undermining the rights of the victims of the atrocious crimes committed by these illegal groups. Indeed under the Act, the sanctions foreseen in the law for the perpetrators of very serious crimes, including the torture, abduction and killing of trade unionists, are inferior to the penalties for some minor offences while prison sentences do not exceed eight years and may be served on farms. Furthermore, public prosecutors have to file court cases within 60 days, allowing far too little time to investigate what are often huge and complex cases of massive violations of human rights. In July 2006, the Colombian Constitutional Court, the highest court of the country, found several aspects of the Act in contradiction with the Constitution. As of the time of writing this report, the government was

reportedly drafting new regulations for the Act, but it is unclear whether those regulations will fully implement the Court decision.

It is also worth reporting recent government proposals which have threatened to jeopardize exiting protection for human rights' victims and weaken an already ineffective judicial system. For example the government has proposed significant curtailment of "tutela", a kind of injunction that grants an emergency protection of constitutional rights while a case is being decided. The government has proposed limiting the jurisdiction of the constitutional court which has been a bulwark of defense of labour rights. In addition the government has abruptly broken off its dialogue with the inter-institutional committee for the prevention of violations and the protection of workers' human rights.

The government argues that violence against trade unionists is a result of the internal state of war in the country. However, according to data available up to December 2004, if in 70% of reported cases, the material and intellectual perpetrators of the crimes are unknown, for 30% of the remaining cases, where information on the possible perpetrators is held, reports show that about 50% of the cases are attributed to paramilitary forces, 40% to State officials, 7% to social violence and delinquency, and 3% to rebel groups. The State itself is chiefly responsible for the arbitrary arrests, the house searches and the extrajudicial executions of trade union activists in the department of Arauca.

The Colombian NGO, Escuela Nacional Sindical, points out that most of the violations of the human rights of trade unionists in Colombia are associated with industrial disputes, even though they take place in the context of war and are committed, in most cases, by one of the belligerent parties. The Escuela also reports that most of the murders, threats, kidnappings and forced removals suffered by Colombian workers have taken place in periods and contexts characterised by increased activity and pressure for workers' demands and that therefore, Colombian trade unionists are not accidental or collateral victims of the armed conflict that has been raging in the country for decades. It is worth noting that, like many other human rights' organizations, the ENS has itself been the subject of serious threats, which raise deep concerns about the safety of its members.

Indeed some businesses have been accused of using the armed conflict as a cover for violence intended to break trade unions or weaken their ability to bargain collectively. In a number of cases allegations have been made of companies contracting paramilitary forces to deter union organizations. Unfortunately the Colombian government has not deemed it necessary to investigate possible links between armed groups, the military and private employers.

The case of the Cali Municipal Enterprises Workers' Union (SINTRAEMCALI) is illustrative. In August 2004 the union was informed of a plan named "Operation Dragon", instigated by the management of the Municipal Enterprises of Cali to eliminate several officials of the union as well as a member of the House of Representatives and other human rights defenders. Ample evidence was uncovered showing that the security firm, composed of members of the armed forces, and hired by the company to destabilise the union had collected information on the personal lives of the trade union officials. SINTRAEMCALI believes the personal information was obtained from officers of the Administrative Department of Security (DAS), the country's official security service, a unit of which is responsible for providing protection for trade unionists. As SINTRAEMCALI pointed out in a complaint to the ILO, the detailed information seized in the legal proceedings launched after the union's formal complaint was only available to officials of the national government. The government denies the existence of a plan to eliminate the trade union or its officials.

Earlier this year, Rafael Enrique Garcia Torres, a former senior official at Colombia's executive intelligence agency, the DAS, told prosecutors as well as journalists from two major newsmagazines in the country that the DAS has provided the paramilitary groups with the names of 23 union leaders. Although these declarations were immediately refuted by the Presidency, it is striking to note that most of the leaders mentioned by Garcia have been either assassinated or have fled under death threats and that not a single penal investigation related to these cases has yielded result up to this date. In any case, no action has been taken within the DAS to elucidate the facts surrounding these accusations.

Freedom of association

Freedom of association is enshrined as a basic right in the Constitution. The Labour Code provides for the automatic recognition of any trade union that has at least 25 members and has complied with a simple registration process. In law, unions are free to decide their own rules and manage their own activities. Only a judicial authority, as opposed to a government body, may suspend trade unions or annul their legal personality.

In practice, there are serious obstacles faced by trade unionists when they register their organisation. Firstly, workers willing to form a union face retaliation. In addition the official in charge of registration can oppose a trade union registration if he or she thinks that the trade union statute is in breach of labour laws. Trade unions have been saying for several years that only an independent judicial authority should be allowed to decide on the legality of trade unions' statutes. Furthermore, according to a resolution of the former Ministry of Labour, employers have the right to oppose a trade union registration. Finally, if a company has informed its workers that the company is restructuring, any trade union that is formed cannot be

registered. As the result, more than 70 trade unions were unable to register over the last 5 years. This has led the ILO Committee of Experts on the Application of Conventions and Recommendations to request the government to ensure that the registration of trade unions is only refused in those cases explicitly envisaged by the legislation and that the registration authority does not use its discretion to refuse such applications, in conformity with article 2 of the Convention.

Trade unions are confronted with the use of various types of contractual arrangements, such as associated work cooperatives and services, and civil or commercial contracts to carry out functions and work that are within the normal activities of companies but under which workers are not allowed to establish or join a trade union. The ILO Committee of Experts on the Application of Conventions and Recommendations stated in its 2006 Observation that "*when workers in cooperatives or those covered by other types of civil or commercial contracts have to perform work within the normal activities of the establishment in the context of a relationship of subordination, they should be considered as employees in a real employment relationship and should therefore enjoy the right to join a union*". The Committee requested the government to take the corresponding necessary measures.

Restructuring public establishments, which involve the massive dismissal of workers, including trade union leaders, or even the closure of establishments has been used in some cases as an anti-union strategy. Indeed when the restructuring phase is followed by the re-establishment of the company under a different entity in which former workers are re-employed on the condition they are not member of a trade union, it is no longer possible for unions to exist. The ILO has in 2006 criticized these practices and requested the government to ensure that workers can exercise their trade unions' rights freely during the restructuring process and in the new restructured establishments.

The way in which three major state-owned companies (Ecopetrol in the oil sector, Telecom in the telecommunications sector, and the Instituto de Seguros Sociales in the health sector) were restructured in 2003 and 2004 speaks volumes about the labour policies of the current government.

Telecom was liquidated, without the company following the required legal procedures, in order to destroy the 6,000 members' strong union and put an end to collective bargaining. At the same time, the government used the assets of the liquidated company to set up another non-unionized telecommunications company, which only employed one fifth of the workforce of the old company under employment contracts and working conditions far worse than those formerly enjoyed by the workers.

The Colombian oil company ECOPETROL and the Social Security Institute (Instituto de Seguros Sociales, ISS) were divided into two

companies, thereby reducing the unions' influence and denying the workers in the newly formed companies many of the negotiated rights they had enjoyed in their former companies. The majority of the ISS employees were classified as "civil servants", thus losing the rights they had previously enjoyed under the collective agreement signed between the union Sintraseguridad Social and the ISS - including the right to be represented by that union.

Collective bargaining

Collective bargaining is not allowed in the public sector. For many years, the ILO Committee of Experts on the Application of Conventions and Recommendations have urged the government to take all the necessary measures to ensure that public employees who are not engaged in the administration of the State can bargain collectively. Under the current Colombian legislation, the unions representing public sector workers are not allowed to put forward demands or sign collective agreements, since their right to collective bargaining is limited to submitting "respectful requests" that do not cover key aspects of industrial relations such as wages, benefits and employment contracts. As of this date the government has failed to put its legislation in conformity with Convention 98.

While a total of 634 collective agreements were signed for the period 2004-2005, it is important to bear in mind that this total includes 192 collective accords (“pactos colectivos”) which according to the legislation, can only be concluded in cases in which the membership of the union organisation does not include over one third of the workers. In reality however these “accords” are imposed by the employer and tend to be used as a pretext for sidelining the unions. According to information gathered by the ILO high level tripartite meeting of October 2005, it is frequently the case that in practice workers who are members of a trade union are encouraged to disaffiliate from it and to sign a collective accord, thereby bringing the number of trade union members below the level of one third. This led the ILO Committee of Experts on the Application of Conventions and Recommendations in 2006 to emphasise that direct negotiations with workers should only be possible in the absence of trade union organisations. The Committee called on the government to take measures to guarantee that collective accords are not used to undermine the position of the unions and the possibility in practice to conclude collective agreements with them.

The labour code allows the government to extend the terms of collective bargaining agreements that apply to two-thirds of the firms in an industry to cover workers in the entire industry. However article 376 of the code requires that an industrial union must represent more than 50% of the workers in each firm to be able to bargain, a provision inconsistent with ILO Conventions. As a result, collective agreements are only negotiated in individual companies and industry-wide agreements have been negotiated only in the banana and electrical industries.

Another factor that is having a particularly negative impact on collective bargaining concerns the new powers given to Arbitration Courts, which are now entitled to review all the provisions of collective agreements in such a way as to allow employers to cut back and/or abolish rights previously acquired by the workers. This situation has led many unions not to put forward new sets of demands, but instead to seek to extend the collective agreement in force, rather than face the risk of losing existing rights in an arbitration court. In addition, it is important to bear in mind that trade union leaders are subject to all kinds of illegitimate pressures when they negotiate collective agreements.

Finally it is worth noting that a reform of labour regulations was imposed in 2004, without any form of consultation or social dialogue, which resulted in longer daily working hours, reduced overtime payments, reductions of severance pay, increased worker flexibility, restrictions on collective bargaining and the loss of previously acquired rights. For example, the new law excludes the possibility of apprenticeship contracts being covered by collective bargaining. According to the ILO conventions, collective bargaining should cover "*all written agreements concerning working conditions and terms of employment*".

The right to strike

The 1991 Colombian Constitution recognises the right to strike for all workers except for members of the armed forces, the police and workers providing essential public services as defined by law. Similarly, the Constitution charges the legislative authorities with making provisions governing the right to strike. However, this task has not yet been fulfilled. In practice, laws dating back to between 1956 and 1990 which ban strikes remain applicable to a wide range of public services. These often do not qualify as "essential" services, in contravention of the ILO definition that such services can only be those "*the interruption of which would endanger the life, personal safety or health of the whole or part of the population*". For many years, the ILO Committee of Experts on the Application of Conventions and Recommendations has requested the government to amend the legislation on the right to strike. Up to this date the government has failed to act.

Furthermore, and despite the fact that the ILO Committee of Experts has required the government to modify the law for many years, federations and confederations are still prohibited from calling strikes. In 2005 the Committee reiterated that under the Conventions, higher level organisations should be able to have recourse to strike action in cases of disagreement with the government's social and economic policies. Again the government has failed to act.

The legislation permits the Ministry of Social Protection to refer a dispute to arbitration when a strike exceeds a certain period. However the

ILO Committee of Experts on the Application of Conventions and Recommendations considers that the use of compulsory arbitration to bring an end to a strike is only acceptable when it has been requested by the two parties involved in the dispute, or in cases when the strike is prohibited or restricted in cases of disputes within the public sector in the strict sense of the term. The Committee has requested the government on several occasions to amend the legislation. The government has failed to act.

Another problem of consistency with ILO Convention 87 concerns the legal provisions regulating the dismissal of trade union leaders or activists who engaged in strike action that has been declared unlawful. Those engaged in lawful strike action can also be dismissed, once six months have passed following the end of the dispute. Again, the government has failed to put its legislation in conformity with the Conventions despite several calls of the ILO.

***Conclusions**:*

Colombia holds the sad record of being the country in which the most men and women have been murdered for their engagement in trade union activities. If attempts have been made to improve the protection of trade unionists, those are largely insufficient. The systematic and selective violence against trade unionists in a climate of impunity remains the largest obstacle to workers' rights in Colombia today. Attacks on the right to strike, to bargain collectively, and to form and join a union are persistent and pervasive. The government has, on several occasions, sought to weaken the unions, tarnish their image and discourage their membership. As a result trade unions and collective agreements are gradually disappearing.

II. Discrimination and Equal Remuneration

Colombia ratified ILO Convention No. 100 (1951), Equal Remuneration in 1963 and ILO Convention No. 111 (1958), Discrimination (Employment and Occupation) in 1969.

The Constitution prohibits discrimination against women and specifically requires authorities to ensure adequate and effective participation by women at decision-making levels of public administration. However, discrimination against women persists. Women face hiring discrimination, are disproportionately affected by unemployment, and have salaries that are generally incompatible with their education and experience. Government unemployment statistics indicate that in 2004 the unemployment rate for women was 16.5 percent, compared with 5 percent for men. The female workers most affected by wage discrimination and unemployment are the ones in rural areas.

Despite an explicit constitutional provision promising additional resources for single mothers and government efforts to train them in parenting skills, women's groups report that single mothers continue to face serious economic and social problems.

Approximately 22 percent of the population is of African origin. Afro-Colombians are entitled to all constitutional rights and protections; however, they face significant economic and social discrimination. Seventy-four percent of Afro-Colombians earn less than the minimum wage. Choco, the department with the highest percentage of Afro-Colombian residents, has the lowest per capita level of social investment and ranks last in terms of education, health, and infrastructure. Despite special legal protections and government assistance programmes, indigenous people continue to suffer discrimination and often live on the margins of society.

Conclusions:

Discrimination in employment is a source of concern. Afro-Colombians and indigenous people are disproportionately represented among the unemployed, underemployed and the poor. The government has not taken sufficient measures to eliminate all forms of discrimination.

III. Child Labour

Colombia ratified ILO Convention No. 138 (1973), the Minimum Age Convention, in 2001 and Convention No 182 (1999), the Worst Forms of Child Labour Convention in 2005.

The Constitution prohibits the employment of children under 14 in most occupations, and the Labour Code prohibits the granting of work permits to children under 18; however, child labour remains a significant problem whose evolution is intrinsically linked to the increase in poverty, unemployment and precarious forms of employment.

The Constitution stipulates that the State must provide a free public education for children between the ages of 6 and 15; however, the National Department of Statistics (DANE) estimates that only 75 percent of children between the ages of 6 and 15 attend school. According to DANE, nearly 15 percent of children are employed.

The 1989 decree that established the Minors Code categorically prohibits the employment of children under 12 and strictly limits work by children of ages 12 and 13. It stipulates that “exceptional conditions” and the express authorization of the Ministry of Labour are required to employ children between 12 and 17. Children ages 12 and 13 may work a maximum of 4 hours a day, children ages 14 and 15 a maximum of 6 hours a day, and children ages 16 and 17 a maximum of 8 hours a day. Children are prohibited from working in a number of specific occupations, including

mining and construction; however, these requirements are largely ignored in practice, and 5 percent of working children possess the required work permits.

The legal minimum age for work is inconsistent with completing a basic education, and only 38 percent of working children attend school.

According to a recent report released by the partly public company Mineros de Colombia, between 200,000 and 400,000 children work in illegal gold, clay, coal, emerald, limestone, and other mining operations. Children work extensively in agriculture, primarily on subsistence family farms. According to DANE, approximately 200,000 children work as coca pickers or in other aspects of the illegal drug trade.

Although there are no reports of forced child labour in the formal economy, several thousand children are forced to serve as guerrilla or paramilitary combatants, prostitutes, or coca pickers.

The Ministry of Social Protection has inspectors in each of the country's 32 departments and the national capital, responsible for certifying and conducting repeat inspections of workplaces that employ children; however, the system lacks resources and covers 20 percent of the child labour force employed in the formal economy.

The ICBF (Instituto Colombiano de Bienestar Familiar) estimates that 25,000 children are victims of sexual exploitation. However according to UNICEF, an estimated 35,000 adolescents work as prostitutes, in spite of legislation prohibiting sex with minors and the employment of minors for prostitution. Children are trafficked for sexual exploitation.

***Conclusions**:*

The legal provisions on child labour are not enforced for children engaged in informal work. The worst forms of child labour occur in Colombia with half a million children working either in mines or in coca plantations. In addition, an estimated 35,000 children are involved in prostitution.

IV. Forced Labour

Colombia ratified ILO Convention No. 29 (1930), the Forced Labour Convention in 1969 and ILO Convention No. 105 (1957), the Abolition of Forced Labour Convention in 1963.

The Constitution prohibits slavery and any form of forced or compulsory labour, including by children, and there are no reports that such practices occurred in the formal economy.

However, guerrillas and paramilitaries practice forced conscription. Both guerrillas and paramilitaries use child soldiers. In 2004, the International Organisation for Migration estimated that 11,000 children in the country are members of illegal armed groups; UNICEF reports that the number is as high as 14,000. According to a Human Rights Watch study of 2003, eighty percent of the children under arms belong to one of the two guerrilla groups, the Revolutionary Armed Forces of Colombia (FARC) or the National Liberation Army (ELN); at least one of every four irregular combatants in Colombia is under eighteen years of age; and of these, several thousand are under the age of fifteen, the minimum age permitted for recruitment under the Geneva Conventions. For its part, ILO Convention 182 on the Worst Forms of Child Labour, prohibits the forced or compulsory recruitment of children below the age of 18 for use in armed conflict.

Under Colombian legislation the recruitment of minors is punishable by six to ten years in prison. Yet the government has failed to protect children by enforcing the law energetically. In addition the government has failed to ensure that those responsible for the recruitment of children are held accountable.

The ILO Committee of Experts on the Application of Conventions and Recommendations has repeatedly asked the Government of Colombia to provide information on the effect given in practice to several sections of the Penal Code establishing penalties which may involve compulsory labour. The Convention prohibits the imposition of forced labour as a sanction for activities of social protest and trade union activities including strike action or activities related to the expression of political opinions. As of this date, the Government has failed to provide the requested information.

The law prohibits trafficking in persons; however, the country is a source for trafficking in persons, primarily for sexual purposes, and principally to Europe and Asia. According to the DAS (Departamento Administrativo de Seguridad), an estimated 45,000 to 50,000 women are working overseas as prostitutes. Many of them were trafficking victims. The vast majority of trafficking victims are young women, although children and young men are also at risk and there are reports of some Colombian men being trafficked for forced labour.

Internal trafficking of women and children from rural to urban areas for sexual exploitation remains a serious problem.

Conclusions:

Forced labour occurs in this country in the form of trafficking of human beings, mainly for the purpose of prostitution. There are more than 10,000 children being forcibly recruited as combatants by armed groups. The government has failed to address these issues in a satisfactory way.

RECOMMENDATIONS

1. The government should improve its policies, programmes and administrative measures for the protection of trade unionists so as to guarantee that their lives are effectively protected.
2. The government should reform the Administrative Department for Security (DAS) so as to ensure that its programme for the protection of trade unionists is not used for any other purposes but the protection of people whose life is at risk.
3. The government should put an end to the climate of impunity by taking all necessary measures to ensure that cases of serious violations of human rights are properly investigated, those responsible effectively convicted with sentences appropriate to the gravity of their crimes, and reparation for the victims made real.
4. The government should redraft Act 975 on Justice and Peace taking into full consideration the recommendations and comments of the Constitutional Court and of the UN High Commissioner for Human Rights.
5. The government should put pressure on competent authorities to accelerate or initiate investigations related to serious violations of human rights, including where that are concerns that the DAS might have been involved.
6. The government should take actions to implement the tripartite agreement signed in June 2006 at the ILO, including the opening of an ILO permanent representation in the country.
7. The government should ensure that the registration of trade unions is undertaken in accordance with the principles enshrined in the Constitution, national law and international standards.
8. The government should put its legislation in conformity with the ILO core Conventions so as to ensure that all workers, irrespective of their status, have the right to join or form a union.
9. The government should ensure that workers in public services which are not essential in the strict sense of the term have the right to bargain collectively.
10. The government should revise the legislation concerning collective pacts in order to ensure that they do not undermine the fundamental right of workers to bargain collectively.
11. The government should put its legislation concerning collective negotiation at the industry level in conformity with ILO core Conventions.

12. The government should withdraw the powers recently given to arbitration courts to review the content of collective agreements.

13. The government should promote social dialogue and consultation with the social partners when planning to reform labour regulation.

14. The government should put its legislation concerning the right to strike in conformity with ILO core Conventions, in particular so that workers of public services which are not essential in the strict sense of the term, as well as trade union federations and confederations should be granted the right to strike.

15. The government should limit the use of compulsory arbitration in cases of strike to those cases that are foreseen in the ILO core Conventions and established ILO jurisprudence.

16. The government should put its legislation concerning the dismissal of workers involved in strikes in conformity with ILO core Conventions and established ILO jurisprudence.

17. The government should implement a decent work programme, following the recommendations of the International Labour Organisation.

18. The government should take all necessary measures and programmes to eliminate all forms of discrimination.

19. The government should take all necessary measures to enforce the legislation on child labour.

20. The government should design policies and programmes to eliminate the worst forms of child labour which concern half a million Colombian children.

21. In line with the commitments accepted by Colombia at the Singapore WTO Ministerial Meeting and its obligations as a member of the ILO, the government of Colombia should provide reports to the WTO and the ILO on its legislative changes and implementation programmes with regard to the above areas.

22. The WTO should draw to the attention of the authorities of Colombia on the commitments they undertook to observe core labour standards at the Singapore and Geneva WTO Ministerial Conferences. The WTO should request the ILO to intensify its work with the government of Colombia in these areas and provide a report to the WTO General Council on the occasion of the next trade policy review.

References

AFL-CIO Solidarity Center, Justice for all, The struggle for workers rights in Colombia, 2005

Escuela Nacional Sindical, various reports, 2004, 2005, 2006

Human Rights Watch Report "You'll learn not to cry" Child Combatants in Colombia, 2003

Human Rights Watch, various reports, 2004, 2005, 2006

ICFTU Annual Survey of violations of trade unions rights, 2004, 2005, 2006

ILO CEAR Observations, 2004, 2005, 2006

UNICEF reports, 2004, 2005

UNDP reports, 2004, 2005