

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, 26 and 28 June, 2012)**

EXECUTIVE SUMMARY

Colombia has ratified all eight core ILO labour Conventions. In view of restrictions on the trade union rights of workers, discrimination, child labour, and forced labour, determined measures are needed to comply with the commitments Colombia accepted at Singapore, Geneva and Doha in the WTO Ministerial Declarations over 1996-2001, and in the ILO's Declaration on Fundamental Principles and Rights at Work and its 2008 Social Justice Declaration.

Trade unions in Colombia are under constant attack and threat, resulting in reduced membership and bargaining power. Employers often fail to engage in good faith collective bargaining and the state does not protect workers who seek collective agreements or initiate a strike to pursue their demands. Workers face significant difficulties in exercising the right to organise and collective bargaining and to strike due to of fatal attacks as well as death threats, disappearances, attempts on their lives and raids. The vast majority of these crimes remain unpunished. Bargaining power is also reduced by the large numbers of irregular and precarious workers who are barred from a long term contract.

Colombia's laws provide insufficient protection for women, Afro-Colombians, indigenous people and other groups that are frequently discriminated against. Activists, indigenous leaders and peasant leaders have been targeted for murder and hundreds receive threats. Indigenous people and Afro-Colombians are adversely affected by the internal conflicts which can result in forced displacements. When employed, they face poor employment conditions. Women and other groups deal with unequal access to employment as well as unequal remuneration.

The law protects children in employment and regulates child labour. On the other hand, the law is not sufficiently enforced and there are many reports of the worst forms of child labour. Children of displaced families living in cities are particularly vulnerable to street labour and Afro-Colombian and indigenous children are often victims to some of the worst forms of child labour in plantations, mines and in domestic servitude.

Forced labour and trafficking in persons are problems. Many victims are usually from displaced families, indigenous and Afro-Colombians. Much of the problem concerns women and girls trafficked for sexual exploitation, however, forced labour has been detected and many children and adults are reportedly forced into military conflict by illegal armed groups.

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 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 and in the Declaration on Social Justice for a Fair Globalisation adopted unanimously by the ILO in 2008.

The ITUC affiliates in Colombia are the *Confederación General del Trabajo (CGT)*, the *Central Unitaria de Trabajadores (CUT)* and the *Confederación de Trabajadores de Colombia (CTC)* which have a combined membership of 1,450,000 workers covering various areas of employment.

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 limit these rights. In law, Colombia protects basic principles of freedom of association and the right to organise and bargain collectively. However in practice, high levels of violence and crime continue to heavily restrict workers' freedom to exercise their rights. From January to June 2012 alone, 7 trade union leaders and activists were murdered, 2 were attacked in unsuccessful attempts on their lives and 2 disappeared. The vast majority of these crimes remain unpunished. For these reasons, less than 5 per cent of Colombian workers are unionised or covered by collective agreements.

In view of this situation, the US administration insisted on the adoption of an "Action Plan for Labour Rights" to accompany the US-Colombia FTA which was presented on April 7, 2011. However, the Plan was criticised as incomplete because, among other things, it is not enforceable and it does not establish a framework that fully complies with ILO Conventions. Furthermore, more than a year after its introduction reports show poor implementation as well as exclusion of unions from participating in the

Plan's follow up and implementation. The US Congress ratified the US-Colombia FTA in October 2011 and President Obama declared the agreement in force on April 15, 2012.

In May 2011, the Tripartite Agreement of Freedom of Association and Democracy of 2006 was renewed by the Colombian government, business and two trade union confederations (CGT and CPC) in order to continue promoting and extending social and labour dialogue. Nonetheless, the agreement also does not cover all the problems of freedom of association and the right to collectively bargain.

As demonstrated in this report, the government failed to fully address the outcomes of an ILO High-Level Mission which visited the country in February 2011. Further to this, the ILO's Committee of Experts on the Application of Conventions and Recommendations (CEACR) has repeatedly called on the government to implement its recommendations.

The right to organise

The right to establish and join trade unions is recognised by law in Colombia. 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. However, some restrictions on union registration are in place.

A primary reason for Colombia's low union membership rate is that half the economic activity is informal. In 2010 and 2011, Colombia's statistic authority reported a slightly declining rate in total informality from close to 51.5 to 50 per cent.

In the formal economy, unions' membership and bargaining power is limited because the law does not effectively protect workers from **anti-union discrimination** and the law's application in practice is weak. For instance, in 2011 union leaders in the packaging company Minipak faced discriminatory disciplinary measures such as 15 to 45 days' suspension without pay. Likewise, the security company BRINKS intimidated and dismissed unionists. The multinational AJE Colombia dismissed union leaders and offered non-unionised workers a collective agreement. The plantation companies Banacol and Uniban asked employees to show evidence that they did not belong to a union for renewing their contracts. Intimidation, disciplinary measures and dismissals are not found only in the private sector: the municipal workers' union in Coveñas suffered harassment and dismissals for forming a union.

It is uncommon for workers to be vindicated in cases of such abuses of their right to organise. The OMA restaurant chain dismissed 19 union members, offered benefits to union leaders to withdraw from the union and changed many permanent contracts to fixed-term contracts. A complaint was raised and the court decided in favour of the workers. The company initially ignored the ruling which gave rise to contempt proceedings before the municipal civil court which ruled for the reinstatement of

dismissed workers and imposed a non-dissuasive fine equal to five minimum wages for impeding organising.

The ILO High-Level Mission stated that it was “*deeply concerned at the repeated and detailed information received concerning acts of anti-union discrimination at the enterprise level and in the public sector as well as the failure to take effective action to stop it.*”

Another reason for the low unionisation rate is the **lack of regular contracts**. About two million workers in health services, plantations, extraction industries, transportation and other sectors are not employed with regular work contracts. The situation is similar for a large number of public institutions where the state outsourced services to ‘associated workers’ cooperatives’ (*‘CTAs’, from their initials in Spanish*). In Colombia, the CTAs are subcontracting agencies that operate under the pretense of community and democratic management. CTAs began as cooperatives on a communal level which enjoyed lower taxation and other benefits. These advantages eventually led to the proliferation of false cooperatives that pooled workers for subcontracting through third-party intermediaries without contracts and social benefits.

In 2009, the Constitutional Court ruled that employment through CTAs violated labour rights when they prevented workers from freely exercising the right to organise. The government adopted Law 1429 of 2010 that established penalties for subcontracting through CTAs. The US Department of State noted that 907 cooperatives and pre-cooperatives were investigated and that 102 of them were sanctioned approximately a total amount of 395 million pesos (\$219,000). The report continued: “*[i]n practice nominal fines assessed by the government did little to dissuade violators.*”

Further to non-dissuasive penalties for the use of CTAs, employers can rename a CTA as a ‘simplified anonymous society’ (SAS) and continue with the same practices. Largely, this is the case in the country’s ports. The Ports’ Union has filed several complaints but the authorities have failed to address the problem.

Moreover, employers increasingly hire workers through employment agencies and labour recruiters who offer part-time and irregular work. It is difficult for workers employed through such agencies to form unions because they are easily replaceable and because employers suppress such efforts by firing those who initiate them. The National Trade Union School (ENS) reports that labour inspections are inadequate and that legislative loopholes allow companies to avoid regularising workers. To this end, the ILO’s 2011 High-Level Mission recommended “*that the legal provisions regulating Cooperatives should be modified to bring them in line with ILO Conventions concerning freedom of association and the recognition of the right to collective bargaining.*”

The right to collective bargaining

The Labour Code permits ‘collective pacts’ to be directly negotiated with non-unionised workers where the union represents less than one-third of the workforce. The

CEACR stressed that *“when there is a trade union at the enterprise, collective agreements should not be concluded with non-unionized workers,”* as even an equal collective pact with non-unionised workers undermines the incentive to join a union. In practice, employers usually sign ‘collective pacts’ that offer better conditions to non-unionised workers with a view to discouraging union membership.

In 2011, Colombia enacted an amendment of Article 200 of the Criminal Code which stipulates fines and imprisonment terms of one to two years for using this practice. The government also promised to request ILO technical assistance and implement the provision with enforcement measures as well as to launch a campaign for 2011 and 2012 to raise awareness of this amendment with public by June 15, 2011.

Collective bargaining is not fully enjoyed by public sector workers. For many years, the ILO CEACR has urged the government to take all 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, 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.

In May 2012, the government amended Decree No. 535 of 2009 which had enabled the establishment of special consultation bodies in the public sector. While not yet adequate, the amendment constitutes an improvement over the law that existed before. Some collective agreements were concluded in the district of Bogota, the Ministry of Social Protection and the Ministry of Education; the last-named agreement was not fully respected by the state.

Dispute settlement

The law establishes compulsory arbitration as the main form of dispute settlement. The CEACR has acknowledged that an amendment to the Labour Code provides four steps which take 3 to 5 days each: an initial effort to settle the dispute or decide on arbitration, the intervention of the tripartite ‘Standing Negotiation Committee on Labour and Wage Policies’ (CPCPLS), an Arbitration Board by the Ministry of Social Protection, and the return of employees to work. However, the third step has to be triggered by a demand of both parties.

The CPCPLS mandated the creation of the ‘Special Committee for the Handling of Conflicts referred to the ILO’ (CETCOIT) as a tripartite body responsible for making recommendations to CPCPLS on establishing procedures for disputes that occur in exercising the right to organise. CETCOIT can also handle submitted disputes at request of both parties on enterprise level. However, the Commission has not lived up to workers’ expectations and ILO has called for positive efforts from all sides to make it function. Recently, this body achieved the resolution of at least four cases.

The right to strike

It is prohibited for federations and confederations of trade unions to call a strike. CEACR has repeatedly referred to this issue but the government has failed to amend the Labour Code provision that imposes this prohibition. Act No. 1210, 2008 establishes that a strike called by federations or confederations may be declared illegal only by judicial authorities. In order to protect the right to strike the government enacted Act No. 1309 in 2009. The Act provides fines of between 100 and 300 minimum monthly wages for disturbing lawful assemblies, impeding the exercise of labour rights and for reprisals against assembling and strike action.

Strikes are allowed only during collective bargaining and workers must give prior notice to the employer. A strike's legality is decided by courts in a rapid procedure and if deemed illegal, the employers have the ability to fire workers who participated in the strike.

Employers usually make use of these provisions disregarding the demands of workers. For example, the management of Drummond Ltd Colombia, which operates a mine in Pribbenow, fired workers for a spontaneous work stoppage. The mine held a record of 14 recent deaths and numerous work accidents that resulted in injuries. On March 21, 2009, another worker died in an industrial accident and workers downed tools asking for better safety conditions. Beforehand, the trade unions had made strong representations for these demands which were ignored by management. The company filed against the union and the court decided in favour of the employer because the action did not follow the strike procedures laid out in the law. The employer dismissed 19 employees, nine of them sick. The ILO report on the complaint states: *"Indeed, one company director even commented that the first to be dismissed would be the officials who had gone to the United States in the past to push a claim against the company for financing paramilitary groups to assassinate two presidents and a vice-president of the union."*

State authorities have not been neutral when a labour dispute escalates to collective industrial action and police have taken violent action to disperse demonstrators and strikers. Strikes in the oil fields of Campo Rubiales, the Gran Tierra Energy and Emerald Energy have been repressed with force by the police including by firing rubber bullets and tear gas. Strikes in the mining sector where workers called for better health and safety conditions and other collective bargaining demands were met with police brutality as well as media libel. In January 2012 police intervened in a strike and dispersed protesters in mining company Obras Proyecto Minería (OPM) where workers asked for similar working conditions to other mines in the region because theirs were inferior.

In the public sector, the government has defined 'essential services' in a broad way and many categories of public employees are excluded from the right to strike. The ILO accepts the prohibition of strikes only *"in the case of public servants exercising authority in the name of the State or of workers in essential services in the strict sense of*

the term, i.e. services whose interruption could endanger the life, personal safety or health of the whole or part of the population.”

Work stoppages are also reported in the informal economy for example taxi and bus drivers, recyclers, porters, truck drivers and employees in trash collection.

Assassinations and Impunity

Act No. 1309, which extends the statute of limitations to 30 years, recognises as an aggravating circumstance the victim's affiliation to a union or human rights ombudsperson and stipulates that penalties would be increased by one third if there have been threats and intimidation to union members. According to information submitted to the CEACR in 2010, the government established a Victims Compensation Fund which applies to cases related to trade union leaders and members and it covers 177 trade union leaders.

Colombia holds the world record for violence against trade unionists and other human right defenders and activists. The total number of murdered unionists since 1986 is 2,914 and almost a quarter of those murdered were trade union leaders. In 2008 there were 51 assassinations of unionists, 47 in 2009, 51 in 2010, 29 in 2011 and 7 from January-June 2012.

If the thousands¹ of attempts, torture cases, warning attacks, forced displacements, disappearances and death threats were to be recorded the total number of anti-union crimes would reach to 11,000. In 2011 alone there were 480 more cases of non-lethal attempts and threats against unionists.

Many union offices have been attacked including, recently, the premises of the Electricity Workers Union, the Teachers Union of Caldas and the National Hospital Workers' Association offices in Meta. In this type of attacks, hired thugs cause damages and injuries, steal computer disks and documents or just shoot at windows and doors to instigate fear in union members.

Attacks are also carried out by organised crime rings and in many cases by parties to the internal conflicts. The far-right paramilitary group, United Self-defence of Colombia (AUC), that was supposed to have been disbanded in 2006 has been re-organised in successor groups. Some groups claim to operate for left-wing goals such as the Revolutionary Armed Forces of Colombia (FARC) and the National Liberation Army (ELN).

Impunity for such crimes remains at exorbitant levels, above 90 per cent for assassinations and 97 per cent for all crimes. The lack of enforcement certainly encourages these acts of violence against organised labour. Consequently, willingness to

¹ Against trade unionists alone there have been in total 290 unsuccessful attempts at murder, 222 forced disappearances, at least 5,397 death threats and 1,776 forced displacements.

form and join unions, engage in collective bargaining and take action is discouraged and collective power is in decline.

A US based human rights NGO has reported on an example of the terror trade unionists face for conducting their activities. In November 2011, two alleged paramilitaries invaded Juan Carlos Galvis' home, *“while Juan Carlos and his son were away and assaulted his wife, Mary, and his two daughters, Jackeline and Mayra. They grabbed Mayra, a child with Down Syndrome, and put a gun to her head, threatening to kill her if Mary did not tell them the whereabouts of Juan Carlos and his son. They then bound and gagged Mary and Jackeline, again asking them to say where Juan Carlos and his son were. The assailants then proceeded to spray paint Mary and Juan’s faces on a wedding photo the family had posted on the wall. Before leaving the home, they stole two laptops, some USB memory drives, and documents, and they trashed the house. The traumatic attack left Mayra in shock and unable to speak for days.”* The family went into hiding because apart from this incident another two colleagues of Galvis had recently been assassinated.

In May 7, 2012 Daniel Aguirre Piedrahita, the General Secretary of Colombia's National Union of Sugar Cane Cutters and a father of three was shot in the head with two bullets, close to his house while he was accompanying his wife to make a telephone call. The leader of the union had led massive protests joined by 18,000 workers in 2008 that established a successful collective agreement for workers. He was the seventh victim of fatal attacks in 2012.

On January 17, 2012, Mauricio A. Redondo of the oil workers union USO and local community leader in Puerto Asís was killed along with his wife, Janeth Ordoñez Carlosama, at night in his home in Putamayo. He was working for the petroleum company PEI Energy which is under contract to the state owned Ecopetrol. He was part of the protests in Teteyé, where he was organising workers against the company's policies that caused environmental damage and for better wages and working conditions. On June 17, 2010, Nelson Camacho González, another member of USO, a maintenance worker at the Ecopetrol refinery had been assassinated.

Jorge Eliécer de los Ríos Cárdenas was an environmental activist and member of a professors' union in Risalda. A father of two, he was on his way to the Educational Institute of his town where he worked when he was assassinated on June 8, 2011 with six bullets. He had previously spoken out in the press against the mining operations of a multinational in the municipality of Quinchía. He was the third professor to be murdered in the municipality (*departamento*) of Risalda in 2011. Teachers are particular targets for assassinations: 2010 data show that 25 out of the 46 unionists killed in 2010 were teachers.

In 2010, on June 5, Hernán Abdiel Ordóñez Dorado, leader of the prison workers' union was murdered in Cali. He had spoken of corruption in Cali's women's prison and had been receiving death threats. On 9 September Nelson Murillo Taborda, a member of the executive board of an agricultural union in Meta was assassinated in front of his wife.

On the same day Segundo Salvador Forero from a teachers' union was assassinated in Caldas.

As is the case for many other victims, all three unionists had repeatedly asked for special protection from the government's programme for threatened persons but they were ignored. In 2011, the government extended the coverage of its protection programme for unionists, improved the risk assessment procedures for identifying potential victims and put in place an emergency plan for non-assessed applications. However, applicants still fall victims of lethal attacks.

Enforcement

The Trade Union Members Sub-Unit of the National Human Rights Unit of the Attorney General's Office is responsible for investigating the murders of trade unionists and although its work has been acknowledged for achieving "significant improvements" by the ILO High-Level Mission, the outcomes of the report call for its reinforcement as well as for cooperation with the relevant unions in the cases that are being investigated. In addition to the two recommendations, the ENS has proposed the adoption of more effective methodology for investigations and for reaching an agreement with unions on the list of cases as agreed by Colombia in the Action Plan. ENS adds that "*The Prosecutor General's Office refused to agree to a procedure to identify cases of anti-union violence reported by the trade union movement over the past 25 years.*"

Colombia has recently started investigating these crimes; however, the results are still far from satisfying. The ILO Mission "*underlined that the majority of the cases have not yet been investigated nor have the perpetrators, including the intellectual authors of these crimes, been brought to justice.*" Indeed, the presumed authors are unknown in 337 cases out of a total of 480 (in 2011). The remaining 143 were carried out by paramilitaries in a rate of above 70 per cent; in one quarter of the cases the perpetrators were state agencies and the rest were three guerrilla groups, one common criminal and one employer.

A report of the ILO Committee on Freedom of Association acknowledged government-provided data on acts of violence against trade unionists submitted by the Sub-Unit, according to which, "*between 1 October 2007 and July 2010 there were 1,344 cases assigned, 550 cases under preliminary investigation, 317 cases under investigation (defendant known), 527 persons placed in preventive detention, 176 indictments, 234 cases are at the stage of formulation of preliminary charges, 326 guilty verdicts and 330 convictions obtained.*" Another source reports that as of June 2011 the Attorney General's Office had opened a total of 787 investigations into murders of unionists and had convicted offenders in 185 cases.

Nonetheless, the Sub-Unit achieved no convictions for murder attempts and death threats. All forced disappearances remain largely unpunished as courts achieve only one conviction for every 218 cases. The courts have convicted virtually no-one responsible for these murders.

The courts achieved the conviction of the national intelligence service (DAS) for the assassination of Professor Alfredo Correa de Andreis in 2004. The jury recognised that the unionist who was prosecuted, arrested and subjected to extra-judicial execution was under systematic persecution by paramilitaries and DAS.

The ILO and trade unions have raised concerns on the capacity of the labour law inspectorate to identify violations and enforce the law. There should have been 2,000 more trained inspectors who are well equipped with all necessary resources. The ILO Mission acknowledged that the government had dedicated more resources to labour inspectorates and called on it to implement training and capacity building of unions, employers' organisations and specialised government agencies and the labour inspectorate. Since 2011 there has been an increase in the number of inspectors, but it remains insufficient.

There are 58 Export Processing Zones in Colombia. There are no exceptions in the application of labour law in the zones.

Summary

Trade unions in Colombia are under constant attack and threat, resulting in reduced membership and bargaining power. Employers often fail to engage in good faith collective bargaining and the state does not protect workers who seek collective agreements or initiate a strike to pursue their demands. Workers face significant difficulties in exercising the right to organise and collective bargaining due to hundreds fatal attacks as well as death threats, disappearances, attempts on their lives and raids. The vast majority of these crimes remain unpunished. Bargaining power is also reduced by the large numbers of irregular and precarious workers who are barred from a long term contract.

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. The law provides for 'equal wage for equal work' and the CEACR has repeatedly asked the government to amend the law in order to make explicit mention to the right of equal remuneration between men and women for work of equal value. Moreover, the definition of remuneration is strict and fails to include 'any additional emoluments whatsoever payable directly or indirectly'. In 2008 sexual harassment was defined as a criminal offence with imprisonment penalties. However, there is no specific provision on sexual harassment at the workplace.

Discrimination against women is a problem, particularly in rural areas. Only 43 per cent of women participate in the labour force; however, this figure would be somewhat higher if informal economic activity was to be taken into account. Colombian women are paid considerably less than men for work of equal value given that they are not significantly underrepresented in managerial, professional and senior positions; in 2011, women faced a 40 per cent wage gap. Women are 1.5 per cent more affected by unemployment.

The law grants equal rights to **Afro-Colombians, indigenous people and peasants** but fails to provide penalties to prohibit racial and ethnic discrimination. The government has undertaken sporadic policies and measures; nonetheless, the CEACR has stated that *“despite national policies establishing special measures, in practice Afro-Colombian and indigenous peoples continue to have great difficulty in securing respect for their rights and continue to be the victims of de facto racial discrimination and marginalization.”*

Approximately 22 per cent of the population is of African origin: this ethnic group has fewer opportunities for decent work and is more vulnerable to poverty and extreme poverty. Due to less opportunity for education and societal discriminatory stereotypes, Afro-Colombians are underrepresented in highly skilled and highly paid positions. The areas where they are concentrated are generally characterised by lower level of infrastructure and public services.

Many Afro-Colombians are employed in sugar plantations and ethanol refineries through the scheme of ‘associated workers cooperatives’ (CTAs). Reports say that by business practice Afro-descendants are required to belong to CTAs in order to be reviewed as candidates for work. As a result of poverty and weak bargaining power, almost three quarters of working Afro-Colombians receive less than the minimum wage and they are largely employed as informal labour or in informal enterprises.

Afro-Colombians are disproportionately afflicted by the internal conflict and it is probable that they fall victims of displacement by right-wing paramilitaries, leftist-guerrillas and their successors, organised criminal gangs and other outlaw armed groups. For example, in March 2011, 800 Afro-Colombians fled their homes at the Anchicayá River because of clashes of armed groups over the control of illegal mining activities.

The government has approved a policy to promote better opportunities for Afro-Colombians in order to improve literacy, access to education, healthcare and other public services.

In Colombia, 1.4 million indigenous people constitute 3.4 per cent of the total population. The law recognises several rights of indigenous people, including property rights on ancestral lands which account for almost 30 per cent of the national territory. Most of the indigenous communities comprise a large peasant population. However, many indigenous and peasant groups have yet to have their land rights recognised. The

communities are also granted rights over preserving or setting their communal and traditional laws on civil and criminal matters as well as right to elect their leadership. Since 2006, indigenous people institutions should be consulted for matters that affect them. The new Law on Victims and Land Restitution that came into force on January 1, 2012, enables the return of about two million hectares of land to indigenous people and other rightful owners. The land had been usurped by means of violence and corruption over the past 20 years.

Indigenous people are also common victims in the internal conflict. Several illegal armed groups and the national army operate within or close to their territories, most often without consulting with them or giving notice. As a result they suffer from raids, robberies, forced evictions and displacement. In the past years, indigenous groups have been victims of massacres and indigenous individuals have been targeted by assassins. In the first eight months of 2010, there were 40 murders of indigenous persons and many death threats usually against activists and community councillors and peasant leaders. Although not concentrated in cities, indigenous persons that choose to live in urban centres are discriminated against in employment and other aspects of life. The vast majority of these crimes remains unsuccessfully investigated and unpunished.

The EU-Colombia/Peru Free Trade Agreement (EU-C/P FTA) sustainability impact assessment states that social conflict in rural areas is expected to be exacerbated due to the expansion of mining, hydrocarbon extraction and logging activities which would result from the FTA.

Moreover, many indigenous people find employment in agriculture and forestry through CTAs and they perform precarious and unprotected work in farms and plantations.

The law prohibits discrimination against **disabled persons** in employment, access to services and other aspects of life. On the other hand, there is no law to mandate access to buildings and, although some buildings provide access for physically impaired, the general state of access is poor. Reports show that disabled persons are discriminated against in employment.

Lesbians, Gays, Bisexuals and Transgendered (LGBTs) persons face severe discrimination and violent attacks which caused 50 deaths in 2009. Some of the victims were targeted for their activism, while others were assassinated by homophobic persons or in honour crimes. The US Department of State reports that, according to data, 98 per cent of LGBT individuals have faced discrimination in education and employment.

The authorities on national and provincial level have tried to raise awareness of rights with different sexual orientation and implemented a programme on “Strengthening the Preventive Role of the Inspector General on LGBT Population Rights” and a training programme of 300 public servants on equal treatment. Although few cases led to convictions, the authorities have massively failed to bring the intellectual and material authors of these crimes into justice.

There is no law protecting **persons who live with HIV/AIDS** from discrimination in employment but such persons are victims of discrimination and unequal treatment. Trade unions affiliated to the International Federation of Chemical, Energy, Mine and General Workers' Unions (ICEM) in Colombia decided to declare 2012 a year to campaign against HIV and AIDS at the workplace aiming at reducing stigma and eliminating discrimination through collective agreements. The government and the UN Population Fund have launched a campaign against stigmatisation.

Summary

Colombia's laws provide insufficient protection for women, Afro-Colombians, indigenous people and other groups that are frequently discriminated against. Activists, indigenous leaders and peasant leaders have been targeted for murder and hundreds receive threats. Indigenous people and Afro-Colombians are adversely affected by the internal conflicts which can result in forced displacements. When employed, they face poor employment conditions. Women and other groups deal with unequal access to employment as well as unequal remuneration.

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 Minors Code prohibits the employment of children under 15 and stipulates that “exceptional conditions” and the express authorisation of the Ministry of Labour are required to employ children between 12 and 15. Children aged 12 and 13 may work a maximum of 4 hours a day, children aged 14 and 15 a maximum of 6 hours a day. The law allows working children up to the age of 15 to be apprentices in family-owned enterprises. Children of ages 16 and 17 are allowed to work a maximum of 8 hours a day. Breaching the child labour regulation can be punished with a fine equal to the level of 100 times the minimum wage.

The law also prohibits hazardous work for children and a regulation has been adopted to define hazardous occupations and activities. Among other sectors the regulation mentions mining and quarrying, forestry, street vending, garbage scavenging, domestic services, construction, transport, public utilities and manufacturing. However, these requirements are largely ignored in practice. There is a large number of children reported in these sectors and some of them have even obtained required work permits.

Children in these sectors can be subjected to harsh working conditions in terms of working time, weather conditions and safety procedures. Some child workers have to deal with pesticides, chemicals and dangerous acids, carrying heavy loads, operating dangerous machinery and undertaking tasks that put their physical and mental

development in danger. Children working on the street face an increased risk of being sexually exploited and participate in illicit activities, and children in domestic services are vulnerable to long hours and sexual, physical and verbal violence.

The Penal Code was amended in 2008 in order to criminalise the use, procuring or offering of a child for prostitution. In 2009, another amendment prohibited procuring children under 18 years for commercial sexual exploitation in order to include cases of pornography and other forms of exploitation and reinforce measures against sexual tourism with children. The use, procuring or offering of a child for illicit activities is also made illegal with penalties ranging from 16 to 30 years imprisonment and fines of up to 100,000 times the minimum monthly wage. Likewise, individuals taking part in use and recruiting a child to armed groups could be punished by 16 to 30 years' incarceration and the equivalent of 45,000 minimum wages in fines. In 2009, the government reported 4 cases of sexual exploitation of underage persons and 23 cases of incitement of underage prostitution, which led to 20 convictions.

Although the Constitution stipulates that the state must provide free public education for children between the ages of 6 and 15, the school fees system has led to exclusion as well as to big differences between schools in poor and rich areas in terms of quality of education. For 2009, the National Department of Statistics (DANE) estimated that 83 per cent of children between the ages of 5 and 17 attend school and that 9.2 per cent of children (about 12 per cent of boys and 6 per cent of girls) or 1,050,000 underage persons are employed. The figure shows a 34 per cent increase in child labour since 2007. In 2012, the Colombian Institute for the Family Welfare (ICBF) announced that there are about a million working children. However, in 2010, reports from member organisations of the National Inter-Agency Committee to reduce the worst forms of child labour estimated the number of children in work to be around two million children working unreported and illegally.

The CEACR has acknowledged studies and information about thousands of children working in the worst forms on child labour. In its 2006 report, the Committee on the Rights of the Child (CRC) had expressed concern at the unequal enforcement of the law on issues of sexual exploitation and trafficking and reported high and rising numbers of victims. The CEACR also acknowledged data that show increasing child prostitution (latest available was for 2007) and UNICEF estimated there were about 30,000 children in prostitution. In June 2010, the CRC observed that data on the number of children involved in these activities was limited and not systematised.

The CEACR has also noted that in Colombia drugs production and trade harm children involved in its production and distribution from the stage of coca plantations to trafficking. There are no data on the volume of the problem.

The ILO-IPEC programme estimated that 80,000 children were engaged in domestic labour, most of them girls. Reports show that some indigenous families continue to send their children to cities as domestic servants.

Although data is scarce, it seems that more than 10,000 children are forced into service by armed groups, especially the Revolutionary Armed Forces of Colombia (FARC) and the National Liberation Army (ELN); often the girls are coerced into becoming sexual slaves. There are reports that Colombia's national army has used children as informants against such groups.

Child labour in its worst forms is also met in extraction; gold and other minerals, coal, precious stones, in quarrying and clay pitting, in agriculture and forestry; logging camps, farms of vegetables, fruits, cotton, as well as plantations of sugar cane, coca and coffee. In Bogota alone there are about 10,000 children begging, working on the street and being involved in petty crime activities. Most of these children belong to rural families displaced by internal conflict.

The Inter-institutional Committee on Elimination of Child Labour and Protection of Young Workers was established in 1995 under Decree 859 and has the following functions:

1. Provide advice on, coordinate and propose policies and programmes to improve the social and labour conditions of child workers and discourage the use of child labour.
2. Develop and propose a National Plan of Action for the Progressive Elimination of Child Labour and the Protection of Child Workers between 14 and 18 years of age.
3. Strengthen coordination and cooperation between public and private, national and international institutions related to child workers to define alternatives and strategies to reduce or eliminate the root causes of child labour and promote the effectiveness of labour legislation for children between 14 and 18 years of age.
4. Propose procedures for adoption by the responsible entities for ensuring the assessment and monitoring of the National Plan of Action for the Progressive Elimination of Child Labour the Protection of Child Workers between 14 and 18 years of age.
5. Convene and provide advice to local authorities for adoption and implementation, within their respective jurisdictions and powers, of the National Plan of Action for the Progressive Elimination of Child Labour the Protection of Child Workers between 14 and 18 years of age.
6. Other responsibilities determined by the Committee that comply with its nature.

This committee consists of the national tripartite actors: government entities, employers' organisations and the national union centres in the country, CGT, CUT and CTC. Under the coordination of these entities and technical support from the ILO the

committee developed two plans to eradicate child labour in Colombia and a National Strategy from 2008 to 2015.

With the adoption of the National Strategy (2008-2015) on the worst forms of child labour, efforts are focused on preventing and eliminating work of children in sexual exploitation, small-scale mining, commercial agriculture and street trading. More than 22,000 children and adolescents were prevented from becoming employed in such activities. The Colombian Institute for the Family Welfare (ICBF) works on various areas including education and eliminating child labour including by receiving complaints. The Institute has implemented various plans for children of Afro-Colombians, indigenous people and displaced communities. Among other things, the Institute has also achieved the demobilisation of more than 3,000 child soldiers from armed groups. Trade unions have proposed that the Institute should be reinforced and should develop better coordination with other government agencies.

Summary

The law protects children in employment and regulates child labour. On the other hand, the law is not sufficiently enforced and there are many reports of the worst forms of child labour. Children of displaced families living in cities are particularly vulnerable to street labour and Afro-Colombian and indigenous children are often victims to some of the worst forms of child labour in plantations, mines and in domestic servitude.

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 law prohibits slavery and any form of forced or compulsory labour, including by children. The Penal Code prohibits trafficking in persons and prescribes prison terms from 13 to 23 years and heavy fines. However, the prohibition fails to include trafficking in persons as result of force, fraud or coercion. A 2005 Act establishes protections for victims of trafficking.

Trafficking and forced labour are problems. Many Colombian women are forced into prostitution in Latin America and developed countries or in touristic resorts in Colombia. There are also reports of poor rural women and girls, usually from displaced families, indigenous and Afro-Colombians, forced into domestic servitude. Men and boys are reportedly forced to work in agriculture. Guerrillas, paramilitaries and armed groups practice forced recruitment including of children.

For many years the CEACR has been criticising the government for using graduates to perform compulsory military service as assistants in the National Prison Guards and Surveillance Service in such tasks as assisting prison staff with guarding,

surveillance as well as in educational, sports and social activities for prisoners. The CEACR noted that *“in order not to be considered as forced labour, work exacted in virtue of compulsory military service laws must be of a purely military character.”*

In 2010, police investigated 144 trafficking cases, mostly related to forced sexual exploitation, which led to 17 convictions, including one for forced labour. Allegedly, police and other state officials are complicit in trafficking and there has been no investigation of these allegations. Law enforcers have limited knowledge of the anti-trafficking laws and often they fail to investigate and prosecute offenders under the right provisions. Police do not follow standardised procedures for identifying trafficking victims and in some cases have deported victims of foreign citizenship rather than granting them the status of victim.

The government has provided only limited assistance to adult victims and resorted to referring them to NGOs and health care centres. However, the authorities report providing housing to victims that agree to participate in the prosecution with information. Victims are most usually not willing to participate for fear of retaliation and there is no information on the number of victims that have participated in prosecutions.

The government established a National Strategy to combat trafficking in persons from 2008 to 2012. The strategy aimed at improving prevention measures, protection and assistance for victims, increasing international cooperation and strengthening enforcement.

Summary

Forced labour and trafficking in persons are problems. Many victims are usually from displaced families, indigenous and Afro-Colombians. Much of the problem concerns women and girls trafficked for sexual exploitation, however, forced labour has been detected and many children and adults are reportedly forced into military conflict by illegal armed groups.

Recommendations

1. The government should amend its laws in order to provide protection to unions, human rights defenders and activists as well as indigenous and peasant leaders against any type of discrimination and violence and take action to immediately investigate all death threats, attempts and murders and convict those responsible for ordering or carrying out these crimes.
2. The laws should be improved and strictly enforced in order to protect workers against all anti-union practices used by employers including discriminatory disciplinary measures, unfair dismissals, offering better employment agreements to non-unionised workers, organising employer-dominated unions, asking for disaffiliation from unions, threatening regularisation of contracts, and deterring union membership and activities in all other ways. Attacks, harassment, intimidation and threats aiming at impeding organising, collective bargaining, campaigning, collective action and assembly should be addressed effectively by all legal means, including adequate penalties. The law should be enforced equally for the public sector and for its contractors.
3. The country's judicial authorities should investigate and successfully prosecute those responsible for all crimes committed against trade unionists and other victims.
4. The government's protection programme should be strengthened and should respond adequately to cases of threats.
5. The government should take immediate measures to punish anti-union discrimination in hiring and dismissing and treat all workers equally.
6. Police forces should stop being ordered to harass, use violence and disperse protesting workers.
7. The law on 'associated workers' cooperatives' should stipulate much higher penalties and should be amended in order to cover 'simplified anonymous societies' and all other agencies that provide temporary and irregular employment with terms that violate basic labour rights.
8. Collecting bargaining should be unrestricted for public employees and 'essential services' need to be defined according to the ILO definition.
9. Employers should engage in collective bargaining in good faith and the law should protect collective action in case an employer fails to negotiate in good faith.
10. Federations and confederations of trade unions should be given the authority to call a strike.
11. The employers should not be permitted to dismiss workers or take other retaliatory measures against who participate in unauthorised strikes or spontaneous stoppages.
12. Employers should not have the ability to fire workers who participated in strikes, whether or not the strike is deemed illegal.

13. The Attorney General's Office should further increase its efforts to achieve convictions for all crimes, current and past. The Office should be sufficiently resourced and the law enforcers adequately trained.
14. The national intelligence service (DAS) should stop any activities against trade union members and provide the prosecutors all material they possess for agents involved in these crimes.
15. The law should provide for the right of equal remuneration between men and women for work of equal value and remuneration should be interpreted broadly.
16. The government should take measures to mitigate the gender pay gap and assist Afro-Colombians, indigenous people and peasants to get access to equal opportunities to employment. The government should improve enforcement in cases of discrimination against these groups.
17. The authorities should not fail to protect Afro-Colombians, indigenous people and peasants from armed groups, and should repatriate those displaced.
18. Crimes against members and activists of the lesbian, gay, bisexual and transgender (LGBT) community should be prosecuted and such persons should be granted police protection when they are threatened.
19. The government needs to become more active in protecting LGBT persons, disabled persons and persons who live with HIV/AIDS from discrimination in employment.
20. The state needs to improve enforcement of legislation against child labour and forced labour particularly in tourism, mines, farms, plantations and other sectors where some of the worst forms of child labour are rife. Special measures are needed for children of displaced families. The labour inspectors and judges should be trained and well-equipped.
21. The army should stop using children as informants. Special measures should be taken to achieve quicker demobilisation and rehabilitation of children in armed groups.
22. The law should be amended in order to include cases of trafficking in persons as result of force, fraud or coercion.
23. Law enforcers should increase efforts against forced labour and trafficking in persons. Standardised procedures for the identification of trafficking victims should be adopted and better protection and assistance should be provided to the victims.
24. The WTO should draw the attention of the Colombia authorities to the commitments they undertook to observe core labour standards at the Singapore and Doha Ministerial Conferences. It should request that the ILO 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.

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