



## Colombia: A Case in Continuous Progress

2009

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### I. ILO Office in Colombia and Technical Cooperation Programs

#### a) ILO Technical Cooperation program

Since ILO's representation through a permanent office in Colombia begun, a permanent effort by the social partners has been taking place in order to implement most of the activities of the Technical Cooperation Program which, by the way, is fully financed by the Government of Colombia.

At its 298<sup>th</sup> session, the Government Body underlined the approval and the interest of the Colombian Government, workers' and employers' organizations of having an ILO office in Bogotá.

ILO officials in Colombia have engaged in a number of activities that are described in the ILO document GB.298/TC/4.

On the other hand, the social partners have reached the conclusion that the Technical Cooperation Program is fundamental to develop the Tripartite Agreement. It was decided that any additional funds that could strengthen the original budget, will be used to develop activities related with the social dialogue program.

The Government has already allocated nearly US\$ 5 millions from the national budget to fund the implementation of technical cooperation programs that were agreed on a tripartite basis.

The technical cooperation program *for promoting decent work* is based in four pillars:

1. Strengthening social dialogue, fundamental rights at work and labor inspection.
2. Entrepreneurship training for at least 2000 young displaced people.



3. Strategies on creating jobs for women.
4. Local development program (PRODEL).

Directors for these sub programs as well as interdisciplinary staff are already working on such programs.

Several tripartite meetings have been held to review the specifics, and the Colombian Government and the ILO have agreed that the Organization will be in charge of the budget according to what's been decided by the social partners.

According to the Tripartite Agreement, and the guidelines of the technical cooperation program, the ILO office is currently holding symposiums all over the country with the following topics:

- Labor law and International Labor Standards for union members, judges and members of the prosecution office.
- Strategies for an adequate handling on the information and the methodology to determine who the victims of crimes against trade union members are.
- Set a positive environment between the judiciary and the Unions in order to strengthen the ongoing and future investigations.

Workers, employers and government workshops are also being held separately to strengthen social dialogue and to spread better approaches to labor relations. From employers perspective, these workshops have been a great success.

The Government has maintained a permanent dialogue mechanism with the social partners. Ongoing tripartite dialogue with workers and employers also ensures that international labor standards are respected.

With the support of the ILO the following committees are currently working:

- **National Commission on Labor and Wage Policies.**
- **Consensus Building Roundtables** with the President or the Vice President of the Republic and several ministers.
- **Every five weeks there is a luncheon with the President**, the Vice President, the Ministry of Social Protection and the General Attorney. In these meetings, trade unions leaders communicate their concerns to the highest public level and discuss policies to protect worker's rights and the safety of labor leaders. Unfortunately, CUT has recently ceased to attend.
- **Inter-institutional Commission for workers' Human Rights.** Follow-up of the protection program and criminal prosecution of cases of violence against union members and cases of restrictions to freedom of association.
- **Commission to deal with ILO related complaints (CETCOIT)** which meets fortnightly (detailed below). The principle of this commission is the analysis and assessment of the cases according to Conventions and its subsequent doctrine from the ILO's Control Bodies in order to reach consensus solutions. Unfortunately, some cases with ongoing mediation in the Commission were nevertheless presented by workers' organizations as a complaint to the CFA which lessened the scope of the CETCOIT.



- **Commission for Collective Bargaining in the Public Sector**, which meets every second week, and develops a model to set the scope, parties and dispute settlement mechanism, for collective bargaining in the public sector.

Mr. Marcelo Castro –Fox, ILO’s former head officer in Colombia, successfully ended his assignment last march and was appointed as the Director General’s Adviser on Latin America and the Caribbean in Geneva. Social partners are in consultations with the Office in order to set the convenience to appoint a new head officer.

Despite the vacancy of the head officer the cooperation programs are being carried on by members of the staff in Colombia under the guidance of the office for Andean Countries.

The presence of the ILO in Colombia has also contributed to build trust amongst social partners, to reactivate the last four commissions, define the agenda and set a periodic schedule of meetings between the government, workers and employers.

b. USAID Program on Fundamental Rights at Work. COL/08/01/USA- M.260.14.220.816

Sponsored by the U.S. Department of State, the program on Fundamental Rights at Work intends to improve the impact of International Labor Standards trough technical cooperation, particularly freedom of association and collective bargaining.

The program has the following main objectives:

- Supporting the work of the National Commission on Labor and Wage Policies and the Commission for Dealing with ILO related conflicts.
- Strengthening the judiciary to solve labor related disputes.
- Improving social partners’ capacity to collective bargaining.
- Enforcing labour inspection throughout training of government officials and the increase of labour inspectors all over the country.

Three workshops will be undertaken with forty enterprises engaged in collective bargaining in 2009, training both workers and employers in dispute resolution, negotiation skills and labour law issues.

Other activities aiming to these purposes have taken place in several cities with relevant success so far.

Ms. Katherine Bermudez is in charge of the program, with the support of national and international experts in dispute resolution, social dialogue, labour rights and international labour standards.

c. Sweden bi-partite technical cooperation program

With the financial support of Sweden’s workers’ and employers’ organizations a successful technical cooperation program is being developed since 2002 aiming to improve labor relations in Colombia.

Last year Swedish representatives visited Colombia to exchange positive experiences on social dialogue and labor relations. In addition, several meetings on dispute resolution where held on a bi partite basis, with an increased interest from workers’ and employers’ organizations, mainly on a regional basis in order to reach a countrywide scale.

Last January, workers and employers representatives visited Sweden in order to renovate the cooperation agreement until 2011, with the involvement of CGT, a workers’ organization absent on



the previous phase. A budget of approximately 500 thousand US dollars has been funded for objectives such as:

- Learning through successful experiences.
- Building social dialogue networks.
- Negotiation training.
- Understanding political and social environment.
- Founding a long term social dialogue policy.

Mr. Carlos Guarnizo has been consensually appointed as the Coordinator of the program and will be managing the current and future activities of the technical cooperation planned to improve dialogue, trust among social partners and fluent labor relations.

d. Commission for dealing with ILO related complaints -CETCOIT

Bearing in mind the amount of particular cases presented before the Committee on Freedom of Association, since the visit on 2000 of a representative of the General Director of the ILO to Colombia, it was considered the functioning of a Commission for the previous analysis of those cases.

This commission depends on the National Commission on Labour and Wage Policies, and its conformation complies with a tripartite principle, with three members of each sector, that is, a total of nine members..

After their assessment, relevant cases are directed to the National Commission, where interested parties may demand direct intervention in order to help on the conflict resolution.

Both workers and employers have shown great interest in the work of the Commission. There are already approximately 50 cases under analysis (most of the cases are from the public sector) and some of them will be treated on a regional basis by sub-commissions (which is consider a straightforward mechanism to speed up a solution) with the same tripartite structure as the National Commission.

In several complaints, employers and workers have reached agreements preventing the cases to be decided by the ILO Committee on Freedom of Association.

The target of the Commission is to ease a consensual tripartite solution to cases, those in course to be presented and those already under the study of the Committee on Freedom of Association.

**II. Overview violence situation and the fight against impunity. (see VI. Annex)**

a) Criminal investigations, indictments and convictions.

The Special Sub Unit in charge of the prosecution of crimes against trade union leaders and activists, and the judges exclusively appointed to rule the trials have already undertook for almost two years the criminal investigation of the cases.

The Attorney General Office is constantly updating social partners on the progress of the criminal investigations regarding crimes against trade union members.

According to the last report (July 2009) the results on the task of the investigators and judges appointed to solve the crimes against trade union members:



- 207 condemnation verdicts have been issued (156 since the creation of the special judges).
- 198 individuals are actually convicted
- 370 are held in custody waiting for trials
- Several indictments have been issued.

Complete figures are detailed below in *VI. Annex*.

b) Protection schemes and decreasing of violence against union members.

Any situation of violence is incompatible with the rule of law. Nevertheless, Colombia has accomplished significant advances on the reduction of crimes against life and integrity of its citizens and also the Government has developed proper schemes of protection for Union Representatives. The protection is aimed against any kind of threats by including unionists in the group of people who are entitled to have special protection providing them with armoured cars and households, bodyguards, among other means of security.

The protection scheme is the result of the joint efforts between the Government and the society to face and prevent the consequences of diminishing violence. It started with Human Rights spokespersons and Trade Union Representatives, and now it has been extended to other civil society representatives. The protection scheme program is already consolidated and budget provisions have been made on a yearly basis. (see *VI. Annex for figures*)

Regarding violence, although victims in Colombia are still too many, by any standards, it's important to notice that people from every layer of society have been affected as a consequence of political violence and drug trafficking related conflicts. Union leaders and members are certainly the victims of violence, the same violence that affects most Colombians.

Below (*VI. Annex*) is the information from the Government containing homicide figures.

Furthermore, in its last session the CFA made remarks on the situation of violence and fight against impunity (case No. 1787)

In its 353rd Report, the Committee on Freedom of Association, the CFA noted that (...) *With regard to acts of violence in particular, the Committee observes that considerable progress has been made in combating violence (...).*

Although the situation of Colombia still raises concern, efforts being made by government and social partners have shown significant improvement.

Relevant figures from the information updated as of July 2009, are shown in the Annex.

### **III. Tripartite Commission on Labor and Wage Policies**

One of the main commitments of the Tri Partite Agreement (2006) was the reestablishment of the Commission for Dialogue on Labour and Wage Policies, which has a tripartite conformation.

The Commission is meeting on a monthly basis and serves as the main scenario to discuss and draw the course of action of various topics in which the social partners are engaged.

During 2007 and 2008 meetings, the Commission discussed about:



- Fulfilment of the ILO Conventions
- Enforcement of the union trade movement as well as the freedom of enterprise principle.
- Employment and public finances
- National Plan of Development
- Payroll taxes.
- Tripartite agreement (follow up)

The 2009 Commission's discussions are focusing on strategies to face unemployment due to the international economic crisis.

On the regional level, meetings are being held on a monthly basis through departmental sub commissions in order to face the relevant issues of labour relations with a local approach. This scheme has proven to be effective in spreading the strategy of social dialogue throughout the country, and to emerge as an additional scenario to solve union-employer disputes even before those disputes reach legal consequences. The abovementioned USAID Program on Fundamental Rights at Work is developing, with great success, training activities to improve regional delegates' skills to approach labour issues.

Social partners are interested on discussing the most remarkable issues of the Colombian labour situation permanently, from a tripartite institution which purpose was initially limited to minimum wage discussions but has evolved into the natural scenario for tripartite dialogue, with an extended agenda.

\* Minimum Wage

Although no agreement was reached on the December tri partite meetings, the minimum wage for 2009 (decreed by the government) on COP \$496,900 ( US\$210, or 7,67% higher than the previous year) complies with the Constitutional Court ruling as of increasing the wage the same rate as the inflation for the previous year. Therefore workers retain purchase capacity of their income through a responsible salary increase in hard international times.

#### **IV. Changes on legal framework:**

a. Strike.

- i) Judicial decision of the legality of a strike

Colombian Congress approved a new Law (No. 1210) on strike in order to fulfill the remarks of the ILO<sup>1</sup> regarding the need of a judiciary pronouncement concerning the legality of a strike and the inconvenience of mandatory arbitration. The main changes of such law are:

- Whenever a strike extends for sixty days without reaching an agreement, the employer and the workers are able to freely choose a mechanism of mediation or arbitration to reach a solution to the labor conflict without being forced to a mandatory arbitration. Therefore Government power to call arbitration is eliminated as recommended by the ILO.
- If no solution is agreed, a tripartite panel from the national Commission on Labor Policies (CLP) cooperates in finding a settlement formula, extending, therefore, the time and steps of the strike in support of a definitive agreement. If the CLP fails, only both of the parties will therefore be able to call the arbitration.

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<sup>1</sup> ILO's Committee of Experts on the Application of Conventions and Recommendations



- Law 1210 establishes that legality of strikes is to be decided by Colombian Labor Jurisdiction and not by the Ministry of Social Protection. The aforementioned is enforced by 167 judges nation wide complying with ILO's recommendation.

Therefore, with the judicial ruling on legality of the strike, Colombia complies with the ILO's CEACR and CFA observations.

About public services (where strike is prohibited) the Constitutional Court<sup>2</sup> recently ruled out that salt exploitation is not a public service, therefore strike is authorized. Thus, the notion of public services is being narrowed by the judiciary accordingly with ILO's recommendations.

ii) New comprehensive scope on the right to strike

A recent Constitutional Court ruling broadened the scope of strikes in Colombia. Taking in account several statements by the ILO's Committee on Freedom of Association regarding strikes, specially those with a political nature, the Court found out that "strikes of a purely political nature ... do not fall within the scope of the principles of freedom of association" (ILO, 1996 d, para. 481).

However, and congruently with the CFA doctrine, the Court stated that unions can raise concerns over social and economic policies that somehow could affect them. Hence, strikes can take place not only in collective bargaining but also to protest against the social and labor consequences of social and economic policies.

b. New Law Strengthening prosecution of union related crimes:

The President of Colombia recently signed Law No. 1309 issued by Congress which extends the time to prosecute homicides against union members for up to thirty years, in order to have legal back up to start and continue the investigations of crimes committed in the past.

The law also provides a rise in the punishment of union related crimes such as homicides (33 to 50 years); disappearance (20 to 30 years) kidnappings (37 to 50 years) and threats (5.3 to 10.6 years) even if the victim is a trade union member, not only a trade union representative. Also, increases the fines to anyone who obstacles trade union meetings.

c. Cooperatives

As a response to the social partners increased concern on the misuse of non-labor based systems of personal entailment and also in order to fulfill the commitment of promoting labor relations that rely entirely on legal grounds, Congress issued Law 1233. Main issues of the law are:

- At least minimum wage is mandatory for cooperative associates. Therefore, there will be no difference in salary between associates and any other kind of worker.
- Cooperatives are, like any other employer, compelled to pay para-fiscal contributions which are invested in labor training, childhood protection and benefits for housing, education and leisure for workers and their families.
- Cooperative associates are now entitled to social protection schemes and benefits such as mandatory medical insurance and pension funds, as any other worker regardless of the type of labor or non labor contract.

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<sup>2</sup> Decision C-691 2008.



- Labor intermediation (as private employment agencies) is strictly forbidden for Cooperatives.

The new legislation is the first step to put both cooperatives and traditional employment generators in the same nutshell (and disarticulate the non-labor systems misuse).

c. Union Registry.

Recently, Colombia's Constitutional Court ruled on several articles of the Labor Code<sup>3</sup>.

In decisions C-465, C-466, C-621 and C-667, the Court underlined the importance of union registration and decided that Ministry of Social Protection is not authorized to reject neither the constitution, nor the modifications of a Union.

If a new or existing Union does not meet the legal requirements to be registered, Ministry of Social Protection should not oppose to such request. In order to avoid any arbitrary refusal to register new trade unions, new union statutes or the executive committee of a trade union, any objection should be brought upon the labor jurisdiction.

With those decisions, Colombia's legal system meets with ILO's standards on the matter.

Additionally, the office in charge of the supervision of the public servants (Procuraduría General de la Nación), issued a mandatory instructive to labor inspectors regarding union registry. This instructive document orders that no request for union recognition should be rejected; instead, as stated by the ILO, the courts should decide any dispute over the legality of a new union. In the meantime, the union may fully operate.

Recent CFA observations on Colombia have taken in account the mentioned rulings.

After Court decisions, the new scenario in terms of union registry has generated a complex situation where even existing Confederations have recently pointed out that new unions, federations and confederations are being registered without complying with minimum standards which has led to discussions regarding legitimacy and law abuse from the new unions created under the aforementioned parameters in which

Conscious of this situation, we consider it necessary to look for a solution to regulate Union Registry in Colombia.

d. Bereavement leave of absence.

Congress approved Law No. 1280 granting a five day paid leave of absence in case of grief due to the loss of a worker's relative (father, mother, brother, spouse or descendant and even in laws).

This mandatory leave of absence ends any dispute or misinterpretation regarding the cause and the period of legitimate and justified leave from work and is a new legal prerogative for employees under Colombian law.

e. Follow up to the oral procedure on labor trials law.

Since the implementation of oral procedures for the prompt resolution of labor trials, USAID has been working with the Council of the Judiciary (Consejo Superior de la Judicatura) to make the follow up.

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<sup>3</sup> Articles 361, 370, 371, 391, 398 and 434 of the Labor Code



The main goal of the program is to monitor the daily issues that emerge from the new oral procedural system to bring solutions and draft recommendations for a better implementation of the legislative changes.

The last report discloses some encouraging facts, such as the reduction in trial's length, and a better knowledge of the facts by the judge.

Social partners are confident that the oral procedure on labor trials will upgrade the quality of labor dispute resolution.

## **V. Conclusion.**

Progress in topics such as reducing violence against trade union members, criminal investigations and condemnation verdicts, freedom of association, institutionalized social dialogue, and fundamental rights at work are undeniable results of the commitment of social partners to the *"Tripartite Agreement on Freedom of Association and Democracy"*. The effectiveness of Technical Cooperation Programs is the best way to ensure, in a positive environment, the fulfillment of these objectives in labor relations.

Therefore, there are strong and verifiable grounds to endorse Colombia's as a case of encouraging progress and to support one country's actions to comply with ILO provisions through technical cooperation and social dialogue.

A handwritten signature in black ink, appearing to read "Alberto Echavarría Saldarriaga", written over a horizontal line.

Alberto Echavarría Saldarriaga  
V.P. of Legal and Social Affairs

August, 2009.



**VI. Annex**

As stated in II. (Overview on violence situation and the fight against impunity), according to the July 2009 report from the Attorney General Office, and information from the Ministry of Social Protection, figures on such topics are as follows: (Information updated July 2009).

|   |      |
|---|------|
| Cases   | 1354 |
| Preliminary Investigations  | 620  |
| Cases being prepared for trial  | 249  |
| Detentions waiting for trials   | 370  |
| Formal indictments  | 128  |
| Trials or investigations already with confessions and pending of verdicts | 144  |
| Condemnation verdicts   | 156  |
| People convicted  | 198  |
| Total number of victims   | 1590 |

Source: Attorney General Office.

Concerning the achievements of the Sub Unit for the prosecution of crimes against trade union members (information updated July 2009), data is as follows:

**Sub Unit's assignment progress**

|   | <b>SEPTEMBER<br/>2007</b> | <b>MARCH 2008</b> | <b>JULY 2009</b> |
|---|---------------------------|-------------------|------------------|
|   | <b>TOTAL</b>              | <b>TOTAL</b>      | <b>TOTAL</b>     |
| Cases   | 1194                      | 1264              | 1354             |
| Preliminary Investigations  | 775                       | 691               | 620              |
| Cases Being Prepared for trial                                    | 64                        | 136               | 249              |
| Detentions waiting for trial                                      | 31                        | 106               | 370              |
| Formal Accusations  | 15                        | 44                | 128              |
| Trials or investigations with confessions and pending of verdicts | --                        | --                | 144*             |
| Condemnation verdicts   | 13                        | 43                | 156              |
| Not Guilty verdicts   | 0                         | 2                 | 10               |
| People serving time as consequence of condemnation verdicts       | 15                        | 51                | 139              |

Source: Attorney General Office.



Condemnation verdicts from in trials for crimes against union members (including of the special judges appointed as a result of the *Tripartite Agreement*.) are as follows:

**Condemnation verdicts per year**

| <b>Year</b>   | <b>Verdicts</b> |
|---------------|-----------------|
| 2000          | 1               |
| 2001          | 1               |
| 2002          | 10              |
| 2003          | 7               |
| 2004          | 12              |
| 2005          | 8               |
| <u>2006 *</u> | 11              |
| 2007          | 44              |
| 2008          | 75              |
| 2009          | 38              |
| <b>TOTAL</b>  | <b>207</b>      |

\* **Signing of the tri-partite agreement**

Source: Attorney General Office. Information for 2009 is updated as of July.



### Budget for Union Members protection schemes

The protection scheme plan expanded in recent years and is currently a consolidated program.

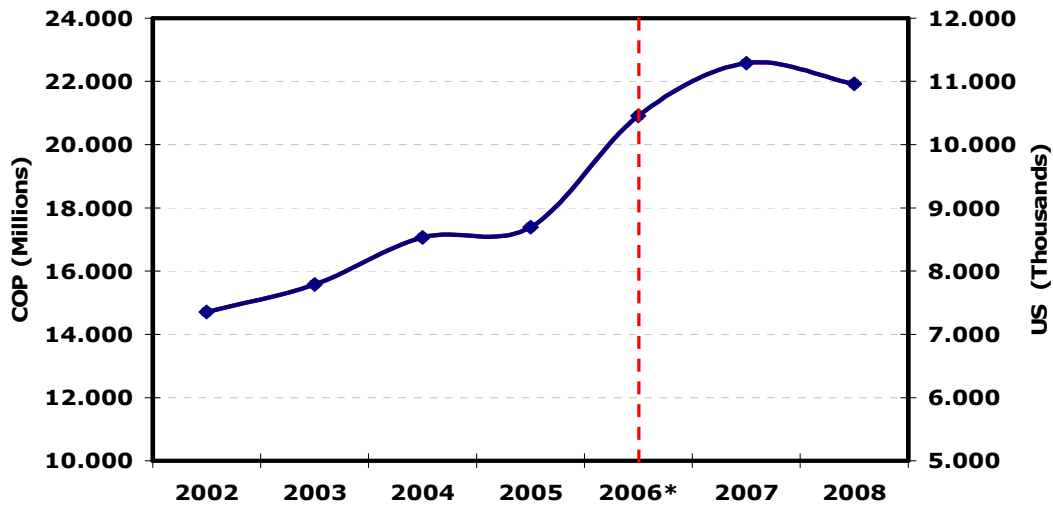
Budget

| Year  | COP (Millions) | USD (Thousands) |
|-------|----------------|-----------------|
| 2002  | 14.705         | 7.352           |
| 2003  | 15.578         | 7.789           |
| 2004  | 17.067         | 8.533           |
| 2005  | 17.392         | 8.696           |
| 2006* | 20.914         | 10.457          |
| 2007  | 22.578         | 11.289          |
| 2008  | 21.925         | 10.962          |

\* Signing of the tri-partite agreement

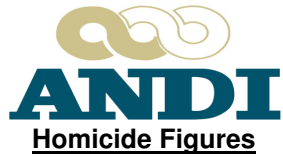
1 US\$= about 2.000 COP

### Budget for Union Members protection schemes



\* Signing of the tri-partite agreement

Exchange Rate: 1US=2000 COP  
 Source: Ministry of Social Protection



**1 – Total National**

| YEAR   | Homicides |
|--------|-----------|
| 2001   | 27.841    |
| 2002   | 28.837    |
| 2003   | 23.507    |
| 2004   | 20.167    |
| 2005   | 18.112    |
| 2006 * | 17.479    |
| 2007   | 17.198    |
| 2008   | 16.140    |

**2- Trade Union Members \*\***

| YEAR   |        |
|--------|--------|
| 2001   | 205    |
| 2002   | 196    |
| 2003   | 101    |
| 2004   | 89     |
| 2005   | 40     |
| 2006 * | 60     |
| 2007   | 26     |
| 2008   | 38     |
| 2009   | 17 *** |

\* Signing of the tri-partite agreement

\*\* GOC Data

\*\*\* June

Source: Ministry of Social Protection.