



EMBASSY of COLOMBIA

W A S H I N G T O N

Colombia: A Progress Report

Strengthening the Rights, Benefits and Security of Unions



October 2007



Executive Summary

Colombia's labor environment has gone through significant improvements in the last 5 years. While challenges remain, there has been notable and sustainable progress on the ground in areas of vital importance for workers.

- **Social Dialogue:** Since 2003 the Government has opened and maintained several dialogue mechanisms with union members, including periodic meetings of unions with the President, Vice President and Minister of Social Protection to assess the situation, as well as 28 regional labor committees.
- **Tripartite Agreement:** In June 2006 the three pillars of Colombian labor relations: workers, business and government, defined an unprecedented "Tripartite Agreement on Freedom of Association and Democracy". In 2006 Colombia was excluded from the list of countries under special review by the ILO Committee of Experts.
- **ILO office in Colombia:** The Tripartite Agreement defined with the unions the terms of reference for the International Labor Organization office which opened in Colombia in 2006 to carry out 4 cooperation programs. The Government of Colombia has pledged nearly US\$5 million over the next four years and additional funds are being sought.
- **Worker's rights:** Colombia has subscribed and implemented 60 ILO conventions, including all of the 8 fundamental Human Rights conventions. Furthermore, recent legislation has facilitated union registration, enhanced labor inspection and labor justice capabilities and procedures.
- **Worker's benefits:** Colombia's minimum wage is among the highest in Latin America, and coverage of health and social services has expanded significantly.
- **Protecting Union Members:** The Colombian Government has taken several steps and implemented far-reaching policies to protect labor union members:
 - o The implementation of the policy of Democratic Security that has led to a general decline in violence has also produced a steep decline in violence against union members. While assassinations in the country between 2001 and 2006 decreased by nearly 40%, those of union members have been reduced by over two thirds. We are committed to continuing this path of greater security
 - o A protection program for vulnerable populations was set up in 1997 and has been strengthened, with special emphasis on protection for union members. This program has a budget of US\$ 38.4 million in 2007 (1.13 of which is USAID cooperation).
- **Increasing prosecutions:**
 - o A Constitutional Reform was promoted and approved, that completely transformed the Judicial system. A new accusatory system is now replacing the old inquisitory system, and the results in terms of speed and efficiency are already being seen.
 - o The budget for the Office of the Prosecutor General, as well as that of all the judicial branch, has been increased by almost 50% since President Uribe took office, and will be further strengthened in the coming years up to 76%.
 - o The Office of the Prosecutor General has created a special subunit within the Unit of Human Rights, to specifically investigate and prosecute 187 priority cases, as determined by the unions themselves. The prosecutors and investigators of this subunit are dedicated exclusively to the investigation of these cases. The Head of the subunit has reported that in 9 months the subunit has issued 15 accusatory actions and has obtained 13 sentences.





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Introduction

Since 2002, Colombia has experienced an unprecedented period of economic expansion, social stability and has started to walk down the road to peace. Through a series of bold reforms, the government has **initiated a peace process** that has led to the demobilization of over 40,000 former combatants, **extensively recovered territorial control**, significantly **brought down the level of violence** in the country, fostered the recent and outstanding **growth of the Colombian economy**, **increased civic transparency** and **invested in social welfare programs**.

In the area of unions, Colombia has made significant progress since 2002. The Colombian government has:

- Helped strengthen the nation's **labor framework**
- **Improved the rights and benefits** of unionized workers.
- Actively worked to establish **a dialogue with labor**, business and itself.
- **Reduced violence against union members**
- Increased funding for the **protection program that to date has not lost a single union member**
- **Cracked down on acts of violence against union members, targeting the perpetrators of such violence and ensuring they are punished.**

In fact, the **rights** of Colombia's workers – including the rights to form a union, bargain collectively and strike – are expressly protected by the nation's constitution. Further, Colombia's workers enjoy **progressive employment benefits** that are beyond those found in other Latin American countries, guaranteed social security coverage and strict workplace health and safety regulations.

The United Nation's International Labor Organization (ILO) has for the first time in over 20 years removed Colombia from its labor watch list. In fact, the Colombian government, along with the nation's labor leaders and entrepreneurs, helped establish a permanent office for the ILO in Colombia in 2006.

That said, the government of Colombia is well aware that more must be done. Specifically, although violence has decreased dramatically throughout the country, some labor union members continue to fall victim to violent attacks in Colombia. The government of Colombia is therefore aggressively pursuing a **two-prong strategy to ensure the safety of union members – protection and prosecution.**

In 1997 the government of Colombia established a "**Protection Program,**" an initiative dedicated to ensuring the safety of key segments of the society. **The largest single group of private citizens protected by this program is union members at risk.**¹ And more importantly, to date, not a single union member has been killed while under the protection provided by the program.

In addition, the government is putting significant resources toward **punishing those who commit acts of violence against union members.** A special office within the Human Rights Unit of the Office of the Prosecutor General – which is completely independent from the executive branch – is wholly dedicated to this effort. Most importantly, significant changes to Colombia's judicial system, from its inquisitorial closed-door system to an open accusatorial system. This effort is being supported by the United States Department of Justice.

¹ Ministry of Justice and Interior





Workers' Rights

The rights of workers in Colombia are protected by law, enshrined in the country's constitution, and in practice. The protections built into the constitution reflect the UN's International Labour Organization's (ILO) Declaration on Fundamental Principles and Rights at Work – the internationally recognized standard for workers' protection. Colombia has subscribed to and implemented 60 ILO Conventions, including all eight Fundamental Human Labor Rights Conventions. Among these rights are:

- **Freedom of Association:** Colombians may congregate freely for any purpose, including labor union meetings, rallies and protests.
- **Right of Collective Bargaining:** Workers may coalesce, as a union or on an ad hoc basis, to negotiate their pay, working conditions and protections with their employers.
- **Right to strike:** If there is widespread dissatisfaction with a collective bargaining process, workers may strike without fear of retribution or replacement until the dispute is resolved.
- **Prohibition of forced labor:** No one in Colombia can be made to work against their will.
- **Prohibition of discrimination:** Colombian law prohibits discrimination in the workforce on the basis of age, gender or race in the hiring, promotion, retention and salary-setting processes.
- **Prohibition of child labor:** The legal working age in Colombia is 15. Children 14 and under are not allowed to work and many companies have self-imposed regulations prohibiting them from hiring anyone younger than 18.

The foundation laid by the Government to foster the protection and promotion of a stable workforce has enabled trade unions and labor advocacy groups to thrive. Currently, there are close to **one million unionized workers** in Colombia, and **over 7,500 unions registered** with the Ministry of Social Protection. New government resolutions have simplified the labor union registry procedures, which has expedited the creation of new unions.

Registry of new trade unions in Colombia				
<u>2002</u>	<u>2003</u>	<u>2004</u>	<u>2005</u>	<u>2006</u>
96	96	90	112	123
Source: Office of the Vice President of Colombia, "Actions to Guarantee and protect the exercise of trade union activities"				





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Legislation and regulations have been adopted to help workers more easily create new unions, ensure union activities are protected and that international labor standards are being met. Specifically:

- In 2000 the Colombian Congress repealed restrictive union registration provisions as well as mandatory requirements for union membership.
- In 2000 and 2003 the Colombian Constitutional Court annulled several provisions limiting industrial unions` rights to collective bargaining.
- In 2006, a new Code for Infants and Adolescents was adopted, which addressed ILO concerns regarding child labor and apprenticeships.
- In 2005 and 2006, new Presidential Decrees and regulations were adopted that addressed concerns regarding Workers' Cooperatives and Temporary Workers, and Child Labor in Hazardous Activities.
- Legislation recently passed this year will significantly expedite proceedings and enhance Colombia's existing labor courts. The law establishes oral procedures for labor disputes. Ongoing efforts include: (1) strengthening the judicial structure with new personnel, (2) Technological adjustments in evidence gathering and hearings, (3) Modifications to the procedural structure, condensing an entire process into two hearings.





Improving Workers' Benefits

Colombia's Constitution and labor laws provide workers with rights and benefits that exceed those required by international standards:

- **Minimum Wage:** All workers are entitled to a minimum monthly wage, which is among the highest in Latin America. Wages are determined on a yearly basis with input from workers, employers and unions, and must exceed annual inflation. Last year, the minimum wage increase was 1.8% above inflation. In the last five years the increase in the minimum wage surpasses inflation by 8%.
- **Health Insurance:** All workers and their families receive proper health coverage. Payments are equal to 12.5% of a worker's monthly salary, of which 8.5% is paid by the employer into the national health care system.
- **Pension Fund:** Workers are covered in the event of disability or death from common causes, including during retirement. An amount equal to 15.5% of a worker's monthly wages is placed in a special fund. Employers are required to provide an amount equal to 11.625% of the worker's monthly wages.
- **Risk Insurance:** Employers are required to protect employees against the hazards of the workplace by providing them with insurance in case of accidents. Workers are entitled to medical insurance, as well as retirement benefits, in case of disability. A worker's family is also covered in case of death.
- **Severance Pay:** Workers are guaranteed 30 days severance pay when their contract is terminated.
- **Maternity Leave:** Employees are entitled to a 12-week paid leave to begin two weeks prior to the estimated birth date. This leave is funded by the General Social Security Healthcare. The law also protects women from being dismissed due to pregnancy.
- **Professional Training:** Every employer must contribute an amount equal to 2% of their payroll to fund professional training for the unemployed.



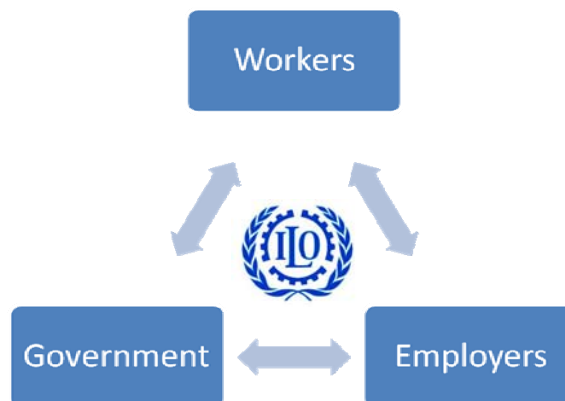


An Active Dialogue with Labor

Colombia has been mindful to invite the input and participation of the international community in its social and economic development. The United Nations has been profoundly influential on Colombia's labor practices and continues to work closely with the country to ensure that the protections, rights and benefits guaranteed to workers are being implemented.

The Tripartite Process

The UN's International Labour Organization (ILO) is the agency that brings together governments, employers and workers of its member states to agree on labor standards and working conditions. Colombia has committed itself to upholding workers' rights as defined by the agency, calling upon ILO representatives to broker negotiations between the three parties.



The Colombian government, the employers and workers subscribed the **“Tripartite Agreement on Freedom of Association and Democracy”**. This Agreement provides for the establishment of the **Permanent Representative Office of the ILO in Colombia** for the promotion of the fundamental rights of workers and labor leaders, including life, freedom of association and collective bargaining.

This tripartite Agreement, signed in June 2006 before the 95th International Work Conference of the ILO, is binding on the parties to protect basic labor rights..

The Government of Colombia contributed approximately US\$5 million over 4 years to fund the implementation of the tripartite agreement. Four projects are currently underway that were agreed on a tripartite basis among the government, workers and employers under the direction of the ILO Office in Bogota:

1. Strengthening of social dialogue and the enforcement of basic rights at work in Colombia.
2. Business technical training for 2000 displaced young people at the national level.
3. Implementation of job creation programs for poor women across the nation.
4. Training to develop and strengthen skills in order to promote local economic development at a national level

Statement on behalf of the European Union during the 298th session of the ILO Governing Body, Geneva, March 20th, 2007

“The European Union recognizes the steps to further implement the Tripartite Agreement on Freedom of Association and Democracy in Colombia, as stated in the document GB.298/TC/4. Against this background we are pleased to refer to the developments in Colombia as a case of progress. Under the Tripartite Agreement the Government of Colombia and the social partners have worked in close collaboration with the ILO to promote and defend the fundamental workers rights, specifically their physical integrity, freedom of association and collective bargaining, as well as freedom of enterprise.”





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Since 2003 the Government has opened and maintained several **dialogue mechanisms** with union members. In these meetings trade union leaders have the opportunity to raise their concerns to the highest Government officials and contribute to the policy discussions on workers' rights and the safety of labor leaders. The ongoing tripartite dialogue with workers and employers also ensures that international labor standards are respected. The ILO representative in Colombia has participated in these committees since November 2006. Other dialogue mechanisms with labor include:

- ✓ **A National Commission on Labor and Wage Policies.**
- ✓ **Departmental Sub-Commissions on Labor and Wage Policies.** 28 of the 32 Colombian Departments have these dialogue mechanisms.
- ✓ **Consensus Building Roundtables** with the President or the Vice President and several ministers.
- ✓ **Inter-institutional Commission for the Human Rights of Workers.** Follow-up to the protection program and criminal prosecution of cases of violence against union members and cases of restrictions to freedom of unionization.
- ✓ **Commission for Dealing with Conflicts**, which meets bi-weekly, and reviews ILO recommendations.

The ILO office in Colombia

On October 18, 2006 the government, workers and employers defined the mandate of the ILO office in Bogotá. The office was established on November 23, 2006.

Mr. Marcelo Castro Fox was appointed to head the permanent representation of the ILO in Bogotá, and took up his post in Bogotá on 15 January 2007. He has participated in the meetings of the National Tripartite Commission on Wages and Labor Affairs, and has engaged in a number of activities. The ILO office in Bogotá is currently selecting four senior consultants and additional staff for the implementation of the above projects. These projects were agreed to with the government, workers and employers.

Successful Cases of Government-Labor Cooperation to Save Public Enterprises



ACERIAS PAZ DEL RIO, S.A.

CASE EXAMPLE: ACERIAS PAZ DEL RIO

Acerías Paz de Rio is Colombia's largest steel mill – and it stood at the brink of liquidation. It was estimated that its closure would have negatively impacted 300,000 families. Simply put, the participation of the trade unions was instrumental in saving the company. Among other things, they committed to saving 2% of their salary in order to create a fund to capitalize the company and increase their participation as shareholders. Over 3 years, they went from owning 9% of the company to owning 43%. As a result, the once near bankrupt mill is now profitable in the millions and its stock value has risen from a low of 26 cents to \$18.



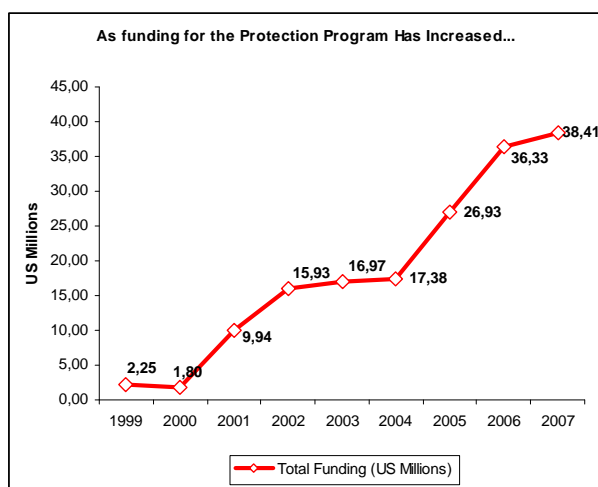


Protecting Union Members

Colombia has become a much safer place for labor union members due to the significant decrease in general violence and Government efforts to protect them. In 1997, using funding from the Colombian Government and from USAID, the Ministry of the Interior, together with the Police, DAS, National Prosecutor General, High Commissioner for Human Rights, the Ministry of Interior and Justice and the Ministry of Social Protection established a protection program for labor union members, their families, and other vulnerable groups.

"We are thankful to the [Government personnel], who have been providing the security service to our threatened directive members throughout the country"

William Millan Monsalve
Joint General Secretary, General Workers Confederation

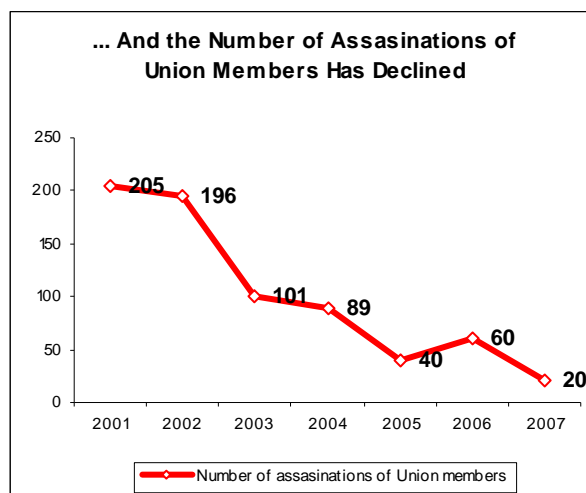


The Uribe government has dedicated unprecedented resources and attention to the protection of labor union members; as a result **homicides of union members have declined by over two thirds** since President Uribe took office.

Since its inception, the program has protected more labor union members than any other group of private citizens². As the protection program has proven highly effective, enrollment from all groups has increased, including journalists, displaced persons, witnesses and civic leaders. In 2006 over **6000 people were enrolled in the protection program** and 1,504 were union members.³

Funding for the program has increased commensurate with enrollment, from \$1.5 million in 2000 to over \$38 million in 2007, (1.13 of which is USAID cooperation)⁴.

The protection program is a rigorous, comprehensive security regimen to ensure safety at home, at work and in public. Labor leaders entering the program meet with the Risk Evaluation and Ruling Committee to determine necessary protection measures for each case.



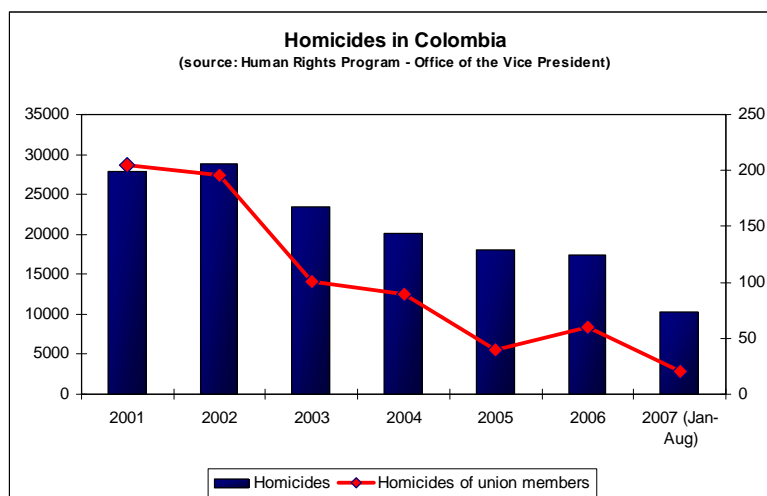
² Office of the Vice President
³ Ministry of Justice and Interior
⁴ Ministry of Justice and Interior





Safety tools available to union members include **armored vehicles, specialized bodyguards, highly trained security personnel, communications gear and security consultants to advise on home and office security measures.**

The program also provides conferences, seminars and training sessions for vulnerable individuals to best protect themselves. As needed, the Government will provide round-the-clock security staff, including armed escorts, and protection for vulnerable individuals without limiting their mobility or activity. Security is provided by Government-funded police officers, who have been specially trained for protection work.



The security of labor leaders is vital to an active workforce. The union member protection program is the only one of its kind in the world and has been recognized as such by the United Nations and the Inter-American Human Rights Court. The Government of Colombia remains steadfast in its dedication to the protection of labor union members and other vulnerable groups.

The Case of Wilson Borja:

During his tenure as president of FENALTRASE (the union of all government workers), Borja was the target of an assassination attempt on December 15, 2000. His life was saved thanks to the quick and effective reaction of his two bodyguards, both of whom were seriously wounded during the attack. Today, Wilson Borja is a member of Congress in the House of Representatives. The Congressman is one of the most vocal opposition members to the sitting Colombian government. He is still protected by 14 bodyguards.





Prosecuting Acts of Violence against Union Members

A new emphasis on the prosecution of those involved in violence against union members has led to dramatic improvements in the country's judicial system and an increased sense of security among unions. The government's proactive approach is sending a message that violence against labor union members is unacceptable and will not go unpunished.

Overhaul of the Criminal Judicial System

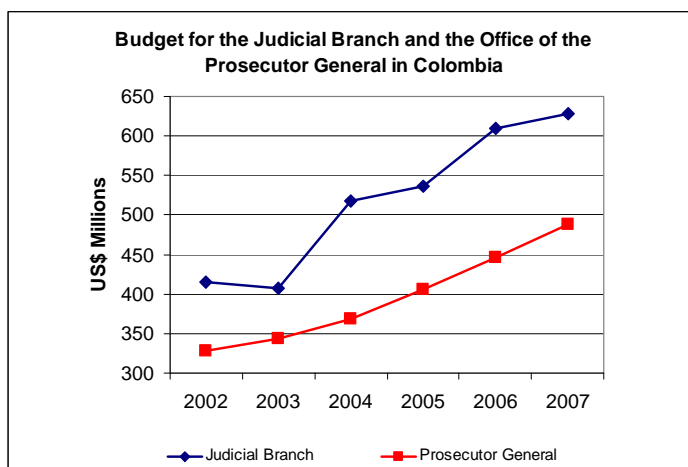
An effective and efficient judiciary is crucial to a democracy. Nevertheless, by 2002 the relentless violence and lack of sufficient resources had the Colombian judicial system on the brink of collapse. In part, the problem had been Colombia's closed-door, written inquisitorial system, where trials are held privately, are based entirely on written documents and the judge involved is responsible for both sorting through all the information presented and reaching a verdict.

Colombia has changed its constitution to adopt an accusatory system and for the past three years has been training and implementing the new system with help from the US Department of Justice.

Improvements to the judicial system are being phased in over three years. By December 2008, the entire country will have migrated to a more expeditious and transparent method of arbitrating justice for all new cases.

Increased Resources for the Judicial Sector

Overall the resources for both the judicial branch and the office of the Prosecutor General have increased every year since 2002, for a total increase of 50%, and will increase by over 75% by the end of 2008. The Office of the Prosecutor General has reported that prosecutions between 2001 and 2007 have increased, and that in cases of union members, 106 people have been convicted in 65 sentences that have been issued.



A provision in the Law that established the 2006-2010 National Development Plan provides the President with the authority to reorganize and strengthen the Office of the Prosecutor General through executive decrees. The National Planning Department and the Office of the Prosecutor General have initiated the necessary study to determine a new and expanded structure that can meet the challenges faced by this agency, and results are expected by the end of this year. The restructuring proposal will address three priority areas: Justice and Peace Law, compliance with international treaties, including human rights treaties, and the protection of victims and witnesses. An additional amount of approximately US\$ 35 million has been allocated for 2008.





Labor Subunit in the Office of the Prosecutor General

A special subunit has been established within the Office of the Prosecutor General, which is independent from the Executive Branch, to dedicate top prosecutors on a full-time basis to pursuing cases of violence against union members. This unit, composed of 13 highly skilled prosecutors, 78 judicial police investigators and 24 supporting lawyers, has a mandate to investigate the facts, identify and prosecute the perpetrators and accomplices of violence against union members, and prevent further crimes against unionists. Three **special judges** have been appointed to hear these priority cases in order to give sufficient judicial attention and expedience to them.

**ILO Committee on Freedom of Association,
Report Number 340**

[The ILO Committee] “recognizes the efforts made by the government to improve the protection of union leaders, affiliates, and union organizations and to make progress in the investigation of cases. The Committee agrees on the importance of the three-way dialogue to move ahead on these efforts”

This year, the Government of Colombia has increased by approximately 50%the budget for the Office of the Prosecutor General to fund this subunit over the next four years, in addition to funding the special judges and the judicial police that work alongside prosecutors.

Trade unions have been integral to the creation and operation of the judicial unit. The Office of the Prosecutor General worked with labor unions to jointly identify 187 priority cases of violence against labor union members in which the perpetrators had not been found. Many of these cases had run cold and were closed. The Subunit is reexamining the cases, gathering new evidence and testimony, and since its creation in February, 2007, the Subunit has reported 15 accusatory actions and has obtained 13 sentences⁵.

The Judicial branch, with additional funding provided by the Government, is fully committed to continue advancing in cases of violence against union members.

⁵ Office of the Prosecutor General

