

# **Que os duelan las sangres ignoradas**

**Impunity and the Violation of the  
Human Rights of Trade Unionists in Colombia  
2009-2010 and 2002-2010**

## **Cuaderno de Derechos Humanos no. 22**



**Impunity and the Violation of the Human  
Rights of Trade Unionists in Colombia  
2009-2010 and 2002-2010**

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## Introduction

Over the last three years the *Escuela Nacional Sindical* (National Trade Union School - ENS) and the *Comisión Colombiana de Juristas* (Colombian Commission of Jurists – CCJ) have been jointly monitoring the human rights situation of trade unionists in Colombia and levels of impunity attached to the crimes committed against them.

This is the second joint report the two institutions have published. It is hoped that at the end of the year a further report will appear, providing an interpretation, covering the period 1977 to the present, of the logic underlying the human rights violations and impunity that characterize trade union cases.

These initiatives are intended to stimulate the establishment of policies to combat the problem of serious human rights violations committed against the trade union movement and the corresponding situation of impunity. We hope that the report will help to shed light on this continuing calamity and contribute to a public debate on effective ways to combat it. The ENS and the CCJ have played a very important role stimulating the interest of the international community in the subject and in opening up the possibilities of developing an agenda capable of transforming the current situation.

This report is published at a time when interests opposed to organized labor question both the statistics on anti trade union violence and the effects of that violence on freedom of association in Colombia.

Despite the current challenging context, the international community and a range of Colombian and international human rights organizations have continued to speak out on the situation. In its observations on Convention

87 the Committee of Experts on the Application of Conventions and Recommendations (CEACR), the *Committee on Freedom of Association* (CFA), concerning Case 1787, and the Conference *Committee on the Application of Standards* have all called on the Colombian state to guarantee that workers' organizations may "carry on their activities freely and meaningfully [...] in a climate free from violence".<sup>1</sup>

Recently, in its June 2010 report on Colombia, the Committee on Economic,

Recently, in its June 2010 report on Colombia, the Committee on Economic, Social and Cultural Rights indicated that:

The Committee is alarmed at the murders of trade-unionists in the State party and that they continue to be victims of various forms of threats and violence. The Committee remains concerned that, despite the implementation of a National Program of Protection that covers trade-unionists and the creation of sub-unit within the Human Rights Unit in the Attorney General's Office to deal with murders against trade-unionists, only a small number of acts of violence against trade-unionists were investigated.<sup>2</sup>

The report has two chapters. The first provides an overview of violations of the *right to life, liberty and security of the person of trade unionists in Colombia during the government of President Uribe* (2002-2010). This chapter includes data on 2009 and that part of 2010 *for which figures are available. These periods are* analyzed in the context of a longer period running from 1986 to 2010. The chapter also provides a summary of a separate study of trade union murders at international level, in which the measures adopted by the Colombian state to prevent such violations are evaluated.

The second chapter deals with the serious situation of impunity, examining the kinds of investigations carried out by the prosecuting authorities (the *Fiscalía General de La Nación*) to identify the perpetrators of the crimes committed against trade unionists, how the investigations are carried out and the results achieved. It also examines the measures taken by the Colombian state to combat the situation of impunity.

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1. CEACR, Individual Observation, Convention 87, in 2007, 2006, 2005 and 2002.

2. E/C.12/COL/CO/5. Paragraph 12.



# Overview of Violations of the Right of Trade Unionists in Colombia to Life, Liberty and Security of the Person in Colombia<sup>3</sup>

## High Levels of Violations Continue in 2010<sup>4</sup>

An examination of the information on violence against trade unionists gathered between 1 January and 30 August 2010 demonstrate the continued violence against unionized workers in Colombia. In the first six months of the year there were at least 35 murders (10 of trade union leaders), and 17 murder attempts (14 against trade union leaders).

Violations of the Right of Trade Unionists to Life, Liberty and Security of the Person, between 1 January and 30 August 2010\*

Type of Violation	Total
Threats	201
Murder	35
Murder attempt with or without injury	16
Harassment	10
Kidnapping	5
Disappearance	5
Illegal Search	2
Arbitrary Detention	1
Overall Total	275

\* 2010 figures are provisional, pending completion of data collection and cross checking.

The preliminary data for 2010 illustrate a terrifying and dangerous scenario for those who choose to exercise their right to assume leadership in the struggles of thousands of workers for a fairer and more equitable society with guaranteed working conditions. Incidents have occurred during this period that have seriously limited and hindered efforts to promote freedom of association.

3. The information on violations of human rights committed against trade unionists in Colombia have been collected and analyzed by the ENS over a period of more than 20 years, in close collaboration with the trade union organizations and other human rights organizations.
4. For this section the period of analysis has been extended to 30 August 2010.

On Friday 13 August 2010, Luis Germán Restrepo Maldonado, President of the Sindicato de Trabajadores de la Compañía de Empaques (Sintraempaques) and an important leader of the CGT in Antioquia, was murdered. The murder was particularly serious because it targeted a high ranking trade union leader who had been highly visible defending his political and trade union views on the national and international stages.

Alejandro Betancur, president of the Sindicato de Trabajadores de la Industria Minera del Departamento de Antioquia (Sintramneros), Amagá branch, received death threats on 26 July 2010. An unknown individual called his cell phone and threatened him concerning his attempts to resolve a 13-year dispute with the company Industrial Hullera, currently in liquidation. The activities in question involved the claim of more than 100 former mine workers who had still not received the redundancy payments to which they were entitled.

On 11 January 2010, 185 workers at the Palo Alto estate in Ciénaga, Magdalena Department, which belongs to Inversiones Palo Alto Gnecco Espinosa, were expelled from their workplace at gunpoint, one worker being injured in the process. The gunmen, who had a list of names and

asked for the workers José Luis Soto Jaramillo and Juan Carlos Torres Muñoz, shouted, “Come out, we’re here to kill you. Don’t hide” before immediately opening fire, wounding Miguel Augusto Cuenca Torregroza. The Sindicato Nacional de Trabajadores de la Industria Agropecuaria (Sintrainagro) interpreted the event as a reprisal for its attempts to recruit large numbers of workers and the organization, since December 2009, of a series of actions protesting against unpaid wages and benefits the workers were owed.

These cases represent a call for the Colombian state to take effective measures to protect the right to life, liberty and security of person for its citizens and the unionized workforce and to promote respect for the right of association in the country.

## **Violations of the Right of Trade Unionists in Colombia to Life, Liberty and Security of the Person During 2009**

### **Overall Characteristics of the Violations**

2009 saw a wide-ranging debate involving the international community on the violation of human rights in Colombia. Four United Nations Spe-

cial Rapporteurs visited the country.<sup>5</sup> In their reports all coincided in expressing concern at the worrying situation, in particular in relation to trade unionists. For example, concerning extrajudicial executions committed by members of the Colombian army, the Special Rapporteur on extrajudicial executions said,

“It should be noted at the outset that killings by these actors disproportionately affect rural and poor populations, Indigenous people, Afro-Colombians, trade unionists, human

rights defenders and community leaders”.<sup>6</sup>

The role of the Uribe Vélez government did not in practice serve to guarantee human rights. On the contrary, it adopted the strategy of flatly denying the complex situation affecting the right to life, liberty and security of the person of unionized workers, denying the existence of an armed conflict and of the continuing activities of paramilitary groups, describing the extrajudicial execution of trade unionists, journalists, and human rights defenders as isolated cases, pursuing high court judges, and questioning the legitimacy of the activities of trade unionist victims.

In its anxiety to gain approval for the Free Trade Agreements (FTAs) with the US, Canada and the European Union, the government has stubbornly refused to accept the statistics concerning anti-trade union violence, rather than adopting hard hitting measures designed to overcome the problem. This attitude illustrates that

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5. The report of the Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People may be consulted at: <http://www2.ohchr.org/english/issues/indigenous/rapporteur/docs/A-HRC-15-34.doc>; of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions at: [http://www.extrajudicialexecutions.org/application/media/Colombia\\_Press\\_Statement\\_English1.pdf](http://www.extrajudicialexecutions.org/application/media/Colombia_Press_Statement_English1.pdf) (The full report in English may be consulted at [http://www.extrajudicialexecutions.org/application/media/14%20HRC%20Mission%20to%20Colombia%20%28A.HRC.14.24.Add.2\\_en%29.pdf](http://www.extrajudicialexecutions.org/application/media/14%20HRC%20Mission%20to%20Colombia%20%28A.HRC.14.24.Add.2_en%29.pdf)); of the Special Rapporteur on the Situation of Human Rights Defenders at: [http://www2.ohchr.org/english/issues/defenders/docs/A.HRC.13.22.Add.3\\_en.pdf](http://www2.ohchr.org/english/issues/defenders/docs/A.HRC.13.22.Add.3_en.pdf); and the Special Rapporteur on the Independence of Judges and Lawyers at: <http://www2.ohchr.org/english/issues/judiciary/docs/A.HRC.14.26.Add.2.pdf>

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6. Press release by Professor Philip Alston, UN Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions following his Mission to Colombia between 8 and 18 June 2009. [http://www.extrajudicialexecutions.org/application/media/Colombia\\_Press\\_Statement\\_English1.pdf](http://www.extrajudicialexecutions.org/application/media/Colombia_Press_Statement_English1.pdf)

the government is more interested in creating a positive international image than working towards a real solution to the problem.

Initially, the administration opted to differentiate between murdered unionized teachers and other workers, creating a parallel variable and, with it, a distorted interpretation of the dimensions of the situation. This manipulation was widely criticized, and the government changed its approach rapidly as a result. Subsequently, it decided on a strategy involving attacks on the reputation of trade unionists. The strategy involved suggesting, for example, that victims had been attacked because they were connected with illegal armed groups, involved in crimes of passion or were merely victims of common crime. On other occasions the strategy has focused on NGOs, attacking the legitimacy of their research, even, at times, making use of unionized workers belonging to political sectors close to the government to front the questioning or denials. These efforts to use discourse to cloak the truth about the human rights situation in Colombia were undermined by the highly questionable actions of the government associated with the scandals it became embroiled in.

Additionally, in May, the Colom-

bian media gave considerable coverage to declarations made by ranking government officials concerning the illegal phone tapping of political opponents of the government, government employees, members of the high courts, the Vice President of the Republic and members of social organizations. The organizations whose communications were intercepted included two trade union confederations, the Central Unitaria de Trabajadores (CUT) and the Confederación de Trabajadores de Colombia (CTC), as well as the Sindicato Nacional de Trabajadores de la Salud y la Seguridad Social (the main health service and social security union), and the Sindicato de Trabajadores de la Empresa de Teléfonos de Bogotá (the union of the Bogotá telecommunications company).

In 2009, legal processes covered by Law 975 of 2005, which was intended to demobilize the paramilitary groups and guarantee the rights of their victims, remained at a standstill and the paramilitary leaders who had been extradited to the United States in 2008 were still failing to provide information necessary to satisfy the victims of the crimes they had committed. Thus the right of the victims to truth, justice and reparation were prejudiced. At the same time the



organizations that the authorities insisted on naming “emerging groups” [*bandas emergentes*], but which were in fact nothing other than reorganized groups of paramilitaries, continued harassing and pursuing the trade union movement.

The FARC and ELN, for their part, continued committing serious acts of violence against the civilian population, including the murder of 27 members of the Awa indigenous on 4 February 2009, and the kidnapping and subsequent murder, of the Governor of the Department of Caquetá, in December of the same year. These two guerrilla groups were also responsible in 2009 for at least four murders, 11

threats, 10 forced displacements and one murder attempt in which the victims were trade unionists.

### Violations during 2008 and 2009: Statistics

There was a slight decrease of 6.2% in the total number of violations committed against trade unionists in 2009 compared with 2008. Nevertheless, the Colombian union movement continued its efforts to combat anti trade union violence and extermination attempts, primarily by denouncing the crimes, and seeking to advance debate nationally and internationally, in both governmental and non-governmental scenarios.

#### Comparison of Violations of the Right of Trade Unionists to Life, Liberty and Security of the Person in Colombia between 1 January and 31 December 2008 and 2009

Type of Violation	Nº of cases 2008	% 2008	Nº of cases 2009	% 2009
Threats	498	65,3	419	58,6
Forced Displacement	154	20,2	129	18,0
Murder	49	6,4	47	6,6
Harassment	19	2,5	54	7,6
Arbitrary Detention	26	3,4	34	4,8
Murder attempt with/without injury	8	1,0	18	2,5
Torture	3	0,4	7	1,0
Forced Disappearance	5	0,7	3	0,4
Illegal Search	1	0,1	4	0,6
Total	763	100,0	715	100,0

Source: Banco de Datos de Derechos Humanos, SINDERH, ENS.

Given this panorama, it is important to stress that while it is true that there was a slight decrease of two in the number of murders, there were also 18 attempted murders in 2009 compared to eight the previous year, and that this represents an increase of 125%. In fact, the number of attempts at physical annihilation (murder plus attempted murder) increased by 14%.

Turning to the acts of violence that increased during 2009, the number of illegal searches increased from one in 2008 to four in 2009 (75%), harassment levels rose from 19 to 54 (64.8%); cases of torture rose 57.1% from four to seven; murder attempts have already been mentioned; while cases of arbitrary detention increased from 26 to 34 (23.5%).

The violent acts that demonstrated a reduction were forced disappearances, falling 66.7% (three in 2009 compared with five the year before); threats fell from 498 to 419, a reduction of 18.9%, while forced displacements fell from 154 to 129 (19.4%); finally, murders fell from 49 to 47, a percentage reduction of 4.3%.

The reduction in reported threats and displacements might be explained

by the scant insistence with which their occurrence has been denounced: there is a perceptible weariness among trade unions, as these kinds of experience have come to be seen as a part of the daily routine of their members. Evidence of this is provided by the difficulty encountered in finding information in secondary sources over the last year.

Thus it may be observed how anti trade union violence is based increasingly on more diffused and complex acts, which permit elaborate schemes to be concocted, designed to spread confusion about events and diminish their impact on public opinion; this is the case, for example, with illegal searches, harassment and arbitrary detentions.

During this period the increase in the numbers of murders of trade union leaders has been telling. While in 2008, 16 trade union leaders were murdered; in 2009 the figure rose to 21. This increase causes concern, above all because this kind of violence does serious damage to individual trade unions and the union movement alike.

**Comparative table of murders of trade unionists between 1 January and 31 December 2008 and 2009, by category of worker**

<b>Category of Worker</b>	<b>2008</b>	<b>%</b>	<b>2009</b>	<b>%</b>	<b>Total</b>
Workforce	32	65.3	26	55.3	58
Trade Union Leader	16	32.7	21	44.7	37
Trade Union Advisor	1	2.0	0	0.0	1
<b>Overall Total g</b>	<b>49</b>	<b>100</b>	<b>47</b>	<b>100</b>	<b>96</b>

Source: Banco de Datos de Derechos Humanos, SINDERH, ENS.

### 3. Responsibility for Violations during 2009

**Violations of the Right of Trade Unionists in Colombia to Life, Liberty and Security of the Person in Colombia between 1 January and 31 December 2009, by presumed perpetrator**

<b>Presumed Perpetrator</b>	<b>Total</b>
Unidentified	445
"Self-Defense Groups" and/or paramilitaries	163
State Body	59
Guerrilla group	26
Common crime	19
Employer	3
<b>Overall Total</b>	<b>715</b>

Source: Banco de Datos de Derechos Humanos, SINDERH, ENS.

During 2009 there were 715 violations of the right of trade unionists to life, liberty and security of the person in Colombia, of which the presumed author of the crime has not been identified in 445 cases (58%). That is, in more than half the violations the perpetrator has not been identified. In 264 cases (36.9%) the presumed author of the crime has been identified, the most common being the paramilitary groups who were responsible for 163 acts of violence (61.7% of the total); in second place were state bodies,

responsible for 59 cases (22.3%); third were the guerrilla groups, with 26 cases (9.6%), followed by common criminals (19 cases, or 7% of the total); the last category of perpetrators were employers, who were responsible for three violent acts, (1.1%).

Threats were the principal technique of aggression employed by the paramilitary groups against trade unionists. It is notorious, furthermore, how the majority of these threats were directed at the trade union leadership. Of the total number of threats carried

out by these groups (136), 106 (77.9%) sought to intimidate trade union leaders.

In general, these threats were highly ideological in nature: accusing all trade unionists of being enemies of peace, members of guerrilla groups or collaborators with them, they also employed notably coarse language, intended to undermine the dignity of the workers and of the trade union movement. The threats were also couched in collective terms, the aggressors purporting to defend the interests of society as a whole, of patriots and citizens. They were collective, also, because at least 70 were aimed at members of the same trade union, to several at once, or to a range of social organizations including unions. Furthermore, a considerable number referred to aspects of the private lives of their targets, such as their family lives, domestic routines and arrangements, so that they could demonstrate without equivocation their capacity to pursue and harm their victims.

An emblematic example is provided by the threats received by members of the Asociación Agraria de Santander, Asogras, on the afternoon of 28 July 2009. Félix Ortiz Amaya, Mabel García Mantilla and Juliana Andrea García Carrillo, president, vice-president and secretary, respec-

tively, of the Asogras branch in Girón, Department of Santander, received a telephone naming them as “military objectives”. Evidence suggests that the criminals belonged to the paramilitary group operating in the town.

In the same phone call Mabel García’s sister was ordered to leave the Miradores de San Juan neighborhood immediately. The callers added that they knew the daily routines of all her family members and that they would disappear her husband, as this is what would hurt her most. The caller also mentioned that he knew Juliana Andrea García was pregnant and that it would be “easy to hit her where it hurts most”. When it came to Félix Ortiz, they said that they were “waiting for him to give us an opportunity to disappear him ... we’re just waiting for the time and place to do it”. Witnesses suggest that the community feared the trade unionists might be attacked in the Miradores de San Juan, where it was well known as a center of operations for the paramilitaries known as the “Águilas Negras”. Asogras has been subjected to constant pressures, threats, persecution and murder by the paramilitary groups that operate in the Department of Santander and the Magdalena Medio region, especially in the municipality of Sabana de Torres.



For their part, state bodies were principally responsible for arbitrary detentions or, in other words, the denial of liberty to trade unionists by state agents for reasons, and following procedures, which do not appear in the penal code. This *modus operandi* includes detention without warrant, when no crime has been committed, and detention that exceeds established remand limits or beyond the sentence period.

In 2009 state bodies were responsible for 33 arbitrary detentions, 10 cases of harassment, six cases of torture, six threats, two murder attempts and two illegal searches.

Between 13 and 16 July 2009, peasants and leaders of different social organizations including several members of the Federación Nacional Sindical Unitaria Agropecuaria (Fen-suagro) – including the Asociación de Trabajadores Campesinos del Tolima (Astracatol), and the Sindicato de Trabajadores Agrícolas del Tolima (Sintragritol) – were arbitrarily detained in the hamlet [corregimiento] of Las Hermosas in the municipality of Chaparral, Department of Tolima. Ever Quijano Capera, Jesús Emilio Portela García, Wilson Medina Arce, Mauricio Collazos Peralta, Edwin Humberto Medina Ríos, Walter Rodríguez Bermeo, Jorge Enrique García

Moreno, Norberto Fernández, Trebelio Guzmán, José Vicente Méndez, Albeiro Serna, Matha Cecilia Orozco, Alcibiades Romero and Carlos Méndez Méndez were detained during a joint operation carried out by soldiers from the national army and members of the Cuerpo Técnico de Investigación (the technical investigation body of the Fiscalía - CTI). Witnesses said that the detentions were carried out based on information from informants who had received in-kind benefits and payments under the terms of the government's Democratic Security policy. It is evident that the stigmatizing of human rights defenders and trade union leaders that characterize the prevailing anti-union climate has a negative effect on the personal freedoms and constitutional guarantees available to citizens as a whole.

Another decidedly delicate matter concerned the arbitrary detention on 5 May 2009 of three leaders of the Asociación Colombiana de Camioneros while they were driving their lorries from Buenaventura to Cali in order to take part in a national lorry drivers' strike. In this case, it is significant that after the detention had been denounced by Tarcisio Mora, National President of the CUT, the national Police's Director of Transit and Transport, General Luis Alberto

Moore, indicated that the men had not been detained but had accompanied his officers voluntarily to the police station:”an officer invited them to sign an agreement because they had been pressuring others to blockade the port of Buenaventura”. General Moore maintained too that the case showed that coercion was used against drivers who wished to continue working. ”while it is true that the strike has

been respected, we cannot allow them to compel drivers to take part if they do not wish to”. This case provokes concern at how the authorities, and in particular the security forces, treat the labor conflicts that occur in the country as public order problems, putting at risk the effective exercise of the right of association and freedom of expression.

**Comparative table of murders of trade unionists between 1 January and 31 December 2008 and 2009, by presumed perpetrator**

Presumed Perpetrator	2008	%	2009	%	Total
Unidentified	37	75.5	35	74.5	38
“Self-Defense Groups” and/or paramilitaries	5	10.2	7	14.9	5
State Body	6	12.2	0	0.0	6
Guerrilla group	0	0.0	4	8.5	0
Common crime	0	0.0	1	2.1	2
Employer	1	2.0	0	0.0	1
Overall Total	49	100	47	100	52

Source: Banco de Datos de Derechos Humanos, SINDERH, ENS.

An examination of the homicide cases for 2009 demonstrates a high percentage of murders (74.5%, or 35 cases), where the identity of the perpetrator remains unknown. Of cases where information on the presumed author is available – 12 in total – seven are alleged to have been committed by paramilitary groups, four by guerrilla groups, and one by common criminals.

Compared to 2008, in 2009 there

were two more murders attributed to paramilitary groups, four by guerrilla groups and one by common criminals. Additionally, while in 2008 six murders were attributed to state agents and one to employers, the 2009 figures were, respectively, zero and one.

An analysis of the murders committed by paramilitary groups shows how their actions focused on the trade union leadership: seven out of nine of their victims occupied leadership

roles.

For their part, guerilla groups were allegedly responsible for four murders, one of a leader of an agrarian trade union and three of workers, one of whom worked in agriculture, one in education and the last in the petroleum industry. This last victim was killed in Arauquita (Arauca Department), on 27 March 2009, during a confrontation involving the army in which workers of Occidental de Colombia were caught in the crossfire.

This case provides an example of the serious phenomenon whereby Colombian workers die when embroiled in the conflict affecting the country, despite the multiple efforts of their organizations to work for peace. Days before the events, a lorry had been attacked, the driver escaping unscathed. Subsequently, the buses that carried Occidental workers and subcontractors were caught up in cross fire between guerrilla forces and the army in the Caricare and Caño Limón oil fields. The Union Sindical Obrera (USO), the oil workers' union that represents workers at the Occidental installations known as Arauca Capital, demanded that the company take measures to minimize the risks workers run when travelling to work, and to protect their right to life. At this point, the guerrilla organization declared a

paro armado<sup>7</sup>. The USO's request was discussed at a meeting involving the authorities (the army, the police and the Departamento Administrativo de Seguridad - the State Security and Intelligence Service, DAS), a representative of Occidental de Colombia's Social Responsibility department, the company's security team, the Arauca Human Rights Ombudsman and USO representatives. The military authorities said that they should not "give in to terrorism" and stated that "nothing was going on" in Arauca and that these were "isolated cases". Consequently they suggested to the USO and to the company that they should organize "military convoys for the workers, to be accompanied by infantry soldiers, helicopters and planes". The proposal was accepted by Occidental de Colombia, despite the fact that the Human Rights Ombudsman argued that transport was severely restricted by the paro armado. Occidental de Colombia responded saying that they shared the analysis

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7. Translator's Note: In a paro armado (literally, an "armed strike") guerrilla groups order transport companies not to operate, thereby paralyzing commercial activity; individuals and companies who defy the order run the risk of their property being destroyed and of being physically attacked.

of the military authorities and that the workers should resume work; finally they asked the Ministry of Social Protection to record the decision in an official minute. The Ministry proceeded to prepare a document laying the groundwork for subsequent accusations that the union leaders and workers were inciting a strike. The USO leadership requested the armed forces to respect the principle of distinction, and the guerrilla organization that had called the *paro armado* not to involve the workers in the armed conflict. They then asked the Human Rights Ombudsman to provide humanitarian accompaniment<sup>8</sup> for the workers and presented a contingency plan to the oil field manager, covering both permanent workers and contract labor. The union based its proposal on the precautionary measures granted by the Inter American Commission of Human Rights (IACHR) in 2001; these include a stipulation that any measure intended to provide security, protection or guarantees to the members of

the USO should be agreed with the union and the petitioners. The union also maintained permanent telephone contact with officials in the Human Rights Unit of the Vice-Presidency, warning of the possibility that one or more worker might be murdered or their personal integrity threatened. Occidental and its contractors refused to accept the proposals of the union in full, and, threatening disciplinary proceedings and dismissal, pressured the workforce into travelling to the oil field with military accompaniment. On Saturday, and under pressure, the workforce went to work Caño Limón oil field. Finally, on 27 March, while travelling in one of the military convoys, and in the midst of crossfire between the army and the guerrillas, the worker Armando Carreño, a member of the Arauca section of the USO, was killed.

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8. **Translator's Note:** humanitarian accompaniment is a technique used fairly frequently in Colombia; it involves high profile members of national and / or international bodies (in this case the Human Rights Ombudsman) accompanying threatened groups or individuals in order to reduce the risk of their being attacked.



## Violations Committed against Women

**Comparative Table showing Violations Committed against Trade Unionists  
between 1 January and 31 December 2009, by sex**

Kind of Violation	Female	%	Male	%	Total
Threats	106	58.6	313	58.6	419
Forced Displacement	51	28.2	78	14.6	129
Murder	4	2.2	50	9.4	54
Harassment	5	2.8	42	7.9	47
Arbitrary Detention	4	2.2	30	5.6	34
Murder attempt with/without injury	7	3.9	11	2.1	18
Torture	1	0.6	6	1.1	7
Forced Disappearance	2	1.1	2	0.4	4
Illegal Search	1	0.6	2	0.4	3
Total general	181	100	534	100	715

Source: Banco de Datos de Derechos Humanos, SINDERH, ENS.

During 2009 women trade unionists represented 25.3% of the total number of violations committed against unionized workers. During the year they received 106 threats and were victims of 51 forced displacements, seven murder attempts, five murders and four cases of harassment.

Specifically, the violence committed against women trade unionists was exacerbated by actions that went beyond the immediate attack, seeking additionally to attack their personal dignity. Aspects such as their looks, the protection of the family and motherhood (a state implying particular vulnerability) were used by the perpetrators of gender-based attacks to intimidate women.

In November 2009, in a municipi-

pality in Antioquia, a female trade union leader who was at the forefront of a series of workers' demands in the local hospital was the victim of an attack using a sharp instrument.<sup>9</sup> The complaints of the trade union concerning graft, corruption and workplace intimidation might be connected with a series of suspicious vehicle movements in the neighborhood of the hospital. The leader survived the attack in question, but her assailants slashed her face, disfiguring her completely.

The emotional damage caused by this attack cannot be overestimated. Additionally, as a result of the attack

9. The name of the victim, the union she belonged to and the municipality where she lived have been withheld for her protection.

the victim was forcibly displaced, her right to free association was violated and her capacity to act freely as a worker was restricted.

Other cases of violence against women directly affect their families, principally their children, who are forced into the conflict as a result. On 22 September 2009, María Alicia Cabezas, a member of Sintraelecol in Arauca, received a telephone threat during which she was warned that her daughter would be harmed.

Similarly, Margarita López and Nelly Arias, leaders of Sintraacuvalle, received threats following the arrest of several former managers of the municipal water company Acuavalle following complaints about alleged corruption. An email which provoked terror in its recipients announced that “death would follow” and accused them of being informers or “grasses”. The women had denounced the director of Acuavalle for a company proposal, known as Oferta 026, to contract a foreign investor in 2010 to implement its investment plan. In the context of its actions to defend the public ownership of the company, the proposal had created tension between the director and the union because of the criticisms the union made of the interest payments that would have been paid to a third party.

In other cases women were targeted because they were in relationships with male trade unionists involved in disputes. This was the case of de Jairo del Río, president of the Sindicato de Trabajadores de Tubos del Caribe (Sintratucar) who, on 31 August 2009, received the following death threat from paramilitaries in the city of Cartagena:

“Señor Jairo del río [sic], we hope that you are very clear about the objectives of the trade union organization you lead because you are getting in above your head denouncing things you should leave alone. We remind you that in this country communist guerrillas like you and your group die quickly, so stop fucking around sticking your nose in things that don’t matter. Let us remind you that you have a lovely family that you should look after and that your pregnant wife goes out every morning at five thirty in the morning to take your son to school, and it would be a great shame if something happened to them and you were to blame. The guerillas in this country are finished, especially guerrillas like you who dress up as civilians. Look after yourself and look after your loved ones”.

The following day, the vice president of the union, Deivis Blanco, received a similar written threat, which included a death threat.

## Sectors Affected

Although anti trade union violence in 2009 occurred in many sectors of the economy it was most prevalent in education and agriculture.

### Violations 2009, by Economic Sector

Economic Sector	Total 2008	%	Total 2009	%
Community and personal services - education	446	58.2	413	57.8
Agriculture, hunting and fishing	59	7.7	72	10.1
Community and personal services – other services	45	5.9	66	9.2
Manufacturing industry	56	7.3	40	5.6
Electricity, gas and water	38	5.0	28	3.9
Community and personal services - health	23	3.0	23	3.2
Mining and quarrying	74	9.7	22	3.1
Community and personal services-municipal and official employees	16	2.1	18	2.5
Transport, warehousing and communications	1	0.1	15	2.1
Finance	2	0.3	13	1.8
Community and personal services - legal	0	0.0	5	0.7
Trade	5	0.7	0	0.0
Construction	1	0.1	0	0.0
Overall Total	766	100.0	715	100.0

Source: Banco de Datos de Derechos Humanos, SINDERH, ENS and trade union federations.

In 2009 the sector most affected by anti-trade union violence was education, with 413 violations (57.8% of the overall total for the year). This represented a reduction of 7.4% compared with 2008, when a total of 446 violations of the right to the life, liberty and security of person were committed against trade unionists in the sector.

The second most affected sector was agriculture, hunting and fishing with a total of 72 violations in 2009, 22% more than occurred in 2008 when 59 violations of the right to life, liberty and security of person of trade

unionists in the sector were registered. In third place were the workers in the community and personal services sector, excluding education, health, legal, and municipal and official employees, who suffered 66 violations during the period, 46.7% more than the previous year.

The mining and quarrying sector showed a marked decrease in the number of violations falling from 79 in 2008 to 22 in 2009; there was also a decrease in the industrial manufacturing sector, with a fall of 28.6%, from 56 to 40 violations, and in the electric-

ity, gas and water sectors, which fell from 38 cases to 28.

Nevertheless, there were significant increases in the transport, warehousing and communications sector, where there had been one case in 2008, rising to 15 in 2009, an increase of 1,400%, while violent acts in financial sector increased from two in 2008 to 13. Five cases affected the legal sector in 2009 compared with none in 2008.

It is significant that arbitrary detentions and illegal searches were principally concentrated in the agrarian sector, where civil society responses to institutional abuses remain weak and where, in contrast to the situation in urban areas where international institutions and the media are active, there is little monitoring of the actions

of the multiple actors present. Of a total of 34 arbitrary detentions registered during 2009, 26 were committed against agrarian workers.

Another significant violation involved harassment, a form of violence that is less evident, as it is most common in urban areas, especially in the electricity, gas and water industries, in manufacturing, and among municipal and official employees.

It should be noted that the education sector, as well as being the most affected by anti trade union violence has also been the most active in terms of social mobilization in the period examined. According to the ENS data base on trade union activity, of the 103 actions registered in 2009, 21 (20.39%) occurred in the education sector.

**Labor Protests in 2009 by Economic Sector**

Sector	Frequency	Percentage
Industry	26	25.2
Education	21	20.4
Health	18	17.5
Social Services	13	12.6
Pensioners	7	6.8
Communications	5	4.9
Judicial	4	3.9
Commerce	3	2.9
Miscellaneous*	6	5.8
Total	103	100.0

Source: Banco de Datos Dinámica Sindical, ENS.

\* Activities organized by a range of organizations belonging to different sectors.

Trade Unions Most Affected during 2009 and 2010

Violations against the Right of Trade Unionists to Life,  
Liberty and Security of the Person, 2009,

Trade Union	Cases	%
Adida	246	42.6
Sintraunicol	54	9.4
CUT	45	7.8
Fensuagro	45	7.8
Educal	43	7.5
Sinaltrainal	28	4.9
Sintraemsdes	22	3.8
USO	16	2.8
Anthoc	15	2.6
Asogras	13	2.3
Umach	13	2.3
UNEB	12	2.1
SER	10	1.7
Sindesena	8	1.4
Sindess	7	1.2
Total	577	100.0

Source: Banco de Datos de Derechos Humanos, SINDERH, ENS and trade union federations.

In 2009, 80.7% of anti trade union violence was directed against 15 unions, each of which was known for its capacity to mobilize opinion and

influence debate on public education, health, oil production, the financial sector, multinational corporations and labor issues in general in the country.

**Violations of the Right of Trade Unionists in Colombia to Life, Liberty and Security of the Person in 2010, by union**

Union	Cases	%
Adida	46	22.9
SER	46	22.9
CUT	23	11.4
Sindesena	14	7.0
USO	10	5.0
Sintraunicol	10	5.0
Fensuagro	9	4.5
Anthoc	8	4.0
Simana	8	4.0
Astdemp	6	3.0
Ademacor	5	2.5
Asogras	4	2.0
Asoinca	4	2.0
Sinramienergetica	4	2.0
UNEB	4	2.0
Total	201*	100.0

\* It is not yet possible to compare the figures for 2010 with 2009 which remain provisional because the methodology has not been applied systematically to the 2010.

For those trade unions most affected by violence, the panorama in 2010 has not changed much compared with 2009. The tendencies remain similar, which is unsurprising given that the principal problems affecting the sectors in question remain constant too. Once again, it is the education sec-

tor that is victim of the highest number of attacks. Six of the 15 unions that have suffered most attacks belong to the sector, an aspect that is consistent with the high levels of mobilization and activism of teachers compared with other sectors.

The Geography of Violations in 2009 and 2010

Violations of the Right of Trade Unionists in Colombia to Life, Liberty and Security of the Person in 2010, by department

Department	2009	%
Antioquia	267	37.3
Valle	86	12.0
Santander	85	11.9
Caldas	47	6.6
Atlántico	41	5.7
Cauca	25	3.5
Tolima	25	3.5
Bogotá D.C.	21	2.9
Bolívar	17	2.4
Chocó	16	2.2
Risaralda	15	2.1
Arauca	14	2.0
Cesar	11	1.5
Córdoba	8	1.1
Magdalena	8	1.1
Meta	8	1.1
Huila	5	0.7
Norte de Santander	5	0.7
Quindío	4	0.6
Cundinamarca	2	0.3
Popayán	2	0.3
Caquetá	1	0.1
Guajira	1	0.1
Putumayo	1	0.1
Total	715	100.0

As has consistently been the case historically, in 2009 the departments most affected by violations of the right

of trade unionists to life, liberty and security of the person were Antioquia, Valle and Santander.



**Violations of the Right of Trade Unionists in Colombia to Life, Liberty and Security of the Person between January 1 and August 30 2010, by Department**

Department	2010	%
Antioquia	68	24.7
Risaralda	48	17.5
Valle	34	12.4
Santander	23	8.4
Caldas	20	7.3
Cauca	15	5.5
Bogotá D.E.	11	4.0
Nariño	9	3.3
Arauca	8	2.9
Atlántico	6	2.2
Bolívar	6	2.2
Meta	5	1.8
Magdalena	5	1.8
Córdoba	5	1.8
Tolima	3	1.1
Cesar	2	0.7
Quindío	2	0.7
Norte de Santander	1	0.4
Sucre	1	0.4
Caquetá	1	0.4
Amazonas	1	0.4
Cundinamarca	1	0.4
Total	275	100

\* It is not yet possible to compare the figures for 2010 with 2009 which remain provisional because the methodology has not been applied systematically to the 2010 figures. The figures may rise once data collection and analysis is complete.

For 2010, the information currently available demonstrates that, while Antioquia, Valle and Santander remain in first place, incidents have in-

creased in departments like Risaralda. This phenomenon raises the possibility that anti trade union activity is extending across the country.

### **Selected Cases of Murder, Attempted Murder and Disappearances**

The following section provides details of just some of a long list of violations of the right of trade unionists in Colombia to life, liberty and security of the person during 2009.

On 4 April 2009, Hernán Polo Barrera, a leader of the Sindicato de Trabajadores and Empleados de la Educación (Sintrenal), was murdered close to his home in the city of Montería, in front of his family. He was carrying his granddaughter in his arms and was accompanied by his sixteen year-old daughter who was injured in the attack. Two weeks before his death, Polo Barrera had led a series of actions by administrative workers in the education sector in Montería demanding the payment of salary increases owed them by the state.

On 9 May 2009, Vilma Carcamo Blanco, an odontologist and member of the national committee of the Asociación Nacional Sindical de Trabajadores and Servidores Públicos de la Salud, Seguridad Social Integral y Servicios Complementarios de Colombia (Anthoc) in Magangué, was murdered. Vilma had led a series of protests to demand the payment of back salaries and to continue to request negotiation of a series of re-

quests for negotiation that had been postponed on several occasions.

On 21 August 2009, a group of unidentified individuals arrived at the residence of Gustavo Gómez, a worker at Nestlé-Comestibles La Rosa S.A., and member of the Sindicato Nacional de Trabajadores de la Industria de Alimentos (Sinaltrainal) in the municipality of Dosquebradas. They knocked on the front door and when Gómez opened it the individuals opened fire, hitting him ten times. He was transferred to a clinic where he died several hours later. The crime coincided with a set of demands the union had presented to Nestlé Purina Pet Care de Colombia S.A.. Gómez was a member of the branch committee of the Dosquebradas branch of Sinaltrainal between 1997 and 2000. He was the first cousin of José de Jesús Marín Vargas, a worker at Nestlé-Comestibles La Rosa S.A., and member of Sinaltrainal, himself murdered on 22 November 2007 also in Dosquebradas. This murder brings to 12 the number of Nestlé workers, members of Sinaltrainal, who have been murdered in Colombia.

Abel Carrasquilla was murdered on 23 August 2009, according to witnesses by members of the paramilitary group known as “Los Rastrojos”. The events occurred following Carrasquil-

la's efforts to recruit new members in the workplace, efforts that had already resulted in warnings that he cease these activities.

On 24 November, Luis Javier Correa Suárez, president of Sinaltrainal, received death threats on a cell phone that had been assigned him under the protection program run by the Ministry of the Interior and Justice. He received further threats, by phone and fax, just a few days after the Inter American Commission of Human Rights had announced its decision to increase the precautionary measures already granted to the members of Sinaltrainal, and during a dispute involving workers at Industria Nacional de Gaseosas S.A. (Coca-Cola), a company which has refused to sign a collective bargaining agreement, even though it had agreed a negotiating agenda presented by the union.

## **Violations During the Eight Years of the Government of Álvaro Uribe Vélez**

### **Unchanged Realities during Eight Years of Democratic Security**

Democratic Security, the trade-mark policy of the Álvaro Uribe Vélez government, included measures that had the effect, in many cases, of re-

stricting and impeding the exercise of trade union freedoms and, additionally, of encouraging the development an anti-trade union culture that accused the unions of causing companies and public institutions to fail, threatening public order, and of working in favor of the subversive groups, labeling them as terrorists (a term that gained currency internationally in the wake of 11 September 2001), and in particular, accusing them of being an obstacle to development and restricting job creation. As a result, trade union freedoms have been restricted and the responsibility of state agents in the violation of the human rights of trade unionists has increased.

Despite the promises of the Uribe government to destroy the guerrilla groups and to demobilize the paramilitaries, the conflict has continued and the likelihood that the rights of workers would be guaranteed has fallen. Given this context, violations of the rights of unionized workers have come to appear normal, because the prevailing logic of Democratic Security has associated them with the armed conflict.

The two periods of most intense violence against trade unionists occurred between 1996 and 1997 and 2000 and 2002 during the governments, respectively, of Álvaro Uribe's

predecessors as president, Ernesto Samper and Andrés Pastrana. During the Uribe government the problem was mutable. While the number of murders decreased, the level of violations of the rights of female unionists

and unionized teachers increased, and the percentage of state responsibility for the overall number of violations has grown compared both to 1996 and 2002.

**Violations of the Right of Trade Unionists in Colombia to Life, Liberty and Security of the Person by Administration**

Kind of Violation	Government of Andrés Pastrana 1998-2002	Government of Álvaro Uribe 2002-2006	Government of Álvaro Uribe 2006-2010 <sup>1</sup>	Overall Total
Threats	1,272	1,298	1,215	3,785
Murder	580	362	166	1,108
Forced Displacement	264	146	388	798
Arbitrary Detention	209	206	89	504
Harassment	57	138	93	288
Murder attempt with/ without injury	70	43	40	153
Kidnapping	108	29	0	137
Forced Disappearance	46	22	11	79
Illegal Search	3	17	10	30
Torture	4	8	12	24
Murder of Family Member	1	0	0	1
Overall Total	2,614	2,269	2,024	6,907

Source: Banco de Datos de Derechos Humanos, SINDERH, ENS and trade union federations.

A comparison of the presidential periods of Álvaro Uribe and Andrés Pastrana shows that violations of the human rights of trade unionists fell by 15.2% under Uribe. However, the

widely publicized achievements in the protection of the rights of trade unionists were not reflected in changes to the underlying structure of the violence perpetrated against them.

**Violations of the Right of Trade Unionists in Colombia to Life, Liberty and Security of the Person during the Government of Uribe Vélez**

Kind of Violation	2002-2006	2006-2010	Total
Threats	1.298	1.348	2.646
Murder	362	203	565
Forced Displacement	146	388	534
Arbitrary Detention	206	89	295
Harassment	138	97	235
Murder attempt with/without injury	43	53	96
Kidnapping	29	0	29
Forced Disappearance	22	14	36
Illegal Search	17	10	27
Torture	8	12	20
Total	2.269	2.214	4.483

Source: Banco de Datos de Derechos Humanos, SINDERH, ENS.

**Measures adopted by the Uribe Vélez Government that Encouraged Violations against Trade Unionists**

**a. Stigmatization of the trade union movement by high ranking members of government.** The Uribe Vélez government facilitated and fomented anti-trade union violence by frequently stigmatizing the activities of trade unionists in Colombia. Throughout the period of government, the President, high ranking government servants and military officials frequently, and publicly, questioned the legitimacy of trade union activities. The government decided not to comply with the 2009 recommendation of the *Committee on the Application of Standards*, which called on the Colombian authorities to transmit “a

clear message at the highest level of the important role played in society by trade unions”.

**b. DAS Program to Eliminate Trade Unionists.** The *Committee on Freedom of Association* referred to the serious violations committed by the DAS, indicating that:

“The Committee observes that the allegations of presumed connivance between a state body responsible for protecting trade unionists and groups operating outside the law, are extremely serious, as such a situation can seriously undermine the credibility of the Government’s determination to combat violence and impunity”.<sup>10</sup>

With the designation of Jorge Aurelio Noguera Cotes as Director of the

10. Report 356, Case 1787, March 2010, paragraph 563.

DAS in September 2002 (the Uribe government having been inaugurated on 7 August 2002), a criminal structure was established within it, which utilized the machinery of the state to develop paramilitary structures, according to the justification that they were acting to wage a supposed “counterinsurgency war”, that is, carrying out military actions against the guerrilla groups, though in reality the policy led to the criminal persecution of the civilian population. It has emerged as part of ongoing legal proceedings that Jorge Noguera named individuals who were necessary to furthering his criminal activities in key positions in the DAS, the majority of whom were answerable to him in his capacity as Director of the institution. These included people who helped to finance the paramilitaries: it has been demonstrated that Noguera had promised that a commission of between 5% and 10% would be levied on each contract celebrated by the DAS and the amount paid to the Bloque Norte (Northern Bloc) of the paramilitaries.

Currently, Noguera is before the Supreme Court of Justice facing charges of *concierto para delinquir agravado* [aggravated conspiracy to commit a criminal act] in as much as he is accused of initiating, encourag-

ing, promoting, financing and developing joint activities with paramilitary groups and placing the DAS at the service of these illegal groups and other narcotics traffickers; of *homicidio agravado* [first degree murder] of the human rights defender Alfredo Correa D’Andreis, the trade unionists: Zully Esther Codina and Adán Pacheco, and of the politician and sociologist Fernando Piscioti Van Strahlen. He is also accused of the offenses of violating legal reserve by providing intelligence information to paramilitary groups; of the destruction, suppression or concealment of public documents, by destroying evidence related to paramilitaries and narcotics traffickers; and of arbitrary and unfair abuse of authority in as much as he fired numerous DAS officials who were acting to combat paramilitarism.

**Jorge Noguera is one of a group of politicians and public figures accused by the justice system of promoting and encouraging paramilitarism in Colombia.** Thus, a series of investigations involving numerous witnesses have confirmed the criminal responsibility of Noguera Cotes, and also of Rafael García, the former head of IT at the DAS, whose criminal activities have been demonstrated in testimonies and documents occupying more than 50,000 pages, that confirm

the criminal responsibility of Noguera for the crimes for which he is under investigation.

Currently, the paramilitary leaders most implicated in these crimes have been detained on charges of concierto para delinquir agravado, while others, such as the paramilitary leader Rodrigo Tovar Pupo, alias Jorge 40, have been extradited to the United States. The Fiscalía has, furthermore, certified documents to be used in criminal investigations involving other paramilitaries.

In recent months it has proved possible to establish the way in which the DAS was used to attack the legitimate activities of trade unions in Colombia. The violations committed by the DAS, involved: i) passing lists of trade unionists targeted for murder to paramilitaries, ii) illegal interception of communications involving trade union leaders, grass roots members, human rights defenders, magistrates of the high courts, journalists and opposition political leaders, iii) organizing break-ins at trade union offices to steal documentation for use in intelligence purposes, iv) employing DAS agents responsible for the protection schemes of trade unionists and others to gather information and use it to harass the people they were assigned to protect and, even, to generate false

evidence for use in legal processes against them, and v) carrying out “offensive intelligence”, that is, directly threatening and harassing trade union leaders, human rights defenders, magistrates of the high courts, journalists, and opposition political leaders.

i) Passing lists of trade unionists targeted for murder to paramilitaries. During the hearings, DAS officials recognized that trade unionists and human rights defenders had been the subjects of “intelligence activities” intended to gather information for inclusion in the DAS data bases. Information was subsequently extracted from the data bases and included in lists that Noguera handed over to the paramilitaries.

The most important witness in this case, the former IT Director Rafael García Torres, provided the names of victims and of the contacts who maintained communication between the paramilitary blocs and high level DAS employees. His testimony coincided with that of at least six other witnesses: two army colonels, Conde Rubio and Pardo Ariza; two DAS officials, Rodolfo Benítez and David Rivero; and two paramilitary leaders: Mancuso and alias Don Antonio.

The ENS and the CCJ have been able to establish that, of the individuals named in the list, seven were sub-



sequently murdered, one, allegedly, by the paramilitary group the Auto-defensas Unidas de Colombia (AUC) and two by unidentified paramilitary groups. The other four were murdered by unidentified armed groups. The victims were: César Augusto Fonseca Morales, José Rafael Fonseca Cassiani, José Ramón Fonseca Cassiani, Alfredo Correa de Andreis, Zully Esther Codina Pérez, Saúl Alberto Colpas Castro and José María Maldonado.

One person on the list was forcibly disappeared by an unidentified armed group; seven were arbitrarily detained by state agents; six were victims of death threats; two survived assassination attempts - one of which was allegedly committed by the AUC and another by an unidentified armed group; a further two were forced to flee their homes, one of whom has gone into exile.

Name	Violation
Víctor Manuel Jiménez Fruto	Forced disappearance
José Piñeros	Arbitrary detention
Carmelo Piñeros	Arbitrary detention
Alfonso Piñeros	Arbitrary detention
Alberto Acosta	Arbitrary detention
Argelio Contreras	Arbitrary detention
Alfredo Oviedo	Arbitrary detention
Ney Medrano	Arbitrary detention
Ángel Salas	Threat
Gilberto Martínez	Threat
Álvaro Londoño Cardona	Threat
José Meriño	Threat
Álvaro Márquez	Threat
Carmen Torres	Threat
Nicolás Hernández Cabrera	Assassination attempt
Miguel Ángel Bobadilla	Assassination attempt
Zunilda Colpas	Forced displacement
Álvaro Londoño	Forced displacement

Senior DAS officials handed over lists to Rodrigo Tovar Pupo, alias Jorge 40, containing names including those of Professor Alfredo Correa D'Andreis, a social activist and member of the teaching union ASPU; the journalist and trade union leader in the health sector Zully Codina; and the liberal politician and sociologist Fernando Piscioti Van Strahlen, who, according to the recognized paramilitary Edgar Ignacio Fierro Flórez, alias *Don Antonio*, in his preliminary testimony under the Justice and Peace process, were murdered by the Northern Bloc of the AUC..

In these reports, which were uncovered in the DAS archives, members of the union Anthoc, the CUT-Bolívar, the USO and other local organizations were also mentioned, this practice was the initial phase of the dirty war. In summary, Alfredo Correa D'Andreis, Zully Codina and Fernando Piscioti, like many others, were victims of counter-insurgency strategies that were based on the theory of the “enemy within” and formed part of a “political war” waged against social and trade union organizations (labeled the *frente sociolaboral* or “social and labor front”). The strategy was implemented by the state apparatus, directly controlled by Jorge Noguera Cotes, and formed

a part of a wider plan to exterminate trade unionists and opposition leaders that was carried out by paramilitary groups and by their members who operated within the DAS.

The process demonstrated that, in the case of Professor Correa D'Andreis, the DAS compiled false intelligence reports and manipulating the testimony of demobilized fighters who were in reality working for the paramilitaries or acting as false witnesses; and that these intelligence reports were used to establish false charges against him, of which he was subsequently absolved. Following the failure of the attempt to frame Correa D'Andreis, Rodrigo Tovar Pupo, alias *Jorge 40*, and Edgar Ignacio Fierro Flórez, alias *Don Antonio*, proceeded to murder him; the same procedure was used against other trade union leaders.

During the legal examination of the documentation, it was found that intelligence material had been compiled on the murdered victims, evidence that suggests that intelligence activities had been carried out before they were killed. During cross examination some of the former DAS officials stated that the information on trade unionists in the archives was related to public order matters and that it was routine to gather such informa-

tion, but that it was compiled using sources available in the public sphere, that is using news sources and legally available information. But other former officials accepted the existence of orders to carry out field-based activities to verify the information; in our opinion, these constituted infiltrations of trade union protests and other union activities by DAS secret agents.

**ii) Illegal interception of communications and surveillance of targets.** The charges formulated against the former officials of the DAS by the Fiscalía accused them of carrying out, as a part of their regular functions, acts of surveillance and intercepting the communications of trade union leaders, grass roots members, human rights defenders, magistrates of the high courts, journalists and opposition political leaders. These activities also involved the gathering of personal data (habits, weaknesses, strengths, property and, even, the names of schools attended by their children, or home addresses). The surveillance also involved the illegal inspection of bank accounts, financial transactions as well as the organization of smear campaigns targeting the victims.<sup>11</sup> The Fiscalía demonstrated that the

DAS created a “strategic and offensive intelligence group” known as G3, out of which the officials carried out their illegal activities between 2004 and 2008.<sup>12</sup>

The investigations of the Fiscalía into the activities of the DAS uncovered information on the monitoring of internal communications of trade union organizations including the CUT and the Confederación de Trabajadores de Colombia (CTC), as well as, among others, Anthoc, the Sindicato de Trabajadores de la Empresa de Teléfonos de Bogotá and Asonal Judicial.<sup>13</sup>

The former DAS officials also recognized that these illegal activities had taken place. During one of the hearings, Jorge Alberto Lagos, former director of Counter-Intelligence at the DAS confirmed that “what we did find were intelligence activities including the targeting of government employees and the surveillance and harassment of trade unionists”.<sup>14</sup>

### **iii) Organizing break-ins at**

11. “Se cierra el círculo”, *Semana*, mayo de 2010. <http://www.semana.com/noticias-nacion/cierra-circulo/138929.aspx>

12. February 22, 2010, [www.elspectador.com](http://www.elspectador.com)

13. “Hasta familiares de magistrados tuvieron seguimiento del DAS”. Document published by Equipo Nizkor, 28 April 2009, [www.derechos.org](http://www.derechos.org)

14. “Lo que se hacía en el DAS según sus protagonistas”, <http://www.lasillavacia.com/historia/6854>.

**trade union offices to steal documentation for use in intelligence purposes.** It is also apparent that the G3 developed a further strategy involving the theft of information from human rights defenders, trade unionists and their organizations. An example of the practice was provided by a revision made by the Fiscalía of the DAS archive in Bogotá, which uncovered a document known as “Cartagena de Indias”, in which it is clear that the DAS ordered agents to infiltrate a meeting of the CUT in the Department of Bolívar; it mentions the following events that occurred during the meeting:

“In early May 2005 in the Salón Coral at the Centro Recreacional Comfenalco in the Crespo neighborhood, several meetings were organized by the Bolívar sub-branch of the CUT, with the participation of Luis Alberto Mendoza Perinián, President of the CUT, Rubén Castro Quintana, President of the Sindicato de Trabajadores de las Electrificadoras de Colombia, Luis Carlos Sources Pérez, President of the Sindicato Único de Educadores de Bolívar SUDEB, Carlos Carrascal Figueroa, President of the Liga de Usuarios de Servicios Públicos Domiciliarios USPD, Esteban Barbosa Palencia, President of the Sindicato de Conductores de Taxis

de Cartagena SINCONTAXCAR and Jorge Ortega Hernández, President of the Bolívar sub-branch of the USO. According to these people the meetings were held in order to analyze the principal human rights violations in the Department of Bolívar caused by the policies implemented by the government of President ALVARO URIBE, as well as other persecutions carried out against trade union and civic leaders, administrative corruption, and the decentralization and winding-up of state bodies, in order to inform the ILO about this difficult situation and take advantage of their good relations with the Asturian Human Rights Commission in Spain and the work of the Colombian journalist Claudia Julieta Duque Orrego, who is included in Amnesty International’s protection program”.

It goes on to say,

“They claimed that between 2003 and 2004 more than 700 trade union members, including leading members of society such as Amaury Padilla Cabarcas, ex employees of Departmental government of Bolívar; the university teacher Dr. Alfredo Correa De Andreis, the civic leader Román Torres, Rafael Augusto Palencia Fernández, who works for the Ministry of Labor, the civic leader Rufino Pájaro Guardo and Álvaro Rodríguez,

had been arrested at the initiative of the Fiscal [prosecutor] Demóstenes Camargo De Ávila, of the Fiscalía No 33 in Cartagena and accused of the crime of rebellion<sup>15</sup> and of being supporters of the guerrilla groups”.

This document alone speaks clearly of the levels of illegal infiltration of the trade unions. But there is further evidence that the DAS maintained close watch on trade unionists. For example, a document titled *Apreciación situación de orden público departamento del Cesar, del 20 de agosto al 9 de septiembre* [Overview of public order in the Department of Cesar between 20 August and 9 September 2002], written by the sectional director of the DAS in Cesar,<sup>16</sup> says in one section:

“Social and labor front. The trade union at the multinational CICOLAC-NESTLE, has, for seven months now, been involved in a process of negotiation, and is currently in the final stage of arbitration. The activity of the other unions, ADUCESAR, SINTRAELECOL,

SITTELECOM, SINTRAMIENERGETICA, ASPU and SITRADIN is currently normal. In relation to the strike that has been ordered by the trade union federations for the 16 September, they are waiting for instructions from the national leadership”.<sup>17</sup>

The witness Jorge Lagos, a former DAS official, testified that they periodically reviewed the publications of human rights organizations, because of the damage they caused the government, and because many of them referred to anti-trade union violence. The witnesses also agreed about the nature of strategic intelligence, which, according to the DAS, consisted in detecting the risks and threats posed to the government and national security, and monitoring organizations, including unions, and individuals, who threatened the security of the state; finally, they confirmed that this information was intended for the highest levels of government – the President and ministers – so that they could use it to establish policies and take decisions.

**iv) Employing DAS agents responsible for the protection schemes of trade unionists and others to gather information and use it to ha-**

15. Article 467 of the Colombian Penal Code defines Rebellion as follows: “Rebellion. Those who, by force of arms attempt to overthrow the national government or suppress or modify the current constitutional or legal regime ...”

16. CO. 11 Folios 162 a 169, Information from the Colectivo de Abogados José Alvear Restrepo.

17. CO. 11 Folios 162 a 169, Information provided by the Colectivo de Abogados José Alvear Restrepo.

**harrass the people they were assigned to protect and, even, to generate false evidence for use in legal processes against them.** DAS officials who were detailed to provide protection used the information they were privy to harass the people they were supposed to protect and even to fabricate evidence for use in legal proceedings. In 1997 the program was under the direction of the Ministry of the Interior, and the bodyguards employed as part of the hard security scheme were all, until December 2009, provided by the DAS. The investigations carried out by the Fiscalía showed that information produced as a result of the security needs assessments of the organizations included in the program – as well as information provided by the bodyguards themselves - was used to carry out offensive intelligence on various victims.<sup>18</sup>

**v) Carrying out “offensive intelligence”, that is, directly threatening and harassing the victims.** As well as intercepting communications and carrying out surveillance, the information managed by the DAS supposedly to guarantee the life and

personal integrity of trade unionists was in fact used by the institution to threaten, harass and unleash smear campaigns against different victims.

Before the Criminal Chamber of the Supreme Court Jorge Noguera recognized that, in effect, orders to put trade unionists under surveillance were emitted from the DAS. “I did not introduce this – it was an existing practice, and was intended to prevent disorder”.<sup>19</sup> According to the former DAS official Jorge Lagos, “death threats and threatening leaflets were distributed from the DAS”.<sup>20</sup>

Finally, it is important to emphasize that all the witnesses and the accused who carried out these state intelligence activities, including Martha Leal, the analyst who summarized and structured the intelligence reports, swore under oath that the ultimate recipient of the information was President Álvaro Uribe Vélez himself. Thus it may be confidently stated that the President was not ignorant of the actions that were being orchestrated

18. This information was obtained by the Comisión Colombiana de Juristas, in its capacity as a victim in the criminal proceedings against high ranking officials of the DAS.

19. “Jorge Noguera admite seguimientos del DAS a sindicalistas”, 12 February 2010, <http://www.caracol.tv.com/noticias/justicia/articulo167053-jorge-noguera-admite-seguimientos-del-das-a-sindicalistas>.

20. “Lo que se hacía en el DAS según sus protagonistas”, <http://www.lasillavacia.com/historia/6854>.

from the DAS and that, consequently, the path is open to establish his political and – above all – his criminal responsibility for its actions.

### 3. Concerted Efforts by the Government to Deny the Existence of Anti-Trade Union Violence

The Uribe government has sought to convince the outside world of at least three things: 1) that the violence committed against trade unionists in Colombia is not directed against trade unions per se, but is a result of the armed conflict and, in particular, of the infiltration of the unions by armed groups; 2) that anti-trade union violence is a thing of the past, overcome as a result of Democratic Security policy, and that the murders and acts of violence that occur today are committed for personal or economic reasons unconnected with trade unionism; 3) that the enlargement of the protection program for trade unionists and the creation of the Labor Subunit of the Fiscalía, have substantially improved the situation of violence and impunity.

In its desire to differentiate between the murder of unionized teachers and of other unionists the Uribe government created a set of parallel variables and a distorted reading of the dimensions of the problem. The same happened with unionized agricultural workers. Secondly, the government

decided to adopt a strategy designed to attack the reputations of the victims, seeking to suggest links, for example, between trade union victims and armed groups, or that the violence was linked to crimes of passion or common criminality. At other times the strategy focused on NGOs, seeking to attack the credibility of their research, at times even employing members of unions connected with political currents close to the government to front the attacks and denials. Thirdly, the government claimed that the interpretations of the unions were ideological and partial, and tried to get “independent academics” to express themselves publicly on the phenomenon of anti-trade union violence.

None of these strategies have been successful; on the contrary, in the international arena where the question is debated, concern remains high and the government is still urged to adopt effective measures to overcome the extremely high levels of violence and impunity that affect trade unionists in Colombia.

It is worth reiterating that it would be a mistake to equate anti-trade union violence during the period between 1991 and now simply with the number of murders committed each year. The ENS and the trade union confederations have of course



welcomed the decrease in homicides over recent years. But a life is a life, and a vision that goes beyond mere statistics is alive to the fact that though there may be fewer people dying, there are still dying, and we are far from where we should be. Furthermore, just as anti-trade union violence is not only manifested in murders but also encompasses other forms of violence, including symbolic violence, it is also important to stress that the claim that anti-union violence has been reduced significantly is entirely untrue. A comparison by presidential period of the violent acts tracked permanently by the ENS demonstrates that the claim has no empirical basis and that the fall in the overall violations of the rights of trade unionists has been only 14%.

The question of the human rights of trade unionists has led to a debate that has converted the humanitarian crisis in the country into a statistical game in which figures and methodological innovations are employed to conjure an illusory solution. In this debate the victims have been left as the disconcerted audience of a discourse that denies the deaths of their loved ones while offering no prospect of returning them to life.

In November 2009 two researchers at the Universidad de los Andes, Daniel Mejía and María José Uribe,

published research on anti trade union violence in Colombia, in which they emphasized the reduction in the numbers of murders of unionized workers, and indicated that the most important argument advanced against the FTA in the country is ideological and unsupported by the empirical evidence.<sup>21</sup> The research employed a range of documentation to demonstrate the decrease in the rate of murders of trade unionists in recent years. First, the authors examined the decrease in the registered murders of trade unionists before developing a range of reasons (indices) that they used to strengthen their arguments. The research also illustrates the evolution of government spending destined for the protection of trade unionists as well as the number of unionists protected by the government.

As well as illustrating the decrease in murders, the authors also carry out an empirical, econometric, exercise designed to examine the hypothesis that as trade union activity intensifies so does anti-trade union violence. To do this the authors use panel data (in the form of a chronological series

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21. "Is violence against union members in Colombia systematic and targeted?" Daniel Mejía and María José Uribe, Version from November 2009, published on the web: <http://sites.google.com/site/danielmejialondono/research>.

covering various Colombian departments), concluding that the statistical evidence is sufficient to reject the hypothesis.

At first the ENS and CCJ believed that the research was an interesting contribution to the debate over anti-union violence. However, we soon discovered that both Professor Mejía and the research findings had been presented by the Colombian Foreign Ministry in the United States and Canada, and widely distributed in Europe. We came to understand that it was not a question of healthy debate, but a further attempt to deny reality. Although the research would appear to be rigorous in its use of statistics, its assumptions demonstrate a profound ignorance of the realities of trade unionism in Colombia. Its conclusions proved to be more ideological than those of the research it sought to counteract.

The research generated an academic debate within which the comments of Benetech are particularly important as they provide several explanations of how Mejía's article fails to resolve the question posed in its title of whether violence against union members in Colombia is systematic and targeted:<sup>22</sup>

**“Unknown under-registration.**

The Mejía and Uribe study uses convenience sample data as the basis for its claims. These data are based on available, observable reports on union homicides and union activity which have been collected without a scientific random selection method. These data cannot be relied upon to represent an underlying larger population or to accurately describe patterns over time and space”

**“Possible violation of model assumptions.** The statistical methods used in the Mejía and Uribe study to evaluate the relationship between union homicides and “union activity” are based on commonly used least squares regression and instrumental variables analyses. These methods rely on very strong assumptions. However, Price and Guzmán do not believe that the study adequately addresses the data's potential violations of these assumptions and the potential ramifications on the estimates when these assumptions are violated. Violations of these assumptions could change the magnitude of parameter estimates (used to quantify the relationship between union activity and

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Against Union Members in Colombia Systematic and Targeted?” Megan Price and Daniel Guzmán, Benetech Human Rights Program, May 28 2010.

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22. Comments to the article “Is Violence

union violence) and the significance of parameter estimates (used to determine the presence or absence of any relationship)”.

**“Uncorrelated errors.** One of the main modeling assumptions which Price and Guzmán believe these data violate, uncorrelated errors, has a direct affect [sic] on significance tests used in the Mejía and Uribe study. Therefore they are highly skeptical about the reliability of the conclusion that union activity and union violence are not significantly associated.

**Poor quality models.** The descriptive and analytic results presented in Mejía and Uribe’s study indicate that union member homicide rate is a highly variable outcome measure. This variation results in poor-quality models. Price and Guzmán and that control variables in the various model formulations show inconsistent and indeed reversed effects, suggesting problems with the model specification, with the data on homicides, or both”.

“The poor quality of these models, the unknown under-registration inherent in the data, and the questionable modeling decisions, mean that the strong conclusions in Mejía and Uribe’s study are unsupported by the analyses. Price and Guzmán point out that unchecked, those conclusions

distort the truth about violence”.<sup>23</sup>

Other analysts have entered the debate about figures. The important political analyst Claudia López, wrote:

“I believe that the government and the trade unions have entered into a not-very-useful dispute about measuring how many hundreds of trade union deaths there have been. Discussing figures for figures’ sake is a sterile exercise because any figure, even the official figure, is scandalous. Just one dead trade unionist is bad enough. The very fact that we are now talking about differences in the hundreds indicates that trade union activity in Colombia has, without doubt, been marginalized by violence, and this has obviously had the effect of scaring the workers off organizing. I always ask the following question to people who underestimate or deny anti-trade union violence: How many trade unionists would need to die in order to affect trade union membership: One? Two? A Hundred? Who is prepared to give me an answer? When you frame the discussion in this way, nobody knows what to say”.

“[...] I think that the Uribe government has shown the will and commitment to reduce anti-trade union vio-

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23. The full text of the comments can be found at <http://www.hrdag.org/resources/publications/mejia-exec-sum.pdf>

lence and to improve protection levels, but it has not shown the political commitment to recognize the magnitude of the violence and the magnitude of the impunity. Instead, it has tried to minimize it, to manipulate the figures and to reduce them, saying that the killings have not occurred because the victims were trade unionists but because they were Colombians. And in this battle the government has come off worst because while some might accept their figures and recognize that there have been one thousand deaths and not two, or that only 500 people, and not two thousand, have been killed because they were trade unionists we would still be talking about an unacceptable and scandalous figure”.<sup>24</sup>

**Measures adopted by the Uribe Vélez Government were Insufficient to Combat Human Rights Violations Committed against Trade Unionists**

Despite the expansion of the program to protect trade unionists, 565 were murdered during the lifetime of the government, 96 suffered attempts on their lives and 36 were forcibly

disappeared.

The Uribe government defended the protection program as the most important measure to combat violence against the trade union movement. Nevertheless, the protection that, in campaigns coordinated by the Ministry of the Interior, was so vaunted –especially at international level– failed even to cover all the trade unionists at risk.

Protection measures, which need to be urgently implemented because they are required by people at immediate risk, constituted another blemish on the program. For example, if a threatened person is granted hard protection measures such as bodyguards, weapons or armored cars, the police or the DAS are required to carry out a risk assessment which is then passed on to the Ministry of the Interior. According to the *Fundación para la Libertad de Prensa* (Foundation for Press Freedom, FLIP), which independently monitors the protection program for journalists, indicated that in 2008, the average assessment took four months. While it is true that this figure only refers to threatened journalists, the situation was no different in the case of the other groups included in the program, such as trade unionists and human rights defenders at risk.<sup>25</sup>

24. Agencia de Información Laboral and Sindical de la ENS [ENS Labor and Trade Union Information Agency], “Balance al Gobierno de Uribe. Violencia antisindical e impunidad”, Medellín, ENS, agosto 6 de 2010.

25. <http://www.lasillavacia.com/historia/4726>

Between June and August 2009 the protection program ran out of money and all its measures were halted. There was no money available to contract new bodyguards, to buy gasoline for vehicles or to purchase air tickets to transfer threatened individuals. The Vice Minister of the Interior, Viviana Manrique, responded unofficially to press enquiries with the argument that the principal reason for the suspension was the expansion of the program to include more beneficiaries.<sup>26</sup> According to the political website La Silla Vacía,

“[...] while in 2008 [the program] protected 10,716 people, by September of this year [2009] it had reached almost 10,000 people already, obliging the Treasury Ministry obliged to approve an additional budgetary contribution of 15 billion pesos. According to Ministry sources the increase was not required because of an increase in the level of insecurity in the country - an admission that would have put in doubt the positive effects of the Democratic Security Policy – but was due to an expansion in the Program”.<sup>27</sup>

These government statements lack credibility when contrasted with the continuing violations of the rights of

trade unionists.

### **The Absence of Dialogue and of an Agenda to Combat Anti-Trade union Violence during the Uribe Vélez Government**

The Uribe government preferred to deny and distort the situation of anti-trade union violence and impunity, stigmatizing its victims, and refusing to enter into dialogue, let alone develop an agenda to resolve the situation. The new government of Juan Manuel Santos is faced with the challenge of developing a fresh focus that recognizes the seriousness of the situation and the importance of an agenda to construct truth, justice, reparation and guarantees of non-repetition. The agenda must, of course, be agreed with the trade union movement.

The agenda should also contain prevention and promotion measures to prevent the abuse of the right to life, liberty and security of the person of trade unionists, beginning with the recognition of the legitimacy of trade unions and their activities, and taking measures to overcome impunity. Such an agenda would imply the design of policies to guarantee proper criminal investigation of cases of violence against trade unionists.

26. Ibid.

27. <http://www.lasillavacia.com/historia/4726>

## Anti-Trade Union Violence: A Never-ending Story

Between the 1 January 1986 and the 30 August 2010, 2,842 trade

unionists were murdered in Colombia, of whom 2,570 were men and 272 women. Furthermore, 731, or 25.7%, of these murders were committed against trade union leaders.

**Murders of Trade Unionists between 1 January 1986 and 30 June 2010**

Year	86	87	88	89	90	91	92	93	94	95	96	97	98	Total 2,842
Murders	36	73	138	96	58	96	141	201	104	229	277	171	99	
Year	99	00	01	02	03	04	05	06	07	08	09	10		
Murders	83	138	193	191	101	95	72	78	39	52	47	35		

Source: Banco de Datos de Derechos Humanos, SINDERH, ENS.

An analysis of all the data available for the period shows that there were at least 11,096 violations of the right to life, liberty and security of the person of trade unionists in the country. In addition, there were 274

attempted murders of unionized workers, 217 forced disappearances and at least 4,828 death threats resulting from union activity, as well as 1,696 forced displacements.

**Violations of the Right of Trade Unionists in Colombia to Life, Liberty and Security of the Person, between 1 January 1986 and 30 August 2010**

Kind of Violation	Nº of cases	%
Threats	4,826	43.5
Murder	2,842	25.6
Forced Displacement	1,696	15.3
Arbitrary Detention	632	5.7
Harassment	310	2.8
Murder attempt with/without injury	274	2.5
Disappearance	217	2.0
Kidnapping	165	1.5
Torture	82	0.7
Illegal Search	49	0.4
Murder of Family Member	3	0.0
Total	11,096	100.0

Source: Banco de Datos de Derechos Humanos, ENS, trade union confederations.

These figures confirm the existence of a human rights crisis affecting the trade unionism in Colombia that is not the result of diffuse and indiscriminate patterns violence. On the contrary, what exists is a sustained interest in exterminating the union

movement, an interest that has been materialized in the deaths of thousands of victims. The result has been the development of an anti-union environment marked by different forms of violence ranging from legal attacks to physical extermination.

**Murders of Members of the 15 most affected Trade Union Organizations between 1 January 1986 and 30 August 2010**

Trade Union	Nº of Murders
Fecode*	921
Sintrainagro**	798
USO	116
Anthoc	58
Sintraelecol	50
Asonal judicial	47
Sutimac	38
Fensuagro	37
Aseinpec	33
Sinaltrainal	22
Sintraemcali	22
Sincontaxcar	21
Sintramunicipio	21
Sintraemsdes	20
ASPU	19
Total	2,223

\* The figures for Fecode group the murders committed against the federation's member unions: Ade, 5; Adea, 8; Adec, 9; Adeg, 9; Adem, 13; Ademacor, 54; Ades, 16; Adida, 334; Adih, 6; Aducesar, 37; Aica, 28; Asedar, 34; Asep, 18; Asinort, 37; Asodegua, 10; Asoinca, 31; Educal, 34; Edumag, 33; Ser, 31; Ses, 26; Simana, 38; Sindimaestros, 10; Sudeb, 25; Suteq, 3; Sutev, 53; Umach, 6; and Fecode, 13.

\*\* The figures for Sintrainagro group the murders committed against the unions that merged to form the union: Sintrainagro, 677; Sintagro, 97; Sintrabanano, 21; and Sindejornaleros, 3.

This table illustrates how anti-trade union violence has been concentrated against 15 unions – that is, 78.2% of murders were committed against these organizations, from

which it is possible to deduce that an extermination plan existed aimed at trade union organizations and not just at individuals.



**Murders of Trade Unionists by Department,  
between 1 January 1986 and 30 August 2010**

Department	Total
Antioquia	1,337
Santander	222
Valle	168
Cesar	116
Magdalena	93
Córdoba	82
Arauca	81
Norte de Santander	77
Bolívar	67
Risaralda	52
Atlántico	52
Cauca	52
Nariño	48
Bogotá D.E.	46
Tolima	41
Meta	41
Caldas	40
Putumayo	34
Caquetá	32
Sucre	28
Cundinamarca	20
Boyacá	17
Huila	15
Guajira	14
Casanare	14
Guaviare	10
Chocó	9
Quindío	8
Amazonas	3
Total *	2,819

\* The total represents the 2,819 cases about which there is accurate information concerning the department where the murder occurred; in 24 cases it has still not been possible to determine the precise location of the event.

In common with the generality of violations against the right to life, liberty and security of the person of trade unionists in Colombia, it has been in the Departments of Antioquia, Valle and Santander that the majority of murders of trade unionists have occurred (60.7% of the total).

### **Murders of Trade Unionists Around the World During the Last 10 Years**

Over the last decade at least three unionized workers were killed each week somewhere in the world. In other words, between 1999 and 2009 approximately 1,717 unionized workers were murdered, an average of 170 murders a year. A scandalous 1,254 – approximately 73% of the murders registered in the world during the last 10 years – occurred in South America and some 13.5% (233 murders) in Asia; Central America and the Caribbean registered 94 Murders of Trade Unionists (5.4%) and Africa 79 (4.6%); there were 50 (3%) in the Middle East, while in Europe there were 8 (0.4%).

A detailed examination of the murders of trade unionists over the decade has confirmed that Colombia, Bangladesh, the Philippines and Guatemala are the countries where

the highest number of violations of trade union rights have occurred. The figures are overwhelming: **63.12% of the murders committed in the world during the decade occurred in Colombia.** Similar situations, though less dramatic, occurred in the Philippines, which accounted for 5.44% of the world's murders and in Guatemala (3.45%).

### **Murders by Region**

**South America.** The riskiest region to be a trade unionist during the last decade was South America. The figures are devastating. Of the 1,695 trade union members murdered, 1,251 occurred in the southern part of the American continent. Two countries stand out in the region: Colombia and Brazil. 1,081, or 63.12% of the world's victims, were from Colombia. The figures confirm that Colombia is the most dangerous place in the world to be a trade unionist. Meanwhile, 99 unionists were murdered in Brazil during the same decade. However, during the last two years Brazil has managed to reduce the level of murders to one a year.

**Asia.** Between 1999 and 2009, with 230 murders (13.44% of the total), Asia was the continent with the second highest level of trade unionists murdered. Though the figures were

not as great as those for South America they are still worryingly high and in some cases - Nepal and the Philippines with 91 and 93 homicides respectively – alarmingly so. The worst years were 2002, 2005 and 2006. However, it is noteworthy that between 2007 and 2009 there was a significant reduction compared with the three years between 2004 and 2006, passing from 99 murders to 20, a reduction of 80%. There is a second block in Asia, made up of countries like Bangladesh and India, with intermediate levels of trade unionists murdered. In Bangladesh, 22 trade unionists were murdered in two critical years: 2000, with nine victims, and 2005, with 13. A third block is made up of countries with non-systematic patterns of murders against trade unionists that saw killings occurring throughout the decade. These countries include Turkey, Indonesia, Burma, South Korea, China, Thailand and Cambodia. In these seven countries 19 unionized workers were murdered during the first decade of the 21<sup>st</sup> Century, 7.9% of the total for the region.

**Africa.** There were 79 unionized workers murdered in Africa between 1999 and 2009, representing 4.61% of the overall world total. The murders occurred in 14 countries, with two particularly bad years: 2006 and 2007,

largely thanks to the violent events in Guinea, where 22 workers were killed in 2006 (88% of the annual regional total), and 30 in 2007 (96,77%).

**Middle East.** The most violent places in this region were the West Bank/Gaza and Iraq, with 23 and 22 victims respectively between 1999 and 2009. It is important to clarify that the 23 victims in the Palestinian territories were killed during the Israeli bombardments of 2001 and during the destruction of the headquarters of the Palestinian General Federation of Trade Unions<sup>28</sup> in Gaza, in 2008, destroyed during a raid carried out by F-16 fighter planes.

**Europe.** In Europe the most critical year was 1999, when five unionized workers were killed, four in the Russian Federation. In ensuing years only one murder occurred each year.

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28. According to Hasan Barguzi, director of the Palestinian Democracy and Worker's Rights Center, Palestinian General Federation of Trade Unions (PGFTU) is the inheritor of the form of trade unionism "[...] that was always active in the occupied territories, and that remains the principal trade union organization; it is politically plural, made up of different professional federations and with an important section in Gaza". "Entrevista a Hasan Barguzi", Nación Árabe, Nº 37, Madrid, Comité de Solidaridad con la Causa Árabe, August to October 1998.

The other three murders occurred in 2000, 2005 and 2008.

**Central America and the Caribbean.** Guatemala and the Dominican Republic are the countries in which the majority of the murders in the region took place, with 54 and 14 murders respectively between 1999 and 2009. 94 workers were murdered

during the decade, representing 5.49% of the world total. Murders increased by some 450% after 2007, largely as a result of the violence in Guatemala which unleashed against the Movimiento Sindical Indígena and Campesino Guatemalteco (MSICG). In the region, only Belize and Costa Rica have been exempt.

## F. Lists of trade union murders in 2009

Name	Date	Municipality	Department	Union
Adolfo Tique	1 Jan 2009	Prado	Tolima	Sintragritol
Diego Ricardo Rasedo Guerra	7 Jan 2009	Sabana de Torres	Santander	Fensuagro
Arlled Samboni Guaca	16 Jan 2009	Argelia	Cauca	Fensuagro
Leovigildo Mejía	28 Jan 2009	Sabana de Torres	Santander	Fensuagro
Luis Franklin Vélez Figueroa	31 Jan 2009	Quibdó	Chocó	Sintraunicol
Luis Alberto Arango Crespo	12 Feb 2009	Barrancabermeja	Santander	Asopesam
Guillermo Antonio Ramírez Ramírez	15 Feb 2009	Belén de Umbría	Risaralda	SER
Jose Alejandro Amado Castillo	24 Mar 2009	Girón	Santander	Aseinpec
Ramiro Cuadros Roballo	24 Mar 2009	Tuluá	Valle	Sutev
Alexánder Pinto Gómez	24 Mar 2009	Girón	Santander	Aseinpec
Armando Carreño	27 Mar 2009	Araucuita	Arauca	USO
Hernán Polo Barrera	4 Apr 2009	Montería	Córdoba	Sintrenal
Frank Mauricio Aguirre Aguirre	16 Apr 2009	Itagüí	Antioquia	Asempi
Jorge Alberto García	21 Apr 2009	Santa Rosa de Cabal	Risaralda	SER
Víctor Franco Franco	22 Apr 2009	Villamaría	Caldas	Educal
Edgar Martínez	22 Apr 2009	San Pablo	Bolívar	Fedeagromisbol
Milton Blanco Leguizamón	24 Apr 2009	Tame	Arauca	Asedar
María Rosabel Zapata	7 May 2009	Cali	Valle	Sutev
Vilma Carcamo Blanco	9 May 2009	Magangue	Bolívar	Anthoc
Rigoberto Julio Ramos	9 May 2009	Monitos	Córdoba	Ademacor
Hebert Sony Cárdenas	15 May 2009	Barrancabermeja	Santander	Fesamin
Pablo Rodríguez Garavito	9 Jun 2009	Puerto Rondón	Arauca	Asedar
Jorge Humberto Echeverry Garro	11 Jun 2009	Puerto Rondón	Arauca	Asedar
Rafael Antonio Sepúlveda Lara	20 Jun 2009	Cúcuta	Norte de Santander	Anthoc
Herber González Herrera	25 Jul 2009	Sabana de Torres	Santander	Fensuagro

Name	Date	Municipality	Department	Union
Jacinto Herrera	26 Jul 2009	Riohacha	Guajira	Asodegua
Miguel Ángel Guzmán	6 Aug 2009	Anserma	Caldas	SER
Diego Cobo	11 Aug 2009	San Andrés de Sotavento	Córdoba	Ademacor
Jairo Martínez Solarte	11 Aug 2009	Cali	Valle	Asonal Judicial
Gustavo Gómez	21 Aug 2009	Dos Quebradas	Risaralda	Sinaltrainal
Fredy Díaz Ortiz	22 Aug 2009	Valledupar	Cesar	Aseinpec
Abel Carrasquilla	23 Aug 2009	Sabana de Torres	Santander	Asogras
Oscar Eduardo Suárez Suescún	11 Sep 2009	Cúcuta	Norte de Santander	Asinort
Zuly Rojas	9 Oct 2009	Saravena	Arauca	Sindess
Honorio Llorente Meléndez	17 Oct 2009	Puerto Wilches	Santander	Sintrainagro
Rafael Antonio Cantero Ceballos	27 Oct 2009	Lorica	Córdoba	Ademacor
Ramiro Israel Montes	29 Oct 2009	Montelíbano	Córdoba	Ademacor
Iván Edgardo Tovar Murillo	29 Oct 2009	Ibagué	Tolima	Simatol
Apolinar Herrera	1 Nov 2009	Arauquita	Arauca	Fensuagro
Raúl Medina Díaz	1 Nov 2009	Arauquita	Arauca	Fensuagro
Fabio Sánchez	1 Nov 2009	Saravena	Arauca	Fensuagro
Paulo Suárez	1 Nov 2009	Saravena	Arauca	Fensuagro
Zorayda Cortés López	13 Nov 2009	Pereira	Risaralda	SER
Fredy Fabián Martínez Castellanos	15 Nov 2009	Chía	Cundina-marca	ADE
Leny Yanube Rengifo Gómez	24 Nov 2009	Popayán	Cauca	Asoinca
Manuel Alfonso Cuello Valenzuela	26 Nov 2009	Magangué	Bolívar	Sudeb
Alberto Jaimes Pabón	27 Nov 2009	Saravena	Arauca	Fensuagro

## Trade unionists murdered in 2010, to 30 August

Name	Date	Municipality	Department	Union
Norberto García Quiceno	02 Jan 10	Trujillo	Valle	Sutev
Carlos Andrés Cheiva	18 Jan 10	Leticia	Amazonas	Sudea
Jaime Fernando Bazante Guzmán	19 Jan 10	Caloto	Cauca	Asoinca
Henry Saúl Moya Moya	22 Jan 10	Rovira	Tolima	Astracatol
Overtó Beltrán Narváez	28 Jan 10	San Antero	Córdoba	Ademacor
Rigoberto Polo Contreras	03 Feb 10	Tuchín	Córdoba	Ademacor
José de Jesús Restrepo	10 Feb 10	Montecristo	Bolívar	Fedeagromisbol
Ómar Alonso Restrepo Ospina	10 Feb 10	Montecristo	Bolívar	Fedeagromisbol
Beatriz Alarcón	13 Feb 10	Sabaneta	Antioquia	Adida
Gustavo Gil Sierra	01 Mar 10	Medellín	Antioquia	Adida
Franco Ernesto Goyes Salazar	12 Mar 10	Santa Cruz	Nariño	Simana
Duvián Rojo Cadavid	13 Mar 10	Puerto Berrío	Antioquia	Adida
Israel Verona	17 Mar 10	Saravena	Arauca	Fensuagro
Miyer Antonio Garcés Rosero	26 Mar 10	Popayán	Cauca	Asoinca
Rosendo Rojas Tovar	26 Mar 10	San Vicente del Caguán	Caquetá	AICA
Javier Cárdenas Gil	01 Apr 10	La Tebaida	Quindío	Asociación Sindical de Areneros and Balasteros del Quindío
Henry Ramírez Daza	11 Apr 10	Ibagué	Tolima	Sinrabecolicas
Arnulfo Torres Sánchez	15 Apr 10	Itagüí	Antioquia	Adida
Francisco Valerio Orozco	16 Apr 10	Cáceres	Antioquia	Adida
José Isidro Rangel Avendaño	19 Apr 10	Cartagena	Bolívar	SNTT



Name	Date	Municipality	Department	Union
Jorge Iván Montoya Torrado	20 Apr 10	Cartagena	Bolívar	SNTT
Aliciades González Castro	21 Apr 10	Tame	Arauca	Fensuagro
Elkin Eduardo González	21 Apr 10	Tierralta	Córdoba	Ademacor
Diego Fernando Múnera Escobar	22 Apr 10	Medellín	Antioquia	Asonal Judicial
Javier Estrada Ovalle	24 Apr 10	Cali	Valle	Sutev
Benito Díaz Álvarez	25 Apr 10	San Bernardo del Viento	Córdoba	Ademacor
Fabián Alonso Franco Tigreros	06 May 10	Jamundi	Valle	Sinalserpub
Francisco Antonio Abello Rebollo	17 May 10	Puebloviejo	Magdalena	Sintrainagro
Leslien Torcoroma Peñaranda Blanco	18 May 10	Abrego	Norte de Santander	Asinort
Martín Isaac Soto Niebles	18 May 10	Santa Marta	Magdalena	Sintraelecól
Hernán Abdiel Ordoñez Dorado	05 Jun 10	Cali	Valle	Aseinpec
Nelson Camacho González	17 Jun 10	Barrancabermeja	Santander	USO
Ibío Efrén Caicedo	19 Jun 10	Caucasia	Antioquia	Adida
Fernando Loba Aragón	31 Jul 10	Santander de Quilichao	Cauca	Asoinca
Luis Germán Restrepo Maldonado	12 Aug 10	Medellín	Antioquia	Sintraempaques

## **Elevated Levels of Impunity for Crimes Against Trade Unionists<sup>29</sup>**

### **Continuing impunity**

#### **The Number and Characteristics of Human Rights Violations that Remain in Impunity**

Impunity –the absence of legal investigation or punishment– in cases of violence committed against leaders and members of trade unions in Colombia remains very high. The institutions of the ordinary justice system (fiscales [prosecutors] and judges from all parts of the country) and of specialized jurisdictions (the Labor Subunit of the Fiscalía established to

oversee Case 1787 investigations) and specialized circuit judges<sup>30</sup>, do not employ an integral, contextualized analysis of the panorama of violence. Therefore many of steps taken have either been wasted or insufficient, and measures that could have had positive results have not been taken.

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29. The data was gathered and analyzed by the Colombian Commission of Jurists (CCJ) using two data bases maintained by the [Escuela Nacional Sindical (ENS)] that monitor the legal response to crimes committed against trade unionists, and sentencing in the cases of assassinations of trade unionists.

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30. The Subunit of the Fiscalía to Oversee ILO Case 1787 Investigations was established in 2007 and at the end of the year specialist and circuit judges were created to deal with the cases handled by the Subunit. The intention was to advance criminal cases involving trade union victims. These decisions were taken as a result of the pressure applied within ILO procedures by the trade union movement on the Colombian state in an effort to generate a response to the extremely serious situation of impunity for the crimes.

## **Nature and Results of Investigations by the Fiscalía into Acts of Violence against the Trade Union Movement**

To respond to these concerns, the authors examined progress in those criminal investigations where the Fiscalía has specifically stated that the victims are trade unionists who have been subjected to some act of violence. On 17 July 2003 the Fiscalía presented a general report covering the state of ongoing national level criminal investigations into the violation of the human rights of trade unionists to the Comisión Interinstitucional de Derechos Humanos de los Trabajadores (Inter-institutional Commission on Workers' Human Rights - CIDHT<sup>31</sup>). The information contained in this report was complemented by information provided by the Fiscalía to the Colombian Commission of Ju-

rists (CCJ). The picture was completed by referring to reports compiled by the Fiscalía, the competent judges and an initial report by the Ministry of Social Protection on the role of the Fiscalía's Labor Subunit and of judges in cases included under the ILO's Case 1787. The CCJ also requested information on the cases of 1,546 trade union victims under investigation by the Labor Subunit. Finally, the CCJ addressed a right of petition to every office of the Fiscalía in the country, seeking to determine the state of the investigations into all 2,798 murders registered in the data base maintained by the ENS up to December 2009.<sup>32</sup> This report is based on the above information, and is intended to provide a panorama of the treatment given by the Colombian legal system to cases involving the violation of trade union rights.

By the 18 May 2010, 77 responses<sup>33</sup>

31. Created in 1997, made up of high level representatives from government, including the Ministries of the Interior and Justice, and Defense, Presidential Advisors, the Fiscalía, the Procurator General, the Human Rights Ombudsman, judges, trade unions and trade union confederations, and other civil society organizations. The ILO and the Office of the UN High Commissioner for Human Rights can be invited to participate. Its principal function is to promote and protect the right to life, liberty and security of the person and trade union freedoms.

32. While there were 47 murders committed during 2009, at the moment when the right of petition was presented to the Fiscalía, information was only available on 39 of them; for this reason enquiries were not made about the remaining eight cases.

33. Of these 77 responses, 61 were included in the ENS data base on the treatment of trade union cases, as they provided most of the information requested. The remaining 16 were excluded either because it had been indicated that the case had been

to these enquiries had been received, providing information on the state of investigation in 1,659 cases of attacks on trade unionists.<sup>34</sup> Of these, 864 were victims of violations of the right to life,<sup>35</sup> the remaining 795 victims having suffered other violations. Of the former, 378 cases are in the *preliminary phase* of investigation.<sup>36</sup> In other words, in 43.75% of the cases the perpetrator has not been identified<sup>37</sup>. 13 (1.5%) are under preliminary

investigation under the terms of the new Criminal Code<sup>38</sup>; 216 are in the *instruction phase*<sup>39</sup>. In summary, then, 25% of cases are under active investigation while 48 (5.56%) have reached the *judgment phase*.<sup>40</sup> The cases of 88

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transferred to a different jurisdiction or because they did not contain relevant information.

34. While, in response to the right of petition, the Fiscalía provided information on 2,023 cases, no information was provided on the state of investigation in 319 cases; in another 45 cases, while information was made available on the procedural stage, none was forthcoming on the crime in response to which the process had been opened. For these reasons, 364 cases were not included in the research.
35. 850 were murdered, of whom five had initially been disappeared; 14 of the total were forcibly disappeared.
36. Art. 322. Código de Procedimiento Penal (Code of Criminal Procedure - CPP). The preliminary investigation phase is intended to establish if there is a case to answer (occurrence of an offense, presentation of reasons responsibility has not been assigned) and the collection of evidence necessary to identify perpetrators and participants in the crime.
37. CPP, Art. 200: "It is the responsibility of the Fiscalía General de la Nación to

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carry out the enquiries and investigations of any criminal acts that may come to its attention as a result of a complaint, lawsuit, special petition, or any other appropriate means. In development of its functions outlined in the previous sub-section, the Fiscalía General de la Nación, in the person of the prosecutor in charge of the investigation, direction, coordination, legal control and technical and scientific verification of the activities of the investigating agents in development of the terms set out in the code".

38. Law 906 of 2004, CPP.
39. CPP, Art. 331: the instruction phase begins with a decision of the Fiscalía to open the phase, indicating the reasons for the decision, the people implicated in the legal action, and the evidence that should be collected; during this phase, the crime is characterized along with the individuals responsible for it, the determining motives of the conduct, the social and personal conditions of the accused and the damage and damage occasioned.
40. CPP, Art. 232, 403 and ff: the judgment phase starts with the filing of charges, when the Fiscalía makes a legal declaration concerning the conduct established as a result of the investigations carried out; in this phase the judge is required to establish clearly the responsibility of the accused, impose the corresponding sanctions, and establish the damage and

victims (10.19%) have been archived, suspended or closed [“precluido”] for lack of evidence, because the crime asserted is not recognized or because of a conflict of interest. In the cases of the other 121 victims (14.02%), some kind of sentence has been passed: the accused was absolved in three cases (0.35%) while in 118, a guilty verdict was returned (13.66%).

**Of the 795** trade unionists who suffered other violations, 493 were threatened, 17 suffered assassination attempts, 93 were kidnapped, one was arbitrarily detained, 58 suffered personal injuries, seven were tortured or submitted to sexual violence, three were internally displaced and 123 were victims of other violations including theft, damage to property, abuse of authority and extortion.

The information obtained shows that 347 of these non-murder cases are in the preliminary investigation phase; in other words, in 43.65% of the cases the perpetrator has not been identified; 13 are in the preliminary phase, that is, 1.64% are under preliminary investigation under the terms of the new Criminal Code; 80 are in the instruction phase, meaning that the cases of 10.06% of the victims are un-

der investigation; 329 cases (41.38%), have been, archived, suspended, or closed on grounds of conflict of interest; 13 (1.64%) of cases have reached the judgment phase, while in a further 13 cases there has been some kind of sentence passed. Thus, the level of impunity in the cases of these violations of trade union rights, and for which we have information, is 98.36%.

The information supplied by the Fiscalía does not allow a more precise figure for the levels of impunity to be calculated. Information provided by judges operating throughout the country provides a figure of 222 judgments in all classes of violations of trade union human rights between the start of 2002 and October 2009. However, the partial information made available to the authors of this report has only permitted the clear identification of cases involving 118 victims of violations of the right to life (murder and forced disappearance) and 13 victims of other violations.

In other words, based on this publicly available, verifiable, and trustworthy information, it is possible to conclude that of the 3,031 victims of violations of the right to life between 1 January 1986 and 30 April 2010,<sup>41</sup>

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harm caused, as well as the ways in which these might be compensated.

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41. 2,832 murders and 199 forced disappearances

sentences have been passed in 118 cases. These figures result in an impunity level of 96.11%. In relation to the other 8,045 violations, sentences have been passed in only 13 cases and impunity is at 99.84%.

### **Investigatory Procedures and Results of the Labor Subunit for Case 1787**

The overview presented in this report is based on close monitoring of the specialized judicial mechanism established to invigorate the criminal investigations the Fiscalía carries out of crimes against trade unionists. What specific results has the mechanism produced? To answer this question it was necessary to clarify two points: *i)* which cases the Subunit has been working on and *ii)* what violent acts have been committed against this group of victims. Additionally, this section, *iii)*, analyses the results of the Labor Subunit and, *iv)*, summarizes its work on a group of priority cases.

*(i) List of cases of anti-trade union violence handled by the Labor Subunit.* The trade union movement has informed the Committee on Freedom of Association (CFA) that it has provided information on the assassinations of trade unionists between 1986 and 2009. This was intended to establish dialogue that would enable the joint construction of policies to

guarantee the right to truth, justice and reparation for the victims of anti-trade union violence and, as a consequence, ensure compliance with the statement of the CFA that “trade union freedom can only be exercised in a situation in which fundamental human rights, and in particular the right to life, liberty and security of the person are respected and guaranteed”.<sup>42</sup> However, since the creation of the Labor Subunit, it has proved impossible to establish this dialogue.

Information on the actual investigations being handled by the Subunit was first made available in April 2009, more than two years after its creation as a specialized legal mechanism with responsibility for trade union cases. In November 2009, the trade unions requested that these cases should be reviewed as part of the CIDHT process, since of the list of 1,303 cases (involving 1,546 victims) that had been assigned to the prosecutors in March 2009, it was possible that 598 (35.4%) were not trade unionists,<sup>43</sup> a factor that suggests that in a range of

42. CFA, Case 1787, informe núm. 324, párrafo 273.

43. The analyses in this comparative chapter were carried out by the CCJ, based on a comparison between figures provided by the Fiscalía General de la Nación and the ENS

cases the efforts invested by the state to encourage the investigation of cases of anti-trade union violence were being dispersed.

Despite this request, the situation did not change. The government only asked for a response from the CIDHT on 23 April 2010. On the same day the government indicated that it had seen the new report from the Fiscalía; but it was not made available on the grounds that the Fiscalía was not aware the trade union organizations had a right to see it. For this reason, despite the fact that the government refers to an increase in the number of sentences and improved results in general, including for 2010, the ENS only has access to data up to October 2009; consequently this report is only able to refer to the information actually made available to the trade unions.

**(ii) The acts of violence under investigation.** Of the 1,546 victims on whom the Fiscalía provided information, only 948 were definitely trade unionists; it was not possible to identify the names of the other 598 victims in the ENS trade union violence data base. Some of these 598 cases involve an indirect connection with an act of anti-union violence – for example the list of victims provided by the Fiscalía included Giovanni Aldana Patiño and Tomás Enrique Quiñones, who were

bodyguards working for the DAS, wounded during the attempted assassination of the leader of Fenaltrase, Wilson Borja in December 2000; also in the list is María del Pilar Bolaños, a street seller who was killed by a stray bullet during the same incident.

The victims on the list also included Alina Renata Cabrales and Alejandra Camargo Cabrales. Alejandra was the two year old daughter of René Alfredo Cabrales Sosa, a member of Sintraunicordoba; she died during an attack on her father in Montería (Department of Córdoba) on 11 June 1996. There are other occasions where it is difficult to understand the selection criteria at all, because the Fiscalía has not indicated which union the victim belonged to and because the case does not appear in the ENS data base.

In order to carry out an analysis of the trade union victims and to establish the state of the investigations in each case, this study is limited to the 948 confirmed trade unionists. Of these, the Fiscalía is currently investigating 687 murders committed between 1 June 1991 and 8 August 2008. The other 261 were victims of other violations that were not specified in the April 2009 report produced by the Fiscalía, but a comparison of their names with those that appear in the ENS data base makes it clear that they



**Comparison of the Cases of Victims Investigated by the Fiscalía with those Registered by the ENS**

Violation	Victims according to the Fiscalía, June 1991 to 8 August 2008	Victims according to the ENS, June 1991 to 8 August 2008	Victims according to the ENS, 1 January 1986 to April 30 2010
Murder	687	2,330	2,832
Other violations	261	6,926	8,045

were victims of multiple violations.<sup>44</sup> In any case, because of the uncertainty of the information provided by the Fiscalía it is impossible to determine which crime led the authorities to initiate proceedings – it could be for all or just for some of the violations.

Using the available information it is possible to conclude from the selection of cases made by the Labor Subunit that: *i)* murders committed before 1991 were excluded; *ii)* murders committed between 8 August 2008 and 31 December 2008 were also excluded; *iii)* the government informed the CFA that it is investigating 23 murders committed during 2009<sup>45</sup>, when 47 were in fact committed. This being the case, 24 new cases are not being

investigated, *iv)* the government informed the April 2010 meeting of the CIDHT that the Labor Subunit was currently investigating 12 murders of the 25 that had been committed up to 30 April 2010, meaning that there was no investigation in 13 new cases; *v)* the trade union movement has reported the murder of 2,832 people between 1 January 1986 and 30 April 2010, of which the Subunit is only investigating 722 (687 plus the 35 new cases) – that is 25.4% of the murders committed; *vi)* the trade union movement has denounced 8,045 violations between 1 January 1986 and 30 April 2010, of which the Subunit is currently investigating only 261 (3.2%).

*(iii) The results of the activities of the Labor Subunit.* The investigations carried out up to October 2009 make it impossible to speak of significant results. Of the 1,344 cases assigned to the Subunit, in truth, only 1,150 are being investigated, because the files corresponding to 194 cases have not been found. Concerning the 1,150

44. The other violations are: threats, harassment, and attacks with or without wounding, arbitrary detention, kidnap, displacement, disappearance, illegal searches and torture.

45. Comité de Libertad Sindical, caso 1787, informe núm. 356.Vol. XCIII, 2010, Serie B, núm. 1. March 2010.

cases actually under investigation, 586 (50.9%), are currently in the preliminary phase – that is, in half of the cases no suspect has been identified. 275 cases (23.9%) are in the instruction phase, when formal investigation is opened against a suspect who has been identified. In 142 cases (12.3%), the Fiscalía has presented charges before a judge. The Fiscalía has closed 41 cases (3.5%), for procedural reasons. Finally, in 51 cases (4.4%), the Fiscalía declined to order the suspect to be detained.<sup>46</sup>

(iv) *Priority cases investigated by the Labor Subunit.* With the creation of the Subunit, the trade union move-

ment proposed the adoption of an additional mechanism, consisting in the prioritization of 185 cases, in order to ensure progress in the investigations and produce rapid results and combat impunity.

Results for these cases are not positive either. Of the 185 cases, 93 (50.2%), remain in the preliminary phase, a percentage almost exactly the same as for the overall number of cases assigned to the Subunit (50.9%).

62 cases (33.5%) are in the instruction phase. The Fiscalía has archived one case (0.5%) and declared three (1.6%) to be “inhibited”<sup>47</sup>, while seven cases have reached the judgment phase (3.7%). Finally, there have been 42 sentences passed (in fact there were an additional four, but these cases

46. Article 308. Law 906, 2004. Requirements of Criminal Procedure. “At the request of the Fiscal General de la Nación, or his delegate, the judge for the oversight of guarantees, will issue the preventive detention warrant as soon as it may reasonably be inferred from any probatory materials, physical evidence or legally obtained information that may have been gathered, that the suspect may be the perpetrator of the criminal act under investigation, or implicated in it, always as long as one of the following requirements is met: 1. That the detention warrant is demonstrated to be necessary to prevent the accused obstructing justice. 2. That the accused represents a danger to the safety of society or of the victim. 3. That it is likely that the accused will not appear for trial or complete the sentence”.

47. Art. 327. Law 600, 2000: Inhibitory resolution: “The Fiscal General de la Nación, or his delegate, will not initiate any procedure when it appears that the conduct has not occurred, is atypical, that it is not possible to initiate legal proceedings or it is demonstrable that there was no criminal responsibility”.

Art. 79. Law 906, 2004: Procedural Archive: “When the Fiscalía has information concerning an event about which there is no known motive or factual circumstances that permit it to be characterized as a crime or potential crime, it will keep a record of all its actions. If new evidence emerges investigation should reinstate unless the term has expired.

were decided before the Subunit was created). In other words, a sentence has been proffered in only 22.7% of the prioritized cases.

According to these figures, and despite expectations, the creation of a list of priority cases did not prove more effective, since there have been almost exactly the same number of investigations and judgments as for the overall cohort of cases under investigation.

### **Quantitative and Qualitative Analysis of Sentencing by Judges in the National Circuit and Specialized Jurisdictions in Cases of Anti-Trade Union Violence**

A quantitative analysis shows that at national level judges – including specialist and circuit judges – passed 222 sentences between January 2002 and October 2009<sup>48</sup>, while between

November 2007 – when the Subunit was created – and April 2010, the specialist and circuit judges with special responsibility for cases of anti trade union violence reached judgment in 207 cases, 122 of which (59%) involved plea bargains<sup>49</sup>. Additionally, there were 74 guilty verdicts (35.7%) and in 11 cases (5.3%) the accused was declared innocent.

In addition to the quantitative data obtained from the information provided to the trade union movement and the CCJ, this report also presents a qualitative analysis. The CCJ has received hard copies of 173 of the judgments produced between 2002 and 2008; these cover the whole range of cases of crimes against trade unionists. The 173 sentences involved 205 victims. However, 18 victims who appeared in 10 of the sentences handed over to the CCJ had no connection with anti-trade union crimes. In reality, then, the authors of the report have had access to 163 sentences, involving

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48. Statistical table showing the total number of legal proceedings indicating sentences, remands to appeal and proceedings. Centre for Specialized Administrative Services and the Unique Circuit to Alleviate Court Congestion [circular único de descongestión] established under the ILO agreement with Colombia, April 2010, Report on the Progress of the Subunit for Human Rights and International Humanitarian Law in Crimes against Trade Unionists under Case 1787, October 2009. This has not been updated for 2010 because the Fiscalía refused to provide

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information in the meeting of the CIDHT in April 2010.

49. Article 40 of Law 600, 2000: “Once the investigation has been initiated, and until the resolution to close the investigation is confirmed, the accused may request plea bargaining on one occasion [...] The document containing the charges accepted by the accused is equivalent to a formal charge.”

187 victims. Of the 163 sentences, 150 resulted in guilty verdicts, in nine the accused was found not guilty, in one the case was overturned, one was remanded to a lower court for reasons of competence, one ran out of time resulting in there being no judgment,<sup>50</sup>) and a final case was closed because of the death of the accused.

This review of the kinds of sentences passed forms the basis of our analysis of impunity in 150 cases. Of these sentences, 128 of the victims were trade unionists, and 43 had suffered violations at the time of the attack.

Of these 128 trade unionist victims, 111 were murdered; four further victims were murdered but in three of the sentences the judge found the perpetrator guilty only of *concierto para delinquir* (“conspiracy to commit a crime”) - that is, of paramilitarism - and in one, of kidnapping; there were five victims kidnapping, four of attempted murder three of forced displacement, and one of threats. The conclusions are as follows:

i) *The framework of the investigation.* 65 of the 150 judgments (43.33%) were investigated as isolated cases without taking into account the fun-

damental characteristics of anti-trade union violence; in seven judgments (4.6%), the only context analysis carried out was of the individual and of the trade union they belonged to; in 23 judgments (15.3%), the individual context and that of anti-trade union violence in general was analyzed; in six judgments (4%), there was only an analysis of general anti-trade union violence; in four (1.3%), only the context of the individual trade union was examined; and in 23 (15.33%), only the circumstances of the victim were examined. In only 15 cases (10%) was a contextual analysis carried out of the circumstances affecting the individual, the particular union they belonged to, and of anti-trade union violence in general. It is apparent that the persistence of this kind of sentencing reflects the absence of a policy to guarantee comprehensive and structured investigation of these cases and that the methods used are the same as those used in common crimes where priority is given to hypotheses according to which the motives are assumed to be personal or to involve crimes of passion, and where, in many cases, other fundamental aspects relevant to the situation are ignored. In the judgments examined, no analysis of the social and political context in which the violations occurred; instead, the

50. This concerned a case of aggravated threats against a member of the trade union federation, CUT.

investigations provided, as sole support for the decision, an analysis of the narrow facts of the case, denying importance to the context in which they took place.

*ii) Superficial investigation of the motives of crimes.* The logical procedure to follow in investigations of this kind of crime, especially when special units have been created to take on the responsibility for them, would be, first, to examine the history of the victim's trade union activity, second, the activities of the union, and third, who might have been interested in committing the crime. A careful reading of the judgments demonstrates that in the majority of cases the judges made no such analysis.

*iii) Sentences imposed only on those materially responsible.* In the majority of the judgments analyzed it was the actual perpetrators of the crimes who were found guilty while there was no analysis of who might have ordered them to be carried out. It is on the capacity of the authorities to identify the individuals ultimately responsible for the crimes that the genuine dismantlement of the groups that carry out the violence against trade unionists depends; if they are not punished the criminal networks will continue to function and the violations will not stop.

*iv) Accusations of subversive activity stick.* Frequently, when the victim is accused by the perpetrators of being a member of a guerrilla group the authorities accept the word of the accused or even go so far as to open an investigation against the victim. This leads not only to a failure to clarify the motives of the crime but also protects anti trade union activities. In the 68 cases where a plea bargain was agreed, the version provided by the perpetrators was accepted, to the extent that it was repeated by the Fiscalía in the charge sheet.

*v) Use of Plea Bargaining* of the 150 guilty verdicts, 68 (45.3%) involved plea bargaining, while 82 (54.6%) resulted in a definitive sentence. Given the proliferation of plea bargaining (almost half of the cases), it is of concern that the judgments confine themselves to reproducing the confession of the accused without providing any justification for the decision to accept the plea. Thus, judges fail to exercise their duty to preside over the trial, accepting instead the word of the criminal. In consequence, the functioning of the justice system impedes victims' access to the truth about what has happened, and institutionalizes the version of the perpetrators.

Of the 150 guilty verdicts, 146 were decided in the lowest courts, four at the next level and two were confirmed at appeal.<sup>51</sup> Concerning the lowest level decisions, if the accused appeals, the judge at the high level might yet overturn the sentence; at appeal, the sentence may be overturned if the appeal is successful, while the two judgments confirmed at appeal are definitive.

### **Motives for Anti Trade Union Violence: Attempts to Deny the Problem Exists**

The report on the state of criminal investigations and judgments in trade union cases published by the Fiscalía in January 2008 was the first to include a table covering the “Motives for Anti Trade Union Violence”. The table contained a range of headings that purportedly corresponded to the motives that had been identified by the judges responsible for trying the cases.

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51. Appeal Procedures, CPP, Art. 181: “1. Failure to apply, erroneous interpretation, or unlawful application of the spirit of the constitution [bloque constitucional], the constitution, or the law governing the case. 2. Egregious failure to follow due process, or of the guarantees due to any of the parties involved. 3. Manifest failure to follow the rules governing the gathering and examination of evidence used as the basis of the judgment”.

In order to continue monitoring the activities of legal investigators and judges, and to encourage the justice system to improve the coverage and quality of its response to persistent violence against trade unionists in Colombia, the trade union confederations and the CCJ examined the sentences emitted by judges, analyzing, on the one hand, their success in overcoming impunity and, on the other, building up a firsthand picture of the motives of anti trade union violence adduced by the judges in their sentences.

The results of these analyses were extremely worrying. In respect of the analysis of the judgments, it is clear, as the extensive analysis in the previous chapter made clear, that the vast majority of the investigations failed to comply with international standards for overcoming impunity and – furthermore – the international human rights treaties ratified by Colombia.

The results of the second objective established for the research were also disconcerting. An analysis of the judgments demonstrated, concerning the motives, that: *i)* in many judgments the judges were unable to identify the motives, *ii)* in other cases the reasons given by the perpetrators were accepted as the reasons for the crime without any independent evidence having been provided. For example, if the perpe-



trator claimed that the trade unionist was a member of a guerrilla group, the judge would indicate that the motive of the crime was that the victim was a suspected guerrilla member; *iii*) almost half of the sentences emitted were plea bargains, a procedure that obliges the judge only to sentence the perpetrator, without investigating the truth of what had happened. In these cases the truth depends on what the accused is prepared to say; *iv*) in other sentences, the motives mentioned in the reports produced by the Fiscalía did not correspond to the motives indicated in the sentence; and *v*) the Fiscalía and judges did not understand the meaning and reach of trade union activity and, as a result, they did not consider the activities of victims to be trade union related when in fact they were. For example, in cases where a trade unionist had been murdered because they exposed corruption in the company where they worked, the Fiscalía classified the crime as economically motivated or as a corruption case, whereas one of the most important trade union activities involves the defense of the workplace.

Faced with this dramatic panorama of the nature and practice of the justice system in Colombia the trade union movement and the organizations that accompany the movement

have been engaged in permanent dialogue about the realities, within the structures available within the CIDHT. Nevertheless, the analyses and proposals that we make have not been taken into account. In November 2008, the Fiscalía responded to proposals from the union movement and social organizations with a decision to stop producing tables setting out the motives in trade union cases. Today it is the judges who elaborate these tables, though they follow the same criteria.

It is essential to develop adequate policies governing criminal investigations and that these guarantee the rights of the victim. There is an urgent need to adopt differentiated measures, incorporating international norms, to govern cases involving human rights abuses. It would, frankly, be unacceptable to continue with the current situation where the justice system is dedicated to producing “results” at any cost in order to fulfill targets and enable trade treaties to be signed.

The historical debt owed by the Colombian state to victims cannot be paid off by presenting numbers and well-meaning words. The state should accept its responsibility; cease to deny the existence of systematic violence against the trade union movement; take responsibility for the serious



crimes that have been committed directly by its agents or as a result of the tolerance of paramilitary groups or direct connivance with them; punish all remaining authors of the tragedy in the same way that guerrilla leaders are punished; and seek truth, justice, repartition and guarantees of non-repetition for all victims.

### **Confused and baseless information from the government on the reasons for anti-trade union violence**

The activities of the justice system are being obstructed, and its autonomy seriously threatened by government interference. The government has provided baseless and confused information on the motives of anti-trade union violence to organizations including the ILO, public opinion, and the international community, especially in the context of negotiations concerning FTAs with the United States, the European Union and Canada.

This is clearly reflected in the most recent report on Case 1787 produced by the CFA, where the committee noted that “the government provided information on the investigations initiated in relation to almost all the events that occurred in 2008 and 2009. The government provided information on the state of each of the investigations, indicating that of the 23 trade union-

ists murdered in 2009, in 15 cases, there was no anti trade union motive and that of the remaining eight, only one had a trade union connection”,<sup>52</sup> (emphasis added).

These government claims have at least four serious failures:

i) it appears that the information is based on preliminary investigations carried out by the Fiscalía. If this is correct, the assumptions are based on the first impressions of the investigative process, which do not establish a solid basis from which definitive conclusions may be drawn about what happened, nor about the criminal responsibility of the suspects. This function is assigned under the constitution to the judges. The Fiscalía is obliged “to carry out the enquiries and investigations of any criminal acts that may come to its attention as a result of a complaint, lawsuit, special petition, or official communication, always provided there are sufficient means and evidence available to indicate that the act may have been committed”,<sup>53</sup> and it is the decisions of the judges that

52. Comité de Libertad Sindical, Caso 1787, Informe núm. 356. Vol. XCIII, 2010, Serie B, núm. 1. In this report the Committee requests that it be kept informed of developments, March 2010, paragraph 553.

53. Art. 250. Political Constitution of Colombia.

define – among other aspects proper to the administration of justice - the legal definition of the facts and the punishment that should be applied. In this case, the information that is presented as progress in determining the reasons for anti trade union violence is not based on legal decisions but is the result of the first impressions of a few state employees.

**ii)** While it is true that the Constitution indicates that the decisions of the judicial branch “are independent”, in practice the government itself makes its views public and defines the direction the investigation carried out by the Fiscalía should take: there is no opportunity to enquire whether the investigators might be considering other options); the government also indicates the kind of decision that the judges should eventually take. The government position makes no contribution to determining what has happened to the trade union movement, nor to overcoming impunity.

**iii)** The *a priori* definition of the reasons for the crimes committed against trade unionists and the identification of those responsible for them constitutes a mockery of the legal system. From the very beginning of the criminal procedure the government decides the motives for the crimes, ignoring the development of

the legal proceedings, and establishes individual criminal responsibility. If this were not the case, how would it be possible to understand the motivation of the perpetrators without even knowing who they were?

**iv)** The information is not based on sentences, because the 23 processes for the murder of trade union members currently open are all in the preliminary phase of investigation.<sup>54</sup>

Irresponsibly, the government presents the cases as resolved, in an attempt to distort the grave and systematic nature of the violence against the trade union movement, arguing that in Colombia trade unionists are murdered for reasons other than the violation of human rights, in an institutional denial of the gravity of the problem.

Different calls have been made on the state to take seriously its obligation to administer justice and punish the guilty; the UN Human Rights Committee, for example, has said: “the State party has a duty to investigate thoroughly alleged violations of human rights, particularly enforced disappearances and violations of the right to life, and to criminally prosecute, try

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54. Response of the Fiscalía May 2010. CCJ Legal Monitoring Data Base.

and punish those deemed responsible for such violations”.<sup>55</sup>

## **The Measures Adopted by the State to Overcome Impunity have been Insufficient and Ineffective**

### **Policy to Combat Impunity and Strengthening of the Labor Subunit ;Error! Marcador no definido.**

The government informed the ILO that it was increasing the resources available for the development of differentiated methods for investigating violations of the rights of trade unionists, “with the principal objective of increasing the quality of the investigations carried out by legal personnel, maximizing available resources and treating the victims with dignity”. It also referred to the policy published by the *Consejo Nacional de Política Económica y Social* (National Council for Economic and Social Policy) in 2006<sup>56</sup>, intended to strengthen procedures covering investigation, trial and sanctions in human rights cases.

It is to be hoped that financial resources will be made available to strengthen the work of the legal system and its employees. At the meeting of the CIDHT on 23 April 2010, the specialized judges pointed out the scarcity of physical means – such as paper and other office goods - necessary to carry out their work, as well as the importance of a protection program for employees of the legal system. These basic requests, have been ignored now throughout the period of over two years during which the special mechanisms have been in place. The clear conclusion is that more resources need to be invested if a serious and responsible justice system is to be developed.

Turning to the creation of specialized mechanisms, the evidence is clear that none have been created: the judgments produced by the judges make this very clear. Investigations continue to be conducted on a case by case basis, seeking to identify the individual circumstances rather than developing a methodology to examine the facts taking into account the systemic nature of the crimes and casting important light on the events, or differentiated hypotheses that might have led to more important and significant results. The need to apply methodologies and to develop a criminal investi-

55. Arhuacos v. Colombia, p. 488, <http://www1.umn.edu/humanrts/un-docs/612-1995.html>

56. Documento CONPES, No. 3411, Bogotá, 2006.

gation policy to cover these cases was also discussed in the CIDHT meeting where the representative of the judges indicated clearly that they were not able to take into account elements of context and their implications for the motives of crimes when preparing their judgments. This means that in practice no differential element is employed in the investigation and punishment of crimes committed against trade unionists.

Taken together these factors result in the conclusion that the state has not fulfilled the recommendations of the Committee on the *Application of Standards*, according to which it "...observed the concerns raised that the number of convictions remained very low and that the sentences that had been handed down concerned only the direct perpetrators of the violence, but not the actual instigators. The Committee observed that more measures were needed and expressed the hope that the Government would ensure that the judiciary was invested with all the necessary powers to this end and that further resources would continue to be made available for the bolstered protection of threatened trade unionists, coupled with a clear message at the highest level of the important role played in society by trade unions and that anti-union violence would not be

tolerated. The Committee recalled the need to ensure that all investigations against acts of violence against trade union leaders and members were carried out rapidly and efficiently. The Committee underlined that the trade union movement could only exist in a climate free from violence and urged the Government to put an end to the current situation of violence and impunity through the continued implementation and innovation of effective measures and policies."

## **2. Law 1309 of 2009**

This law increases prison sentences for the murder, forced disappearance and kidnapping of trade unionists, raises fines for violating the rights to assembly and association, and extends the statute of limitation for the crimes of genocide, forced disappearance, torture and murder. However, the law will only be effective if it is complemented by the adoption of an approach that leads to the identification, capture and sanction of the perpetrators. The approval of the new law does not imply a change in the response to the violence unleashed against the trade union movement in the distant and recent past: Law 1309 will only be applied to those found guilty of crimes committed after the 26 June 2009.

States are free to adopt myriad legislative measures aimed at promoting and guaranteeing human rights. However, the Colombian government, after more than 24 years of systematic, selective, and deliberate anti-trade union violence perpetrated largely by the paramilitaries but also by the state itself and to a lesser degree by the guerrilla groups, has limited itself to passing a law that increases the punishments and sentences for crimes committed in the future. This measure does not constitute an advance in overcoming violence, since reduced levels of violence are not a natural consequence of longer sentences; it should be remembered that it is always easier to approve a law with new sanctions, to give the impression of fulfilling obligations, than to advance structural reforms designed to dismantle the structures that generate them and permit their continuation, than to construct and apply an effective policy of investigation and punishment, and to end the stigmatizing statements that emanate from the highest levels of government.

### **Application of the “Justice and Peace Law” - Law 975 of 2005**

Law 975 was passed to establish the legal framework for the demobilization of combatants within a

process of negotiation between the government and paramilitary organizations grouped in the *Autodefensas Unidas de Colombia* (AUC).<sup>57</sup> The law offered members of paramilitary groups the benefit of receiving an alternate sentence, of a maximum of eight years imprisonment (much less than the sentences for the same crimes under ordinary legislation), under the condition that they promised to provide truth, justice, and reparation to the victims of the crimes they had committed.

In its application the law has not fulfilled the objectives that were proposed for it. Several international organizations, including the American Commission of Human Rights, have indicated that various aspects of the law have prohibited legal processes advanced under its terms from guaranteeing the rights of victims – including trade unionists – to truth, justice, and reparations. Examples include the extradition of the principle paramilitary leaders at the request of the US justice system, which precipitately interrupted their trials and the confessions they were delivering at the time; the obstacles faced by the victims in participating directly in the

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57. This norm applies to members of any armed group that decides to demobilize.

legal proceedings; and the difficulties in determining the links between state agents and paramilitary leaders in the commission of crimes, even though the responsibility of the state for these links had already been established internationally.<sup>58</sup> Furthermore, nearly five years after Law 975 was passed there has as yet been no confirmed sentence that determines the responsibility of the members of paramilitary groups before July 2005. It is strange, then, given this panorama, that the government should have indicated to the ILO that Law 975 of 2005 has “contributed effectively to advancing the struggle against impunity”,<sup>59</sup> and “constituted a guarantee for the victims to gain effective access to truth, justice and reparation”,<sup>60</sup> when experience demonstrates decisively that these statements have no basis in truth.

The government informed the ILO that on the basis of the preliminary testimonies of the paramilitary leaders, the Fiscalía “has been able to establish that 216 were victims of

crimes confessed to by individuals who accepted the terms of Law 975, of whom the Fiscalía has identified 167.” Nevertheless, this statement contrasts with the grave obstacles that the specialist judges have encountered in trade union cases: in each meeting of the CIDHT they have stated that they have been unable to progress in the cases they have handled involving the principal paramilitary leaders, in the absence of judicial cooperation agreements with the United States that would permit the hearings to continue after extradition. This being the case, it is likely to be very difficult to uncover the truth concerning the crimes committed against trade unionists.

### **The Victims’ Compensation Fund under Law 975**

On 22 April 2008, the government passed Decree 1290, “by which is created the Program for Individual Administrative Reparation for Victims of Illegal Armed Groups”. The ILO Commission of Experts noted the adoption of this mechanism with interest. Therefore this section of the report has been prepared to explain the nature and reach of the measure.

The measure was elaborated without the participation of the victims or society at large; it illustrates the handout mentality of the government

58. Cf. Inter American Commission of Human Rights, Annual Report, Chapter 4, par. 50, 2009

59. Comité de Libertad Sindical, caso 1787, informe núm. 356. Vol. XCIII, 2010, Serie B, núm. 1. In this report the Committee requests that it be kept informed of developments, March 2010.

60. *ibid.*



when it comes to human rights, and the absence of a real commitment to the victims of social and political violence in Colombia.

The decree does not establish a reparations policy, since the state bases the measures adopted on the principle of solidarity, and does not recognize responsibility for the violation of the rights of the population. The decree is in truth a proposal to provide humanitarian assistance to the victims rather than an initiative to provide compensation.

In relation to its concrete measures, the decree leaves a lot to be desired, as it provides detailed rules covering a range of indemnities, while limiting itself to defining other means of reparation without clarifying their concrete content. This, added to the total absence of any consideration of the circumstances of the especially vulnerable populations for whom the measure is designed and for whom – as its name implies – it is only intended to provide individual support, ignoring the collective dimension of reparation, with the consequence that the reparations offered are far from *integral*.<sup>61</sup> It is of the utmost importance

that the grave violations committed

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Guide Series N° 2, (Geneva, 2006, p. 27), norms referring to the integral nature of reparation include: article 34 of the Draft Articles on the Responsibility of States for Internationally Wrongful Acts, which indicate that reparations should take the form of restitution, compensation or satisfaction, “either singly or in combination”; the International Law Commission has observed that this formulation does not leave the decision concerning the form of reparation up to the State, but makes it clear that reparation can only be achieved in certain cases by combining different forms of reparation (Commentary on Article 34 of the Draft Articles on the Responsibility of States for Internationally Wrongful Acts, paragraph 2 (see Official Documents of the General Assembly, 56th Session, Supplement N° 10 (A/56/10)); The Human Rights Committee’s Independent Expert to update the Set of principles to combat Impunity has also stressed that a characteristic of any effective reparations program is that it should benefit all victims equally, (Independent Study on best Practices, including Recommendations, to assist States in Strengthening their Domestic Capacity to combat all Aspects of Impunity, E/CN.4/2004/88, 27 February 2004, paragraph 60); see also the UN Principles on Reparations (UN General Assembly Resolution 60/147 approved by the UN General Assembly, 16 December 2005, Annex, Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of Internatio-

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61. According to the International Commission of Jurists (ICJ) in *The Right to a Remedy and to Reparation for Gross Human Rights Violations*, Practitioners’



against the trade union movement

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nal Humanitarian Law, A/RES/60/147, 21 March 2006, Principle 20. See (in Spanish): Colombian Commission of Jurists (CCJ), *Principios internacionales sobre impunidad y reparaciones* (Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law (A/RES/60/147)), in *Compilación de documentos de la Organización de las Naciones Unidas*, Bogotá, CCJ, January 2007, p. 225) quoting paragraph 18: reparation ‘includes the following forms: restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.’ In its Resolution on Impunity (Human Rights Resolution 2005/81: Impunity, 21 April 2005, E/CN.4/RES/2005/81), the UN Commission on Human Rights observed that these principles had already been applied at regional and national levels: E/ CN.4/RES/2004/72, 21 April 2004, paragraph 16; E/CK4/RES/2003/72, 25 April 2003, paragraph 14; E/CN.4/RES/2005/81, paragraph 21) indicating: ‘The right to reparation shall cover all injuries suffered by victims; it shall include measures of restitution, compensation, rehabilitation, and satisfaction as provided by international law’. (Principle 34); the Inter-American Court of Human Rights considers the right to reparation to be a part of the body of customary international law that includes ‘restitutio in integrum’, or ‘payment of compensation, satisfaction [and] guarantees that the violations will not be repeated,’ (Loayza Tamayo Case (Reparations), Judgment of

should receive reparation. The procedure established to make claims is complicated and it neither clarifies who is responsible for its administration, nor the institutional competence necessary to satisfy the rights of the victims to reparation. Additionally, because the norm regulates Law 975, it is not a mechanism designed to favor the majority of victims of violence in Colombia, but only of the crimes that fall under the purview of the law.

In general terms, because of its inadequate treatment of the different forms of reparation, the exclusion of a subject so vital to the question of reparation in Colombia as the restitution of stolen lands, and the purely compen-

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27 November 1988, Series C No. 42, paragraph 85); finally the International Court of Justice established in its judgment in the case *Avena and Other Mexican Nationals* that ‘the breach of an engagement involves an obligation to make reparation in an adequate form.’ [...] “What constitutes ‘reparation in an adequate form’ clearly varies depending upon the concrete circumstances surrounding each case and the precise nature and scope of the injury, since the question has to be examined from the viewpoint of what is the “reparation in an adequate form” that corresponds to the injury”. (Case Concerning *Avena and Other Mexican Nationals* (Mexico v. United States of America), Judgment 31 March 2004, paragraph 119).

satory nature of the measures it comprehends, rather than a true proposal to provide administrative reparations Decree 1290 is a mechanism designed to discourage the participation of

victims in national and international legal processes so that the huge bills that would be imposed on the nation if truly integral reparation were to be provided need not be paid.