

International Commission for Labour Rights: Colombia

In the last week of March 2004 the International Commission for Labour Rights sent a mission of legal experts to Colombia to investigate violations of the right to life and liberty of trade unionists, the crisis of impunity that surrounds these violations and the systemic and systematic failings in the Colombian justice system that allow the violations to continue.

About the ICLR

The International Commission for Labour Rights was formed in response to an urgent need to defend the fundamental rights of working people worldwide. The initiative for the Commission lies with the International Association of Democratic Lawyers and the International Centre for Trade Union Rights in consultation with labour lawyers and trade unionists worldwide.

The Commission brings together the world's leading labour law experts in order to undertake high profile actions to investigate labour rights abuses and fundamental breaches of ILO Conventions and the United Nations Charter worldwide.

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This report draws together the key findings of three legal experts who visited Colombia on behalf of the International Commission for Labour Rights. The full reports of the ICLR mission participants are available from ICLR's website and on request from the ICLR office.

The original reports investigate the crisis of impunity and the status of labour rights and trade union freedoms in Colombia in much greater detail than this overview, which has been prepared by the ICLR with the support and approval of the mission participants.

Introduction

Throughout the world a number of trade unionists are killed because they are trade unionists. It is an astonishing fact that over three quarters of those individuals who have been murdered are Colombian. In 2002 the death toll was 184, in 2003 there were 90 murders. In both years these murders took place in addition to an onslaught of death threats, kidnappings, torture, arrests, armed attacks and attempted assassinations.

In respect of almost 4,000 murders of trade unionists since 1986 there has been almost 100 percent impunity - there were just five convictions for these murders between 1986 and 2002. In 2002, according to the Workers' Group of the International Labour Organisation, there were 184 murders of trade unionists, yet not one person has been convicted in respect of any of these crimes.

In March 2004 the International Commission for Labour Rights sent a mission of legal experts to investigate the appalling levels of violence and the apparent failure of the Colombian Government to investigate these crimes or to identify or prosecute those responsible. The ICLR mission participants were:

- Teodoro Sánchez de Bustamante, President Labour Lawyers Association, Argentina;
- Sarah Lucy Cooper, Bar Human Rights Committee, UK;
- Efren Sandoval, Legal counsel, UNSITRAGUA, Guatemala.

Colombia currently has a population of about 44 million.

It would be trite to say that Colombia is in general a violent country. The latest US State Department report for 2003 cites the following statistics from the National Police - 23,013 homicides during 2003, apparently showing a drop of 20% from 2002. Furthermore in 2003, according to the same report, there were 3,000 to 4,000 deaths of civilians in the civil war.

Colombia has in general terms ratified the vast majority of international conventions, including those of the ILO. The real issue therefore is their *de facto* effect.

In June 2003, the International Labour Conference voted against sending a Commission of Inquiry to Colombia. This was despite the issue of violence against trade unionists having been formally raised with the ILO since 1998.

Trade unions

Trade unionism is well established as a powerful social and industrial force in Colombia. Many unions are small, enterprise-based organisations, some of which are affiliated to local, regional and national structures. There are 856,099 union members (4% of the labour force) in about 2,357 unions. This averages about 363 members per union. There are three national centres:

- Central Unitaria de Trabajadores de Colombia - CUT. The largest and most politically powerful, CUT is also the most left wing confederation. CUT has no international affiliation;
- Confederacion de Trabajadores de Colombia - CTC. The oldest confederation. CTC is affiliated to the International Confederation of Free Trade Unions;
- Confederacion General de Trabajadores Democratica - CGTD. CGTD is affiliated to the World Confederation of Labour.

The ICLR met with CUT and the CTC. CGTD leader Julio Roberto Gomez had earlier spoken at an ICLR planning meeting in Geneva 2003, but the mission was not able to meet with CGTD in Colombia. A full list of ICLR witnesses is appended to the full version of this report, or is available from the ICLR office.

Although the union confederations are independent of one another, there is a tradition of cooperation. Regular joint rallies are held and the confederations cooperate on a number of projects aimed at monitoring and responding to trade union and human rights violations. It is important to note that many unions are not aligned to any of the confederations.

The trade unions have often been at the forefront of campaigns to develop a meaningful peace process in Colombia. Unfortunately, unions have also been subjected to an extraordinary campaign of violence and repression. That campaign (and the subsequent failure to identify and prosecute those responsible) is the subject of this investigation.

Human rights violations against trade unionists

Colombia's trade unionists experience an astounding array of attacks upon the rights that are supposedly guaranteed to them by virtue of their country's ratification of the key ILO conventions on freedom of association. Not only do trade unionists experience serious restrictions on their right to organise their activities but they are frequently subjected to physical attacks, threats against their lives, kidnappings, murder and torture. Furthermore, there are numerous instances in which trade union activists and leaders have been arrested on flimsy pretexts of 'subversion' and held in detention only to be released – often months later – often without charge.

The ICLR convened a series of meetings with trade unionists, legal experts and Colombian Government representatives during the course of their inquiry. When asked by ICLR whether trade unions were targeted, the Fiscalía stated definitively "yes", the Delegate for Human Rights said "*obviously*", whilst the Ministry of Defence claimed that it depended upon which group they were

compared to.

Recording the catalogue of violence

At the outset the mission encountered difficulties in respect of statistics as there was very little agreement, in particular between the governmental or non-governmental sectors, but also within each sector. The report therefore attempts to identify who compiled the various statistics.

As to the number of political murders and extrajudicial killings, the Comision Colombiana de Juristas cited a figure for 2003 of 1,781.

In respect of the number of trade unionists killed, the ICLR was given the following figures:

2002	ENS 184	Government 121
2003	ENS 90	Government 52

The Escuela Nacional Sindical collates information from the unions, and its figures are accepted by the ILO. The Government figures are taken from a document provided by the Ministry of Defence which apparently emanates from the Ministerio de Proteccion Social. These figures do not exactly accord with other statistics provided in a document from the Ministerio de Proteccion Social Coordinacion de Derechos Humanos which states that there were 121 murders in 2002 and 53 murders in 2003.

The Colombian Government's statistics are approximately half those of the ENS. This is at least in part explained by figures obtained from the Ministerio de Proteccion Social Coordinacion de Derechos Humanos which indicate that the government disputes that some of the victims were union members. The case of Janeth del Socorro Perez Galeano is an example of this. She was killed on 15th February 2004 and was included in the union figures but the Government does not consider her to be a trade unionist with ADIDA, the Antioquian teachers' union, as she was on a freelance contract at the time. Other cases cited by the Government in its statistics as murders which should not be categorised as killings of trade unionists include Nelly Erazo Rivera who was killed along with her husband Abel Ortega Medina, a prominent trade unionist, on 25th September 2003. Overall for 2003 there appear to be 15 murders which the Colombian Government did not accept should be categorised as killings of trade unionists. However, in most cases the Government statistics do not explain why not.

The disparity may also be because in the statistics from the Ministerio de Proteccion Social Coordinacion de Derechos Humanos trade unionists are separated as a category from teachers - it is not clear how the death of a teacher who is also a member of a union would be treated. The Government's own figures show for 2002 79 murders of teachers and for 2003 41 murders of teachers. If these figures are added to the government figures for murder of trade unionists, they appear to be about the same as those of the ENS.

It is crucial to note that the ENS has analysed the figures further and concludes

that of the total violations of human rights of trade unionists in 2003 which includes killings, threats, attacks, harassment, kidnappings, torture, displacement and disappearances that 43% (i.e. - 263 cases) were against trade union leaders, members of the board of directors, executive committees and sub-directives of the union organisations. The Government's own figures for 2003 would also tend to point to such targeting - of the 51 murders cited by the government, 11 were of trade union leaders.

An analysis of individual cases points to a high coincidence between violations of human rights and involvement in industrial disputes. The ENS report on human rights against trade unionists in 2003 states that 90% of the human rights violations for 2003 have as their cause union activities - the remaining 10% being in connection with the armed conflict, social violence and unidentified causes. By way of example the US State Department Report 2003 states in terms:

"Paramilitaries threatened - and sometimes killed - union members who refused to renounce collective bargaining agreements." [p57]

The ENS report for 2003 indicates that the majority of violations of human rights were of workers affiliated to CUT. Whether this is a reflection of CUT's better recording of such violations compared to the other confederations or the fact that they are the most left wing confederation or that they represent workers in particularly vulnerable types of employment is not known. The ICLR was told that the trade unions plan to organise a central body to collate all of the cases.

Accused of guerrilla connections: arrested and detained

The ICLR was informed that police have accused trade unionists of guerrilla activities, and that as a result trade unionists have been arrested and held in detention, sometimes for prolonged periods. When questioned by ICLR, the Ministry of Defence freely accepted that trade unionists could not be equated with members of the guerrillas. However, it was of concern that the Ministry of Defence had no statistics relating detentions to convictions. Anecdotal evidence suggested that there was not one case in which a trade unionist who had been arrested for alleged guerrilla activities had subsequently been convicted of the same. The case of Hernando Hernandez, the President of USO, the oil workers' union, being a case in point. Mr Hernandez was arrested on terrorism charges and detained in custody for 14 months before being released in April 2004 without further charges.

Trade union representatives who spoke with the ICLR delegation reported that they are being targeted by Government security forces. This 'targeting' consists in their being arrested, detained and subsequently released, certainly without being convicted and often without even being charged. The detentions can of course last for many months, particularly given the long delays in the criminal justice system.

The ICLR asked Ministry of Defence officials to provide statistics to demonstrate how many people of the very many who had been arrested - either with or without a judicial warrant - were subsequently convicted.

When the Fiscalía authorities were asked about the illegal and massive detentions reported by the interviewed leaders and the accuracy of the information they took into consideration to make such arrests, they said that the detentions were the result of "intelligence information". ICLR understands that the expression "intelligence information" includes the not too reliable information provided by individuals enjoying the benefits of the amnesty plans implemented by the Colombian Government, and that such "information" is the instrument used to criminalize social protest and to deny any type of defence.

Thanks to such a criminalization, the Government is indirectly violating international humanitarian law. Whenever health workers provide medical attention to individuals who are injured during any armed confrontation, they are accused of terrorism because the authorities consider that the humanitarian assistance they are providing may be interpreted as a collaboration with paramilitaries or guerrilla groups; a fact that de-humanises the already serious conflict the country is facing.

The previous Minister of Defence, Marta Lucia Ramirez, stated in July 2003 that the Armed Forces had captured 125,778 people in the first year of Alvaro Uribe's presidency (i.e. - from August 2002 to July 2003). It appears from prison statistics published by INPEC [the Colombian prison authority] that as of July 2003 there was a prison population of 58,877 of which 25,636 were on remand. The startling conclusion therefore appears to be that of the over 125,000 detentions from August 2002 to July 2003, in respect of a maximum of 25,636 people was there sufficient proof to keep them detained. It would therefore appear that over 100,000 people in 2003 were detained only to be released without any charge at all. Due to a lack of statistical information it is not known what proportion of these people were trade unionists.

During the period from August 2002 to April 2003 emergency legislation was in force which allowed the armed forces to arrest people without a judicial warrant. The Constitutional Court subsequently declared this legislation Decree of 2002 to be unconstitutional, although the Government is currently still attempting to bring into force an anti-terrorism act with similar provisions to allow the armed forces to detain people without a warrant in cases of emergency. The ICLR was told that this provision was necessary in Colombia because of the logistic difficulty in members of the armed forces communicating with judicial authorities to obtain the necessary authorisation. The Fiscalía stated that if such legislation is put into force, they would not expect the armed forces to use such powers to arrest people without warrants, at least not in the cities.

This proposed anti-terrorist legislation is being challenged in the Constitutional Court in an action brought by the Colombian Commission of Jurists. It has been subject to substantial international criticism from the United Nations High Commission of Human Rights and the United Nations Committee Against Torture amongst others as well as many NGOs.

According to statistics from CINEP and Justicia y Paz from 9th September 2003, between August 2002 and April 2003 there were 831 detentions by the armed forces without warrant. Of this number, of the 406 cases in which it was possible to establish the social sector of the person, 48 were trade unionists.

This is a similar figure to that used in the report of ENS which lists 42 arbitrary detentions by security organisms of the state for the year 2003.

Given that the Colombian Government itself apparently does not know how many arrested trade unionists are subsequently convicted, there is a potential for the use of detention, in particular without the need for a judicial warrant, as a means of harassment. This concern was raised by Amnesty International in its briefing to the 91st Session of the ILO in June 2003. This briefing also highlighted many specific cases of raids and arbitrary detentions upon trade unionists, their offices and homes.

The International Labour Organization Freedom of Association Committee has expressed on many occasions the following regarding the rights to life, personal safety and physical integrity of individuals:

"The right to life is a fundamental prerequisite for the exercise of the rights contained in Convention No. 87". (See 265th Report, Cases Nos. 1434 and 1477, para. 493.)

According to the statistics provided by the Social Protection Ministry, in 2002 120 union members were murdered in Colombia, presumably due to their union activity. In 2003, and according to the same source, the killings reported in the same risk group, amounted to 53. According to similar statistics produced by another Governmental entity, the National Defense Ministry, which are not totally consistent with the former figures, the killings were 121 in 2002 and 52 in 2003. Between January 1, 2003 and July 31, 2003, and as per the ENS data, the following figures have to be added for the same risk group: 121 death threats, 15 personal attacks, 26 detentions, 7 raids in homes and union offices. Making a total of 222 violations to the lives, physical integrity and freedom of union members.

Identifying the perpetrators

It is difficult to state conclusively the identities of the perpetrators of the crimes against trade unionists; impunity and the failure of the Colombian Government to investigate, identify and prosecute those responsible is precisely the crisis with which ICLR is concerned in the present case. Yet respected monitoring sources can provide insights into the situation.

In respect of the presumed perpetrators of killings of trade unionists in 2003 the ENS report states that of the 90 murders, 14 were attributed to paramilitaries, 2 to the guerrillas [it is not stated which group] and there was no data on 74. Reports from Amnesty International over the past few years also indicate that the majority of cases of murder of trade unionists in which a perpetrator can be identified are by paramilitaries.

Illegal armed groups: paramilitaries

Paramilitaries have been a part of the political scene in Colombia for many years in one form or another. They have a variety of roots including as private armies for drug barons and industrialists, illegal groups set up on ideological grounds specifically to combat guerrillas and legal self-defence groups set up

by the Colombian Government (i.e. – Convivir, etc). They are well armed, well funded and probably exceed 10,000 members in total.

The paramilitaries are responsible for very many human rights abuses, in particular disappearances, massacres and forced displacement of people from their lands. The paramilitaries do not abide by the Geneva Conventions.

The alleged nexus between paramilitaries and the Armed Forces continues to be disputed by the Colombian Government. The most recent report of the UN Office of Human Rights dated 17th February 2004, notes that, despite pronouncements by the Colombian Government, the UN Office of Human Rights continues to receive allegations about links between paramilitaries and the Armed Forces. Furthermore, in the clear opinion of the UNHCHR the impunity with which the paramilitaries continue to act is a sign that the Colombian Government is failing to act in an appropriate way. The report also criticises the way in which the process of negotiation between the paramilitaries and the Government fails to take into account any judicial consequences (an amnesty is planned without even a truth and reconciliation process). The report also notes that the Fiscalía had failed to act upon the recommendation of the UNHCHR in November 2003 to set up a special unit to investigate possible links between the paramilitaries and the armed forces.

The US Department of State Report for 2003 also states that:

"There continued to be credible reports that some members of the security forces co-operated with illegal paramilitaries ..." [p7]

Further comment is made at page 28 of the report:

"Contrary to the explicit directives of civilian defence authorities and members of the military high command, some members of the public security forces - principally enlisted personnel and NCOs, but also some more senior officials - collaborated with or tolerated the activities of illegal paramilitaries. Reasons for collaboration or tolerance varied from ideological sympathy and perceived operational exigencies to corruption and participation in illegal paramilitary activities such as drug trafficking. Evidence suggested that there were tacit arrangements between local military officers and paramilitary groups in some regions and some members of the security forces actively assisted paramilitary groups by passing them through roadblocks, sharing intelligence, providing them with weapons and ammunition and joining their ranks while off duty ."

The ICLR was told by the Ministry of Defence, contrary to the suggestion by the UNHCHR, that there was no policy of collusion between the security forces and paramilitaries and that this was evidenced by the increasing numbers of combat killings, detentions and warrants for arrest of paramilitaries by the armed forces. The US State Department Report for 2003 cites that the armed forces killed 346 paramilitaries in combat in 2003 compared to 187 in 2002 and that 3,166 were captured during the year (a 133% increase from 2002 [p28]). However, according to figures from the Ministry of Defence 1,042 members of the AUC have already been released pursuant to the amnesty [see above].

The Ministry of Defence's own figures for the number of captured paramilitaries increased by 175% from 1,703 to 4,698 when comparing the periods under the previous President between January 2001 and July 2002 and under President Uribe between August 2002 and February 2004. However, the numbers of guerrillas captured between the same periods also rose by 176% and in brute terms is double the number of paramilitaries arrested.

The figures for killings in combat for each group also reflect a similar trend in that 550 paramilitaries were killed from August 2002 to February 2004 compared to 2,993 guerrillas.

Illegal armed groups: guerrillas

There are currently two main guerrilla groups, FARC and the ELN. At points in history these groups have formed a common front although this is not the case at the moment. The two groups share some common aims as they are both rooted in communist ideals. Both groups have been in existence for many years and are well armed. There is very credible evidence of links between the drug trade and the guerrilla groups, in particular FARC. The total combatants for both groups is around 20,000.

Like the paramilitaries the guerrillas are also responsible for very many human rights abuses, although their pattern is distinct from that carried out by the paramilitaries. They tend to be associated with killings and kidnappings in particular and also do not abide by the Geneva Conventions. Like the AUC both guerrilla groups are listed as terrorist organisations by the USA. Furthermore, again in common with the AUC, various high ranking leaders have arrest warrants from the USA and/or requests for extradition outstanding against them.

The ICLR raised with the Fiscalía the case of the massacre on 26th April 2002 of 9 banana workers in Apartado, Antioquia, 7 of whom were members or leaders of the banana workers' union SINTRAINAGRO. The Fifth Front of FARC is suspected of being responsible. It appears that this case remains in total impunity.

State responsibility to protect human rights and investigate crimes

According to Amnesty International the Colombian government has failed to take decisive action to dismantle the army-backed paramilitary groups, responsible for the majority of human rights violations against trade unionists, and to ensure that those responsible for human rights violations against trade unionists are brought to justice.

The failure to adequately resource the protection programme, to take all measures necessary to guarantee the security of trade unionists, to ensure that full and impartial investigations into human rights violations against trade unionists are carried out, and that those responsible are brought to justice has led to a cycle of increased attacks and trade unionists and a climate of impunity.

"The rights of workers' and employers' organizations can only be exercised in a climate that is free from violence, pressure or threats of any kind against the

leaders and members of these organizations, and it is for governments to ensure that this principle is respected.
(See 291st Report, Case No. 1700, para. 310; and 294th Report, Case No. 1761, para. 726.)

"The killing, disappearance or serious injury of trade union leaders and trade unionists requires the institution of independent judicial inquiries in order to shed full light, at the earliest date, on the facts and the circumstances in which such actions occurred and in this way, to the extent possible, determine where responsibilities lie, punish the guilty parties and prevent the repetition of similar events.
(See the Digest of 1985, para. 78; and 236th Report, Case No. 1192, para. 299; 297th Report, Case No. 1629, para. 23; and 297th Report, Cases Nos. 1527, 1541 and 1598, para. 161.)

It is clear that all human rights violations of union members in Colombia are directly related with their union activities. For that reason, it is not strange that the majority of human rights violations of Colombian workers are made each time labour related conflicts are being solved or ended (i.e. - they appear during the negotiation of collective bargaining agreements, or during national or local strikes).

Consequently, the Colombian Government should make all efforts needed to guarantee the rights of workers. For example, to strengthen the coordination between the different bodies of the Government to improve the *Alerta Temprana* System (Early Alert System) and to ensure that the Protection Program for Human Rights and Union Members Defence Lawyers implemented by the Domestic Affairs Ministry actually plays an active role.

The program to protect union members should operate with the necessary coverage and effectiveness, and it should also seek to find new mechanisms to reduce risk factors affecting workers in combination with other institutions of the State.

The judiciary and legal system

"The civilian judiciary is largely independent of the executive and legislative branches; however, it is overburdened, inefficient, and subject to intimidation and corruption by terrorist groups and common criminals" [p1 US State Department Report 2003]

Though the evolution of Criminal Procedure Law has led to a gradual disappearance of the inquisitive system, the Colombian criminal process has an eminently inquisitive nature which is evidenced in the granting of wide jurisdictional powers to the Fiscalía, and to the inversion of the burden of proof which lies in the accused, a fact that is totally incompatible with the presumption of innocence advocated by all regional and global mechanisms for the protection of Human Rights.

The Colombian legislation includes a wide interpretation of the term "immediate" regarding the minimum period before which a detained individual must be

placed at the disposal of a judicial body. This period, which should not exceed 36 hours, is too long and leaves any detained individual in a very risky situation, subject to the arbitrary actions of any authorities in charge of the interrogation. It should be noted that in neighbouring countries, this period is six times shorter.

Colombian legislation does not include any prohibition, nor does it expressly provide for the annulment by operation of law, of any extra judicial interrogation or of any confession obtained using physical or psychological pressure.

The Colombian Criminal legislation, insofar as it relates with the crime figures mentioned in the Anti-terrorist Act, observes an open typification which leaves the Police and the Fiscalía the power to consider any activity, including union or any other related with any social protest, as criminal ones.

It was noted that the composition of the higher courts was to a large extent dependent upon political patronage. Article 239 of the Colombian Constitution 1991 provides in respect of the Constitutional Court that its members are voted on by the Senate. In the case of the Supreme Court the members are chosen by the Consejo Superior de la Judicatura (Supreme Council of the Judiciary) pursuant to Article 231. However, the majority of the members of the Consejo Superior de la Judicatura are themselves chosen by Congress (Article 254). Complaints were made by several of the lawyers that ICLR spoke with that none of the most senior judges in these two courts had risen from the ranks of employee or trade union lawyers. It did not appear, however, that the main lawyers' association representing employees and unions had lobbied for any particular candidates.

In respect of criminal proceedings and matters involving human rights, the Constitutional Court has shown itself willing to tackle very difficult areas - in particular in April 2003 striking down emergency security legislation passed in August 2002 by the President and making important rulings about the scope of the 'foro militar' (i.e. - court martials). At present it is considering the new anti-terrorist legislation [see below].

The US State Department Report 2003 states that:

"the suborning and intimidation of judges, prosecutors and witnesses was a serious problem. The judicial system was also extremely overburdened. The administrative chamber of the Supreme Council of the Judiciary [Consejo Superior de la Judicatura] reported that as of October the civilian judiciary - including the criminal justice system - suffered from a backlog of at least 102,000 cases. These backlogs led to large numbers of pre-trial detainees. Impunity remained the greatest challenge to the credibility of the Government's commitment to human rights." [p20]

Fiscalia

This is the Prosecution authority for Colombia. The Amnesty International briefing to the UN Committee against Torture from November 2003 states the following at page 17:

"Since July 2001 when Attorney General Luis Camilo Osorio took office, a marked hostility to human rights investigations and an on-going effort to purge the institution of officials willing to pursue these investigations has become the rule In April 2002 seven prosecutors within the Attorney General's Human Rights Unit and one member of the CTI received credible and serious threats related to their work on investigations into high profile cases of human rights violations. Attorney General Osorio failed to take any measures to protect the officials. Subsequently they filed for precautionary measures before the Inter American Commission of Human Rights. Dozens of other prosecutors have either resigned or fled Colombia since Osorio took office ..."

Human Rights Watch also published a report in November 2002 in a similar vein about the politicisation of the Fiscalía.

A number of individual cases in which the alleged perpetrators were paramilitaries and a number in which they were guerrillas were raised with the Fiscalía. However, it appears that there was no progress in any of these cases.

In a series of meetings with the ICLR, union leaders explained that many threats made against them had been reported to the Fiscalía, but that in respect of these cases nothing had been done. Specific examples were provided, such as the case of threats made to members of Sintraincalpa, a plastics union in Antioquia.

In the high profile case of the shooting of Wilson Borja, a former trade union leader and now a member of Congress, progress has been made and the members of the armed forces connected with the shooting have been detained and convicted. However, the impression was left that for less well publicised cases that there had been very little progress, regardless of who were the alleged perpetrators.

In discussion with ICLR lawyers, criminal law practitioners commented that some Fiscales had offices in the batallions themselves, and yet were being required to investigate allegations of abuse by the very same batallions.

Further complaints were made even relating to cases where judicial warrants from the Fiscalía were obtained by the armed forces prior to people being detained. ICLR interviews revealed that warrants were sometimes issued on the basis of very flimsy evidence provided by the armed forces. Although the criminal procedure did allow challenges to be made to the Fiscal's decision to charge an individual, such appeals were subject to a delay of 6-7 months during which time the accused would remain in custody. The ICLR was provided with an example of a teacher who had been buying food for her class and had therefore been accused of helping guerrillas on the basis of the volume of food she had purchased. The teacher had receipts for the food and was eventually released without charge but only after having spent many months in custody as an alleged guerrilla.

Another example raised with the ICLR mission was in respect of false testimony

from a witness who was pretending to be someone who they were not. Every witness has to provide their identification number on their statement, however, it takes up to 2 months to check such identification with the central registration authority, the Registraduria, during which time the accused is held in custody.

Lawyers

There is no one organisation to which a lawyer has to belong. The legal profession therefore tends to be extremely fragmented. Employee and trade union lawyers were frequently members of the Asociacion de Abogados Laboralistas de Trabajadores whilst employment lawyers acting for companies were members of the Colegio de Abogados Especializados en Derecho de Trabajo. The ICLR asked lawyers from both organisations whether they ever met outside of court or held any joint professional events and the answer was a clear no.

Both human rights lawyers and lawyers representing trade unionists in the civil side of employment disputes have been targeted by the perpetrators of the violence. Perhaps the best known case is that of Eduardo Umana Mendoza a founder member of the Colectivo de Abogados JAR who was murdered in April 1998, some years after he left the Colectivo. He had represented the Telecom workers in a case that they had won in the Inter American Court of Human Rights.

The Inter American Commission of Human Rights has issued "medidas cautelares" (interim equitable relief) in respect of many lawyers, including again not just lawyers working in criminal cases such as Justicia y Paz etc, but also many employment lawyers and environmental lawyers involved in disputes with multinationals over logging rights, etc (including, for example, Adriana Gonzalez, who is primarily an employment lawyer working in the coffee region).

Responsibilities of corporations and employers

The role and responsibility of employers in Colombia requires particular scrutiny. It is important, in the first instance, to recognise that at the inter-governmental level of the United Nations, a high profile initiative now exists that emphasises the responsibilities that companies bear, rather than those that are required to be enforced by nation states. The UN Global Compact sets out the standards that companies must maintain in their global operations.

The Global Compact was set up in 1999 by the United Nations as a voluntary code to which companies can subscribe. It contains 9 principles which are derived from the Universal Declaration of Human Rights, the International Labour Organisation's Declaration on Fundamental Principles and Rights at Work and the Rio Declaration on Environment and Development. The principles include:

- Businesses should support and respect the protection of internationally proclaimed human rights within their sphere of influence
- Businesses should make sure that they are not complicit in human rights abuses
- Businesses should uphold freedom of association and the effective

- recognition of the right to collective bargaining
- Businesses should eliminate all forms of forced and compulsory labour

Not one Colombian registered company has signed up to these principles, nor have most of the large multinationals operating in Colombia.

The ICLR met with lawyers from Ecopetrol, the Colombian Government oil company which is in the process of being privatised. This company operates in some of the most dangerous regions in Colombia. On entering the headquarters in Bogota there was a proliferation of posters for the petrochemical union USO. However, the ICLR notes that at the start of May 2004 the main leaders of the unions were dismissed from their jobs for taking strike action. This effectively would have prevented them from continuing their roles in the union. This dismissal came almost immediately after the head of USO, Hernando Hernandez, had been released from custody after 14 months, having been acquitted of terrorism charges [see above].

The ICLR asked Ecopetrol about the protection given to its employees who are frequently exposed to extreme danger and some of whom have been killed. Ecopetrol explained that it had set up a human rights commission with USO which provided armoured cars and guards for union members who were being threatened. This appeared to be a part of the Colombian government's trade union protection scheme.

The ICLR was disappointed to note the refusal by Ecopetrol to accept that union members in particular were more likely to be targeted than were other employees, despite being told that the Fiscalia accepts that this is the case.

The issue of corporate responsibility is especially relevant where the employer is the state, as it will or should know, better than any other employer, of the risks posed in particular regions. In this regard it is especially worrying that teachers in the Antioquia region who have been threatened by either paramilitaries or guerrillas are being sacked by their employers, presumably emanations of the state, for refusing to return to the same regions to work.

Of particular concern was the visit to the hunger strike being carried out by members of Sinaltrainal at the Coca Cola plant in Bogota as the ICLR were told that participants in this and associated strikes throughout Colombia had been subject to paramilitary threats. The ICLR were shown a copy of a written threat from the AUC stating that all trade unionists were guerrillas received by workers at the plant in Palmira in mid March 2004. The ICLR was also told of telephone threats to members of the union at the Barranquilla plant and at the Cali plant following the start of the strike. All of these threats had been reported to the Fiscalia but it is not known what, if any, action has been taken in relation to them.

ICLR observed a very high level of dispute between workers and Coca Cola. Allegations have been made in the USA against the company for alleged links with paramilitaries pursuant to the Alien Tort Claims Act (although there has not as of yet been a trial of the substantive issue). These allegations include

attempts to kidnap various family members of leaders of Sinaltrainal as well as 19 murders of their members in the last 18 years.

Many of the trade unions, in particular those connected with mining and the extraction industries were very well organised and sophisticated with links to many international organisations and campaigns. Some of them had legal proceedings in the USA, for example against the mining company Drummond.

CONCLUSIONS

After a careful revision of the information collected, the ICLR draws the following general conclusions:

As the Colombian Government fails to guarantee the full enjoyment and protection of fundamental rights, the conditions required for the full exercise of Trade Union Freedom do not exist, and accordingly, there is a constant direct and indirect violation of Conventions 87, 98 and 154 by the Colombian Government.

The situation in which trade unionists find themselves in is extremely concerning as whilst the Colombian Government accepts that they are being targeted, the virtual total impunity in which the cases of murder remain means that there is no real deterrent for the perpetrators of the killings.

The sad reality is that it is probably quicker, cheaper and less risky to murder trade unionists involved in an employment dispute than it is to use the civil procedures laid down for the resolution of such disputes by arbitration or litigation.

The ICLR would therefore suggest the following:

I. ILO:

- (i) Conduct a thorough and detailed investigation all of the cases in which trade unionists have been killed and a consideration of why each case has remained in impunity, to the extent that that is the case. A proper analysis needs to be carried out of the background circumstances of each case, identifying the nature of the employment dispute with which they were involved;
- (ii) Conduct a thorough investigation of the relationship between the number of trade unionists detained and the number who are subsequently convicted;
- (iii) Ensure that the Colombian Government complies in full with all ILO Conventions to try at least to minimise the possible sources of conflict between employees and employers.

II. Colombian Government:

- (i) More resources should be devoted to the protection of trade unionists and their lawyers;
- (ii) More resources should be devoted to the protection of Fiscales, Judges and witnesses;
- (iii) There should be an impartial investigation into the very serious

- allegations that the Fiscalía has been politicised;
- (iv) As suggested by the UNHCHR, a unit should be set up in the Fiscalía to investigate possible links between the armed forces and paramilitaries;
 - (v) There should be no amnesty for any individuals alleged to have committed breaches of human rights or international humanitarian law. To the extent that criminal proceedings are not brought, a Truth and Reconciliation Committee should be held;
 - (vi) The relationship between detentions, both with and without judicial warrant, and convictions in all cases [but particularly those of trade unionists] needs to be examined in detail;
 - (vii) The new anti-terrorism legislation needs to be reconsidered in the light of the very many serious concerns expressed by the international community, including the United Nations;
 - (viii) There needs to be more clarity in the statistics from the Colombian Government as to violations of human rights against trade unionists especially to explain why they do not accept that many cases should be categorised as such;
 - (ix) A clear message needs to be sent from the Colombian Government, in particular from the armed forces, that trade unions are not equivalent to guerrillas and that they have the right to exist and to make their views heard;
 - (x) Legislation needs to be passed to ensure that the Colombian Government is complying in full with the ILO Conventions;
 - (xi) More resources need to be directed towards the functioning of employment courts, including the funding of representation of workers, such that they become a more viable, more certain and more speedy means of resolving labour disputes;

III. Trade Unions:

- (i) One data base should be set up of all human rights' abuses from all sources;
- (ii) All unions need to ensure that regardless of their feelings that the policing is disproportionate, that their demonstrations are carried out in a peaceful manner at all times;

IV. Guerrillas and Paramilitaries:

- (i) All groups should abide by the very minimal standards set out in international humanitarian law, in particular the Geneva Conventions.

V. Corporations:

- (i) All corporations should abide by the very minimal standards set out in the UN Global Compact and the ILO Tripartite Declaration;
- (ii) All corporations should acknowledge that employees working in certain regions are in danger and should provide appropriate practical protection, including allowing them to move to other regions if necessary;
- (iii) All corporations should publicly acknowledge that trade unionists are more at risk than their other employees and should take

appropriate steps to ensure their safety;

VI. Lawyers:

- (i) There should be one central body to which all lawyers belong as a way of establishing links and solidarity in the profession;
- (ii) All employment lawyers representing both employees and employers and the two specialist professional bodies (i.e. - the Asociacion de Abogados Laboralistas de Trabajadores and the Colegio de Abogados Especializados en Derecho de Trabajo) should publicly condemn all violence against anyone involved in any employment dispute, be they trade unionists, employees, employers, lawyers or judges;

In spite of the situation prevailing in Colombia, which is briefly described in this present report, the members of the Mission want to point out that their safety was never at stake during this visit to Colombia, and that the interviewed authorities, though sometimes avoiding to answer some key questions, always treated them kindly and with respect.

Nevertheless, the mission participants considered that there were grounds to believe that they were followed during their mission because, on different grounds, when leaving the country all three were detained for a long time only to be released with just enough time to board the flights.

Credits:

The ICLR visit was hosted in Colombia by the Colectivo de Abogados Jose Alvear Restrepo, a lawyers' collective involved in human rights, who are based in Bogota.

Appendices:

The reports of the three mission participants constitute the ICLR report in full and should be read together in order for a full and more detailed picture of the situation affecting labour rights, violations against trade unionists and impunity in Colombia.

