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**U.S. DEPARTMENT OF LABOR**  
**Bureau of International Labor Affairs**

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**Colombia**  
**Labor Rights Report**

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## I. Introduction

This report on labor rights in Colombia has been prepared pursuant to section 2102(c)(8) of the Trade Act of 2002 (“Trade Act”) (Pub. L. No. 107-210). Section 2102(c)(8) provides that the President shall:

[i]n connection with any trade negotiations entered into under this Act, submit to the Committee of Ways and Means of the House of Representatives and the Committee on Finance of the Senate a meaningful labor rights report of the country, or countries, with respect to which the President is negotiating.

The President, by Executive Order 13277 (67 Fed. Reg. 70305 (Nov. 21, 2002)), assigned his responsibilities under section 2102(c)(8) of the Trade Act to the Secretary of Labor and provided that they be carried out in consultation with the Secretary of State and the U.S. Trade Representative. The Secretary of Labor subsequently provided that such responsibilities would be carried out by the Secretary of State, the U.S. Trade Representative, and the Secretary of Labor (67 Fed. Reg. 77812 (Dec. 19, 2002)).

The report first describes Colombia’s national legal framework. It describes the administration of labor law, labor institutions, and the system of labor justice. With regard to each of the covered labor rights, the report describes the relevant legal framework (national laws and international conventions) and practices. In addition, this report concludes with a section on violence against trade unionists because of the unique and much discussed nature of this issue in the Colombian context. A companion report mandated by section 2102(c)(9) of the Trade Act provides additional information on the extent to which Colombia has in effect laws governing exploitative child labor.

The report relies on information obtained from U.S. Department of State reports, the U.S. Embassy in Bogota, Colombia, and from other U.S. Government reports. It also relies upon a wide variety of reports and materials originating from Colombia, international organizations, and non-governmental organizations (NGOs). In addition, the report draws on consultations held in Colombia by U.S. Department of Labor (USDOL) officials and a U.S. interagency team with Colombian government officials, representatives of worker and employer organizations, and NGOs.<sup>1</sup> The report also makes use of information submitted in response to the U.S. Department of Labor’s request for public comment published in the *Federal Register* on June 23, 2004.<sup>2</sup>

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<sup>1</sup> These consultations were held in Colombia on May 19-20, 2004. Section 2102(c)(7) of the Trade Act requires the Secretary of Labor to consult with any country seeking a trade agreement with the United States concerning that country’s labor laws and provide technical assistance if needed. In addition to the initial formal consultations, there were additional meetings and exchanges during and subsequent to the negotiation of the United States-Colombia Trade Promotion Agreement, over the period of May 2004 through December 2007.

<sup>2</sup> U.S. Department of Labor, “Request for Information Concerning Labor Rights in Bolivia, Colombia, Ecuador, and Peru and Their Laws Governing Exploitative Child Labor,” 69 Fed. Reg. 35063 (June 23, 2004). The Department received comments from the American Federation of Labor and Congress of Industrial Organizations (AFL-CIO) in response to this notice.

## II. Labor Rights

This report examines the labor rights situation in Colombia. The labor rights taken into consideration are those identified as internationally recognized labor rights in the definition of “labor law” under Chapter 17 of the *United States-Colombia Trade Promotion Agreement*.<sup>3</sup> They are:

- freedom of association;
- the effective recognition of the right to collective bargaining;
- the elimination of all forms of forced or compulsory labor;
- the effective abolition of child labor, a prohibition on the worst forms of child labor, and other labor protections for children and minors;
- the elimination of discrimination in respect of employment and occupation; and
- acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health.

## III. Legal Framework for Labor Rights

Labor rights in Colombia are set forth in its Constitution, the Substantive Labor Code, the Procedural Code of Labor and Social Security, sector-specific legislation, and ratified international conventions, which are incorporated into national legislation. All labor laws apply to the country’s 15 export processing zones, for which there are no additional laws or exemptions.<sup>4</sup> Colombia’s Constitution guarantees freedom of association and provides for collective bargaining and the right to strike. It also addresses forced labor, trafficking, discrimination, protections for women and children in the workplace, minimum wages, working hours, skills training, and social security.<sup>5</sup>

Colombia’s Substantive Labor Code of 1950, as amended through 2006, governs specific labor and employment issues, including:

- Conditions of employment and work, employment contracts, and employment termination and dismissal;

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<sup>3</sup> *United States-Colombia Trade Promotion Agreement*, Article 17.8; available from [http://www.ustr.gov/assets/Trade\\_Agreements/Bilateral/Colombia\\_FTA/Final\\_Text/asset\\_upload\\_file993\\_10146.pdf](http://www.ustr.gov/assets/Trade_Agreements/Bilateral/Colombia_FTA/Final_Text/asset_upload_file993_10146.pdf).

<sup>4</sup> U.S. Department of State, *Country Reports on Human Rights Practices 2005 - Colombia*, Section 6b, Washington, D.C., March 8, 2006; available from <http://www.state.gov/g/drl/rls/hrrpt/2005/61721.htm>.

<sup>5</sup> In Colombia, social security includes matters related to pensions, health benefits, and workers’ compensation. *Constitución Política de la República de Colombia de 1991 (con reformas hasta 2005)*, Articles 13, 17, 38, 39, 43, 44, and 53-56; available from <http://pdba.georgetown.edu/Constitutions/Colombia/col91.html>. See also Government of Colombia, *Ley de la Seguridad Social Integral, Ley No. 100 (1993)*, Article 8; available from <http://www.fasecolda.com/docs/CtRiePro/NorVig/leyes/Ley%20100%20de%201993.pdf>.

- Equitable treatment and protection of workers with respect to employment and wages;
- The regulation of employment for all workers, whether they are Colombian nationals or foreigners;
- Terms of employment and wages, including minimum wages; minimum age for employment; maternity protection; hours of work and overtime; paid leave, annual leave and holiday leave; policies for special categories of workers; and occupational safety and health protections;
- Trade union affairs and the right to strike; and
- Freedom of association, collective bargaining and the settlement of collective labor disputes, including mediation and arbitration.<sup>6</sup>

The Procedural Code of Labor and Social Security of 1948, as amended through 2001, regulates labor court procedures, including participation in conciliation and arbitration efforts between employers and employees or their representatives, and special procedures concerning protection from dismissal for trade union officials (*fuero sindical*<sup>7</sup>) and the issuance of work permits for minors.<sup>8</sup>

Colombia has ratified all eight of the International Labor Organization's (ILO) fundamental conventions.<sup>9</sup>

#### **IV. Administration of Labor Law**

##### **A. The Ministry of Social Protection**

Pursuant to Law 790 of 2002, Colombian President Alvaro Uribe merged the Ministry of Labor and Social Security (*Ministerio de Trabajo y Seguridad Social*) and the Ministry of Health (*Ministerio de Salud*) in 2003 to form the Ministry of Social Protection (*Ministerio de la Protección Social*, MPS).<sup>10</sup> The MPS is the lead government agency on labor issues and

<sup>6</sup> Government of Colombia, *Código Sustantivo del Trabajo* (as amended through 2005); available from [http://www.secretariassenado.gov.co/leyes/C\\_SUSTRA.HTM](http://www.secretariassenado.gov.co/leyes/C_SUSTRA.HTM).

<sup>7</sup> *Fuero sindical* is defined as “the guarantee that some workers enjoy of not being dismissed, nor having their working conditions deteriorate, nor being transferred to other establishments of the same enterprise or to a different town without just cause, as previously determined by a labor judge.” See *Código Sustantivo del Trabajo*, Article 405.

<sup>8</sup> Government of Colombia, *Código Procesal del Trabajo y de la Seguridad Social, Decreto-Ley 2158 of 1948*, (as amended through 2001); available from [http://www.secretariassenado.gov.co/leyes/C\\_PLABOR.HTM](http://www.secretariassenado.gov.co/leyes/C_PLABOR.HTM).

<sup>9</sup> ILO, *Ratifications by Country*, in ILOLEX, [online database] [cited August 15, 2006]; available from <http://www.ilo.org/ilolex/english/newratframeE.htm>. The eight fundamental conventions of the ILO are Convention No. 29 on Forced Labor, Convention No. 87 on Freedom of Association and Protection of the Right to Organize, Convention No. 98 on the Right to Organize and Collective Bargaining, Convention No. 100 on Equal Remuneration, Convention No. 105 on Abolition of Forced Labor, Convention No. 111 on Discrimination in Employment and Occupation, Convention No. 138 on Minimum Age, and Convention No. 182 on the Worst Forms of Child Labor.

<sup>10</sup> Government of Colombia, *Decreto 205 de 2003*, as published in the *Diario Oficial*, no. 45,086, February 3, 2003. See also Government of Colombia, *Por la cual se expiden disposiciones para adelantar el programa de renovación de la administración pública y se otorgan unas facultades extraordinarias al Presidente de la República. Ley 790 de*

coordinates the national health care system, the national pension system and retirement assistance programs, the national human resources directorate, the national apprenticeship service, family assistance funds, and the Colombian Family Welfare Institute (*Instituto Colombiano de Bienestar Familiar*, ICBF).<sup>11</sup> With respect to labor, the MPS is responsible for the development, direction, and coordination of labor and employment policies and for overseeing compliance with labor and employment law in both the public and private sectors.<sup>12</sup> The Vice-Minister for Labor Affairs (*Viceministro de Relaciones Laborales*) oversees three divisions that are responsible for policy development and implementation of labor legislation in the area of labor relations:

- The General Directorate for Labor Protection (*Dirección General de Protección Laboral*) is responsible for establishing regulations and procedures to guarantee the rights of workers, including for working children, women, rural workers, and other groups that require special protection. It also proposes policies and strategies that aim to encourage productivity and better working conditions. In addition, the Directorate seeks to: promote compliance with labor laws; develop government policies with respect to individual and collective labor rights; establish plans and programs that assist in the creation, development, and strengthening of trade unions; encourage collective bargaining; and promote policies that contribute to mediation, conciliation, arbitration, and effective resolution of labor disputes.<sup>13</sup>
- The General Directorate for Employment Promotion (*Dirección General de Promoción de Trabajo*) develops and oversees programs that deal with employment creation, skills development, protections for the unemployed, migration issues, and labor market research.<sup>14</sup>
- The Labor Inspectorate (*Unidad Especial de Inspección, Vigilancia y Control de Trabajo*) enforces Colombia's labor, employment, and social security laws. It is responsible for the registration of trade unions and advises and participates in mediation, conciliation, and arbitration efforts to resolve labor disputes. The Inspectorate also oversees national and regional disability claims boards, as well as a national service organization for the prevention of workplace accidents and illnesses.<sup>15</sup> It is comprised of two specialized offices at the national level and 32 regional offices. At the end of December 2006, the Inspectorate employed 274 inspectors (out of a possible 289 budgeted posts). It conducted 29,267 administrative investigations, sanctioned 2,904 businesses and imposed fines of approximately 7.3 billion pesos (USD 3.7 million). In 2005, the Inspectorate

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2002, as published in the *Diario Oficial*, no. 45.046 (December 27, 2002), Article 5; available from <http://www.dafp.gov.co/leyes/L0790002.HTM>.

<sup>11</sup> U.S. Embassy- Bogota, *reporting*, December 20, 2004.

<sup>12</sup> *Decreto 205 de 2003*, Articles 1, 12, 13, and 15.

<sup>13</sup> *Ibid.*, Article 27.

<sup>14</sup> *Ibid.*, Article 28.

<sup>15</sup> *Ibid.*, Article 29.

employed 289 inspectors, conducted 20,932 investigations, sanctioned 4,585 businesses and imposed fines totaling 7.7 billion pesos (USD 3.9 million).<sup>16</sup>

## **B. The Labor Court System**

Cases regarding labor disputes can be initiated at lower courts, either in a Labor Circuit Court (*Juzgado Laboral del Circuito*) or a Civil Circuit Court (*Juzgado Civil del Circuito*) if there is no labor circuit court in the area.<sup>17</sup> In 2006, there were 160 judges for these Labor Circuit Courts, which resolved 52,733 labor cases.<sup>18</sup> In 2005, Colombia had 158 labor circuit court judges located in 31 judicial districts. Twenty labor circuit courts are located in Bogota, 13 in Medellin, 12 in Cali, nine in Barranquilla, and eight in Cartagena de Indias.<sup>19</sup> Cases involving human rights violations – including those affecting trade unionists – are handled by civil courts.

If both parties consent, labor disputes, including disagreements on the terms of collective bargaining agreements may be submitted to arbitration panels (*tribunales de arbitraje*). Parties to the arbitration may select one or more arbitrators. If the parties have not previously agreed on a selection process, each party will select one arbitrator, with a third member to be selected by the two other arbitrators. If no agreement can be reached on a third member within 24 hours, the regional labor inspector, or the mayor in his/her absence, serves in that position.<sup>20</sup>

Labor Courts of the Superior District Courts (*Salas Laborales de los Tribunales Superiores de Distrito Judicial*) may hear appeals of rulings issued by labor courts of first instance, including civil circuit courts, related to the Procedural Code of Labor and Social Security. These courts also have jurisdiction over cases involving appeals to annul jurisdictional rulings of arbitral tribunals, complaints that parties have been denied recourse to an appeal or annulment, appeals to review sentences rendered by labor circuit court judges, and jurisdictional conflicts involving the same judicial district.<sup>21</sup> In 2006, there were 88 magistrates for these labor courts, which resolved 24,959 cases.<sup>22</sup>

The Labor Cassation Court (*Sala de Casación Laboral*) of the Supreme Court may annul or reverse lower court decisions, including decisions of the Labor Courts of the Superior District Courts. Specifically, it may annul arbitral tribunal decisions concerning collective disputes of an economic nature, hear appeals that are not in the purview of the Superior District Courts, review decisions that deny parties the right to seek an annulment or reversal of a lower court decision, and handle jurisdictional conflicts between different courts and tribunals in different districts.<sup>23</sup>

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<sup>16</sup> MPS, “*Citación e información necesaria para el informe sobre Derecho Laboral en Colombia*” (Email communication attachment, September 21, 2007, U.S. Embassy-Bogota), 1, 3, 5. As of January 29, 2008, 1000 Colombian Pesos = USD 0.51. Currency conversion made at <http://www.xe.com/ucc/convert.cgi>.

<sup>17</sup> *Código Procesal del Trabajo y de la Seguridad Social*, Articles 7-9 and 11-13.

<sup>18</sup> MPS, written communication to U.S. Embassy-Bogota in response to USDOL request for updated information (Email communication attachment, May 3, 2007, U.S. Embassy-Bogota), 21.

<sup>19</sup> Consejo Superior de la Judicatura, *Directorio de Despachos Judiciales*, [online] [cited April 5, 2005]; available from [http://www.ramajudicial.gov.co/esj\\_portal/jsp/mapa/directorio3.jsp](http://www.ramajudicial.gov.co/esj_portal/jsp/mapa/directorio3.jsp).

<sup>20</sup> *Código Procesal del Trabajo y de la Seguridad Social*, Articles 130 and 132.

<sup>21</sup> *Ibid.*, Article 15(B).

<sup>22</sup> MPS, written communication to U.S. Embassy-Bogota in response to USDOL request for updated information, May 3, 2007, 21-22.

<sup>23</sup> *Código Procesal del Trabajo y de la Seguridad Social*, Article 15(A).

Institutions of labor administration and labor courts cover workers in the formal economy. They may not cover workers in the informal economy. Activities may fall outside of the formal economy because they are not subject to any or all of the following types of regulation, or because of evasion of such regulation: regulations governing the establishment and operation of businesses (including tax laws); regulations and laws concerning property rights; and labor legislation and regulation covering employment relationships and the rights of workers.<sup>24</sup> Because of their unregulated nature, the extent of “informal economy” activities and the associated labor force are hard to measure precisely or consistently. As a result, proxy measures such as small firm size, self-employment status, or both, are typically used to estimate the size of the informal economy, under the assumption that firms and people in these statuses are either exempt or most unlikely to comply with law and regulation. A number of sources estimate that 60 percent of the Colombian labor force is part of the informal economy.<sup>25</sup>

## V. Labor Rights and Their Application

### A. Freedom of Association

#### 1. Trade Unions

Colombia ratified ILO Convention No. 11 on the Right of Association in Agriculture on June 20, 1933 and Convention No. 87 on Freedom of Association and Protection of the Right to Organize on November 16, 1976.<sup>26</sup>

The Constitution and Substantive Labor Code of Colombia guarantee the right of freedom of association and the right to organize trade unions without prior authorization or government intervention. The Constitution of Colombia states that a new union will be legally recognized upon basic registration of the union’s constituting documents.<sup>27</sup> In 2000, the Labor Code was amended to require that a new union be registered with the MPS before it can legally function and exercise its rights.<sup>28</sup> With the exception of the police and armed forces, all employees over the age of 14 in Colombia have the right to form or join trade unions.<sup>29</sup> Employers are prohibited from dismissing, suspending, or modifying the working conditions of union personnel for the purpose of preventing the exercise of freedom of association.<sup>30</sup>

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<sup>24</sup> International Labor Conference, *Decent Work and the Informal Economy*, 2002, 27; available from <http://www.ilo.org/public/english/standards/reim/ilc/ilc90/pdf/rep-vi.pdf>. See also Norman V. Loayza, *The Economics of the Informal Sector: A Simple Model and Some Empirical Evidence from Latin America*, Washington, D.C.: World Bank, 1996; available from <http://www.worldbank.org/html/dec/Publications/Workpapers/WPS1700series/wps1727/wps1727.pdf>.

<sup>25</sup> Guillermo Perry et. al., *Informality, Exit and Exclusion*, Washington, D.C.: World Bank, 2007, 29; available from <http://web.worldbank.org/WBSITE/EXTERNAL/COUNTRIES/LACEXT/0,,contentMDK:21345369~pagePK:146736~piPK:146830~theSitePK:258554,00.htmlU.S>. See also ILO, *Key Indicators of the Labor Market*, 5th edition, 2007, Geneva, KILM 7; available from <http://www.ilo.org/public/english/employment/strat/kilm/download/kilm07.pdf>.

<sup>26</sup> ILO, *Ratifications by Country*.

<sup>27</sup> *Constitución Política de la República de Colombia*, Articles 38-39. See also *Código Sustantivo del Trabajo*, Articles 12 and 353.

<sup>28</sup> *Código Sustantivo del Trabajo*, Article 372.

<sup>29</sup> *Ibid.*, Articles 1, 5, 22, 383 and 414. See also *Constitución Política de la República de Colombia*, Article 38.

<sup>30</sup> *Código Sustantivo del Trabajo*, Article 354(2)(d).



There are four types of unions in Colombia:

- a company-level union formed by workers of varying professions, trades, or specialties in the same company;
- an industry union or a branch of activity union formed by workers in the same industry or branch of economic activity;
- a craft union formed by workers of the same profession, trade, or specialty; and
- a union of varying trades established by workers that are involved in diverse, dissimilar, or unconnected professions. Such a union may only be established when the number of workers of the same activity, profession, or trade does not reach the legal minimum to form a craft union.<sup>31</sup>

A minimum of 25 workers is required to establish or maintain a trade union.<sup>32</sup> After workers in an assembly approve the establishment of the union, a trade union is to communicate its creation in writing to the employer and the Labor Inspectorate.<sup>33</sup> A new trade union must request registration with the MPS within five days of the founding assembly. To register, the trade union must present a written registration application; a copy of the constituting documents; a copy of the proceedings electing a group of union leaders known as the Executive Board; a copy of the minutes of the assembly that approved the union's internal rules; a copy of the rules authenticated by the Secretary of the Executive Board; and copies of payroll information for the Executive Board and affiliated staff and their identification documents.<sup>34</sup> The MPS has a maximum of 15 days after receiving the registration application to approve, deny, or request corrections. If corrections are required, the MPS has ten days after receiving the corrected application to make a final decision. If the MPS fails to deny, to request changes to the application, or to otherwise approve the registration, the Labor Code states that the union is to be automatically entered into the registry.<sup>35</sup> The Labor Code provides that registration may be denied if the union's internal rules are contrary to the Constitution or federal labor law, or if the trade union does not meet the minimum membership requirement. An MPS official who fails to follow the proper procedures for reviewing a registration request is subject to punishment according to the pertinent disciplinary code.<sup>36</sup> Ten days after a union is registered, notice of the registration should be published in a national publication (which in practice has been the *Diario Oficial de Colombia*).<sup>37</sup> Unions must notify MPS of any changes they make to the internal rules

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<sup>31</sup> Ibid., Article 356.

<sup>32</sup> Ibid., Article 359.

<sup>33</sup> Ibid., Article 363. The Code notes (as a comment) that the communication to the MPS and the employer is a formality that must be undertaken at a convenient time. Failure to issue such communication shall not invalidate the union's establishment nor impede its registration.

<sup>34</sup> *Código Sustantivo del Trabajo*, Article 365.

<sup>35</sup> Ibid., Article 366. In response to complaints about slow processing, MPS issued Resolution 1651 of 2007, which directs MPS officials to expedite the processing of union registrations by reducing the time period for processing a union's registration request from 15 days to five days. It also specifies the bases on which MPS officials are to approve, deny or request corrections from the union. See MPS, *Resolución No. 1651 de 2007* (May 24, 2007); available from

<http://www.minproteccionsocial.gov.co/vbecontent/library/documents/DocNewsNo16096DocumentNo4059.PDF>.

<sup>36</sup> *Código Sustantivo del Trabajo*, Article 366.

<sup>37</sup> Ibid., Articles 367 and 368.

or Board membership. Changes to the internal rules shall be subject to review based on the same considerations for approval of initial union registration.<sup>38</sup>

There is a vast degree of discrepancy and inconsistent availability across sources of data on unions.<sup>39</sup> The National Labor College (*Escuela Nacional Sindical*, ENS)<sup>40</sup> reports that in 2006 there were 2,803 unions; by industrial sector: 53 percent of which were in trades, 37 percent in business, and 10 percent in industry. For 2005, ENS figures were nearly identical.<sup>41</sup> But according to the MPS, in 2005 there were about 6,000 registered unions, 49 percent of which were in trades, 39 percent in business, and nine percent in industry.<sup>42</sup>

The MPS reports that it registered 74 new unions in 2007. In 2006, it registered 72 new unions, and in 2005 it registered 84 new unions.<sup>43</sup> The ENS states that based on data compiled from the *Diario Oficial de Colombia*, recent years have resulted in the fewest number of new union registrations and respective new members. According to the ENS, MPS only registered 10 new unions in 2006 and 14 new unions in 2005.<sup>44</sup>

For 2007, the U.S. Department of State reports that there were 742,000 union members, which is roughly four percent of the 18.2 million members of the workforce.<sup>45</sup> According to the ENS in 2006 there were 818,507 union members.<sup>46</sup> In 2005, there were 846,579 union members.<sup>47</sup> Of these, 55 percent were employed by government and 44 percent by private business.<sup>48</sup>

According to the U.S. Department of State, in practice the union registration process has historically been slow and occasionally takes years before the MPS officially recognizes a union; unions have claimed that the process is used to block union registration in the cut flower sector

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<sup>38</sup> Ibid., Articles 369-371.

<sup>39</sup> Throughout this report, discrepancies are noted across sources in the reporting of certain statistics. When USDOL has obtained an explanation for those discrepancies, that explanation is reported as well.

<sup>40</sup> ENS is a Medellin-based NGO that studies organized labor in Colombia.

<sup>41</sup> ENS, *Afiliación Sindical* (Email communication attachment, November 23, 2007, U.S. Embassy-Bogota). See also Colombian Trade Union Federations (CUT, CGT and CTC) and the Confederation of Pensioners of Colombia (CPC), *Labor Rights and Freedom of Association in Colombia*, Bogotá: October 2007, 82; available from <http://www.cut.org.co/dmdocuments/derechoslaboralesLIBROINGLES.pdf>.

<sup>42</sup> MPS, written communication to U.S. Embassy-Bogota in response to USDOL request for updated information, 2006, 6-7. More complete data from the MPS and ENS were not provided.

<sup>43</sup> MPS, written communication to U.S. Embassy-Bogota in response to USDOL request for updated information, (Email communication attachment, February 20, 2008, U.S. Embassy-Bogota), 1.

<sup>44</sup> ENS, *Respuestas a preguntas sobre sindicalización y contratación colectiva*, (Email communication attachment, February 21, 2008, U.S. Embassy-Bogota), 1. The ENS states that it has not received from the MPS full year new union registration data for 2007. Neither ENS nor MPS provided an explanation for the discrepancy in the numbers reported by each source for each year.

<sup>45</sup> U.S. Department of State, *Country Reports on Human Rights Practices 2007 - Colombia*, Section 6b, Washington, D.C., March 11, 2008; available from <http://www.state.gov/g/drl/rls/hrrpt/2007/100633.htm>.

<sup>46</sup> *Afiliación Sindical*.

<sup>47</sup> ENS, written communication to U.S. Embassy-Bogota, *Información Colombia 2005-2006*, May 2, 2007, 1. The data cited in this document was collected by ENS from its annual 2005 Union Census and the MPS. See also U.S. Department of State, *Country Reports on Human Rights Practices 2006- Colombia*, Section 6a, Washington, D.C., March 6, 2007; available from <http://www.state.gov/g/drl/rls/hrrpt/2006/78885.htm>.

<sup>48</sup> The economic sectors in which most union members were working included: education (30 percent); public administration, defense, and obligatory social security (12 percent); industrial manufacturing (12 percent); and social services and health (10 percent). See *Información Colombia 2005-2006*, 1.

in particular.<sup>49</sup> The Colombian Government has stated that there is no difficulty in establishing trade unions in Colombia and that denial of registration may be appealed through the courts. The ENS reports that in 2007, the MPS denied 23 applications for union registration, 109 in 2006, 60 in 2005, and 45 in 2004.<sup>50</sup> In 2005, MPS reports that it did not authorize 68 applications for union registration compared to 33 in 2004.<sup>51</sup> The World Confederation of Labor (WCL)<sup>52</sup> and other unions asserted to the ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR) that in practice employers oppose union registrations and that the Government subsequently rejects registrations.<sup>53</sup> In 2006, the CEACR noted that there were a high number of seemingly arbitrary rejections of applications to register new unions, union rules, and Executive Committees (Boards). The CEACR requested that the Government not use discretion outside of established legislation to refuse the registration of trade unions.<sup>54</sup>

A trade union has the right to freely draw up its union rules and regulations.<sup>55</sup> Any modifications to union rules must be approved by the general assembly of the trade union and sent to the MPS within five days following the date of approval, along with a copy of the minutes of the meeting in which the reforms were introduced and signed by those present.<sup>56</sup> No modifications to union rules are valid until they are approved by the MPS.<sup>57</sup>

All individual union members are eligible to be elected to the Executive Board of the trade union, but under no circumstance may the Executive Board consist of a majority of foreign workers.<sup>58</sup> The election of the Executive Board must be by written, secret ballot.<sup>59</sup> A trade union must notify the employer and the MPS through a labor inspector of any change to its Executive Board.<sup>60</sup>

Trade unions have the right to form local, regional, professional, or industrial federations and confederations. Except for being prohibited from declaring strikes, federations and confederations in Colombia have the same rights as trade unions.<sup>61</sup>

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<sup>49</sup> U.S. Department of State, "Country Reports - 2007: Colombia," Section 6a. See also U.S. Department of State, *Country Reports on Human Rights Practices 2004 - Colombia*, Section 6a, Washington, D.C., February 28, 2005; available from <http://www.state.gov/g/drl/rls/hrrpt/2004/41754.htm>.

<sup>50</sup> "Respuestas a preguntas sobre sindicalización y contratación colectiva," February 21, 2008, 2.

<sup>51</sup> MPS, written communication to U.S. Embassy-Bogota in response to USDOL request for updated information, 2006, 5. See also *Información Colombia 2005-2006*, 5.

<sup>52</sup> The WCL is an international confederation of democratic trade unions, with unions from over 100 countries represented. The Colombian General Confederation of Labor (*Confederación General de Trabajo*, CGT) is a member of the WCL. See WCL, *What is the WCL?* [online] [cited February 19, 2008]; available from [http://www.cmt-wcl.org/cmt/ewcm.nsf/\\_/029786116316424EC1256F0400387237?opendocument](http://www.cmt-wcl.org/cmt/ewcm.nsf/_/029786116316424EC1256F0400387237?opendocument).

<sup>53</sup> International Labor Conference, *2005 Report of the CEACR*, 51; available from <http://www.ilo.org/public/english/standards/reim/ilc/ilc93/pdf/rep-iii-1a.pdf>. See also International Labor Conference, *2006 Report of the CEACR*, 70; available from <http://www.ilo.org/public/english/standards/reim/ilc/ilc95/pdf/rep-iii-1a.pdf>.

<sup>54</sup> International Labor Conference, *2006 Report of the CEACR*, 72-73.

<sup>55</sup> *Código Sustantivo del Trabajo*, Article 362.

<sup>56</sup> *Ibid.*, Article 369.

<sup>57</sup> *Ibid.*, Article 370.

<sup>58</sup> *Ibid.*, Article 388.

<sup>59</sup> *Ibid.*, Article 391.

<sup>60</sup> *Ibid.*, Article 371.

<sup>61</sup> *Ibid.*, Article 417.

The MPS reports that in 2007, it registered 23 Executive Committees of federations; in 2006, it registered 26; and in 2005 it registered 27.<sup>62</sup> The ENS reports that in 2005 the MPS denied nine applications from federations for the registration of their Executive Committees.<sup>63</sup>

Colombia has three labor confederations. As of 2006:

- The United Workers Central (*Central Unitaria de Trabajadores*) represents some 533,128 members.<sup>64</sup> Its 704 unions are grouped into roughly 17 industry-specific organizations.<sup>65</sup>
- The General Confederation of Labor (*Confederación General de Trabajo*, CGT) consists of about 115,968 members with 498 unions.<sup>66</sup>
- The Confederation of Colombian Workers (*Confederación de Trabajadores de Colombia*) represents about 46,305 members with 171 unions.<sup>67</sup>

As noted by the U.S. State Department, violence against Colombian trade unionists continued to be a problem in 2007.<sup>68</sup> Both the ILO CEACR and the ILO Committee on Freedom of Association (CFA) have emphasized to the Government of Colombia that workers' and employers' organizations can only exercise their activities freely and effectively in a climate free of violence, and have urged the Government to guarantee the right to life and security.<sup>69</sup> See Section VI of this report for more on this topic.

## 2. Right to Strike

Colombia's Constitution guarantees workers the right to strike, except for workers in essential public services. The Substantive Labor Code also protects workers' right to strike, but prohibits strikes in public services.<sup>70</sup>

Before declaring a strike, workers must attempt to negotiate an agreement directly with the employer or they may submit the dispute to an arbitration tribunal.<sup>71</sup> A valid decision to strike or to seek arbitration must be made within ten working days from the end of direct negotiations, through a secret ballot vote of the majority of workers in the company or a union(s) general

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<sup>62</sup> MPS, written communication to U.S. Embassy-Bogota in response to USDOL request for updated information, February 20, 2008, 2.

<sup>63</sup> *Información Colombia 2005-2006*, 5.

<sup>64</sup> ENS, *Sistema censo sindical: frecuencia de numero afiliados* (Email communication attachment, November 23, 2007, U.S. Embassy-Bogota).

<sup>65</sup> ENS, *Con el Sudor de tu Frente: El Presidente Uribe y los Trabajadores*, 2006, 91; available from [www.ens.org.co/docinteressindical.htm](http://www.ens.org.co/docinteressindical.htm).

<sup>66</sup> *Sistema censo sindical: frecuencia de numero afiliados*.

<sup>67</sup> *Ibid.*

<sup>68</sup> U.S. Department of State, "Country Reports-2007: Colombia," Section 6a.

<sup>69</sup> International Labor Conference, *2007 Report of the CEACR*, 69; available from <http://www.ilo.org/public/english/standards/realm/ilc/ilc96/pdf/rep-iii-1a.pdf>. See also ILO CFA, *Report 343 (November 2006)*, para. 418; available from [http://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---relconf/documents/meetingdocument/wcms\\_gb\\_297\\_10\\_en.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_gb_297_10_en.pdf).

<sup>70</sup> *Constitución Política de la República de Colombia*, Article 56. See also *Código Sustantivo del Trabajo*, Articles 430 and 450.

<sup>71</sup> *Código Sustantivo del Trabajo*, Articles 431-436 and 444.

assembly, if the union(s) represents the majority of all workers. The strike is valid if the majority of workers in the company or the majority of those voting in the general assembly vote for the strike. Before the assembly takes place, the union(s) may notify the labor authorities so that they can witness and confirm the voting process and results.<sup>72</sup> Cessation of work must occur within two to ten working days of a strike declaration and the strike must be carried out in an organized and peaceful manner.<sup>73</sup> Labor conflicts involving essential public services, if not resolved through direct negotiation, must be submitted to arbitration.<sup>74</sup>

During a strike, the parties may resume negotiations directly or through the intervention of the MPS; or, a majority of the workers in the company or the union(s) general assembly, if the union(s) represents the majority of workers, may determine to submit the dispute to arbitration.<sup>75</sup> If the workers vote in favor of arbitration, work must begin again within three working days of the vote. The MPS may also refer a collective labor dispute to arbitration when the strike reaches 60 calendar days, in which case the workers must return to work within three working days of the referral.<sup>76</sup> The Government of Colombia has stated that this provision of the law has been rarely used. Yet, the ILO CEACR has asked the Government to repeal this provision of the Labor Code (Article 448(4)), based on its consideration that compulsory arbitration to end a strike is only acceptable when it has been requested by both parties or in cases in which the strike may be restricted or prohibited, such as in essential services.<sup>77</sup>

The police are responsible for monitoring strikes and ensuring peaceful conditions. While the majority of workers continue to strike, the authorities shall prevent individual or small groups of workers from returning to work.<sup>78</sup> Employers may not hire replacement workers to renew suspended services; unless, the strikers do not allow work by essential personnel, and only after a labor inspector determines that such work is necessary to avoid serious damage to the safety and preservation of the workshop, machinery, or basic materials, or for crop preservation and livestock maintenance.<sup>79</sup>

The MPS may declare a strike illegal when: (1) it pertains to a public service; (2) its goals do not encompass professional or economic objectives; (3) it is carried out for the purpose of demanding that government authorities take any action within their sole discretion; (4) the workers first do not comply with the direct negotiation procedures; (5) it has not been declared in accordance with the terms provided in the law; (6) it is carried out before two working days or after ten working days following the strike declaration; or (7) it is not limited to the peaceful suspension of work.<sup>80</sup> If a strike is declared illegal, the employer has the right to dismiss workers that participated in the strike. Union members who otherwise enjoy *fuero sindical* may be included in these dismissals.<sup>81</sup>

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<sup>72</sup> Ibid., Article 444.

<sup>73</sup> Ibid., Articles 445-446.

<sup>74</sup> Ibid., Article 452.

<sup>75</sup> Ibid., Articles 445 and 448.

<sup>76</sup> Ibid., Article 448.

<sup>77</sup> International Labor Conference, *2005 Report of the CEACR*, 50-51.

<sup>78</sup> *Código Sustantivo del Trabajo*, Article 448.

<sup>79</sup> Ibid., Article 449.

<sup>80</sup> Ibid., Article 450 and 451.

<sup>81</sup> Ibid., Article 450.

According to the ILO CEACR, Article 450 of the Substantive Labor Code and a number of decrees ban strikes in a wide range of services that are not necessarily essential.<sup>82</sup> For example, the Substantive Labor Code prohibits strikes in public services, which it defines as all organized activity necessary to satisfy public welfare needs in a regular and continuous form (e.g., ground, air, and water transportation; water, energy, electricity, and telecommunications; public health establishments, hospitals, and clinics; social welfare establishments; public hygiene services; salt production and distribution; and the petroleum industry).<sup>83</sup> The CEACR has stated to the Government of Colombia that the right to strike should only be limited or prohibited where interruption of service endangers the life, personal safety, or health of the population, and has requested that the Government take measures to amend its laws to this effect.<sup>84</sup> The ILO CFA has also stressed to the Government that the right to strike should only be restricted or prohibited for public servants who exercise authority in the name of the State.<sup>85</sup>

An on-going ILO CFA case involves alleged violations of public sector workers' rights to strike, freedom of association and collective bargaining. At issue is, in part, that the MPS declared illegal a 2004 strike conducted by workers at ECOPETROL S.A., the state-owned oil company, which resulted in ECOPETROL dismissing 248 striking workers. The CFA reported in 2006 that although ECOPETROL had reinstated 104 workers pursuant to the terms of a voluntary arbitral ruling (which found that the dismissal had not followed due process), ECOPETROL moved to dismiss them again. As earlier, the Government claimed the workers were engaged in an essential public service, which prevents them from striking and authorizes the employer to dismiss them for participating in an illegal strike. The CFA found that the dismissal of these workers under the Single Disciplinary Code may subject them to being "blacklisted" from working in the public sector for a period of 10 to 15 years.<sup>86</sup> The CFA found this "blacklisting" to be inconsistent with the principles of freedom of association and that it posed "a serious threat" to trade union rights.<sup>87</sup> Additionally, the CFA reiterated to the Government that the responsibility for declaring a strike illegal should not lie with the Government, especially when the Government is party to the dispute, but with an independent body that has the confidence of the parties involved. It therefore reiterated its request that the Government modify the law accordingly. In its response to the CFA, the Government had indicated that no provisions within Conventions Nos. 87 and 98 prevented a competent government agency from determining the legality of a strike. The CFA also reiterated that the Government should take steps to allow strikes in the petroleum sector with the possibility of providing for the establishment of a

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<sup>82</sup> International Labor Conference, *2006 Report of the CEACR*, 73.

<sup>83</sup> *Código Sustantivo del Trabajo*, Article 430.

<sup>84</sup> International Labor Conference, *2005 Report of the CEACR*, 50. See also ILO, Committee on Freedom of Association, Report No. 338, para. 731.

<sup>85</sup> ILO CFA, *Report 338 (November 2005)*, para. 731; available from <http://www.ilo.org/public/english/standards/relm/gb/docs/gb294/pdf/gb-7-1.pdf>.

<sup>86</sup> ILO CFA, *Report 337 (June 2005)*, paras. 603, 615, 624, 633 and 636; available from <http://www.ilo.org/public/english/standards/relm/gb/docs/gb293/pdf/gb-7.pdf>. See also ILO CFA, *Report 343 (November 2006)*, paras. 434-435, 441, 467-483; available from [http://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---relconf/documents/meetingdocument/wcms\\_gb\\_297\\_10\\_en.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_gb_297_10_en.pdf). See also Government of Colombia, *Ley 734 de 2002, Por la cual se expide el Código Disciplinario Unico* as published in *Diario Oficial No. 44.708* (February 13, 2002); available from <http://www.secretariassenado.gov.co/leyes/L0734002.HTM>.

<sup>87</sup> ILO CFA, *Report 343 (November 2006)*, para. 477.

negotiated minimum service with the participation of trade unions, the employers, and the public authorities concerned.<sup>88</sup>

Trade union federations and confederations are prohibited from conducting strikes.<sup>89</sup> The ILO CEACR has requested that the Government amend the Substantive Labor Code to address this prohibition.<sup>90</sup>

According to the U.S. Department of State, none of the seven strikes that took place in 2007 were declared illegal by the Government of Colombia.<sup>91</sup> For 2006, the MPS reported that only one out of a total of 18 strikes was declared illegal.<sup>92</sup> For 2005, the MPS reported that 14 out of 18 strikes were declared illegal and four petitions by businesses to have a strike declared illegal were denied.<sup>93</sup> Available ENS data cover only the total number of strikes, and do not identify the incidence of strikes declared illegal. ENS estimates that from January through October 2007, there were four strikes; in 2006, there were eight strikes; and in 2005, 18 strikes.<sup>94</sup>

## **B. The Effective Recognition of the Right to Collective Bargaining**

### **1. Right to Organize**

Colombia ratified ILO Convention No. 98 on the Right to Organize and Collective Bargaining on November 16, 1976 and Convention No. 154 on Collective Bargaining on December 8, 2000.<sup>95</sup>

Colombia's Substantive Labor Code prohibits individuals from interfering with workers' trade union rights and expressly bars employers from limiting or pressuring workers in the exercise of their right of association.<sup>96</sup> Employers may not influence a worker's decision to join a trade union through gifts or offers of improved benefits, and it is forbidden for employers to make non-affiliation to a trade union a condition of employment.<sup>97</sup> An employer is prohibited from dismissing, suspending, or modifying the working conditions of workers who are in the process of establishing a trade union.<sup>98</sup>

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<sup>88</sup> Ibid., paras. 470-471, 483. See also ILO CFA, *Report 337 (June 2005)*, paras. 631-636. The CFA does not consider the petroleum sector to be an *essential* public service in the strict sense, but considers it to be a *fundamental* public service where it may be appropriate to negotiate a required minimum level of service that must operate in the case of a strike.

<sup>89</sup> *Código Sustantivo del Trabajo*, 417(1).

<sup>90</sup> International Labor Conference, *2005 Report of the CEACR*, 50. See also International Labor Conference, *2004 Report of the CEACR*, 59-60; available from <http://www.ilo.org/public/english/standards/relm/ilc/ilc92/pdf/rep-iii-1a.pdf>. See also International Labor Conference, *2003 Report of the CEACR*, 245; available from <http://www.ilo.org/public/english/standards/relm/ilc/ilc91/pdf/rep-iii-1a.pdf>.

<sup>91</sup> U.S. Department of State, "Country Reports - 2007: Colombia," Section 6a.

<sup>92</sup> *Citación e información necesaria para el informe sobre Derecho Laboral en Colombia*, 12.

<sup>93</sup> MPS, written communication to U.S. Embassy-Bogota in response to USDOL request for updated information, 2006, 8.

<sup>94</sup> ENS, *Huelgas Realizadas: 2000 a Octubre 2007* (Email communication attachment, November 23, 2007, U.S. Embassy-Bogota).

<sup>95</sup> ILO, *Ratifications by Country*.

<sup>96</sup> *Código Sustantivo del Trabajo*, Article 59(4) and 354(1).

<sup>97</sup> Ibid., Article 354(2)(a).

<sup>98</sup> Ibid., Article 354(2)(b).

Employers are also prohibited from adopting repressive measures against workers who have accused management of violating their right to organize a union, testified to such, or intervened in investigations that could confirm such a violation.<sup>99</sup> Furthermore, employers are forbidden from compiling “black lists” of workers as a means to inform other enterprises which workers not to hire.<sup>100</sup> Individuals who infringe upon the right to organize may be punished for each infraction with a fine equaling between five and 100 times the current legal minimum monthly salary.<sup>101</sup>

Colombia’s Constitution recognizes the right of *fuero sindical*.<sup>102</sup> Founding members of a union receive *fuero sindical* for a period not to exceed six months, from the day the union is established and up to two months after registration.<sup>103</sup> Five principal members (and their replacements) of the Executive Board of a trade union, federation, or confederation also are protected during their elected term and up to six months thereafter.<sup>104</sup> When the Executive Board is composed of more than five principal members and five replacements, *fuero sindical* is only extended to the first five members (and their replacements) that appear on the list the union has provided to the employer.<sup>105</sup> If a trade union official abandons his/her union post by voluntary resignation, he/she will continue to receive protection from dismissal for three months following the resignation as long as the resignation does not occur before half of the union-prescribed term for the position has expired.<sup>106</sup> If, however, the resignation is due to disciplinary action imposed by the union, protection from dismissal ceases immediately.<sup>107</sup> Upon the merger of two or more labor organizations, officials of the two unions who are not chosen to serve on the new Executive Board will continue to enjoy *fuero sindical* for three months following the creation of the new board.<sup>108</sup> Public servants who fall within the above categories are also guaranteed *fuero sindical*, with the exception of those who make jurisdictional determinations, civil authorities, political appointees, or those in management positions.<sup>109</sup>

For all eligible persons, the protections of *fuero sindical* must be verified with a copy of the Executive Board’s registration certificate or with a copy of the union formation letter to the employer.<sup>110</sup> If a worker enjoys *fuero sindical*, his/her employer must show just cause and receive permission from a labor judge in order to terminate or transfer the worker, or to subject

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<sup>99</sup> Ibid., Article 354(2)(e).

<sup>100</sup> Ibid., Article 59(8).

<sup>101</sup> Ibid., Article 354(2). In 2008, the minimum monthly salary was set at 461,500 pesos (USD 235). See section V-F.

<sup>102</sup> *Constitución Política de la República de Colombia*, Article 39.

<sup>103</sup> This same protection is given to workers who become members of the union before registration. See *Código Sustantivo del Trabajo*, Article 406(a) and (b).

<sup>104</sup> This same protection is given to one primary member of a sectional board of a trade union, federation, or confederation and his/her replacement. See *Código Sustantivo del Trabajo*, Article 406(c).

<sup>105</sup> *Código Sustantivo del Trabajo*, Article 407(1).

<sup>106</sup> Ibid., Article 407(2).

<sup>107</sup> Ibid.

<sup>108</sup> Ibid., Article 407(3).

<sup>109</sup> Ibid., Article 406(PAR 1).

<sup>110</sup> Ibid., Article 406(PAR 2). The union must notify the employer of the initial composition of the Executive Board and of any subsequent changes in its composition. See also Article 407(2). See also *Código Procesal del Trabajo y de la Seguridad Social*, Articles 113 and 118.



him/her to less desirable working conditions.<sup>111</sup> Within 24 hours of receiving the employer's request for such permission, the judge will notify the parties and summon them for a hearing. Within five working days following this notification, the judge will hear arguments, and allow the worker to contest the request. The judge will provide a ruling at the hearing or within two days.<sup>112</sup> Under the law, the following causes are just grounds for discontinuing *fuero sindical* protections: (1) the liquidation or final closure of the company and the total or partial suspension of activities for more than 120 days; or (2) causes listed in Articles 62 and 63 of the Substantive Labor Code for the termination of a labor contract. Articles 62 and 63 include the provision of fraudulent work credentials, committing serious acts of violence, and immoral conduct as ground for the termination of a labor contract.<sup>113</sup> Either party may appeal the judge's ruling. The appeals tribunal must make a decision within five days following its receipt of the case.<sup>114</sup>

If, without first receiving judicial approval, an employer treats an eligible worker in a way that denies the worker's *fuero sindical* protections, the worker has two months from the date of the employer's action to file suit with the court.<sup>115</sup> If proven that the employer dismissed a worker contrary to the procedures concerning *fuero sindical*, the judge must order the worker's reinstatement and direct the employer to pay back wages. In cases where the protected worker was not dismissed, but was transferred or disadvantaged in his working conditions, the judge may order other appropriate compensation.<sup>116</sup>

## 2. Right to Bargain Collectively

Colombia's Constitution guarantees the right of collective bargaining as a mechanism for the conduct of labor relations.<sup>117</sup> Colombia's Substantive Labor Code grants private sector trade unions and employers or employers' associations the right to enter into collective bargaining agreements that establish working conditions.<sup>118</sup>

In practice, there are two types of collective bargaining agreements that are recognized in Colombia: collective conventions (established between an employer and unionized workers) and collective pacts (a relatively newer type of contract established between an employer and non-unionized workers, as discussed below). In the Labor Code, however, a collective bargaining agreement refers primarily to a contract with unions (collective conventions), while pacts are legally recognized separately. Employers may not refuse to negotiate with unions that have submitted requests to negotiate in accordance with the legal procedures set out in the Labor Code.<sup>119</sup> If a union represents more than one-third of the company's workers, then all workers in the enterprise are covered by the collective bargaining agreement. Otherwise, only union members are party to the agreement.<sup>120</sup> The Government has the authority to extend a collective

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<sup>111</sup> *Código Procesal del Trabajo y de la Seguridad Social*, Article 118. See also *Código Sustantivo del Trabajo*, Article 408

<sup>112</sup> *Código Procesal del Trabajo y de la Seguridad Social*, Article 114.

<sup>113</sup> *Código Sustantivo del Trabajo*, Article 410.

<sup>114</sup> *Código Procesal del Trabajo y de la Seguridad Social*, Article 117.

<sup>115</sup> *Ibid.*, Article 118.

<sup>116</sup> *Código Sustantivo del Trabajo*, Article 408.

<sup>117</sup> *Constitución Política de la República de Colombia*, Article 55.

<sup>118</sup> *Código Sustantivo del Trabajo*, Article 467.

<sup>119</sup> *Ibid.*, Article 354(2)(C).

<sup>120</sup> *Ibid.*, Articles 470-471.

bargaining agreement to other companies in the same industry in a given region if the following conditions are met: 1) the agreement covers more than two-thirds of workers in an industry branch in the region; 2) the companies are of equal or similar technical and economic capacity; and 3) the companies do not have in place agreements that currently provide greater protections for their workers.<sup>121</sup>

A collective bargaining agreement must be in writing and must be submitted to the MPS within 15 days following the date it was signed.<sup>122</sup> An agreement may be revised when there are unforeseeable and serious changes in the economy. If the parties can reach no agreement on the revisions, the labor court will decide whether and how to revise the agreement.<sup>123</sup>

If the duration of the agreement is not stipulated, then it is presumed to continue indefinitely for successive six-month periods.<sup>124</sup> Upon the expiration of a collective bargaining agreement, either one or both of the parties may present a written denunciation (request to renegotiate the agreement) in triplicate within 60 days to the labor inspector or, in his/her absence, the mayor. If there is no denunciation, the collective bargaining agreement is extended indefinitely for successive six-month periods.<sup>125</sup>

For 2007, MPS reports that 184 collective conventions between workers and employers were signed;<sup>126</sup> in 2006, 457 were signed;<sup>127</sup> and in 2005, 349 conventions were signed.<sup>128</sup> The ENS reports that in 2007, 164 were signed (partial year data);<sup>129</sup> in 2006, 285 were signed; and in 2005, 200 were signed.<sup>130</sup>

Instead of a convention, collective pacts may be negotiated by non-unionized workers regarding pay and labor conditions. These pacts are only applicable to the workers that negotiated or subsequently sign on to them.<sup>131</sup> In 2006, the MPS recorded 218 pacts that had been signed.<sup>132</sup> According to the ENS, in 2006 a total of 70 collective pacts were concluded, among which 33 were in industrial manufacturing; 17 in agriculture, hunting and fishing; and nine in commerce,

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<sup>121</sup> Ibid., Article 472.

<sup>122</sup> Ibid., Article 469.

<sup>123</sup> Ibid., Article 480.

<sup>124</sup> Ibid., Article 477.

<sup>125</sup> Ibid., Articles 478-479.

<sup>126</sup> “Respuestas a preguntas sobre sindicalización y contratación colectiva,” February 21, 2008, 2.

<sup>127</sup> MPS, written communication to U.S. Embassy-Bogota in response to USDOL request for updated information, May 3, 2007, 23.

<sup>128</sup> MPS, written communication to U.S. Embassy-Bogota in response to USDOL request for updated information, February 20, 2008, 1. See also MPS, written communication to U.S. Embassy-Bogota in response to USDOL request for updated information, 2006, 9.

<sup>129</sup> “Respuestas a preguntas sobre sindicalización y contratación colectiva,” February 21, 2008, 3.

<sup>130</sup> It is unknown for certain why the data from MPS and ENS differ; the ENS gets much of this data from MPS directly. The 2005 and 2006 figures do not include agreements resulting from arbitral tribunals nor agreements for workers employed by the State. It should also be noted that 300 agreements, one per company, in the Urabá banana zone were submitted together in only one petition to the MPS, which counted these as one rather than 300. *Información Colombia 2005-2006*, 2-3. See also “Respuestas a preguntas sobre sindicalización y contratación colectiva,” February 21, 2008, 3.

<sup>131</sup> *Código Sustantivo del Trabajo*, Article 481.

<sup>132</sup> MPS, written communication to U.S. Embassy-Bogota in response to USDOL request for updated information, May 3, 2007, 23.

restaurants and hotels.<sup>133</sup> For 2005, MPS reported that it recorded 237 pacts<sup>134</sup> although ENS reports that 160 pacts were concluded, among which 76 were in industrial manufacturing, covering 17,546 workers; 24 in agriculture, hunting and fishing, covering 5,425 workers; and 21 in commerce, restaurants and hotels, covering 4,390 workers.<sup>135</sup>

Combined, ENS reports that all agreements (collective conventions and pacts) in force in 2006 covered 61,801 private-sector workers. These agreements were mostly in social services (68 covering 4,334 workers), industrial manufacturing (63 covering 19,843 workers), and the commerce, hotels and restaurants sectors (36 covering 5,423 workers). In 2005, agreements in force covered 99,336 private-sector workers combined. Most of these agreements were in agriculture, hunting and fishing (184 covering 10,973 workers), industrial manufacturing (47 covering 37,264 workers), and social services (23 covering 21,300 workers).<sup>136</sup>

According to the ENS, collective pacts do not represent a real negotiation in which the workers can define their requests with autonomy or choose their negotiators; instead, the pacts almost always are imposed by the employers. The ENS also asserts that collective pacts are used by employers to discourage trade union organization.<sup>137</sup> The ILO CEACR has noted practices by business, the Government, and the judiciary in Colombia that gave preference to collective pacts with non-unionized workers, disregarding collective bargaining agreements and trade unions. The CEACR emphasized to the Government that direct negotiations with workers should only be possible in the absence of labor organizations.<sup>138</sup> It also notes that during its high-level tripartite visit in 2005, the ILO observed that frequently union members are encouraged by employers to drop their affiliation and sign a pact instead, which could in turn result in a union being disqualified for having fewer than the required number of members (one-third of all workers in the enterprise).<sup>139</sup>

According to the U.S. Department of State, an increase in the growth and prevalence of Associated Work Cooperatives (also called work partnership cooperatives or *Cooperativas de Trabajo Asociados*) has had a negative impact on collective bargaining.<sup>140</sup> These cooperatives are groups of five to twenty self-managed, autonomous, and self-governing associated workers that contract with business or the public sector to perform specific functions or tasks. Because they are at the same time both worker and manager of their cooperative enterprise, they set the terms of their employment and, therefore, are not covered by the Labor Code (which covers salaried workers who are dependent on or subordinate to their employer).<sup>141</sup> Introduced to

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<sup>133</sup> *Información Colombia 2005-2006*, 2.

<sup>134</sup> MPS, written communication to U.S. Embassy-Bogota in response to USDOL request for updated information, 2006, 10.

<sup>135</sup> *Información Colombia 2005-2006*, 2-3. For 2006, the number of workers covered was not reported.

<sup>136</sup> *Información Colombia 2005-2006*, 3. ENS reports that it appears that the MPS did not record 2007 information about the number of workers covered by collective bargaining agreements. See “Respuestas a preguntas sobre sindicalización y contratación colectiva,” February 21, 2008, 3.

<sup>137</sup> ENS, *Informe de la Negociación Colectiva 2004*.

<sup>138</sup> International Labor Conference, *2004 Report of the CEACR*, 60; available from <http://www.ilo.org/public/english/standards/reln/ilc/ilc92/pdf/rep-iii-1a.pdf>.

<sup>139</sup> International Labor Conference, *2006 Report of the CEACR*, 74.

<sup>140</sup> U.S. Department of State, “Country Reports - 2007: Colombia,” Section 6b.

<sup>141</sup> Government of Colombia, *Por el cual se actualiza la legislación cooperativa, Ley 78 de 1988*, Article 59; available from [http://www.comuna.com.co/archivos/ley\\_79\\_1988.pdf](http://www.comuna.com.co/archivos/ley_79_1988.pdf). See also Government of Colombia, *Por el*

provide greater flexibility in employment contracts, cooperatives have been widely used as subcontractors and themselves have engaged in subcontracting. They have been used as an alternative to hiring direct employees, which further limits opportunities for the formation of new unions and the exercise of unions' rights.<sup>142</sup> According to the U.S. Department of State, in 2004 government investigations found irregularities or abuses with respect to 75 percent of workers' cooperatives. In some cases, employers reportedly forced workers to form the cooperatives and managed their day-to-day operations. In response, the Government rescinded specific tax incentives provided to workers' cooperatives.<sup>143</sup> Further, in 2006, the Government issued Decree 4588 to regulate the cooperatives. Although Decree 4588 permits cooperatives to engage in subcontracting to fulfill specific needs, it explicitly prohibits cooperatives from contracting out the services of associated workers or essentially acting as temporary work agencies; designates workers' cooperatives as non-profit entities; and establishes fines, including fines against third-party beneficiaries, for illegal cooperatives. It also prevents those that contract with cooperatives from being members of, or participants in, the organization and operation of the cooperative.<sup>144</sup> The Decree requires that cooperatives establish regulations governing wages and working conditions, which must be approved by the MPS and must be available for workers to review. Cooperatives are required to provide compensation equivalent to at least the minimum monthly salary and to make payments towards the associated workers' social security.<sup>145</sup> The ENS states that the Decree does not address the fundamental problem of businesses using cooperatives to avoid having to respect workers' rights.<sup>146</sup>

For 2007, the U.S. Department of State reported that the Superintendent of Economic Cooperatives estimated the number of such cooperatives at more than 3,000, with more than 400,000 associated workers.<sup>147</sup> In 2006, there were an estimated 3,000 registered cooperatives covering 379,000 associated workers; in 2005, the Superintendent registered some 1,500 cooperatives, covering 150,000 workers.<sup>148</sup> The ENS, however, reported higher numbers, which have increased each year since 2000. It reported that in 2006, there were 3,296 registered cooperatives with 452,000 associated workers; in 2005 there were 2,980 cooperatives, covering 378,933 workers. Going back to 2000, there had been 732 cooperatives that covered 55,496 workers.<sup>149</sup>

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*cuál se reglamenta la organización y funcionamiento de las Cooperativas y Precooperativas de Trabajo Asociado, Decreto 4588* (December 27, 2006), Articles 5 and 10; available from <http://www.actualicese.com/normatividad/2006/12/27/decreto-4588-de-27122006/>. See also MPS, *Decreto 1466* (April 30, 2007), as published in *Diario Oficial* No. 46,615; available from <http://www.portalcooperativo.coop/flash/592/d1466.doc>. See also *Código Sustantivo del Trabajo*, Articles 5 and 22.

<sup>142</sup> U.S. Department of State, Country Reports - 2006: Colombia, Section 6b. See also ICFTU, Annual Survey of Trade Union Rights 2006.

<sup>143</sup> U.S. Department of State, "Country Reports - 2004: Colombia," Section 6b. See also U.S. Department of State, "Country Reports - 2007: Colombia," Section 6b.

<sup>144</sup> *Decreto 4588*. See also U.S. Department of State, "Country Reports - 2006: Colombia," Section 6b.

<sup>145</sup> *Decreto 4588*, Article 27.

<sup>146</sup> *Información Colombia 2005-2006*, 5.

<sup>147</sup> U.S. Department of State, "Country Reports - 2007: Colombia," Section 6b.

<sup>148</sup> U.S. Department of State, "Country Reports - 2006: Colombia," Section 6b. See also U.S. Department of State, "Country Reports - 2005: Colombia," Section 6b.

<sup>149</sup> Colombian Trade Union Federations (CUT, CGT and CTC) and the Confederation of Pensioners of Colombia (CPC), *Labor Rights and Freedom of Association in Colombia*. See also *Información Colombia 2005-2006*, 6.

Unions also reported to the ILO CEACR concerns about restructurings, closures and re-openings of public institutions, which they claim have led the Government to dismiss workers, offer new contracts to non-unionized workers only, and restrict the formation of new unions. The CEACR states that during restructurings and in newly restructured institutions, the Government must ensure workers their rights to establish and join unions.<sup>150</sup> It also acknowledges that the Government reported that restructurings in 2005 were done following consultations with trade unions.<sup>151</sup>

In the Substantive Labor Code, public sector unions are exempted from the right to bargain collectively.<sup>152</sup> For a number of years, the ILO CEACR has stressed to the Government of Colombia that public employees who are not engaged in the administration of the State should enjoy the right to collective bargaining, and has called on the Government to establish legislative measures to guarantee this right.<sup>153</sup> In 2007, the CEACR noted that a 2005 ruling by Colombia's Constitutional Court requested that the legislature establish procedures governing the right of public employees to engage in collective bargaining, in accordance with the country's Constitution and its ratification of ILO Conventions Nos. 151 and 154. In light of the ruling, the CEACR requested the Government to adopt the necessary regulations to ensure that this right is observed.<sup>154</sup> In 2007, President Uribe agreed that public sector unions should be able to bargain collectively.<sup>155</sup> According to a recent ILO Mission to Colombia in November 2007, a tripartite subcommittee has been formed to discuss public sector bargaining and related draft legislation, rules and regulations. This topic has also been included in a recent agenda of priority items to be addressed during implementation of the Tripartite Agreement on Freedom of Association and Democracy (please see Section VI of this report for more on this Agreement).<sup>156</sup>

### **C. The Elimination of All Forms of Forced or Compulsory Labor**

Colombia ratified ILO Convention No. 29 on Forced Labor in March 4, 1969 and ILO Convention No. 105 on the Abolition of Forced Labor in June 7, 1963.<sup>157</sup>

The Constitution of Colombia prohibits slavery, servitude, and human trafficking in all forms.<sup>158</sup> The Penal Code provides penalties for forced prostitution of 80 to 162 months imprisonment and fines of 66.66 to 750 times the legal minimum monthly salary.<sup>159</sup> Penalties increase by one-third to one-half if the victim is under the age of 14, if the crime involves moving the victim outside of the country, or if the perpetrator is a family member.<sup>160</sup> Forced prostitution and sexual slavery in

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<sup>150</sup> International Labor Conference, *2006 Report of the CEACR*, 72.

<sup>151</sup> International Labor Conference, *2006 Report of the CEACR*, 74.

<sup>152</sup> *Código Sustantivo del Trabajo*, Article 416.

<sup>153</sup> International Labor Conference, *2006 Report of the CEACR*, 73.

<sup>154</sup> International Labor Conference, *2007 Report of the CEACR*, 70. The Constitutional Court's ruling was No. C-1234, dated November 29, 2005.

<sup>155</sup> U.S. Embassy-Bogota, *reporting*, July 6, 2007.

<sup>156</sup> "ILO Mission Report: Colombia, November 23-28, 2007," provided by the Embassy of Colombia, Washington, D.C. to the U.S. Congress, January 14, 2008.

<sup>157</sup> ILO, *Ratifications by Country*.

<sup>158</sup> *Constitución Política de Colombia*, Articles 17 and 53.

<sup>159</sup> Government of Colombia, *Código Penal*, Article 214.

<sup>160</sup> *Ibid.*, Article 216.

relation to the country's on-going armed conflict are punishable by imprisonment of 160 to 324 months and a fine of 666.66 to 1,500 times the legal minimum monthly salary.<sup>161</sup>

The Penal Code addresses trafficking in persons. Individuals convicted of capturing, moving, or receiving a person with the goal of exploitation, both within or outside of the country, may be sentenced to 13 to 23 years in prison and fined between 800 and 1,500 times the legal monthly minimum salary.<sup>162</sup> These penalties may be increased by one-third to one-half if the victim is under the age of 18; is psychologically immature or mentally ill; is permanently physically injured or experienced mental anguish as a result of the trafficking; or if the perpetrator is a parent, guardian, blood relative or public servant.<sup>163</sup> If the victim is under the age of 12, the penalty is increased by one-half.<sup>164</sup> Exploitation is defined as "obtaining economic or any other benefit for one's self or someone else through exploitation of another person's prostitution or other forms of sexual exploitation, forced employment or service, slavery or practices similar to slavery, servitude, exploitation of another person's begging, servile matrimony, organ extraction, sexual tourism, or other forms of exploitation."<sup>165</sup> Consent by the victim does not constitute grounds for exoneration in trafficking cases.<sup>166</sup> For information on other laws regarding exploitative child labor, such as prostitution, see Section D.

The ILO CEACR has expressed concern regarding forced labor by inmates convicted of offenses related to social protest or participation in strikes.<sup>167</sup> According to the U.S. Department of State, paramilitary and guerrilla organizations in Colombia forcibly recruit individuals, including children, to serve as combatants and forced laborers in areas outside of government control.<sup>168</sup>

Colombia is a source and transit country for women and children trafficked for sexual exploitation and labor purposes. Victims are trafficked internationally to Central America, the Caribbean, Asia, Europe and the United States, and internally from rural to urban areas.<sup>169</sup> Some Colombian men are trafficked for forced labor.<sup>170</sup> The Colombian Program for the Prevention, Assistance and Reintegration of Victims of Human Trafficking of the International Organization for Migration (IOM) has also identified trafficking for forced labor in domestic service, agriculture, mines, factories, and begging. Some travel is voluntary, but the resulting work situation has the characteristics of forced labor.<sup>171</sup>

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<sup>161</sup> Ibid., Article 141.

<sup>162</sup> Ibid., Article 188A.

<sup>163</sup> Ibid., Article 188B.

<sup>164</sup> Ibid.

<sup>165</sup> Ibid., Article 188A.

<sup>166</sup> Ibid.

<sup>167</sup> ILO CEACR. *Individual Observation, Abolition of Forced Labour, 1957 (No. 105), Colombia (ratification: 1963)* [online] 2005 [cited September 6, 2007]; available from <http://www.ilo.org/ilolex/english/newcountryframeE.htm>.

<sup>168</sup> U.S. Department of State, "Country Reports- 2006: Colombia," Section 5. See also Human Rights Watch, "You'll Learn Not to Cry" *Child Combatants in Colombia*, New York: 2003, 29-34.

<sup>169</sup> U.S. Department of State, "Country Reports- 2006: Colombia," Section 5. See also U.S. Embassy- Bogota, *reporting*, March 5, 2007. See also Nathalie Tran, *An Assessment on the Exploitation of Chinese Migrants in the Western Hemisphere*, Organization for American States, 2006.

<sup>170</sup> U.S. Embassy- Bogota, *reporting*, March 5, 2007.

<sup>171</sup> International Organization for Migration, *Dimensiones de la trata de personas en Colombia*, Bogota: February 2006, 20, available from [http://www.oit.org.pe/ippec/documentos/oim\\_trata\\_col.pdf](http://www.oit.org.pe/ippec/documentos/oim_trata_col.pdf).

Traffickers for prostitution purposes sometimes disclose the nature of the work, but often conceal information about working conditions, clientele, freedom of movement, and compensation. Some traffickers attract trafficking victims by offering phony opportunities for modeling, marriage, study or free travel abroad.<sup>172</sup> Some victims are kidnapped.<sup>173</sup> Victims may not have access to personal travel documents, and/or may have to pay brothel owners or captors large sums to have their travel papers returned. Often usurious fees for transportation, documentation, food or shelter create large debts which victims must pay off before being granted freedom. Escape or denunciation of captors is repressed by threats of personal injury or against their families and fear of the police.<sup>174</sup>

Data on the number of trafficked persons are not precise. The U.S. Department of State has quoted estimates by the Colombian Department of Administrative Security (*Departamento Administrativo de Seguridad*, DAS) that 45,000 to 50,000 Colombian women are working as prostitutes in other countries.<sup>175</sup> While recognizing that many of these women may be victims of trafficking and forced labor, the IOM, the DAS and National Police (*Policia Nacional*, PNC) identify the official number of victims of trafficking during the period 2002-2004 as 211, based on registered denunciations. A total of 285 traffickers were associated with these cases. The IOM, the DAS and the PNC state that actual numbers of women trafficked for prostitution may be much higher than the small number of official cases, since there are few consistent sources of information in Colombia on this problem.<sup>176</sup>

The Government of Colombia's main efforts to address forced labor are subsumed under its work combating human trafficking. The Ministry of Justice and Interior (*Ministerio del Interior y de Justicia*, MIJ) is responsible for enforcing laws against trafficking in Colombia. In the period March 2006 to February 2007, the Inter-Institutional Committee for the Fight against Trafficking in Persons (*Comité Interinstitucional para la Lucha Contra la Trata de Personas*, ICFTP) and Colombian District Attorney's office reported that they undertook 49 investigations and 63 prosecutions and obtained ten convictions related to trafficking. In 2005, there were 25 prosecutions and two convictions.<sup>177</sup> A key strategy of the Government is to work with police forces in destination countries to break up trafficking rings and prosecute offenders.<sup>178</sup>

The Government of Colombia has programs and policies in place to combat trafficking. The ICFTP was officially formed in 2005, although it started informally in 2003.<sup>179</sup> It is made up of 14 government agencies and led by the MIJ. The ICFTP's objectives include coordinating government actions against trafficking; developing the National Strategy Against Trafficking

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<sup>172</sup> U.S. Department of State, "Country Reports- 2006: Colombia," Section 6c. See also Observatory for Gender Affairs, *La esclavitud aún existe*, Boletín No. 7, Bogota: November-December, 2006, 22.

<sup>173</sup> Observatory for Gender Affairs, *La esclavitud aún existe*, 22.

<sup>174</sup> Rebellion, *Colombianas bajo condiciones de esclavitud en España*, [online] December 11, 2002, [cited September 6, 2007]; available from <http://www.rebellion.org/ddhh/colombianas111202.htm>. See also Tran, *An Assessment on the Exploitation of Chinese Migrants*.

<sup>175</sup> U.S. Embassy- Bogota, *reporting*, March 5, 2007.

<sup>176</sup> International Organization for Migration, *Dimensiones de la trata de personas en Colombia*, 11-12, 28, 35-36.

<sup>177</sup> U.S. Embassy- Bogota, *reporting*, March 5, 2007.

<sup>178</sup> U.S. Department of State, "Colombia" in *Trafficking in Persons Report- 2004*. Washington, D.C., June 14, 2004; available from <http://www.state.gov/g/tip/rls/tiprpt/2004/33198.htm>.

<sup>179</sup> IOM, *Dimensiones de la trata de personas en Colombia*, 28. See also Observatory for Gender Affairs, *La esclavitud aún existe*. See also U.S. Embassy- Bogota, *reporting*, March 5, 2007.

(National Strategy); promoting the creation of regional and local committees based on the National Strategy and encouraging coordination between national and regional groups; developing recommendations on trafficking regulations and prosecution of trafficking for various state agencies; and designing and implementing a National Information System so as to gather reliable information on the problem of trafficking in Colombia.<sup>180</sup> In December 2006, the National Fund for the Fight against Trafficking in Persons was formed to provide funds for the prevention of trafficking, protection and assistance to trafficking victims, and to support judicial investigations and other government activities against trafficking.<sup>181</sup>

The ICFTP and various ministries have assisted with the development of departmental and municipal anti-trafficking plans and implemented a variety of anti-trafficking awareness raising activities within Colombia, including flyers about trafficking in newly issued passports; information kiosks at major airports; short television ads and a daytime soap opera about trafficking; and presentations for at-risk school children.<sup>182</sup> The Committee also maintains a database of trafficking cases and promotes collaboration between agencies.<sup>183</sup> Colombian foreign missions and the PNC provide assistance to trafficking victims including referrals to IOM repatriation services and information regarding legal protection.<sup>184</sup> The Inspector General's Office has implemented a trafficking monitoring system in ten departments.<sup>185</sup>

With support from the Government, the IOM is leading or involved in many programs related to trafficking in Colombia, as well as support for ex-combatant children.<sup>186</sup>

#### **D. The Effective Abolition of Child Labor, a Prohibition on the Worst Forms of Child Labor, and Other Labor Protections for Children and Minors**

Colombia ratified ILO Convention No. 138 on Minimum Age of Employment on February 2, 2001 and ILO Convention No. 182 on the Worst Forms of Child Labor on January 28, 2005.<sup>187</sup>

The Constitution states that children are to be protected against exploitative and hazardous labor.<sup>188</sup> The minimum employment age in Colombia is 15 years, based on the Code of

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<sup>180</sup> Observatory for Gender Affairs, *La esclavitud aún existe*, 10-11.

<sup>181</sup> President of the Republic: Colombia, *Gobierno Crea Fondo Especial Para Lucha Contra Trata De Personas*, press release, December 5, 2006; available from [http://www.presidencia.gov.co/prensa\\_new/sne/2006/diciembre/05/04052006.htm](http://www.presidencia.gov.co/prensa_new/sne/2006/diciembre/05/04052006.htm).

<sup>182</sup> U.S. Embassy- Bogota, *reporting*, December 6, 2005. See also U.S. Department of State, "Colombia (Tier 1)," in *Trafficking in Persons Report- 2006*, Washington, D.C., June 5, 2006; available from <http://www.state.gov/g/tip/rls/tiprpt/2006/>. See also Ministry of Communication, *Qué es Internet Sano*, [online] [cited October 10, 2006]; available from [http://www.internetsano.gov.co/que\\_es.htm](http://www.internetsano.gov.co/que_es.htm). See also National Police News Agency, *Que Nadie Dañe Tus Sueños*, press release, August 9, 2006; previously online at <http://www.policia.gov.co/85256EA10053F753.nsf/0/AA9949A80C6E0D510525712C004BFCA9?Open>.

<sup>183</sup> U.S. Department of State, "Country Reports- 2006: Colombia," Section 5.

<sup>184</sup> Ibid. See also U.S. Embassy- Bogota, *reporting*, March 5, 2007.

<sup>185</sup> U.S. Embassy- Bogota, *reporting*, March 9, 2005.

<sup>186</sup> IOM, *IOM's Role in Colombia*, [online] [cited December 18, 2007] available from <http://www.oim.org.co/modulos/contenido/default.asp?idmodulo=11&idioma=ing>.

<sup>187</sup> ILO, *Ratifications by Country*.

<sup>188</sup> *Constitución Política de Colombia*, Article 44.



Childhood and Adolescence (2006), which supersedes the Minor's Code (1989).<sup>189</sup> Prior to the adoption of the new code, the Minor's Code had established the minimum age for employment at 14.<sup>190</sup> Children under age 15 may receive permission from the Labor Inspectorate to work for pay in artistic, cultural, recreational or sports-related jobs, up to 14 hours per week.<sup>191</sup>

According to the Code of Childhood and Adolescence, parents of adolescents of legal working age wanting to work must receive authorization from the Labor Inspectorate.<sup>192</sup> Among other provisions, the work authorization is contingent upon an official from the Inspectorate visiting the worksite to ensure that working conditions will not harm the health of the adolescent; the adolescent completing school or if not registered being registered in school by the employer; and the employer obtaining a health certificate for the adolescent. The authorization must also include the terms of the work contract.<sup>193</sup> Indigenous youth must receive permission from their respective traditional authority. If these requirements are not met, authorization can be denied or revoked.<sup>194</sup>

Adolescents ages 15 and 16 may only work six hours per day, 30 hours per week, and until 6 p.m. Adolescents age 17 may only work 8 hours per day, 40 hours per week, and until 8 p.m.<sup>195</sup> Adolescents have a right to a salary that is commensurate with the work done and time worked and that is at least the legal minimum monthly salary.<sup>196</sup> Pregnant working adolescents may only work four hours per day from the seventh month of pregnancy through the end of lactation and shall not suffer any reduction in salary or benefits.<sup>197</sup> No one under age 18 may perform work that is dangerous, detrimental to his/her health or welfare, or considered a worst form of child labor.<sup>198</sup>

All worst forms of child labor, as defined by ILO Convention No. 182 and the Government of Colombia, are expressly prohibited.<sup>199</sup> Within the Government, the MPS and the ICBF have responsibility for the identification of the worst forms of child labor, and must make the list publicly available every two years.<sup>200</sup> According to the current list, minors under age 18 cannot

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<sup>189</sup> Government of Colombia, *Código de la Infancia y la Adolescencia*, Law 1098 of 2006, (November 8, 2006), Article 35; available from [http://www.secretariassenado.gov.co/compendio\\_legislativo.htm](http://www.secretariassenado.gov.co/compendio_legislativo.htm).

<sup>190</sup> Government of Colombia, *Código del Menor*, Decree No. 2737, (November 27, 1989), Article 238; available from [http://www.secretariassenado.gov.co/leyes/C\\_MENOR.HTM](http://www.secretariassenado.gov.co/leyes/C_MENOR.HTM).

<sup>191</sup> *Código de la Infancia y la Adolescencia*, Article 35.

<sup>192</sup> *Ibid.*, Article 113.

<sup>193</sup> *Ibid.*

<sup>194</sup> *Ibid.*

<sup>195</sup> *Ibid.*, Article 114.

<sup>196</sup> *Ibid.*, Article 115.

<sup>197</sup> *Ibid.*, Article 116.

<sup>198</sup> *Ibid.*, Article 117.

<sup>199</sup> *Ibid.*, Article 20. The worst forms of child labor as defined in ILO Convention 182 include: (a) all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict; (b) the use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic purposes; (c) the use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs as defined in the relevant international treaties; and (d) work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children. See <http://www.ilo.org/ilolex/cgi-lex/convde.pl?C182>.

<sup>200</sup> *Código de la Infancia y la Adolescencia*, Article 117.

perform most work related to: agriculture destined for market, such as coffee, flowers, sugarcane, cereals, vegetables, fruits, tobacco, and livestock; fisheries; logging; mining or work underground; industrial manufacturing and bakeries; utilities; construction, painting, and heavy equipment; transportation or warehousing; healthcare; defense and private security; and unskilled labor such as shoe shining, domestic service, trash collection, messenger services, building security; gardening, work in clubs and bars, and street sales.<sup>201</sup> Minors must also not work under ground or water, under rigorous environmental conditions (e.g., hot or cold) or in conditions where there are: loud noises; strong vibrations; dangerous substances; poor lighting or ventilation; fluctuating barometric pressures; or biological or chemical materials. Youth cannot perform work that entails safety risks or excessive physical activity or may negatively affect the youth's posture.<sup>202</sup> Minors may not work under conditions that would harm their psychosocial development, such as work without pay; work that interferes with schooling; work that keeps them separated from their families; work under despotic or abusive conditions; work in illegal or immoral situations; or with the exception of minors ages 16 and 17, work between 8 p.m. and 6 a.m.<sup>203</sup> Individuals must report child labor law violations.<sup>204</sup>

The minimum age requirements and ending work time in MPS Resolution no. 4448, which defines in part the worst forms of child labor, and the Code of Childhood and Adolescence are in disagreement. The Resolution states adolescents ages 16 and 17 may work until 8 p.m., while Article 114 of the Code states adolescents ages 15 and 16 may only work until 6 p.m.<sup>205</sup> The ILO CEACR has requested clarification on exceptions in the Resolution about when adolescents ages 16 and 17 may work at night.<sup>206</sup>

The Penal Code identifies penalties for pimping of 32 to 72 month's imprisonment and fines of 66.66 to 750 times the legal minimum monthly salary, with those for pimping children under age 14 increasing by one-third to one-half.<sup>207</sup> Penalties for managing a brothel involving prostitution by minors are 96 to 144 months imprisonment with similar fines as above.<sup>208</sup> Child pornography is punishable by the same prison sentences as for running a brothel, with fines from 133.33 to 1,500 times the legal minimum monthly salary. Penalties in both cases increase by one-third to one-half if the perpetrator is a family member. The use of the mail or Internet to obtain or offer sexual contact with a minor is punishable by 80 to 180 months incarceration and a fine of 66.66 to 150 times the legal minimum monthly salary, with penalties increasing up to one-half if the minor involved is under age 12.<sup>209</sup> There are fines of 13.33 to 75 times the legal monthly minimum salary for failing to report any crimes described in this paragraph. Public servants convicted of these crimes are also dismissed from government employment.<sup>210</sup> Tourist agencies

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<sup>201</sup> MPS, *Resolución No 4448: por la cual se desarrolla la facultad contenida en el Código del Menor* (December 2, 2005); available from [http://white.oit.org.pe/ipcc/documentos/resolucion\\_listatip\\_col.pdf](http://white.oit.org.pe/ipcc/documentos/resolucion_listatip_col.pdf).

<sup>202</sup> Ibid.

<sup>203</sup> Ibid.

<sup>204</sup> *Código de la Infancia y la Adolescencia*, Article 40.

<sup>205</sup> *Resolución No 004448*, Article 6. See also *Código de la Infancia y la Adolescencia*, Article 114.

<sup>206</sup> ILO CEACR, *Direct Request, Night Work of Young Persons (Industry) Convention, 1919 (No. 6) Colombia* (ratification: 1983), [online] 2007 [cited September 6, 2007]; available from <http://www.ilo.org/ilolex/english/newcountryframeE.htm>.

<sup>207</sup> *Código Penal*, Articles 213-214.

<sup>208</sup> Ibid., Articles 216-217.

<sup>209</sup> Ibid., Articles 218-219.

<sup>210</sup> Ibid., Article 219.

found to be involved in child sex tourism can be penalized by fines and the suspension or cancellation of their registration.<sup>211</sup> Posting child pornography on the Internet is punishable by fines up to 100 times the legal minimum monthly salary and the cancellation or suspension of the Web site.<sup>212</sup> For information on other laws regarding forced prostitution and trafficking of children, including sex trafficking, see Section C.

Minors may not serve in the government armed forces or perform defense-related or intelligence activities.<sup>213</sup> Recruitment of children under age 18 by armed groups is punishable by 96 to 180 months in prison and fines ranging from 800 to 1,500 times the legal minimum monthly salary.<sup>214</sup> The law regards child soldiers as victims of political violence.<sup>215</sup> Forcing minors to participate in the commission of terrorist acts is punishable by 192 to 360 months incarceration and fines ranging from 6,667 to 45,000 times the legal minimum monthly salary.<sup>216</sup> Punishments for crimes involving illegal drugs, such as drug cultivation, manufacturing, and trafficking are increased if the crimes involve a minor.<sup>217</sup>

Approximately 10.4 percent of children ages five to 14 were estimated to be working in 2001 in Colombia. Approximately 14.1 percent of all boys' ages five to 14 were working compared to 6.6 percent of girls in the same age group. The majority of working children were found in the services sector (49.9 percent), followed by agriculture (35.6 percent) and manufacturing (12.6 percent).<sup>218</sup> The ICBF estimates that about 80 percent of working children work in the informal economy.<sup>219</sup> In urban areas children work primarily in such sectors as commerce, industry, and services. In rural areas, children work primarily in agriculture and commerce.<sup>220</sup>

Many children in Colombia work as domestic servants or in family businesses, often without pay.<sup>221</sup> The International Labor Organization's International Program on the Elimination of Child Labor (ILO-IPEC) estimated that in 1999 in the seven largest cities in Colombia, 157,089

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<sup>211</sup> Ministry of Commerce, Industry and Tourism, *Resolucion 119*, February 12, 2002. See also Government of Colombia, *Ley 679 de 2001*, August 3, 2001, articles 19-20; available from [http://www.mincomercio.gov.co/eContent/documentos/turismo/Normatividad/Leyes/ley\\_679\\_de\\_2001.htm](http://www.mincomercio.gov.co/eContent/documentos/turismo/Normatividad/Leyes/ley_679_de_2001.htm).

<sup>212</sup> Government of Colombia, *Decreto 1524*, (2002), Articles 4 and 9; available from <http://www.uris.com/leyes/dec/1524.htm>.

<sup>213</sup> *Resolución No 4448*, Article 9. See also Government of Colombia, *Decreto 128 sobre política de reincorporación a la vida civil*, (2003); available from [http://www.fiscalia.gov.co/justiciapaz/Documentos/Decreto\\_128\\_2003.doc](http://www.fiscalia.gov.co/justiciapaz/Documentos/Decreto_128_2003.doc).

<sup>214</sup> *Código Penal*, Article 162.

<sup>215</sup> Government of Colombia, *Ley 782 de 2002*, (December 23, 2002), Article 15; available from <http://www.secretariasenado.gov.co/leyes/L0782002.HTM>.

<sup>216</sup> *Código Penal*, Articles 343 and 344.

<sup>217</sup> *Ibid.*, Articles 375 and 384.

<sup>218</sup> UCW analysis of ILO SIMPOC, UNICEF MICS, and World Bank surveys, *Child Economic Activity and School Attendance Rates*, October 7, 2005. Reliable data on the worst forms of child labor are especially difficult to collect given the often hidden or illegal nature of the worst forms, such as the use of children in the illegal drug trade, prostitution, pornography, and trafficking. Available statistics and information may or may not include the worst forms of child labor.

<sup>219</sup> U.S. Department of State, "Country Reports- 2006: Colombia."

<sup>220</sup> National Administrative Department of Statistics and ILO-IPEC, *Encuesta Nacional de Trabajo Infantil*, Bogota: November 2001, 55; available from [http://www.dane.gov.co/files/banco\\_datos/TrabInfantil/OIT\\_Result\\_caract\\_poblacion\\_5y17.pdf](http://www.dane.gov.co/files/banco_datos/TrabInfantil/OIT_Result_caract_poblacion_5y17.pdf).

<sup>221</sup> *Ibid.*, 55.

children between ages five and 18 worked as domestic servants, with the possibility that an additional 166,052 children also worked in this sector, for a total of 323,000 children. Of this total, about 88 percent were girls and 90 percent did not attend school. On average, children working as domestic servants were 4.4 years behind their counterparts in school.<sup>222</sup> Children also mine emeralds, gold, clay, and coal under dangerous conditions.<sup>223</sup> According to government agencies, estimates of children working in illegal mines range from 8,733 to 200,000.<sup>224</sup>

Many children are also victims of commercial sexual exploitation, including pornography, prostitution, and sexual tourism. An estimated 25,000 minors work in the commercial sex trade in Colombia, according to a report by the Inspector General's Office.<sup>225</sup> Colombia is a major source of girls trafficked for the purpose of commercial sexual exploitation.<sup>226</sup> Children are trafficked internally from rural to urban areas for sexual exploitation and forced labor.<sup>227</sup>

Children also harvest coca for making cocaine, and purchase and transport the coca base. Children picking coca, called *raspachines*, engage in heavy manual labor and suffer severely from cut, cracked and calloused hands.<sup>228</sup> Once involved in cocaine processing and transportation, it is difficult to withdraw, at times due to threats of death.<sup>229</sup> Children in Colombia are recruited, sometimes forcibly, by insurgent and paramilitary groups to serve as combatants in the country's on-going conflict (see Section VI). As of 2002-2003, Human Rights Watch estimated that there were about 11,000 child soldiers in these illegal armed groups, while the ICBF estimated about 10,000.<sup>230</sup> Guerrillas and paramilitaries force many children to perform forced labor and participate in human rights violations such as torture and murder.<sup>231</sup>

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<sup>222</sup> ILO-IPEC and Externado University, *La invisibilidad del trabajo infantil doméstico en hogares de terceros en Colombia*, Lima: 2003, 21-22; available from [http://www.oit.org.pe/ipec/boletin/documentos/colombia\\_ras\\_tid.pdf](http://www.oit.org.pe/ipec/boletin/documentos/colombia_ras_tid.pdf).

<sup>223</sup> ILO-IPEC, *Diagnóstico sobre el Trabajo Infantil en el Sector Minero Artesanal en Colombia*, Lima: 2001, 49, 50, 61 and 62; available from <http://www.oit.org.pe/ipec/pagina.php?seccion=13&pagina=178>.

<sup>224</sup> U.S. Department of State, "Country Reports- 2006: Colombia," Section 6d. See also MPS, *El Maltrato y la Erradicación del Trabajo Infantil*, press release, April 25, 2007.

<sup>225</sup> International Organization for Migration, *Panorama sobre la trata de personas*, Bogota: 2006, 18; available at <http://www.oim.org.co/modulos/contenido/default.asp?idmodulo=7&idlibro=115>. See also MPS, *Informe especial sobre violencia contra la infancia en Colombia*, Bogota: 2006, 231; available at <http://www.minproteccionsocial.gov.co/entornoambiental/library/documents/DocNewsNo15086DocumentNo1819.PDF>. See also U.S. Embassy- Bogota, *reporting*, March 5, 2007.

<sup>226</sup> U.S. Department of State, "Country Reports- 2006: Colombia," Section 5.

<sup>227</sup> U.S. Department of State, "Country Reports- 2006: Colombia," Section 5. See also U.S. Embassy- Bogota, *reporting*, March 5, 2007.

<sup>228</sup> Juan Guillermo Ferro, et al. *Jóvenes, Coca, Amapola*, Bogota: Instituto de Estudios Rurales, 1999, 157-179. See also Alirio Bustos Valencia, *La Ley del Monte*, Bogota: Intermedio, 1999, 139, 185. See also International Organization for Migration, *Panorama sobre la trata de personas*, 20. See also UN Committee on the Rights of the Child, *Consideration of Reports submitted by States Parties, Concluding Observations: Colombia*, New York: 2006, para. 82 and 88; available from <http://www.unhcr.ch/tbs/doc.nsf/>.

<sup>229</sup> Ferro, *Jóvenes, Coca, Amapola*, 169.

<sup>230</sup> Human Rights Watch, *You'll Learn Not to Cry*, 5. See also Guillermo González Uribe, *Los Niños de la Guerra*, Bogota: Editorial Planeta, 2002, 15. See also MPS, *Written Communication to U.S. Embassy- Bogota*, April 18-May 2, 2007.

<sup>231</sup> Human Rights Watch, *You'll Learn Not to Cry*, 29-34, 63-65. See also González, *Los Niños de la Guerra*, 36, 99-100. See also MPS, *Informe especial sobre violencia contra la infancia en Colombia*, 187-228.

Many girl combatants are subject to sexual exploitation by other group members.<sup>232</sup> Reportedly, children have been used by government armed forces as informants.<sup>233</sup> Most child soldiers engage in some form of work before entering illegal armed groups; 30 percent of child soldiers work in the coca industry prior to involvement with armed groups.<sup>234</sup> Although many paramilitary groups have been demobilized, they have not officially delivered their demobilized child soldiers to ICBF as required by law. Thus, many of these children have not been identified nor are they receiving the special services they require. Government defense forces and agencies that receive demobilized child soldiers are often retaining them much longer than the 36 hours within which they are required to turn these children over to ICBF and, on some occasions, mistreating and intimidating the children, further delaying and jeopardizing their rehabilitation.<sup>235</sup>

The Government of Colombia has programs and policies in place to address the worst forms of child labor. The MPS is responsible for conducting labor inspections (see Section IV).<sup>236</sup> The ICBF, the Family Defenders, the Children and Adolescent Police, the Prosecutor General, and Family Commissioners are also responsible for enforcing child labor laws.<sup>237</sup> The Attorney General's Office and Judicial Police units investigate and prosecute child trafficking and commercial sexual exploitation.<sup>238</sup> The Attorney General's Office has a unit dedicated to prosecuting crimes of trafficking and sexual violence as well as crimes against minors.<sup>239</sup> The ICBF is responsible for child protection programs, including the provision of services to former child soldiers.<sup>240</sup>

Colombia's National Development Plan spanned 2002 to 2006 and established the eradication of exploitative child labor as a priority.<sup>241</sup> Pertinent results include: passage of the Code of Childhood and Adolescence; increase of the minimum working age to 15 years; and the

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<sup>232</sup> UN Committee on the Rights of the Child, *Concluding Observations: Colombia*, para. 80. See also Human Rights Watch, *You'll Learn Not to Cry*, 53-59. See also González, *Los Niños de la Guerra*.

<sup>233</sup> Coalition to Stop the Use of Child Soldiers, *Child Soldiers Global Report 2004: Colombia*, November 17, 2004; available from [http://www.child-soldiers.org/document\\_get.php?id=820](http://www.child-soldiers.org/document_get.php?id=820). See also Human Rights Watch, *You'll Learn Not to Cry*, 102-103. See also UN Committee on the Rights of the Child, *Concluding Observations: Colombia*.

<sup>234</sup> MPS, *Written Communications to U.S. Embassy- Bogotá*, April 18-May 2, 2007. See also Ferro, *Jóvenes, Coca, Amapola*. See also González, *Los Niños de la Guerra*.

<sup>235</sup> Ombudsman's Office and UNICEF, *Informe Defensorial Caracterización de las niñas, niños y adolescentes desvinculados de los grupos armados ilegales*, Bogotá, 2006, 43-45; available from <http://www.unicef.org/colombia/conocimiento/estudio-defensoria.htm>.

<sup>236</sup> MPS, *Written Communication to U.S. Embassy- Bogotá*, April 18-May 2, and November 16, 2007. See also MPS, *Decreto 205*, (February 3, 2003), Article 2; available from <http://www.suratep.com/legislacion/decretos/205.html>.

<sup>237</sup> *Código de la Infancia y la Adolescencia*, Articles 208-214. See also Observatory for Gender Affairs, *La esclavitud aún existe*, 8-11.

<sup>238</sup> International Organization for Migration, *Panorama sobre la trata de personas*, 11, 33-39.

<sup>239</sup> International Organization for Migration, *Panorama sobre la trata de personas*, 37.

<sup>240</sup> Government of Colombia, *Decreto 4760*, (December 30, 2005), Article 3; available from [www.altocomisionadoparalapaz.gov.co/noticias/2006/enero/documentos/decreto4760.pdf](http://www.altocomisionadoparalapaz.gov.co/noticias/2006/enero/documentos/decreto4760.pdf).

<sup>241</sup> National Planning Department, *Plan Nacional de Desarrollo 2002-2006: Hacia un Estado Comunitario*, Bogotá: 2003, 209; available from [http://www.dnp.gov.co/archivos/documentos/GCRP\\_PND/PND.pdf](http://www.dnp.gov.co/archivos/documentos/GCRP_PND/PND.pdf).

requirement to have permission to work from the MPS.<sup>242</sup> The Plan for Childhood (2004-2015) contains provisions relating to exploitative child labor, specifically to child trafficking, the recruitment of children into armed groups, and the commercial sexual exploitation of children.<sup>243</sup> The Government has developed a National Plan of Action for the Prevention and Eradication of Commercial Sexual Exploitation of Boys, Girls, and Adolescents Less than 18 Years of Age 2006-2011. This plan aims to generate information; develop and apply legislation; enhance prevention; provide services to children; build institutional capacity; and encourage the participation of children in the development, implementation and evaluation of the plan.<sup>244</sup> The ICBF and several NGOs operate shelters and treatment programs for child victims of commercial sexual exploitation.<sup>245</sup>

The Inter-Institutional Committee for the Eradication of Child Labor (*Comité Interinstitucional para la Erradicación del Trabajo Infantil y la Protección del Trabajo Juvenil*) implemented the Third Plan for the Elimination of Child Labor and the Protection of Working Youth, 2003-2006.<sup>246</sup> Under the Third Plan, the Government decentralized national policy on the elimination of child labor with the formation of departmental and municipal plans; MPS labor inspectors worked to raise young workers' and employers' awareness of child labor regulations during the work permit process; MPS provided technical assistance on exploitive child labor issues and policy development for regional and local agencies and committees; and ICBF formed units in 25 municipalities aimed at preventing child labor in artisanal mining. During the period, the number of youth participating in, and graduating from, the rural youth and youth in action programs increased.<sup>247</sup> The Committee was started in 1995, with the first National Plan from 1996 to 1999, the second from 2000 to 2002, and the third from 2003 to 2006.<sup>248</sup> Instead of developing a fourth plan, the Government will develop a national strategy linked with other macro policies. The National Strategy for the Eradication of Child Labor and Protection of Youth Workers, 2007-2015, is in development as of January, 2007.<sup>249</sup> The Inter-Institutional Committee has conducted trainings; it also maintains a child labor information system.<sup>250</sup>

The MPS and the National University of Colombia (*Universidad Nacional de Colombia*) have worked to eradicate exploitative child labor through a media campaign, community and school

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<sup>242</sup> Office of the President of Colombia. *Informe al Congreso 2007: Alvaro Uribe Velez*, Bogota: 2007, 70; available from [http://www.dnp.gov.co/paginas\\_detalle.aspx?idp=235](http://www.dnp.gov.co/paginas_detalle.aspx?idp=235).

<sup>243</sup> Government of Colombia, *Plan Decenal de infancia (2004-2015) para Colombia*, Bogota: 2004; available from [www.icbf.gov.co/espanol/decenal.htm](http://www.icbf.gov.co/espanol/decenal.htm).

<sup>244</sup> ICBF-UNICEF-ILO-IPEC and Fundación Renacer, *Plan de acción para la prevención y erradicación de la explotación sexual comercial*, Bogota: 2006, 43.

<sup>245</sup> ECPAT Internacional CSEC Database, *Colombia*, accessed June 19, 2007; available from <http://www.ecpat.net>.

<sup>246</sup> Interinstitutional Committee for the Eradication of Child Labor and Protection of the Youth Worker, *III Plan Nacional para la Erradicación del Trabajo Infantil y la Protección del Trabajo Juvenil 2003-2006*, ILO, Bogota, 2003, 51-52.

<sup>247</sup> *Informe al Congreso 2007*, 71-2.

<sup>248</sup> *Ibid.*, 4.

<sup>249</sup> Interinstitutional Committee for the Eradication of Child Labor and Protection of the Youth Worker, *Estrategia Nacional para la Erradicación del Trabajo Infantil y la Protección del Joven Trabajador*, ILO, Bogota, (draft) Jan. 12, 2007.

<sup>250</sup> U.S. Department of State, "Country Reports- 2006: Colombia," Section 6d.

education, and inter-institutional coordination.<sup>251</sup> The Ministry of Education (*Ministerio de Educación Nacional*, MEN) has specific projects and goals for improving access to education for vulnerable and displaced populations, including provision of space for 7,000 in educational institutions for demobilized child soldiers for the period 2007 through 2010. From 2003 through 2006, 2,200 demobilized child soldiers were provided educational services.<sup>252</sup>

The ICFTP and various ministries have implemented a variety of anti-trafficking awareness raising and monitoring activities within Colombia (see Section C for information on these initiatives not specifically related to children). The Office of the Human Rights Ombudsman, the National Police, and the IOM conducted a trafficking awareness raising program in schools.<sup>253</sup>

The Government has participated in a variety of projects addressing exploitative child labor. Colombia became a participating member of the ILO-IPEC in 2002.<sup>254</sup> With support from the ILO-IPEC and the Government of Canada, the Government is working to improve cooperation and coordination among national, regional, and municipal governments in combating child labor.<sup>255</sup> Also, with the support of the ILO-IPEC and Canada, the Government executed its 2001 child labor survey.<sup>256</sup>

The ICBF, the MIJ and the Ministry of Defense (*Ministerio de Defensa*) work to reintegrate former child soldiers into schools and society at large, and prevent additional children from becoming soldiers, assisted by the IOM and funds from the U.S. Agency for International Development and other governments.<sup>257</sup> From November 1999 to September 30, 2006, the ICBF provided services to 3,012 former child soldiers.<sup>258</sup> Armed groups that enter the Government's demobilization process must place minor recruits with the ICBF.<sup>259</sup> The military distributes prevention materials to schools and children in areas where children are at-risk for recruitment into armed groups.<sup>260</sup> The Government participated in a three-year, USD 7 million, inter-regional ILO-IPEC project funded by the USDOL to combat the involvement of children with armed groups. This project, which ended in 2007, withdrew 789 Colombian children from

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<sup>251</sup> Center for Social Studies, National University of Colombia, *Informe sobre las acciones realizadas en el desarrollo del convenio interadministrativo 047 de 2005*, Bogota: June 9, 2006, 3-4.

<sup>252</sup> Ministry of Education, *La Revolución Educativa, Proyectos Estratégicos 2007-2010, 1. Cobertura en Educación Básica y Media*, [online], accessed June 19, 2007; available from <http://www.mineducacion.gov.co/1621/propertyvalue-30972.html>.

<sup>253</sup> U.S. Embassy- Bogota, *reporting*, December 5, 2005.

<sup>254</sup> ILO, *Ratifications by Country*. See also ILO, *IPEC Actions against Child Labor: Highlights 2002*. Geneva: 2002, 15.

<sup>255</sup> U.S. Embassy- Bogota, *reporting*, August 25, 2004. See also ILO-IPEC official, E-mail communication, November 8, 2005.

<sup>256</sup> National Administrative Department of Statistics and ILO-IPEC, *Encuesta Nacional de Trabajo Infantil*, 8.

<sup>257</sup> IOM, *Programmes and Projects: Excombatant children*, [online] [cited January 9, 2006]; available from <http://www.iom.org.co/modulos/contenido/default.asp?idmodulo=224>. See also Coalition to Stop the Use of Child Soldiers, *Child Soldiers Global Report 2004: Colombia*. See also Human Rights Watch, *You'll Learn Not to Cry*. See also Colombian Ministry of Defense, *Reclutamiento de Menores*, press release, January 6, 2006; available from <http://www.mindefensa.gov.co/index.php?page=171>. See also González *Los Niños de la Guerra*.

<sup>258</sup> MPS, Written communication, April 18 - May 2, 2007.

<sup>259</sup> Government of Colombia, *Ley 975*, (July 25, 2005), Article 10; available from [http://www.altocomisionadoparalapaz.gov.co/justicia\\_paz/documentos/Ley1\\_975.pdf](http://www.altocomisionadoparalapaz.gov.co/justicia_paz/documentos/Ley1_975.pdf).

<sup>260</sup> Colombian Ministry of Defense, *Reclutamiento de Menores*, press release. See also UN Committee on the Rights of the Child, *Concluding Observations: Colombia*, para. 80.

child soldiering and prevented an additional 673 Colombian children from becoming child soldiers.<sup>261</sup>

The Government participates in a USDOL-funded USD 5.5 million ILO-IPEC regional project to combat child domestic labor and commercial sexual exploitation. The goal of this project is for a total of 2,185 children to be withdrawn from exploitive child labor and 2,920 to be prevented from entering such work.<sup>262</sup> The PNC program, "Colombia without Prostitution," uses family and community education to prevent the commercial sexual exploitation of children.<sup>263</sup> In 2005, the UN High Commissioner for Refugees presented a report congratulating the Colombian Government for its work with displaced persons, but stating that there were no reports of actions to prevent forced labor and sexual exploitation of displaced children.<sup>264</sup>

The Government participates in a USD 3.5 million, four-year USDOL-funded project to combat child labor through improved education services. The project, implemented by World Vision, seeks to withdraw or prevent 4,500 children from hazardous labor, and will end in 2008.<sup>265</sup> A new 39-month, USDOL-funded project for USD 5.1 million started in October 2007. This project, managed by an association led by Partners of the Americas, seeks to withdraw 3,663 and prevent 6,537 children from exploitative child labor in Colombia.<sup>266</sup> The MPS and the MEN work to eradicate exploitative child labor through activities including awareness raising campaigns.<sup>267</sup> The Colombian Institute of Geology and Mining (*Instituto Colombiano de Geología y Minería*), a government agency, is implementing a project to eradicate child labor in mining in cooperation with the United Nations Development Program.<sup>268</sup> The Government also participated in a two-year, USD 1.6 million project to prevent and eliminate child labor in small-scale mining operations in Colombia, which ended in 2004. Through this project 1,248 children were withdrawn from small-scale mining activities and 2,061 prevented from entering that form of child labor.<sup>269</sup>

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<sup>261</sup> ILO-IPEC, *Prevention and Reintegration of Children Involved in Armed Conflict: an Inter-regional Programme*, project document, Geneva, September 17, 2003. See also ILO-IPEC official, E-mail communication, October 3, 2007.

<sup>262</sup> ILO-IPEC, *Prevention and Elimination of child domestic labour and commercial sexual exploitation of children in Chile, Colombia, Paraguay and Peru*, project document, Geneva, September 8, 2004, 27.

<sup>263</sup> ECPAT International CSEC Database, *Colombia*, accessed June 30, 2005; available from <http://www.ecpat.net>.

<sup>264</sup> ACNUR Destaca Crecimiento en 132% de presupuesto para atención a desplazados, press release, June 1, 2005; available from [http://www.presidencia.gov.co/prensa\\_new/sne/2005/junio/01/03012005.htm](http://www.presidencia.gov.co/prensa_new/sne/2005/junio/01/03012005.htm).

<sup>265</sup> World Vision, *Combating Exploitive Child Labor through Education in Colombia*, project document, Washington, D.C., 2005.

<sup>266</sup> U.S. Department of Labor, *Cooperative Agreement: Partners of the Americas and Associates*, September 27, 2007.

<sup>267</sup> Interinstitutional Committee for the Eradication of Child Labor, *III Plan Nacional para la Erradicación del Trabajo Infantil 2003-2006*. See also *Lineamientos de política para la atención educativa a poblaciones vulnerables*, Bogota: Ministry of Education, July 2005, 32-35.

<sup>268</sup> ICBF, "PEPTIMA, un ejemplo para las comunidades mineras," *Diálogos*, July 2005, 8; available from [http://www.oit.org.pe/spanish/260ameri/oitreg/activid/proyectos/ipec/documentos/bol\\_min\\_col\\_icbf.pdf](http://www.oit.org.pe/spanish/260ameri/oitreg/activid/proyectos/ipec/documentos/bol_min_col_icbf.pdf).

<sup>269</sup> ILO-IPEC, *Prevention and Elimination of Child Labour in Small-Scale Mining in Colombia*, project document, Geneva, 2001. See also ILO-IPEC, *Prevention and Elimination of Child Labour in Small-Scale Mining in Colombia*, technical progress report, November 2005.



## E. Elimination of Discrimination in Respect of Employment and Occupation

### 1. General Legal Framework

Colombia ratified ILO Convention No. 100 on Equal Remuneration on June 7, 1963, and ILO Convention No. 111 on Discrimination (Employment and Occupation) on March 4, 1969.<sup>270</sup>

The Constitution of Colombia states that all individuals are born free and equal before the law. They are entitled to equal protection and treatment by the authorities, and to enjoy the same rights, freedoms, and opportunities without discrimination on the basis of gender, race, national or family origin, language, religion, political opinion, or philosophy. The Constitution obligates the Government to:<sup>271</sup>

- promote the necessary conditions to ensure equality;
- adopt measures favoring groups which are discriminated against or marginalized; and
- protect individuals who, on account of their economic, physical, or mental condition, are demonstrably vulnerable, and to sanction any abuse or ill-treatment perpetrated against them.

The Constitution of Colombia makes work a right and a social obligation. Every person is entitled to a job under dignified and equitable conditions.<sup>272</sup> The Constitution directs the Congress to issue a labor statute that includes the fundamental principle of equality of opportunity for workers.<sup>273</sup> The Substantive Labor Code states that all workers are equal before the law and that each worker possesses the same protections and guarantees.<sup>274</sup>

Law 1010 of 2006 defines employment discrimination as all treatment that is different on the basis of race, gender, family or national origin, religious creed, political preference, social status, or other factors not pertinent to employment.<sup>275</sup> It further defines employment discrimination as a prohibited form of employment harassment.<sup>276</sup> Using injurious or offensive language about an employee that references his/her race, gender, family or national origin, political preference, or social status is considered to be employment harassment.<sup>277</sup>

Law 1010 applies to both the public and private sectors.<sup>278</sup> Employers are required to put in place mechanisms to prevent workplace harassment and to establish an internal, confidential

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<sup>270</sup> ILO, *Ratifications by Country*.

<sup>271</sup> *Constitución Política de la República de Colombia*, Article 13.

<sup>272</sup> *Ibid.*, Article 25.

<sup>273</sup> *Ibid.*, Article 53.

<sup>274</sup> *Código Sustantivo del Trabajo*, Article 10.

<sup>275</sup> Government of Colombia, *Ley no. 1010*, (January 23, 2006), Article 2; available from [www.empleo.com/info/ley1010.pdf](http://www.empleo.com/info/ley1010.pdf).

<sup>276</sup> *Ibid.*

<sup>277</sup> *Ibid.*, Article 7.

<sup>278</sup> *Ibid.*, Article 6.

procedure to resolve any incidents of harassment.<sup>279</sup> Victims of employment harassment may also contact the local labor inspectorate, municipal police, public defender's office, or municipal representative. If the situation continues, victims have the right to ask for a legally-authorized institution to conciliate the situation.<sup>280</sup> Law 1010 defers to the Disciplinary Code (*Código Disciplinario Unico*) and the Substantive Labor Code in terms of setting penalties for those found guilty of employment harassment.<sup>281</sup> In cases where those two codes are silent, Law 1010 imposes a fine totaling two to 10 months of the legal minimum monthly salary for the person who committed the harassment and the company that tolerated it. The employer is also responsible for paying 50 percent of all medical treatment and other related costs resulting from the harassment.<sup>282</sup>

Law 972 of 2005 protects the right of people living with HIV/AIDS to work.<sup>283</sup> Decree 1543 of 1997 protects workers' right to keep their HIV/AIDS status private and prohibits employers from using HIV/AIDS tests as part of an application for a job. It further prohibits employers from dismissing employees because of their HIV/AIDS status.<sup>284</sup>

The Special Unit of Inspection, Monitoring and Control of the MPS directs, coordinates, develops, and evaluates preventative actions, inspections, and enforcement actions to ensure that laws and regulations regarding employment discrimination in the public and private sector are followed. This office also develops programs and activities, through inter-agency committees, to eradicate employment discrimination that affects vulnerable workers in the informal sector.<sup>285</sup>

The following sections provide information on the situation facing specific demographic groups in Colombia, where further specific information is available.

## 2. Gender

The Constitution states that women and men have equal rights and opportunities and women cannot be subjected to any type of discrimination. It also states that women will benefit from the special assistance and protection of the Government during their periods of pregnancy and following delivery, and will receive food subsidies if they should thereafter find themselves unemployed. The Constitution directs the Congress to issue a labor statute that includes special protection for women, mothers, and workers who are minors.<sup>286</sup>

Law 823 of 2003 establishes an institutional framework and orients the policies and actions of the Government to guarantee equality of opportunity for women. It obligates the Government to

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<sup>279</sup> Ibid., Article 9.

<sup>280</sup> Ibid., Article 6.

<sup>281</sup> Ibid., Article 10.

<sup>282</sup> Ibid.

<sup>283</sup> Government of Colombia, *Ley no. 972*, (July 15, 2005), Article 2; available from <http://www.secretariassenado.gov.co/leyes/L0972005.HTM>.

<sup>284</sup> Government of Colombia, *Decreto 1543 de 1997*, (June 12, 1997), Articles 21 and 35; available from [www.presidencia.gov.co/prensa\\_new/decretoslinea/1997/junio/12/dec1543121997.pdf](http://www.presidencia.gov.co/prensa_new/decretoslinea/1997/junio/12/dec1543121997.pdf).

<sup>285</sup> MPS, written communication to U.S. Embassy-Bogota in response to USDOL request for updated information, February 20, 2008.

<sup>286</sup> *Constitución Política de la República de Colombia*, Articles 43 and 53.

promote and strengthen women's access to urban and rural work, and equality in income generation, by:<sup>287</sup>

- developing programs that ensure non-discrimination in employment and the application of the principle of equal pay for equal work;
- designing training and capacity-building programs for women to develop non-traditional skills, such as in construction work;
- offering technological, organizational and management support to micro, small and medium-sized companies led by women and those that employ mostly women;
- raising public awareness of women's labor and economic rights and mechanisms available for protecting their rights;
- guaranteeing female farmers access to property, credit, and technology;
- overseeing and implementing social security laws that assist female workers and impose penalties for violations;
- making periodic evaluations of the conditions of work for women, especially for rural workers, to improve data collection and to adopt pertinent corrective measures.

Law 823 also guarantees women and men equal access to all academic and professional programs. The Government is required to use the media to undertake campaigns to eradicate sexist and discriminatory stereotypes and to promote attitudes and practices of equality between men and women.<sup>288</sup>

Law 731 of 2002 aims to improve the quality of life of rural women, especially those in poverty, and to increase equality between men and women in rural areas.<sup>289</sup> The Constitution states that the authorities will guarantee adequate and effective participation of women in the decision-making ranks of the public administration.<sup>290</sup>

The rate of female participation in the labor force rose from 19 percent in 1950 to 58 percent in 2005.<sup>291</sup> According to statistics analyzed by the ILO, female-to-male income differentials in Colombia have improved as well. In 1994, women earned 68 percent of the income earned by

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<sup>287</sup> Government of Colombia, *Ley no. 823*, (July 10, 2003), Articles 1 and 5; available from <http://www.secretariassenado.gov.co/leyes/L0823003.HTM>.

<sup>288</sup> *Ibid.*, Article 9.

<sup>289</sup> Government of Colombia, *Ley no. 731*, (January 14, 2002), Article 1; available from <http://www.secretariassenado.gov.co/leyes/L0731002.HTM>.

<sup>290</sup> *Constitución Política de la República de Colombia*, Article 40(7).

<sup>291</sup> Departamento Nacional de Planeación, *Plan Nacional de Desarrollo 2006-2010 - Estado Comunitario: desarrollo para todos*, Bogota, Colombia: Departamento Nacional de Planeación, 2006, 115; available from [http://www.dnp.gov.co/paginas\\_detalle.aspx?idp=906](http://www.dnp.gov.co/paginas_detalle.aspx?idp=906).

men, while in 2004 women earned 77 percent of the income earned by men.<sup>292</sup> Women experience higher rates of unemployment than men. In 2004, the unemployment rate of women in urban areas was 18.4 percent, while the unemployment rate of men was 13 percent.<sup>293</sup> In rural areas, the difference was greater – the unemployment for women (16 percent) was twice that of men (8 percent).<sup>294</sup>

Law 1009 of 2006 establishes a permanent government body, the Observatory on Gender Matters (*Observatorio de Asuntos de Género*, OAG), within the Administrative Department of the President.<sup>295</sup> The objective of the OAG is to identify and to select a system of gender indicators, categories of analysis, and follow-up mechanisms in order to reflect critically on the policies, plans, programs, laws, and jurisprudence designed to improve the status of women and gender equity in Colombia.<sup>296</sup> In 2006, the Government approved the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination Against Women.<sup>297</sup>

In 2006, the Office of the United Nations High Commissioner for Human Rights (UNHCHR) engaged in advisory, support and exchange activities with representatives of civil society and NGOs in the areas of the rights of women and discrimination based on gender and sexual orientation.<sup>298</sup>

### 3. People with Disabilities

The Constitution obligates the Government to guarantee to people with disabilities the right to employment appropriate to their physical condition.<sup>299</sup>

Law 361 of 1997 prohibits an employer from not hiring persons with disabilities, unless the disability would clearly prevent fulfillment of the job requirements. It also prohibits the dismissal of a person with a disability from a job, or termination of his/her employment contract due to the disability, unless the MPS grants authorization. Workers with disabilities who are dismissed or who have their contracts terminated because of their disability and without MPS authority are entitled to a monetary amount equivalent to 180 days of wages.<sup>300</sup>

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<sup>292</sup> ILO, *Equality at work: Tackling the challenges. Global Report under the follow-up of the ILO Declaration on Fundamental Principles and Rights at Work*, Geneva: International Labour Office, 2007, 21; available from [http://www.ilo.org/dyn/declaris/DECLARATIONWEB.DOWNLOAD\\_BLOB?Var\\_DocumentID=6779](http://www.ilo.org/dyn/declaris/DECLARATIONWEB.DOWNLOAD_BLOB?Var_DocumentID=6779).

<sup>293</sup> Carlos Augusto Viáfara López, *Plan Integral de Largo Plazo para la Población Negra, Afrocolombiana, Palenquera y Raizal: Consultaría Desarrollo Económico - Género*, (Bogota, Colombia: Departamento Nacional de Planeación, June 7, 2007), 36; available from [http://www.dnp.gov.co/paginas\\_detalle.aspx?idp=885](http://www.dnp.gov.co/paginas_detalle.aspx?idp=885).

<sup>294</sup> *Ibid.*, 37.

<sup>295</sup> Government of Colombia, *Ley no. 1009*, (January 23, 2006), Article 1; available from <http://www.secretariassenado.gov.co/leyes/L01009006.HTM>.

<sup>296</sup> *Ibid.*

<sup>297</sup> United Nations General Assembly, Human Rights Council, *Organization of the Work of the Session: Report of the United Nations High Commissioner for Human Rights on the Situation of Human Rights in Colombia*, (Geneva: United Nations, March 5, 2007), Annex II para 38; available from [http://www.hchr.org.co/documentoseinformes/informes/altocomisionado/Informe2006\\_eng.pdf](http://www.hchr.org.co/documentoseinformes/informes/altocomisionado/Informe2006_eng.pdf).

<sup>298</sup> *Ibid.*, para 109. Annex II, para 33 of this same report notes that there are cases of discrimination in educational institutions and access to employment against lesbians, gays, bisexuals, and transgender persons.

<sup>299</sup> *Constitución Política de la República de Colombia*, Article 54.

<sup>300</sup> Government of Colombia, *Ley no. 361*, (February 7, 1997), Article 26; available from [http://www.secretariassenado.gov.co/leyes/L0361\\_97.HTM](http://www.secretariassenado.gov.co/leyes/L0361_97.HTM).

Law 361 establishes a policy of preferential hiring of people with disabilities by public organizations. If a person with a disability is fully capable of performing a job, that person is to be hired under terms equal to what would be offered to a person without a disability.<sup>301</sup>

Law 361 directs the Government to provide all the necessary resources to allow people with disabilities to exercise their rights. It also directs the Government to adopt measures to create and promote employment for people with disabilities, including education and skills development. In cases where the disability does not allow a person to be integrated into the regular, competitive labor market and as a result cannot earn an income equivalent to at least the legal minimum salary in effect, the Government is to establish programs of employment protection for such persons or else make them beneficiaries of the social security system.<sup>302</sup>

The MPS is responsible for promoting the integration of people with disabilities in the labor market. The National Service of Learning (*Servicio Nacional de Aprendizaje*, SENA) is also charged with labor-related objectives, specifically to improve the employability of unemployed people belonging to vulnerable populations, including people with disabilities. It aims to do this by designing and implementing programs for improving their job skills and qualifications and matching them with the needs of the current labor market.<sup>303</sup>

In order to fulfill the National Plan for the Development of People with Disabilities, the Government established a sub-plan, the National Plan of Intervention for People with Disabilities 2005-2007 (*El Plan Nacional de Intervención en Discapacidad 2005-2007*). The Plan aims to contribute to the educational and labor market integration of people with disabilities and the development of their employment and production capacity. Activities to be carried out include:<sup>304</sup>

- developing councils and committees of people with disabilities and plans of action for labor market integration;
- designing, validating, and disseminating policies and pedagogical guidelines for the education of people with disabilities;
- identifying barriers to institutional access and designing mechanisms to overcome those barriers;
- promoting programs of labor skills development and qualifications that meet the demands of the labor market; and
- promoting the economic advantages of employing people with disabilities.

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<sup>301</sup> Ibid., Article 27.

<sup>302</sup> Ibid., Articles 4, 22, and 29.

<sup>303</sup> MPS, *Discapacidad e Integración Sociolaboral en Colombia: Guía Metodológica para la Implementación del Modelo*, Bogota, Colombia: Oficina Asesora de Comunicaciones, 2006, 11, 31, 32.

<sup>304</sup> Ibid., 37.

The Plan of Intervention also creates inter-sectoral groups, composed of public and non-governmental organizations, to address issues related to people with disabilities, including achieving equality in opportunities for people with disabilities. The Intersectoral Group for Equality in Opportunities (*Grupos de Enlace Sectorial de Equiparación de Oportunidades*) is responsible for, among others, the following objectives:<sup>305</sup>

- integration of people with disabilities into educational institutions;
- integration of people with disabilities into public education;
- integration of people with disabilities into the labor force and increasing job skills for people with disabilities.<sup>306</sup>

#### 4. Indigenous and Afro-Colombian Groups

The Colombian Constitution guarantees that members of ethnic minority groups will have the right to training that respects and develops their cultural identity.<sup>307</sup>

The Government does not regularly track labor force participation rates for ethnic or indigenous populations.<sup>308</sup> However, according to a 2007 report published by the Colombian National Planning Department (*Departamento Nacional de Planeación*, DNP) it appears that, in part as a result of their limited access to the labor market, ethnic minority Afro-Colombian, *palenquera*, and *raizal* populations experience greater levels of poverty, marginalization, and social vulnerability.<sup>309</sup>

The DNP report indicates that Afro-Colombian men in Cartagena generally earn 70 to 80 percent of the wages earned by non-Afro-Colombian men in the same occupational category. The differential is most pronounced in the “directors and civil servants” occupational class, where Afro-Colombian men earn 21 percent of the wages earned by non-Afro-Colombians.<sup>310</sup> Afro-Colombian women in Cartagena appear to be achieving more parity with respect to wages than men, generally earning between 83 to 97 percent of the wages earned by their non-Afro-Colombian counterparts within the same occupational classes (except that female Afro-Colombian “professional and technical workers” earned only approximately 27 percent of their counterparts).<sup>311</sup> With respect to employment patterns, the DNP report indicates that the

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<sup>305</sup> Ibid., 28, 30.

<sup>306</sup> U.S. Embassy- Bogota, E-mail communication, August 20, 2007.

<sup>307</sup> *Constitución Política de la República de Colombia*, Article 68.

<sup>308</sup> U.S. Embassy- Bogota, E-mail communication, August 20, 2007.

<sup>309</sup> Libia Grueso, June Marie Mow, Dilia Robinson Davis, and Carlos Augusto Viáfara, *Plan Integral de Largo Plazo para la Población Negra /Afrocolombiana, Palenquera Y Raizal: Propuestas para el Capítulo de Fortalecimiento de los Grupos Étnicos y de las Relaciones Interculturales del Plan Nacional de Desarrollo 2006-2010*, Bogota, Colombia: Departamento Nacional de Planeación, January 15, 2007, 12-13; available from [http://www.dnp.gov.co/paginas\\_detalle.aspx?idp=885](http://www.dnp.gov.co/paginas_detalle.aspx?idp=885).

<sup>310</sup> Carlos Augusto Viáfara López, *Plan Integral de Largo Plazo para la Población Negra, Afrocolombiana, Palenquera y Raizal: Consultoría Desarrollo Económico - Género*, (Bogota, Colombia: Departamento Nacional de Planeación, June 7, 2007), 48; available from [http://www.dnp.gov.co/paginas\\_detalle.aspx?idp=885](http://www.dnp.gov.co/paginas_detalle.aspx?idp=885).

<sup>311</sup> Ibid.

unemployment rate for Afro-Colombians in urban areas is 17.6 percent, which is higher than the 15.2 percent unemployment rate for non-Afro-Colombians in urban areas. Afro-Colombians in rural areas, however, have a lower rate of unemployment (8.3 percent) than non-Afro-Colombians (11.4 percent).<sup>312</sup>

In 2006, the UNHCHR stated that ethnic groups were affected by inferior education quality in comparison with national averages.<sup>313</sup> The DNP report also suggests that investment in education for Afro-Colombians does not reduce the probability that they will live in poverty, as it does for non-Afro-Colombians.<sup>314</sup> The authors of the report conjectured that this may be due to discrimination on the part of potential employers and the lack of high quality education available to Afro-Colombians.<sup>315</sup> Afro-Colombians may be discouraged from higher educational achievement because they experience greater disadvantages than do non-minorities in accessing technology, developing specialized labor skills, and fully integrating into the labor market.<sup>316</sup>

In 2006, the Office of the UNHCHR engaged in advisory, support and exchange activities with representatives of civil society and NGOs in the area of discrimination based on race.<sup>317</sup>

## 5. Age

Law 15 of 1958 and Law 931 of 2004 prohibit age discrimination in employment, banning the imposition of age requirements for job applications or to perform a job.<sup>318</sup> There does, however, appear to be employment discrimination on the basis of age, based on the results of labor inspections conducted by the MPS.<sup>319</sup> The Special Unit of Inspection, Monitoring, and Control of the MPS is responsible for monitoring workplaces for age discrimination and for sanctioning violators with fines equivalent to 50 months of the legal minimum monthly salary.<sup>320</sup> The MPS notes that although it is difficult to prove that an employer has violated age discrimination laws in its selection processes, it has imposed sanctions in cases where the employer has established an age requirement in order to be hired for a position.<sup>321</sup>

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<sup>312</sup> Ibid., 36, 37, 44, 45.

<sup>313</sup> *Report of the United Nations High Commissioner for Human Rights* (2007), Annex II para 13.

<sup>314</sup> Ibid., 29.

<sup>315</sup> Ibid.

<sup>316</sup> Ibid., 30.

<sup>317</sup> *Report of the United Nations High Commissioner for Human Rights* (2007), para 109.

<sup>318</sup> Government of Colombia, *Ley no. 931*, (2004), Article 2; available from <http://www.secretariasenado.gov.co/leyes/L0931004.HTM>. See also U.S. Embassy- Bogota, E-mail communication, August 20, 2007.

<sup>319</sup> U.S. Embassy- Bogota, E-mail communication, August 20, 2007.

<sup>320</sup> *Ley 931*, Article 4. See also MPS, written communication to U.S. Embassy-Bogota in response to USDOL request for updated information, February 20, 2008.

<sup>321</sup> MPS, written communication to U.S. Embassy-Bogota in response to USDOL request for updated information, February 20, 2008.

## F. Acceptable Conditions of Work

### 1. Minimum Wage

Colombia ratified ILO Convention No. 26 on Minimum Wage Fixing on June 20, 1933, ILO Convention No. 95 on Protection of Wages on June 7, 1963, and ILO Convention No. 99 on Minimum Wage Fixing Machinery in Agriculture on March 4, 1969.<sup>322</sup>

The Constitution of Colombia and the Substantive Labor Code recognize the right of workers to receive a minimum level of remuneration.<sup>323</sup> The Government sets annually a standardized minimum monthly salary. This minimum monthly salary is determined by the Permanent Committee on Agreement of Wage and Labor Policies (*Comisión Permanente de Concertación de Políticas Salariales y Laborales*), a 15-member tripartite committee with equal representation from government, business, and labor, which makes decisions by consensus.<sup>324</sup> For 2008 and for the fifth time in the last eight years, the Committee was unable to agree on a new minimum monthly salary. In such instances, the law permits the President of Colombia to determine the minimum monthly salary following certain parameters.<sup>325</sup> Accordingly, for 2008 the President raised the minimum monthly salary for the private sector by 6.4 percent to 461,500 pesos (USD 235) from 433,700 pesos (USD 221) in 2007.<sup>326</sup> This increase exceeds the 2007 inflation rate of 5.7 percent and the 6 percent increase sought by the private sector. Colombian unions had sought a 10.5 percent increase.<sup>327</sup> The President commented that employees of middle and low incomes in the public sector will receive the same increase but this will be given as a “productivity bonus” that has yet to be defined.<sup>328</sup> Out of the 7.4 million workers in the formal economy, an estimated 1.9 million currently earn the minimum wage.<sup>329</sup>

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<sup>322</sup> ILO, *Ratifications by Country*.

<sup>323</sup> *Constitución Política de la República de Colombia*, Title II, Article 53. See also *Código Sustantivo del Trabajo*, Article 145.

<sup>324</sup> Ley 278 de 1996, *Comisión Permanente de Concertación de Políticas Salariales y Laborales creada por el artículo 56 de la Constitución Política*, (April 30, 1996); Articles 2(d), 5, and 8, as cited in *Diario Oficial*, No. 42783, May 10, 1996; available from [http://www.secretariassenado.gov.co/leyes/L0278\\_96.HTM](http://www.secretariassenado.gov.co/leyes/L0278_96.HTM).

<sup>325</sup> *Ibid.*, Article 8. See also U.S. Embassy-Bogota, *reporting*, January 3, 2008. See also *Presidencia de la República de Colombia*, “Declaración del Presidente Uribe sobre salario mínimo para el año 2008,” press release, December 27, 2007; available from <http://web.presidencia.gov.co/sp/2007/diciembre/27/02272007.html>.

<sup>326</sup> *Presidencia de la República de Colombia*, “Declaración del Presidente Uribe sobre salario mínimo para el año 2008,” press release. See also Government of Colombia, “Por el cual se fija el salario mínimo legal,” Decree No. 4965 (December 27, 2007), Article 1; available from <http://www.businesscol.com/empresarial/tributarios/2008/decreto-4965.pdf>.

<sup>327</sup> Colombian law also mandates that various other public service costs be raised annually according to the previous year’s inflation rate. Such costs tend to disproportionately affect low-income people, thereby offsetting the increased minimum salary earnings. U.S. Embassy-Bogota, *reporting*, January 3, 2008.

<sup>328</sup> *Presidencia de la República de Colombia*, “Declaración del Presidente Uribe sobre salario mínimo para el año 2008,” press release.

<sup>329</sup> U.S. Embassy-Bogota, *reporting*, January 3, 2008.



In the cut flower industry, which exports heavily to the United States,<sup>330</sup> some growers have made additional commitments with respect to working conditions. For example, two Colombian flower firms, employing some 600 workers, are among 48 growers in South America and Africa that have signed the International Code of Conduct for the Production of Cut Flowers (ICC), in which companies agree to follow basic human rights principles, core ILO conventions, and environmental standards.<sup>331</sup> By signing the ICC, these companies have committed to ensuring that the wages and benefits paid to their workers meet legal minimum standards, are sufficient to meet basic needs of workers and their families, and provide some discretionary income.<sup>332</sup>

## 2. Hours of Work

Colombia ratified ILO Convention No. 1 on Hours of Work and No. 14 on Weekly Rest on June 20, 1933. It also ratified ILO Convention No. 106 on Weekly Rest in Commerce and Offices on March 4, 1969, and Convention No. 30 on Hours of Work in Commerce and Offices on March 4, 1969.<sup>333</sup>

Colombia's Substantive Labor Code sets the maximum hours of work at averages of eight hours per day and 48 hours per week, with the averages determined over a three-week period.<sup>334</sup> As it relates to domestic workers, the Code notes that a 1998 Constitutional Court decision held that domestic workers living in the home of the employer cannot work more than 10 hours a day. The Substantive Labor Code also provides the Government with the authority to order a reduction in work hours for laborers engaged in unsafe and dangerous work.<sup>335</sup> The official work day in Colombia is from 6 a.m. to 10 p.m., while night work is conducted between 10 p.m. and 6 a.m.<sup>336</sup> Individuals performing night work receive premium pay — 35 percent extra in wages than daytime workers in the same position.<sup>337</sup> Overtime work is limited to an average of two hours per day and 12 hours per week, but may be increased in cases of *force majeure* (such as an act of God), if an accident occurs, or when there is urgent, indispensable work that must be performed using company equipment or personnel. In any of these cases, the extra work must be undertaken only to the extent necessary to prevent great harm to the normal operations of the establishment.<sup>338</sup> Overtime during daytime hours must be compensated at 1.25 times the regular

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<sup>330</sup> In 2006, the United States imported \$448.6 million in cut flowers from Colombia, which accounted for 58 percent of U.S. imports of cut flowers from all sources. These data refer to items imported under the Harmonized Tariff Schedule (HTS) 4-digit heading 0603: cut flowers and flower buds of a kind suitable for bouquets. Data provided by the U.S. Department of Commerce, Bureau of the Census, as accessed from the USITC Interactive Tariff and Trade Dataweb [online][cited October 3, 2007]; available from <http://www.dataweb.usitc.gov>.

<sup>331</sup> Sarah Cox, "The Dark Side of Flowers," *Georgia Straight*, June 7, 2002; available from [http://www.zmag.org/content/print\\_article.cfm?itemID=1422&sectionID=9](http://www.zmag.org/content/print_article.cfm?itemID=1422&sectionID=9). See also First FLP Companies in Colombia," *Food First - FIAN Magazin*, no. 4/01, as cited in "Press," *FLP: Flower Label Program*, [online] [March 3, 2005]; available from <http://www.flower-label-program.org/e5/press.htm>.

<sup>332</sup> *International Code of Conduct for the Production of Cut-Flowers*, [online] [March 3, 2005]; available from <http://www.bothends.org/strategic/ICC-eng.pdf>.

<sup>333</sup> ILO, *Ratifications by Country*.

<sup>334</sup> *Código Sustantivo del Trabajo*, Articles 161 and 165.

<sup>335</sup> *Ibid.*, Articles 161-162.

<sup>336</sup> *Ibid.*, Article 160.

<sup>337</sup> *Ibid.*, Article 168.

<sup>338</sup> *Ibid.*, Articles 162-163.

wage, while workers engaged in overtime work during the night must receive pay that is 1.75 times their normal wage.<sup>339</sup>

It has been reported that workers in the flower industry typically work upwards of 60 hours per week during peak seasons and often do not receive full overtime pay. In addition, workers on many flower farms are allowed only minimal breaks for meals and bathroom use in order to meet the high quotas for planting or picking flowers.<sup>340</sup> The two Colombian flower firms that have signed the ICC have committed to a 48-hour workweek, with one day of rest per week. In addition, the two companies have agreed that overtime may not exceed 12 hours per week, must be voluntary and not demanded on a regular basis, and must be paid at a premium rate.<sup>341</sup>

### 3. Occupational Safety and Health

Colombia ratified ILO Convention No. 81 on Labor Inspection on November 13, 1967, ILO Convention No. 129 on Labor Inspection (Agriculture) on November 16, 1976, ILO Convention No. 167 on Safety and Health in Construction on September 6, 1994, ILO Convention No. 170 on Safe Use of Chemicals on September 6, 1994, ILO Convention No. 174 on Prevention of Major Industrial Accidents on December 9, 1997, and ILO Convention No. 161 on Occupational Health Services on January 25, 2001.<sup>342</sup>

Colombia's Substantive Labor Code requires employers to provide equipment and workplaces that guarantee the security and health of workers and to adopt safety and health measures to "protect the life, health, and morality of workers in their service."<sup>343</sup> Employers that have ten or more permanent workers must develop special safety and health regulations and submit them for approval to the National Office of Medicine and Industrial Hygiene (*Oficina Nacional de Medicina e Higiene Industrial*) of the MPS.<sup>344</sup> These special regulations must include provisions on: (1) personal hygiene protection for workers; (2) prevention of accidents and illnesses; (3) medical services and a day nursery; (4) prohibitions regarding the lodging of workers in dangerous or unsafe industrial buildings; (5) seating conditions for workers in factories, shops, pharmacies, etc.; (6) protection for workers when dealing with electrical welding; (7) special norms for mining and petroleum companies; (8) safety measures for electrical energy companies and explosives depots, flammable materials, and other hazardous materials; and (9) hygiene in agricultural, stock breeding, and forestry companies. Once these regulations are approved, employers must post them at the work site in two conspicuous places.<sup>345</sup> The U.S. Department of State reports that while Colombian law guarantees workers the right to remove themselves from hazardous work situations without jeopardizing their employment; in practice, non-unionized workers have continued to work in these circumstances out of fear of losing their jobs if they complained about the situation.<sup>346</sup>

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<sup>339</sup> Ibid., Article 168.

<sup>340</sup> Sarah Cox, "The Dark Side of Flowers."

<sup>341</sup> *International Code of Conduct for the Production of Cut-Flowers*.

<sup>342</sup> ILO, *Ratifications by Country*.

<sup>343</sup> *Código Sustantivo del Trabajo*, Article 348.

<sup>344</sup> Ibid., Article 349.

<sup>345</sup> Ibid., Article 350-351.

<sup>346</sup> U.S. Department of State, "Country Reports - 2006: Colombia," Section 6e.

The National Office of Medicine and Industrial Hygiene (*Oficina Nacional de Medicina e Higiene Industrial*) of the MPS enforces the occupational safety and health regulations via periodic inspections and complaint-driven inspections. However, according to the U.S. Department of State, a lack of labor inspectors, low public awareness of safety and health regulations, and the inadequate attention placed by trade unions on occupational safety and health in the workplace has led to a high level of industrial accidents and unsafe working conditions.<sup>347</sup> The MPS reports that through November 2007, there were 430,668 reported workplace accidents (302,050 of which were verified) and 826 reported accidental workplace deaths (706 of which were verified). In 2006 there were 393,484 accidents (295,052 of which were verified) and 895 accidental workplace deaths (654 of which were verified).<sup>348</sup>

Labor rights and working conditions in Colombia's flower industry – the second largest flower exporter in the world - have received increased attention in recent years from Colombian and international public and private stakeholders, in part related to exposure of workers to harmful chemicals.<sup>349</sup> The MPS and the Colombian Agricultural Institute (*Instituto Colombiano Agropecuario*) regulate the use and management of pesticides through the implementation of Law No. 9 of 1979 and Decree No. 1843 of 1991.<sup>350</sup> Colombia has signed on to the Andean Norm for the Registration and Control of Chemical Pesticides for Agricultural Use.<sup>351</sup> Workers in the flower industry are exposed to pesticides, fungicides, and other agro-chemicals. Of the 134 pesticides approved for use in the Colombian flower industry, seven are considered by the Government to be extremely toxic. One study of more than 8,000 workers in flower farms outside of Bogota found that employees were exposed to 127 different pesticides, three of which are identified as extremely toxic by the World Health Organization. In addition, workers in the flower industry often are not given appropriate personal protective equipment or adequate training on how to use the protective gear that is provided; nor are they educated about the types of pesticides being used, how to handle the pesticides properly, and the potential risks of

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<sup>347</sup> Ibid.

<sup>348</sup> MPS, "Estadísticas Sistema General de Riesgos Profesionales: Año 2007," 1,4,5; available from [http://www.fondoriesgosprofesionales.gov.co/Estadisticas/ESTADISTICAS\\_SGRP\\_NOVIEMBRE\\_2007.pdf](http://www.fondoriesgosprofesionales.gov.co/Estadisticas/ESTADISTICAS_SGRP_NOVIEMBRE_2007.pdf). See also Colombian Trade Union Federations (CUT, CGT and CTC) and the Confederation of Pensioners of Colombia (CPC), *Labor Rights and Freedom of Association in Colombia*, 104-105. These data only reflect incidents among workers that are covered under the General System of Professional Risks (*Sistema General de Riesgos Profesionales*) which, according to a joint union report given to the ILO in 2007, covered approximately 5.6 million workers in 2006 (32 percent of the working population). For 2006, the joint report (citing the MPS) only provides one number for total workplace accidents (688,536 noted as "qualified + presumed"); that number equals the sum of the MPS reported and verified numbers that are listed here. The joint report gives a number for workplace deaths in 2006 that is the same as the MPS number for reported workplace deaths. It is unknown if the reported accidents and deaths that were not found verifiable by the MPS were actually deemed as such per se or if they were withdrawn voluntarily, were mistakenly reported, or otherwise.

<sup>349</sup> U.S. Embassy-Bogota, *reporting*, December 14, 2007. Approximately 98 percent of Colombia's flowers are exported, 80 percent of which go to the U.S.

<sup>350</sup> Government of Colombia, *Ley 09 de 1979*, available from [http://www.car.gov.co/documentos/1\\_17\\_2005\\_6\\_01\\_09\\_PM\\_Ley\\_9\\_1979\\_C%C3%B3digoSanitario.pdf](http://www.car.gov.co/documentos/1_17_2005_6_01_09_PM_Ley_9_1979_C%C3%B3digoSanitario.pdf). Ministerio de Salud, *Por el cual se reglamentan parcialmente los títulos III, V, VI, VII, y XI de la ley 09 de 1979 sobre uso y manejo de plaguicidas, Decreto 1843 de 1991*; available from [http://www.cisproquim.org.co/legislacion/decreto\\_1843\\_1991.pdf](http://www.cisproquim.org.co/legislacion/decreto_1843_1991.pdf).

<sup>351</sup> Auditoría General de la República de Colombia, *Auditoría Analítica de Gestión al Uso y Manejo de Plaguicidas en Colombia*, Bogota: March 2004, 28; available from [http://www.auditoria.gov.co/9\\_documentos/2\\_3\\_2\\_plaguicidas.pdf](http://www.auditoria.gov.co/9_documentos/2_3_2_plaguicidas.pdf).

exposure.<sup>352</sup> Workers must enter greenhouses during or immediately after fumigation, and many workers suffer from health problems ranging from back and muscle pain, headaches, weight loss and dizziness to chronic respiratory diseases, skin diseases, seizures, and leukemia.<sup>353</sup> The 2002 study also found that pregnant workers face additional risks, such as higher rates of miscarriages, premature births, and congenital defects.<sup>354</sup> According to Corporación Cactus, a nonprofit organization that aids Colombian flower workers, the application of pesticides in greenhouses triples the impact of these substances because it is an enclosed area, and most flower production takes place in greenhouses. While Colombia has regulations governing the use of pesticides, there are no rules specific for greenhouses.<sup>355</sup>

In 1996, the 225-member Colombian Association of Flower Exporters (*Asociación Colombiana de Exportadores de Flores* – commonly known as *Asocolflores*) created an industry certification program called *Florverde*. *Florverde* strives to continuously improve the environmental and social standards that *Asocolflores* companies that participate in *Florverde* use, so that the production of flowers, in part, secures the quality of life of participating companies' workers. Before being certified as in compliance with program requirements, *Florverde* requires companies to be in compliance with prescribed standards and codes of conduct, including operational, safety and social guidelines. As of November 2007, 89 of the participating members were certified while another 56 were in the process of being certified.<sup>356</sup>

The ILO CEACR reports that labor inspectors in agricultural enterprises are at-risk in certain regions due to general security issues and urges the Government to adopt sufficient measures to protect them. It also notes that the Government did not provide data regarding agricultural inspections, but recognizes that training plans were being developed to improve inspections and surveillance activities for occupational health and safety matters in general.<sup>357</sup>

## VI. Violence against Trade Unionists

### A. Overview

In March 2006, the U.S. Department of State indicated that Colombian trade unionists are the victims of selective, systematic, and persistent violence perpetrated primarily by illegal armed groups for political and financial reasons. It also noted that violence and antiunion discrimination

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<sup>352</sup> Milagros Campos, *Deceptive Beauty: A Look at the Global Flower Industry*, Victoria International Development Education Association, 1 No. 5, 2002; available from [http://www.vida.ca/support\\_items/deceptive\\_beauty\\_ch1.pdf#search='flower%20industry%20colombia](http://www.vida.ca/support_items/deceptive_beauty_ch1.pdf#search='flower%20industry%20colombia).

<sup>353</sup> Campos, “Deceptive Beauty: A Look at the Global Flower Industry.” See also Sarah Cox, “The Dark Side of Flowers.”

<sup>354</sup> Campos, “Deceptive Beauty: A Look at the Global Flower Industry.”

<sup>355</sup> Sarah Cox, “The Dark Side of Flowers.” See also Corporación Cactus, [online][cited March 18, 2008] <http://cactus.org.co/principal.php>.

<sup>356</sup> Asocolflores, *Florverde: Información General*, and *Florverde: Empresas Participantes y Certificadas* [online] [cited March 18, 2008]; available from <http://asocolflores.org/>. See also *Florverde, Certification* [online] [cited March 18, 2008]; available from <http://www.florverde.org/florverde-certification.html>. See also U.S. Embassy-Bogota, *reporting*, December 14, 2007. For information about other efforts to implement codes of conduct in the Colombian cut flower sector, see [http://www.eti2.org.uk/Z/lib/2007/04/event-bogota-sem/ETI-Bogota-seminar-2007\\_en.pdf](http://www.eti2.org.uk/Z/lib/2007/04/event-bogota-sem/ETI-Bogota-seminar-2007_en.pdf). See also [http://www.globalgap.org/cms/front\\_content.php?idart=3&idcat=9&lang=1](http://www.globalgap.org/cms/front_content.php?idart=3&idcat=9&lang=1).

<sup>357</sup> International Labor Conference, *2005 Report of the CEACR*, 315.

discourage workers from joining a union and engaging in trade union activities.<sup>358</sup> In response to this situation, in June 2007 the ILO CEACR brought to the attention of the Government of Colombia that it “recalls the interdependence between civil liberties and trade union rights and emphasizes that a truly free and independent trade union movement can only develop in a climate of respect for fundamental human rights . . . and that employers’ and workers’ organizations can only exercise their activities freely and meaningfully in a climate that is free from violence.”<sup>359</sup>

Due to the decades-long armed conflict in Colombia, it is difficult to determine which murders of trade unionists were related to union activities and which were the result of general violence in the country. Based on statistics compiled by ENS, the pattern of homicides of trade unionists closely tracks the overall pattern of murders. Both rose steeply in the mid-1990s, fell some in 1997 and 1998, rose again over the period 1999 to 2002, fell steeply in 2002 and 2003, and have generally fallen since.<sup>360</sup> Unions reject the explanation that violence is a by-product of the armed conflict, and labor rights groups state that most of the violations of trade unionists’ human rights are associated with industrial disputes, even though they take place in the context of war. They argue most of the murders, threats, kidnappings, and forced removals suffered by unionists have taken place in periods characterized by increased activity and pressure to meet workers’ demands and, therefore, unionists are not merely accidental victims of the civil war.<sup>361</sup>

The Embassy of Colombia to the United States has stated that a two-thirds decline in homicides against unionists since 2002 is due to the unprecedented level of resources and initiatives from President Uribe’s Administration. Specifically, the Government of Colombia attributes the increased safety for trade unionists to its efforts to protect labor union members, their families, and other groups at their homes, at work and in public.<sup>362</sup>

The signing among representatives of the Government, employers and workers of a Tripartite Agreement on Freedom of Association and Democracy in Geneva in June 2006 provides for the establishment of a permanent ILO representation in Bogota.<sup>363</sup> The International Trade Union Confederation (ITUC) has noted this as a positive development.<sup>364</sup> A High-Level ILO Mission to Colombia during November 25-28, 2007, resulted in recognition, for the first time, from

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<sup>358</sup> U.S. Department of State, “Country Reports-2005: Colombia,” Section 6. See also ILO CFA, *Report 343* (November 2006), para. 418.

<sup>359</sup> International Labor Conference, *2007 Report of the CEACR*, 69.

<sup>360</sup> Peter DeShazo, Tanya Primiani, and Philip McLean, *Back from the Brink: Evaluating Progress in Colombia, 1999-2007* (Washington, D.C.: Center for Strategic and International Studies, November 2007), 26-28; available from <http://www.csis.org/media/csis/pubs/071112-backfromthebrink-web.pdf>.

<sup>361</sup> International Trade Union Confederation, *2007 Annual Survey of Violations of Trade Union Rights: Colombia*, [cited September 25, 2007]; available from <http://survey07.ituc-csi.org/getcountry.php?IDCountry=COL&IDLlang=EN>.

<sup>362</sup> Embassy of Colombia, *Colombia: A Progress Report*, Washington D.C.: October 2007.

<sup>363</sup> The duration of the mandate of the permanent representation is two years, which may be extended upon request of the Colombian constituents. *ILO Governing Body Committee on Technical Cooperation 297<sup>th</sup> Session*, November 2006, (b) Appendices I-III; available from <http://www.ilo.org/public/english/standards/reim/gb/docs/gb297/pdf/tc-5-2.pdf>.

<sup>364</sup> International Trade Union Confederation, *2007 Annual Survey of Violations of Trade Union Rights: Colombia*, [cited September 25, 2007]; available from <http://survey07.ituc-csi.org/getcountry.php?IDCountry=COL&IDLlang=EN>.

Colombia's labor confederations that the Government has made progress in protecting labor leaders and prosecuting related crimes, although more must be done. It also resulted in the acceptance among the involved tripartite representatives of four technical cooperation projects to help implement the Agreement, and an eleven-point agenda that would serve as a starting point for future discussions.<sup>365</sup>

## B. Extent and Nature of Violence

The Department of State reported that Colombian Government statistics for 2006 showed a decrease from 2005 in the number of all homicides, massacres, kidnappings and forced displacements in the country.<sup>366</sup> The 2006 estimate of 17,281 homicides is the lowest in 20 years.<sup>367</sup>

According to the U.S. Department of State, the MPS reported a total of 26 murdered unionists for 2007, and ENS reported 39. Of the MPS reported murders, 18 victims were teachers, three of whom were union leaders. According to the ENS, 24 of the murders they reported were of unionized teachers, four of whom were leaders.<sup>368</sup> In other recent years, the MPS and ENS have also provided varying estimates on the number of murdered unionists, with the MPS always providing the lower estimate and ENS the higher. For 2006, the range was 59 to 72. More than half (34) of the MPS-reported victims in 2006 were teachers; union leaders accounted for 11 of the MPS total (two of the murdered leaders were also teachers.)<sup>369</sup> The ENS reported a total of 72 murders of unionists in 2006.<sup>370</sup> According to the U.S. Department of State, the MPS and ENS totals differ because only the ENS counts murdered "non-affiliated advisers to unions, retired and nonactive union members, and rural community organizers as trade unionists."<sup>371</sup> The ENS states, however, that the only crimes counted in its permanent database are those against persons who are union members. With respect to its statistics, ENS reports that for all recorded unionist murders, it verifies with the union that the victim was a current member. ENS thereafter assesses whether the murder was due directly to union-related activities or otherwise.<sup>372</sup> For 2005, the MPS and the ENS give estimates that are lower than their 2006 totals. They give a range of between 39 and 70 murders of unionists in 2005.<sup>373</sup>

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<sup>365</sup> "ILO Mission Report: Colombia, November 23-28, 2007." See also U.S. Embassy- Bogota, *reporting*, December 13, 2007.

<sup>366</sup> U.S. Department of State, "Country Reports-2006: Colombia," Introduction.

<sup>367</sup> U.S. Embassy- Bogota, *reporting*, March 7, 2007.

<sup>368</sup> U.S. Department of State, "Country Reports-2007: Colombia," Section 6a.

<sup>369</sup> U.S. Department of State, "Country Reports-2006: Colombia," Section 6a.

<sup>370</sup> ENS, "Aclaraciones frente al registro de asesinatos de sindicalistas" (Email communication attachment, November 23, 2007, U.S. Embassy-Bogota). See also Colombian Trade Union Federations (CUT, CGT and CTC) and the Confederation of Pensioners of Colombia (CPC), *Labor Rights and Freedom of Association in Colombia*, 24.

<sup>371</sup> U.S. Department of State, "Country Reports - 2007: Colombia," Section 6a. See also U.S. Department of State, "Country Reports-2006: Colombia," Section 6a.

<sup>372</sup> "Aclaraciones frente al registro de asesinatos de sindicalistas."

<sup>373</sup> U.S. Department of State, "Country Reports-2005: Colombia," Section 6a. See also International Confederation of Free Trade Unions, *Colombia: Annual Survey of Violations of Trade Union Rights*, 2006 [cited September 25, 2007]; available from <http://www.icftu.org/displaydocument.asp?Index=991223865&Language=EN>. See also Colombian Trade Union Federations (CUT, CGT and CTC) and the Confederation of Pensioners of Colombia (CPC), *Labor Rights and Freedom of Association in Colombia*, 24.

The UNHCHR noted that in 2006, murders of teachers and unionists in particular had increased.<sup>374</sup> The UNHCHR recorded an increase in threats against various human rights defenders, including unionists and grassroots leaders, especially in rural areas.<sup>375</sup> Colombian trade union leaders have alleged, moreover, that the Government has attempted to marginalize trade unions by arresting union members on suspicion of engaging in terrorist activities.<sup>376</sup> In support of this, unions cite a matter involving the former president of the National Oil Workers Union (*Unión Sindical Obrera de la Industria Petróleo*), who was arrested by security forces for rebellion and subversion for alleged ties with the National Liberation Army (*Ejército de Liberación Nacional de Colombia*); however, in March 2004 all charges were dismissed due to a lack of evidence when the judge determined that witnesses were paid to present false testimony against the defendant.<sup>377</sup>

In November 2007, the ENS reported that since January 2007 at least 14 trade unionists had been arbitrarily detained. In 2006, 16 were arbitrarily detained; and in 2005, 56. ENS also reported that there were at least 134 death threats against unionists in 2007. In 2006, there were 244 death threats and in 2005, 260. In 2007, ENS reported there were at least 14 cases of harassment against unionists. In 2006, there were 22 cases of harassment; in 2005, there were 32.<sup>378</sup>

Teachers have long been particular victims of violence in Colombia. According to the Colombian Federation of Educators (*Federación Colombiana de Educadores*, FECODE), between 1998 and mid-2003, 300 teachers were killed.<sup>379</sup> ENS reports that in 2005, 72 percent of all anti-union crimes affected unionists in the education sector, including 44 murders (out of 70 total), 186 death threats and 44 arbitrary detentions.<sup>380</sup> There is no single reason why teachers might be targeted. Some media reports suggest that many are reportedly singled out by right-wing paramilitary forces because they also work as labor activists. In addition, teachers are thought to be visible targets because they are often seen as community leaders, especially in rural areas where illiteracy is prevalent. They are often the most educated people in town, and some believe that violence is used to discourage them from participating in civil society. Some also believe that teachers are targeted by right-wing paramilitaries that object to history lessons that highlight class differences, and that both the left- and right-wing forces view schools as lucrative opportunities for extortion.<sup>381</sup>

Both right-wing paramilitary groups and left-wing guerrilla groups are known to have been responsible for violence against trade unionists, and are recognized by the U.S. Department of

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<sup>374</sup> *Report of the United Nations High Commissioner for Human Rights* (2007), para. 44.

<sup>375</sup> *Ibid.* Annex II, para. 38.

<sup>376</sup> See also U.S. Department of State, "Country Reports-2004: Colombia," Section 6a.

<sup>377</sup> ENS and the European Union, *Informe Sobre la Violación a los Derechos Humanos de los Sindicalistas Colombianos, en el año 2005, Medellín, Colombia, Abril, 2006*, 13; available from [http://www.ens.org.co/aa/img-upload/40785cb6c10f663ea7ea03aa15/Informe\\_DE\\_DDHH\\_DE\\_SINDICALISTAS\\_COLOMBIANO\\_EN\\_EL\\_2005.pdf](http://www.ens.org.co/aa/img-upload/40785cb6c10f663ea7ea03aa15/Informe_DE_DDHH_DE_SINDICALISTAS_COLOMBIANO_EN_EL_2005.pdf). See also U.S. Department of State, "Country Reports-2004: Colombia," Section 6a.

<sup>378</sup> ENS, "Violaciones del Derecho a la Vida, a la Libertad y a la Integridad Física de los Sindicalistas: Colombia, todas las Violaciones" (Email communication attachment, November 23, 2007, U.S. Embassy-Bogota). See also *Informe Sobre la Violación a los Derechos Humanos de los Sindicalistas Colombianos*, 1.

<sup>379</sup> Stern, Seth and Rachel Van Dongen, "Targeted Teachers," *The Christian Science Monitor*, June 17, 2003, Washington, D.C. and Bogota. Available online at: <http://www.csmonitor.com/2003/0617/p13s02-lecl.html?related>.

<sup>380</sup> *Informe Sobre la Violación a los Derechos Humanos de los Sindicalistas Colombiano*, 5, 9.

<sup>381</sup> Stern and Van Dongen, "Targeted Teachers."

State as Foreign Terrorist Organizations. But a report covering 2006 by the U.S. Department of State suggests that there is no consensus on the primary perpetrator. In cases of murder of trade unionists or union-affiliated teachers for which they have identified perpetrators, Colombian authorities have identified guerrillas as responsible for seven murders, as well as “renegade paramilitaries” for four, and common criminals for an additional two murders. The ENS has identified and “attributed nine murders to renegade paramilitaries, seven to guerrillas, and one to common criminals.”<sup>382</sup>

Government security forces, particularly units of the army and police, have also been implicated. The UNHCHR reports that from 2005 to 2006 there was an increase in complaints lodged with the UNHCHR’s Colombian office concerning the involvement of security forces in human rights violations affecting a wide variety of groups, including union members.<sup>383</sup> Some of these violations involved murder. Many such murders had characteristics of extrajudicial executions and appeared to be increasingly common across a large area of the country and involving various units of the military.<sup>384</sup> The UNHCHR also reports that, as in previous years, most of these cases involved victims “presented” as if they were members of illegal armed groups, so as to give the impression they were killed in combat.<sup>385</sup> In 2006, some investigations charged military officers with terrorist attacks and murders that previously had been falsely attributed to the terrorist organization the Revolutionary Armed Forces of Colombia - People’s Army (*Fuerzas Armadas Revolucionarias de Colombia – Ejército del Pueblo*, commonly known as FARC-EP), or that had been reported as resulting from “friendly fire.”<sup>386</sup>

A number of sources suggest that violence against trade unionists has persisted largely because perpetrators have been able to act with little fear of punishment, which may be due to various reasons. Issues of due process and continued non-reporting of crimes, for example, have been obstacles to the administration of justice.<sup>387</sup> The U.S. Department of State also notes that impunity continues to be a serious problem in light of the judicial system’s inefficiency, and because of intimidation and violence against judges, prosecutors, and witnesses.<sup>388</sup> Another reason involves issues of court jurisdiction. Colombia’s Penal Code specifically outlaws

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<sup>382</sup> U.S. Department of State, “Country Reports-2006: Colombia,” Section 6a. There were about 750 total terrorist incidents in Colombia in 2006, the most in the Western Hemisphere. The paramilitary groups had, until the recent demobilization of most of their leaders and members, been affiliated with the umbrella terrorist organization called the United Self-Defense Forces of Colombia (*Autodefensas Unidas de Colombia* - commonly known as AUC), which largely ceased to function by the end of 2006. The guerrilla groups include the Revolutionary Armed Forces of Colombia - People’s Army (*Fuerzas Armadas Revolucionarias de Colombia – Ejército del Pueblo* - commonly known as FARC-EP) and the National Liberation Army (*Ejército de Liberación Nacional* – commonly known as ELN). See U.S. Department of State, “Colombia,” in *Country Reports on Terrorism – 2006*, Washington, DC, April 30, 2007, chapters 2 and 6; available from <http://state.gov/s/ct/rls/crt/2006/>. See also U.S. Department of State, “Briefing on Release of 2006 Country Reports on Terrorism,” Washington, DC, April 30, 2007; available from <http://state.gov/s/ct/rls/rm/07/>.

<sup>383</sup> *Report of the United Nations High Commissioner for Human Rights* (2007), para. 34 and Annex 1, para. 1. UNHCHR states that, “Human rights violations are understood to be actions and omissions that affect rights contained in international instruments when they are committed by public servants or by private individuals with the acquiescence of the authorities.”

<sup>384</sup> *Report of the United Nations High Commissioner for Human Rights* (2007), para. 36 and 38.

<sup>385</sup> *Ibid.*, Annex 1, para 1.

<sup>386</sup> *Ibid.*, para 7.

<sup>387</sup> *Report of the United Nations High Commissioner for Human Rights* (2007), para. 55.

<sup>388</sup> U.S. Department of State, “Country Reports-2005: Colombia,” Section 1e.



physical and mental torture, and the Constitution states that no one may be “imprisoned, arrested, or detained except by virtue of a warrant.”<sup>389</sup> The U.S. Department of State notes that judicial handling of these and other human rights violations should fall within the jurisdiction of the civilian system, not the military system.<sup>390</sup> Yet, the UNHCHR has noted that reports of extrajudicial executions attributed to members of the security forces show continued military involvement in both the crimes and in the investigations. This observation led to a joint directive issued June 14, 2006 by the Minister of Defense and the Attorney General to further emphasize the jurisdiction of the civil justice system over these matters. The UNHCHR credited this as one factor leading to a decline in complaints of extrajudicial executions in Antioquia, one of the areas most affected by such executions. The UNHCHR noted “no decrease” in other areas after the issuance of the joint directive.<sup>391</sup>

Concerns about impunity have surfaced often from ILO sources. Through 2006, the ILO CFA and CEACR repeatedly observed that a lack of investigations in some cases, limited progress in others, and a lack of convictions, all underscored a prevailing state of impunity.<sup>392</sup> The CFA and the ILO CEACR have noted that this impunity situation is a serious impediment to the exercise of trade union rights.<sup>393</sup> In reports to the CEACR from Colombian trade unionists and also as presented separately by the ITUC, between 95 to 99 percent of cases concerning anti-union violence are claimed to go unpunished.<sup>394</sup> In 2006, on-going concern with impunity contributed to the signing of the Tripartite Agreement on Freedom of Association and Democracy at the ILO by the Government of Colombia and Colombian worker and employer representatives. Among other things, the Agreement declared that “[i]n the fight against impunity, the parties have agreed on rigorous follow-up on the results of the special investigation group set up by the Procurator General of the Republic to bring to light abuses of freedom and life of workers and trade union leaders and to punish those guilty.”<sup>395</sup> (See next section for full text of the Agreement.)

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<sup>389</sup> *Código Penal*, Article 279. See also *Constitución Política de la República de Colombia*, Article 23.

<sup>390</sup> U.S. Department of State, *Country Reports on Human Rights Practices 2003 - Colombia*, Section 1e, Washington, D.C., February 25, 2004. Available at: <http://www.state.gov/g/drl/rls/hrrpt/2003/27891.htm>. See also U.S. Department of State, “Country Reports-2005: Colombia,” Section 1e.

<sup>391</sup> *Report of the United Nations High Commissioner for Human Rights* (2007), para. 36-39.

<sup>392</sup> ILO CFA, Report No. 343 (November 2006), para. 422; available from <http://webfusion.ilo.org/public/db/standards/normes/libsynd/index.cfm?hdroff=1>. See also International Labor Conference, *2006 Report of the CEACR*, 71.

<sup>393</sup> International Labor Conference, *2007 Report of the CEACR*, 69. See also International Labor Conference, *2006 Report of the CEACR*, 71. See also International Labor Conference, *2005 Report of the CEACR*, 49. See also ILO CFA, Report No. 337, paras. 535 and 551(a).

<sup>394</sup> International Labor Conference, *2005 Report of the CEACR*, 49. See also ITUC, *Annual Survey - 2007: Colombia*.

<sup>395</sup> International Labor Conference, *2006 Report of the Committee on the Application of Standards*, 5; available from <http://www.ilo.org/public/english/standards/reln/ilc/ilc95/pdf/pr-24-part1.pdf>.

### C. Government Response and Initiatives

President Uribe has publicly expressed his commitment to effective enforcement of labor rights in Colombia, stating that “for security to be democratic, it must provide equal protection to businessmen, union leaders, farm-owners, and workers, and those who express their opinions; whether in favor or against the Government.”<sup>396</sup> Vice-President Santos echoed this sentiment by stating that “. . . freedom of association can only be exerted in a situation in which fundamental human rights are respected and guaranteed, in particular those related to the life and the security of people.”<sup>397</sup> Toward this end, the Government has taken a number of measures meant to reduce violence, including against trade unionists.

The Government of Colombia has attributed the decline in overall violence in the country to various recent and bold reforms it has initiated to bring peace to the country.<sup>398</sup> In 2003, President Uribe introduced the National Development Plan (*Plan de Desarrollo Nacional*), to guide and prioritize government spending.<sup>399</sup> The Democratic Security Policy (*Política de Defensa y Seguridad Democrática*) is a key aspect of this plan; it aims to guarantee all citizens full exercise of their individual rights by bolstering the rule of law. The policy aims to consolidate state control of national territories; eliminate the illegal drug trade and organized crime; strengthen the judicial system; support the economic and social development of conflict regions; and strengthen the protection of human rights, especially for high risk groups such as union members and social activists.<sup>400</sup>

A program that supports the Democratic Security Policy, and that coordinates with the Ministry of Defense and the DAS, is the MIJ’s Protection Program for human rights advocates and other groups, including union members.<sup>401</sup> The Program was first created in 1997 in cooperation with various agencies and with partial funding from the United States Agency for International Development (USAID).<sup>402</sup> The Program protects individuals by implementing security measures such as bullet proofing for homes and vehicles, supplying bodyguards, security personnel, bullet-proof vests and communication equipment, and providing temporary relocation.<sup>403</sup> In 2007, the

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<sup>396</sup> Government of Colombia, *Commitment by President Uribe’s Administration to the Enforcement of Labor Standards and the Protection of Human Rights of Labor Union Members and Workers* [online][cited February 26, 2008], 1; available from

[http://alpha.mindefensa.gov.co/descargas/Documentos\\_Descargables/ingles/ExSumm%20050202.pdf](http://alpha.mindefensa.gov.co/descargas/Documentos_Descargables/ingles/ExSumm%20050202.pdf).

<sup>397</sup> United States-Andean Free Trade Agreement, *Before the Trade Policy Staff Committee: Written Comments by the Government of Colombia Regarding Its Commitment to Human Rights and Labor Rights*, April 2, 2004.

<sup>398</sup> Embassy of Colombia, *Colombia: A Progress Report*, Washington D.C.: October 2007.

<sup>399</sup> Presidencia de la República, Ministerio de Defensa, *Por la cual se aprueba el Plan Nacional de Desarrollo 2003-2006, hacia en Estado comunitario*, Colombia, *Ley 812 de 2003*, (2003); available from <http://www.presidencia.gov.co/ley812.PDF>.

<sup>400</sup> Government of Colombia, *Política de Defensa y Seguridad Democrática (2003)*; available from [http://alpha.mindefensa.gov.co/dayTemplates/images/seguridad\\_democratica.pdf](http://alpha.mindefensa.gov.co/dayTemplates/images/seguridad_democratica.pdf).

<sup>401</sup> Ibid. See also Ministerio del Interior y de Justicia, *Programa de Protección*, 1 [cited January 25, 2007]; available from [http://www.mij.gov.co/paginal\\_detalle.asp?doc=152&pag=593](http://www.mij.gov.co/paginal_detalle.asp?doc=152&pag=593). This is separate from the Witness Protection Program of the Office of the Prosecutor General.

<sup>402</sup> Embassy of Colombia, *Colombia: A Progress Report*, Washington D.C.: October 2007, 9.

<sup>403</sup> *Programa de Protección*.

Program received over USD 38 million.<sup>404</sup> In 2006 the MIJ spent over 19.9 billion pesos (USD 10.1 million) on the protection of labor union members, which was 28 percent of the Program's 2006 total budget of over 71 billion pesos (USD 16.8 million). In 2005, the MIJ spent 17.3 billion pesos (USD 8.8 million) or 36 percent of the entire Program budget of 48 billion pesos (USD 24.5 million).<sup>405</sup>

Between 1999 and 2007, the Protection Program reportedly provided 39,983 individuals with some form of direct protection assistance. This includes 11,063 trade unionists. In 2007 alone, 1,959 trade unionists were protected (out of the 9,444 total individuals provided protection that year). Through 2005, more unionists benefited from the Program than any other category of beneficiaries. In each of 2006 (there were 1,504) and 2007 (1,959) they comprised the third highest category of beneficiaries following local council members (2,150 in 2007) and Patriotic Union-Colombian Communist Party (*Unión Patriótica - Partido Comunista Colombiano*) members (2,058 in 2007).<sup>406</sup> In 2006, however, the ILO CEACR noted with regret that the level of protection given to unionists illustrates that they still faced grave violence and their security was "permanently under threat."<sup>407</sup>

The UNHCHR reports that substantial Government efforts to train all military and police members on human rights matters continued. The UNHCHR assisted with 29 courses conducted by the Attorney-General's trainers. This resulted in training 950 public servants, of which 147 are in the National Human Rights and International Humanitarian Law Unit (*Unidad Nacional de Derechos Humanos y Derecho Internacional*).<sup>408</sup> The air force and marines were credited with giving substantial consideration to the risks of protected persons when carrying out military operations.<sup>409</sup>

The Government has sponsored large-scale demobilization ceremonies where thousands of paramilitary groups have turned over their weapons to security forces.<sup>410</sup> On July 22, 2005, President Uribe signed the Justice and Peace Law, which provides a legal framework for the demobilization of paramilitary and armed groups.<sup>411</sup> The law grants reduced prison sentences to members of illegally armed groups who agree to demobilize and confess their crimes.<sup>412</sup> Human rights groups argued that the law gave no incentive for combatants to fully disclose information

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<sup>404</sup> Embassy of Colombia-Washington, D.C., *Colombia: A Progress Report*, Washington D.C.: October 2007, 9. USAID provided over USD one million.

<sup>405</sup> Embassy of Colombia-Washington, D.C., written communication to U.S. Department of State, May 7, 2007.

<sup>406</sup> *Programa de Protección*, 5. See also Ministry of the Interior and Justice, "Charting Colombia's Progress," power point presentation, February 22, 2008; available from <http://www.state.gov/documents/organization/93761.pdf>.

<sup>407</sup> International Labor Conference, *2006 Report of the CEACR*, 71.

<sup>408</sup> *Report of the United Nations High Commissioner for Human Rights* (2007), 46.

<sup>409</sup> *Ibid.*, 20.

<sup>410</sup> Human Rights Watch, *Human Rights Overview: Colombia* [online] [cited September 28, 2007]; available from <http://hrw.org/english/docs/2006/01/18/colomb12206.htm>.

<sup>411</sup> *Por la cual se dictan disposiciones para la reincorporación de miembros de grupos armados organizados*, Ley 975. See also Human Rights Watch, *Human Rights Overview: Colombia*. See also Amnesty International, *Colombia* [online] [cited September 28, 2007]; available from <http://web.amnesty.org/web/web.nsf/print/02DA869C42D6BD058025716400303A75>.

<sup>412</sup> *Por la cual se dictan disposiciones para la reincorporación de miembros de grupos armados organizados*, Ley 975, Article 3.

about their past crimes or knowledge of related illegal activities, and combatants faced no threat of sanctions or loss of benefits if they were caught lying to authorities.<sup>413</sup>

Since the passage of the Justice and Peace Law, Colombia's Constitutional Court has issued several interpretive rulings that have strengthened the Law's effectiveness.<sup>414</sup> The Court ruled that paramilitaries must fully disclose all crimes to receive a reduced sentence and that failure to disclose a crime will result in trial under ordinary criminal law, and that paramilitaries must turn over all illegally acquired assets and can be forced to pay reparations from legally acquired assets.<sup>415</sup> Nonetheless, as of early 2007 the UNHCHR reports that numerous concerns remain about the framework for demobilization and reintegration, including the need for more effective mechanisms to guarantee victim's rights to truth, justice and access to reparations; and for dismantling the continuing existence of political and economic structures that were created by paramilitary cadres.<sup>416</sup> The UNHCHR also reports that the Government had noted the need to improve the process of reintegration of demobilized individuals into civilian life. The High Presidential Advisory Office for the Social and Economic Reintegration of Insurgent Persons has been credited with progress in the reformulation of a long-term strategy that is "not paternalistic in nature." Some local authorities, particularly in Medellin and Bogota, are noted to have made "more systematic efforts" at reintegration of demobilized individuals.<sup>417</sup>

The U.S. Department of State reports that in 2006 the Government's program demobilized 17,560 paramilitary members, contributing to a cumulative total of around 32,000 for the 2003-to-2006 life of the program.<sup>418</sup> The UNHCHR reports that a "high percentage" of all demobilized persons actually had not been direct contributors to hostilities.<sup>419</sup> Despite demobilization efforts, the structures of paramilitary groups have reportedly become less visible and more fragmented and elusive as demobilized and non-demobilized paramilitaries continue their activities through new, increasingly powerful, illegal armed groups.<sup>420</sup> Security forces have arrested approximately 900 persons after their demobilization for subsequently engaging in new criminal activities, but drastic enforcement of the law is needed to combat the growth in size and power of these new illegally armed groups. Furthermore, in some regions the UNHCHR reports that there are clear links between these new illegal armed groups and members of security forces, yet impunity for perpetrators continues.<sup>421</sup>

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<sup>413</sup> Amnesty International, *Colombia: Justice and Peace Law Will Guarantee Impunity for Human Rights Abusers* [online] April 26, 2005 [cited September 28, 2007]; available from <http://news.amnesty.org/mavp/news.nsf/print/ENGAMR230122005>.

<sup>414</sup> Human Rights Watch, *Court Fixes Flaws in Demobilization Law* [online] May 19, 2006 [September 28, 2007]; available from <http://www.hrw.org/english/docs/2006/05/19/colomb13430.htm>.

<sup>415</sup> Human Rights Watch, *Court Fixes Flaws in Demobilization Law*.

<sup>416</sup> *Report of the United Nations High Commissioner for Human Rights* (2007), 9-10, 23 (paras. 29-30, 118, 122).

UNHCHR found that existing mechanisms are insufficient for victims of paramilitary crimes. Approximately 25,000 victims provided information to the Attorney-General's Office regarding 100,000 paramilitary criminal acts.

<sup>417</sup> *Report of the United Nations High Commissioner for Human Rights* (2007), para. 33.

<sup>418</sup> U.S. Department of State, "Country Reports-2006: Colombia," Section 1g. See also *Report of the United Nations High Commissioner for Human Rights*, paras. 28-29.

<sup>419</sup> *Report of the United Nations High Commissioner for Human Rights* (2007), paras. 28-29.

<sup>420</sup> *Ibid.*, 18.

<sup>421</sup> *Ibid.*, 19.

In early 2007, the UNHCHR discussed the main achievements and challenges facing the Government at the end of 2006, and observed a greater commitment from Colombian authorities to act on previous UNHCHR recommendations toward improving the human rights situation overall. The UNHCHR noted that the record of implementation was still mixed; among other things, the UNHCHR held that “substantial efforts” by the Government are still needed to complement existing worthy initiatives aimed at the reduction of impunity.<sup>422</sup>

The Colombian Government, Colombian employer organizations, and Colombian worker organizations continue to work actively with the ILO. In June 2006, the tripartite Colombian delegation to the International Labor Conference of the ILO announced that the Colombian Government had reached an agreement with Colombian worker and employer organizations to revitalize tripartite dialogue and cooperation in the country.<sup>423</sup> The Tripartite Agreement on Freedom of Association and Democracy is in response to more than 20 years of discussions at the ILO.<sup>424</sup> The agreement reads as follows:

In the framework of ILO Conventions Nos. 87 and 98, the Colombian tripartite delegation to the 95<sup>th</sup> Session of the International Labour Conference, desirous of putting into effect the matters agreed to, declares to the Committee on the Application of Standards that the following agreements have been reached: (a) The Government of Colombia will, with the assistance of the ILO secretariat and with the support of the Workers and Employers, guarantee a renewed presence of the International Labour Organization in the country, through permanent representation of the aforesaid organization, which will have as a priority task technical cooperation aimed at promoting decent work and the defence of the fundamental rights of workers, their trade union leaders, freedom of association and of speech, collective bargaining as well as free enterprise for employers. The parties request the Governing Body to put this agreement into effect and to provide the logistics and structure for its implementation; (b) With regard to technical cooperation, the Colombian Government undertakes to seek economic support that will guarantee the achievement of the proposals made and, to this end, will seek financial assistance from the ILO. With this in mind, the national Government will make available resources to activate and implement the programme. The Government also requests the ILO to take action to obtain additional resources from donor nations and other international organizations, with a view to reinforcing the cooperation programme; (c) In the fight against impunity, the parties have agreed on rigorous follow-up on the results of the special investigation group set up by the Procurator General of the Republic to bring to light abuses of freedom and life of workers and trade union leaders and to punish those guilty; (d) The Colombian Government, the employers and the workers undertake to provide a new impetus to ILO principles with a view to giving effect to fundamental rights at work. In this perspective, the National Commission on Wages and Labour Policies will be convened with a permanent agenda, and the ILO will be

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<sup>422</sup> *Report of the United Nations High Commissioner for Human Rights (2007)*, 6 and 7.

<sup>423</sup> International Labor Conference, *2006 Report of the Committee on the Application of Standards*, 5.

<sup>424</sup> International Labor Conference, *2007 Report of the Committee on the Application of Standards, General Report of the Conference Committee on the Application of Conventions and Recommendations*, para. 19; available from <http://www.ilo.org/ilolex/english/conf2007E.htm>. See also Embassy of Colombia-Washington, D.C., *Colombia: A Progress Report*, Washington D.C.: October 2007.

requested to provide assistance in the fulfilment of its work. The commitments made today are intended to seize the opportunity offered by the Committee on the Application of Standards to disseminate this agreement and to reaffirm the implementation of ILO policies on cooperation, social dialogue, collective bargaining, trade union freedoms, defence of human and of workers' rights, of freedom of association and freedom of enterprise.<sup>425</sup>

The ILO Governing Body had promoted the creation of permanent ILO representation in Colombia to facilitate dialogue on ways to combat and ultimately eliminate the ongoing situation of impunity, as well as to ensure more effective implementation of freedom of association.<sup>426</sup> The ILO's on-the-ground representative in Colombia started in January 2007 with a scope of work that was defined by the tripartite partners in October 2006 and submitted to the International Labor Conference.<sup>427</sup> Colombia's Vice Minister of Labor has since confirmed that the Government had provided USD 2.2 million as of October 2007 to the ILO for the technical cooperation projects,<sup>428</sup> out of a total USD 4.7 million committed over the next four years towards implementation of the Tripartite Agreement.<sup>429</sup>

Flowing from the Tripartite Agreement, Government of Colombia Interagency Agreement No. 15406 was established in September 2006 by the President, Vice-President and Attorney General to coordinate the Government's new efforts to investigate cases filed with the ILO, and to prevent future human rights violations against unionists. The Interagency Agreement is specifically in response to a high profile case initially filed in 1994 with the ILO, which is commonly known as Case 1787.<sup>430</sup> The Case includes 1,374 individual victims of anti-unionist violence whose cases were filed by various unions over the years and which had not been acted on by the Government. They include 837 cases of murder, 257 death threats, and 104 disappearances or kidnappings, among others.<sup>431</sup>

Stemming from Case 1787, the Office of the Prosecutor General, Human Rights Unit has been assigned a total of 1,262 cases. Of these, approximately 187 have been selected jointly by the Office and labor unions for priority attention by a special labor subunit of the Human Rights Unit. The subunit was created in November 2006 to investigate and prosecute crimes against union officials and workers.<sup>432</sup> Three special judges have been appointed specifically to hear and

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<sup>425</sup> International Labor Conference, *2006 Report of the Committee on the Application of Standards*, 5.

<sup>426</sup> International Labor Organization, *ILO Governing Body Concludes 295<sup>th</sup> Session*, March 31, 2006; available from [http://www.ilo.org/news/200603/e10GB\\_march\\_en.pdf](http://www.ilo.org/news/200603/e10GB_march_en.pdf).

<sup>427</sup> ILO, March 2007, *Technical Cooperation Programme for Colombia*, 2; available from <http://www.ilo.org/public/english/standards/relm/gb/docs/gb298/pdf/tc-4.pdf>. See also *ILO Governing Body Committee on Technical Cooperation*, 2006, 8. See also U.S. Embassy- Bogota, *reporting*, December 13, 2007.

<sup>428</sup> U.S. Embassy- Bogota, *reporting*, December 13, 2007.

<sup>429</sup> "ILO Mission Report: Colombia, November 23-28, 2007," 2.

<sup>430</sup> ILO, "Complaint against the Government of Colombia presented by the International Confederation of Free Trade Unions (ICFTU) Report No. 297, Case(s) No(s). 1787" available from <http://www.ilo.org/ilolex/english/newcountryframeE.htm>.

<sup>431</sup> Government of Colombia, Comité de Impulso a Casos, "Informe de Avances de Procesos de Violaciones Cometidas Contra Sindicalistas: Caso 1787 - OIT," 2007, 4.

<sup>432</sup> U.S. Embassy- Bogota, *reporting*, March 17, 2008. See also Embassy of Colombia-Washington, D.C., *Colombia: A Progress Report*, Washington D.C.: October 2007. The labor subunit also handles cases other than the 187 "priority" cases as noted. In brief, the criteria that were generally used to select the 187 cases were as follows: the

expedite the priority cases.<sup>433</sup> The Office has assigned 13 specialized prosecutors and 78 investigators to the subunit.<sup>434</sup> The Colombian Government allocated USD 1.5 million to fund this initiative.<sup>435</sup> In March 2008, the Prosecutor General's Office reported that since 2001, the Human Rights Unit has resolved a total of 73 of the 1262 cases, which resulted in 156 persons convicted. Of these, the subunit had prosecuted 40 cases (ten of which were priority cases), accounting for 67 convicted perpetrators (17 of which were from priority cases).<sup>436</sup> The ILO has noted Colombia's efforts while bearing in mind that between 2002 and 2004, there were only four convictions and the vast majority of other cases had been shelved due to lack of evidence.<sup>437</sup>

In November 2007, a high profile ILO Mission to Colombia met with the tripartite partners with a mandate (from the ILO Director-General) "to identify new requirements in order to ensure the effective implementation" of the Tripartite Agreement, including its technical cooperation program.<sup>438</sup> Because of the cooperation and availability of the tripartite partners, including representatives from the highest levels, the Mission concluded "that the discussions were informative, constructive, open and useful. They have served to examine both the progress achieved and the expectations of all the parties in what remains a difficult situation."<sup>439</sup>

During the Mission visit, it was decided that the technical cooperation program would include four projects to promote the following:

- fundamental Labor Conventions, especially pertaining to freedom of association, and strengthening social dialogue and labor inspection;
- employment for women;
- employment for young people; and
- local economic development.

Also discussed was the importance of the National Commission on Wage and Labor Policies (*Comisión Nacional de Concertación de Políticas Laborales y Salariales*) to continuing the

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nature of the crime against unionists was typical; the findings or outcomes would help set a precedent for the prosecution of other cases; reliable information was available; crimes were committed no sooner than January 2003; criminals were from paramilitaries, guerrillas, and State agencies; victims included males and females, whether the females were direct or indirect victims; violations of the right to live had occurred, and some that involved attacks on freedom and personal integrity. Office of the Prosecutor General, *Estrategia de Impulso a las Investigaciones por Actos de Violencia contra Sindicalistas*, power point presentation, 2007.

<sup>433</sup> Embassy of Colombia, *Colombia: A Progress Report*, Washington D.C.: October 2007.

<sup>434</sup> U.S. Department of State, "Country Reports-2007: Colombia," Section 6a.

<sup>435</sup> U.S. Department of State, "Country Reports-2006: Colombia," Section 6a. See also U.S. Embassy- Bogota, *reporting*, March 7, 2007.

<sup>436</sup> U.S. Embassy- Bogota, *reporting*, March 17, 2008. See also U.S. Department of State, "Country Reports-2007: Colombia," Section 6a. According to the U.S. Department of State, by the end of 2007 another three priority cases were resolved (resulting in 8 convicted persons) elsewhere in the Prosecutor General's Office.

<sup>437</sup> International Labor Conference, *2006 Report of the CEACR*, 72.

<sup>438</sup> "ILO Mission Report: Colombia, November 23-28, 2007," para. 4.

<sup>439</sup> *Ibid.*, para. 23.

tripartite dialogue and to overseeing implementation of the Agreement.<sup>440</sup> The partners agreed to a general, and still open-ended, eleven-point agenda of priority action items that the Commission could immediately discuss, such as the following:

...Further support of the Attorney General, special judges and investigators and the special protection programme; the registration of trade unions within the framework of the Freedom of Association Convention No. 87; collective bargaining and legislation concerning the public service; initiatives to combat abuses in the employment relationship through the use of cooperatives; follow-up to the implementation of the law on oral justice; strengthening the procedure through the Special Committee for [T]reating [C]onflicts (CETCOIT); and certain other proposals made by the Government to ensure that the social partners had the opportunity to make their views known through the media on draft legislation.<sup>441</sup>

The Mission reiterated the availability of the ILO representative in Bogota to provide technical assistance for the implementation of the Tripartite Agreement, including the development of a more detailed, open-ended Commission agenda, and that the ILO's services remain at the disposal of the Government as recent legislative proposals move forward. It suggested that the Commission should meet once per month, and that the Commission should consider appointing an independent, permanent secretariat and a mediator. It also noted that the Commission could be used to follow-up on ILO CFA recommendations. In addition, the Mission noted that regularly convening the Inter-Institutional Committee on the Human Rights of Workers would enable workers and employers to better address issues about, and have increased confidence in, the MIJ's Protection Program. While recognizing the Government's efforts to speed up the fight against impunity, and whose subsequent progress has been appreciated by all partners, it also notes the importance of extending the mandate of the special courts that handle the backlog of the (above-mentioned) anti-union violence cases.<sup>442</sup> In January 2008, through the normal process for the assignment of judges to special courts, the 28 magistrates of the Appellate Court for Bogota voted to reappoint two of the original special labor court judges but to replace the third, who will serve as the new head labor judge. After the original six-month term ended in December 2007, the judges resumed work on labor cases starting January 11, 2008.<sup>443</sup>

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<sup>440</sup> This Commission is the same as the Permanent Committee on Agreement of Wage and Labor Policies (*Comisión Permanente de Concertación de Políticas Salariales y Laborales*), discussed in Section V-F of this report.

<sup>441</sup> "ILO Mission Report: Colombia, November 23-28, 2007," para.13. The CETCOIT (*Comisión Especial de Tratamiento de Conflictos ante la OIT*) is a Colombian commission that was referred to the ILO and before which there are 52 cases that involve both the public and private sectors regarding the application of the ILO Conventions that the Colombian Government has ratified. The CETCOIT sometimes has referred cases to the national courts. The resumption of its activities was supported by the ILO representative in Colombia as per the scope of the mandate agreed to by the Tripartite Working Group. The ILO representative has advised at least 144 workers' and employers' organizations on how the CETCOIT works. The Mission noted that future concrete results of the CETCOIT are important toward improving the industrial relations climate in Colombia. See *ILO Report of the Director-General: Fourth Supplementary Report: Implementation Process of the Tripartite Agreement on Freedom of Association and Democracy in Colombia*, 300<sup>th</sup> Session, November 2007, 2; available from [http://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---relconf/documents/meetingdocument/wcms\\_087328.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_087328.pdf).

<sup>442</sup> "ILO Mission Report: Colombia, November 23-28, 2007."

<sup>443</sup> U.S. Embassy-Bogota, *reporting*, February 11, 2008.



## LIST OF ACRONYMS

<b>CEACR</b>	Committee of Experts on the Application of Conventions and Recommendations
<b>CFA</b>	Committee on Freedom of Association
<b>CGT</b>	General Confederation of Labor <i>Confederación General de Trabajo</i>
<b>DAS</b>	Administrative Department of Security <i>Departamento Administraivo de Seguridad</i>
<b>DNP</b>	National Planning Department <i>Departamento Nacional de Planeación</i>
<b>DOL/USDOL</b>	United States Department of Labor
<b>ENS</b>	National Labor College <i>Escuela Nacional Sindical</i>
<b>FECODE</b>	Colombian Federation of Educators <i>Federación Colombiana de Educadores</i>
<b>ICBF</b>	Colombian Family Welfare Institute <i>Instituto Colombiano de Bienestar Familiar</i>
<b>ICFTP</b>	Inter-Institutional Committee for the Fight against Trafficking in Persons <i>Comité Interinstitucional para la Lucha Contra la Trata de Personas</i>
<b>ILO</b>	International Labor Organization
<b>IOM</b>	International Organization for Migration
<b>IPEC</b>	International Program on the Elimination of Child Labor
<b>ITUC</b>	International Trade Union Confederation
<b>MEN</b>	Ministry of Education <i>Ministerio de Educación Nacional</i>
<b>MIJ</b>	Ministry of the Interior and Justice <i>Ministro del Interior y de Justicia</i>
<b>MPS</b>	Ministry of Social Protection <i>Ministerio de la Proteccion Social</i>
<b>NGO</b>	Non-governmental Organization
<b>OAG</b>	Observatory on Gender Matters <i>Observatorio de Asuntos de Género</i>
<b>PNC</b>	National Police <i>Policia Nacional</i>
<b>UNHCHR</b>	United Nations High Commissioner for Human Rights
<b>USAID</b>	United States Agency for International Development