

Anti-union violence, impunity and protection of trade unionists in Colombia, 2012-2017

Abstract

Overcoming anti-union violence, reducing the high levels of impunity that surround it and providing greater measures for the exercise of freedom of association and the protection of trade unionists are still pending tasks for the Colombian government despite the numerous recommendations by international organisms such as the ILO, the UNDP and the OECD, and the signing of commitments and implementation of measures by the Government in the framework of the Labor Action Plan (LAP) (Plan de Acción Laboral, PAL in Spanish) signed with the United States and the Roadmap (Resolution 2628) agreed with the EU.

Although in the last six years there has been a continuous yet slow reduction of anti-union violence, serious situations continue to happen as this type of violence still targets activists and union directives. In **2017**, this figure climbed up to **82,8%**. According to the results of the ENS' monitoring, there were around **2220** violations against the life, freedom and integrity of Colombian trade unionists, out of which **143** were murders. Data for 2017's monitoring reveals **198** cases (**19** murders), but information is partial and believed not to truly reflect the reality.

Greater guarantees for the protection of trade unionist are necessary

Different measures to strengthen the program for the protection of workers and union leaders in terms of coverage, financing, performance and efficacy have been implemented during this period, however, it is still not fully effective in terms of its focus, performance and monitoring and evaluation mechanisms. Above all, it's not articulated to a public policy of protection of unionized workers and union organizations as such policy is non-existent.

Overcoming impunity is still a pending responsibility

Over these six years, some progress in terms of justice for cases of anti-union violence was expected after the implementation of these measures. Although the Attorney General (Fiscalía General de la Nación, FGN in Spanish), strengthened its capacity to investigate crimes against trade unionists, efforts do not translate into meaningful results as the impunity rate went from **98,0%** in 2010 to **95,0%** in 2015. With the available data, provided by the Attorney General, the ENS contrasted **502** sentences with Sinderh's database to calculate impunity rates, showing a relationship between violations against the life, freedom and integrity of trade unionists and the progress of investigations and sentences.

In addition to this limited progress, in 2016 the Higher Council of the Judiciary reduced the number of judges exclusively devoted to cases of murders committed against trade unionists from **3** to just **1**.

Anti-union violence, impunity and protection of trade unionists in Colombia (2012 – 2017)

Violations against the life, freedom and integrity of trade unionists in Colombia represent a serious infringement to the rights to freedom of association and to the most fundamental human rights, enshrined and protected by international norms and agreements, by the Constitution and by the law. The exercise of freedom of association and union activity still poses high risks for Colombian workers, despite the peace agreement achieved with the group FARC, as some illegal armed groups, high levels of impunity, corporate harassment and institutional weakness still prevail.

The following characteristics were identified after analyzing anti-union violence during this period: i) decreasing trend in the reporting of cases; ii) anti-union violence directed against activists and trade union leaders; iii) increased acts of violence against union organizations as a whole; iv) there is an overlapping of violence and the criminalization of union activity; v) reactivation of anti-union violence in rural areas¹; and vi) persistence of anti-union violence amid a context of violence against leaders and human rights defenders; vii) prevailing absence of justice; and viii) measures taken to protect trade unionists fail to guarantee their freedom of association and physical integrity.

Overcoming anti-union violence, reducing its high levels of impunity and providing greater measures for the protection of trade unionists are not new demands within the trade union movement, and yet they have been the source of great debate in our country in the last years. Protecting freedom of association, preventing anti-union violence and systematically prosecuting its promoters and authors are still pending issues for the Colombian Government. Despite the numerous recommendations by international organizations such as the ILO² or the UNDP³ and the OECD⁴, the commitments ratified and measures implemented by the Government in the framework of the Labor Action Plan (LAP)⁵ signed with the United States and the Roadmap (Resolution 2628)⁶

¹ Human Rights Notebook N° 24. “Voices that won’t remain silent” (*Voces que no callan*) (2016). Escuela Nacional Sindical.

² Conclusions of the High Level Tripartite Mission to Colombia, February 14-18, 2011. At: http://www.ens.org.co/apc-aailes/3a8983fd104d6672011fe348084d2e16/Conclusiones_Mision_Tripartita_Alto_Nivel_OIT_2011.pdf

³ Acknowledging the past, building the future (*Reconocer el pasado, construir el futuro*). Report on violence against trade unionists and unionized workers, 1984-2011, coordinated by the UNDP. At: http://www.pnud.org.co/2012/informe_sindicalismo.pdf

⁴ OECD study on the labor market and social policies: Colombia 2016. Executive summary, assessment and recommendations. At: <https://www.oecd.org/fr/els/emp/OECD-Reviews-of-Labour-Market-and-Social-Policies-Colombia-AR-Spanish.pdf>

⁵ Five years of neglect, five years waiting for real changes (*Cinco años de incumplimiento, cinco años esperando cambios reales*). Report on the first five years of implementation of the Labor Action Plan (LAP). Escuela Nacional Sindical, May, 2016. At: <http://www.ens.org.co/wp-content/uploads/2016/12/INFORME-PLAN-DE-ACCION-LABORAL-OBAMA-SANTOS-2016.pdf> (Accessed on September 15, 2017)

agreed with the EU, Colombia is still far from fulfilling such agreements and efforts devoted to this issue have only proven to be insufficient, as well as its impact in the transformation of the hard conditions under which union organizations operate.

Despite the measures implemented in the last six years (there has been a continuous yet slow decrease in anti-union violence⁷), there are still many serious cases of violence directed against activists and union directives. While in **2012** around half the documented cases were against union leaders, by **2017**, this type of acts of violence climbed to **82,8%**.

Chart 3. Violations against the life, freedom and integrity of Colombian trade unionists between January 1, 2012 and December 31, 2017

Type of violation	2012	2013	2014	2015	2016	2017	Overall Total
	N° of Cases	N° of Cases	N° of Cases	N° of Cases	N° of Cases	N° of Cases	N° of Cases
Threat	449	337	244	121	201	125	1477
Harassment	50	63	78	30	30	24	275
Murder	25	37	21	21	20	19	143
Attack with or without injury	9	18	24	17	18	16	102
Forced displacement	90	3	1		1	1	96
Arbitrary detention	19	24	17	8	5	9	82
Illegal search and seizure	3	2	2	2	8	2	19
Torture	2		1	4	2	1	10
Enforced disappearance	5	1		2		1	9
Kidnapping		4		3			7
Overall Total	652	489	388	208	285	198	2220

Source: Human Rights Information System, SINDERH, ENS.

According to the monitoring carried out by the ENS, there have been around **2220** violations against the rights to life, freedom and integrity of trade unionists in Colombia during the last six years, **143** of which have been murders. It is also necessary to note that the **37.0%** increase in anti-union violence during **2016** in relation to **2015** is an indicator of the high risks still faced by trade unionists. A

⁶ European Parliament Resolution, June 13, 2012, on the Commercial agreement between the European Union, Colombia and Peru (2012/2628(RSP)), At: <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P7-TA-2012-0249+0+DOC+XML+V0//ES> (Accessed on September 15, 2017)

⁷ Methodological notes: *2017 figures are temporary as data is still being collected, compared and validated.

* It is necessary to note that there is a significant sub registry of cases of anti-union violence against teachers, as access to such information has been difficult in the last years.

lot of work still needs to be done to improve the human rights situation and to guarantee freedom of association in Colombia. Records from 2017, **198** cases (**19** of which are murders), are partial and believed to be far from the reality.

After analyzing all these cases of violence according to the economic fields where they take place, it was found that **63,64%** of cases fall into **3** economic sectors: education, agriculture and mining. On this matter, it is important to address two relevant aspects; first, and even though teachers were the most targeted population during this period (**27,47%**), results from the following years show a gap of information; while in 2012, **323** cases were reported, in 2017 only **34** cases were accounted for. The other aspect relates to the reactivation of rural anti-union violence against union organization leaders in the agricultural and mining sectors. Other economy sectors where anti-union violence took place were community services and the manufacturing and health industries.

With respect to the regions with higher levels of anti-union violence, these are: the south-west, the Caribbean region and the northeastern region, with the highest number of cases reported in the departments of Valle, Santander, Cauca and Bolívar. They also show the highest levels of violations against the rights of union leaders, an indicator of selective violence in which there is a connection between the act of violence and the victim's union activity.

In half of the cases of anti-union violence, there is no information about the possible perpetrators. In the remaining cases, the alleged perpetrators were mainly found to be paramilitary groups (70.0%), state agencies (22.0%), and to a lower degree, the guerrillas, the employer or other criminal actors.

In addition to the prevailing anti-union violence, there is a serious situation of criminalization of the union activity, understood as the set of actions that privilege judicial and public order treatment of labor disputes and union activities with the purpose of constraining union activism and reducing it to its minimum expression. In this regard, it was found that between **2012** and **2017**, this type of criminalization took place in different areas: **i) 161** labor and union protests were restricted by the Mobile Anti-Riot Squad (Escuadrón Móvil Antidisturbios, ESMAD). **ii)** There is information regarding **86** cases in which trade unionists face disciplinary and judicial processes⁸. **iii) 210** violations against trade unionists were allegedly committed by state agencies (army and police). These sets of actions are very serious, as union activities, protests, and even strikes, are treated as crimes and not as rights.

Greater guarantees for the protection of trade unionist are necessary

Six years have passed since the implementation of the measures to strengthen the program for the protection of workers and union leaders in terms of coverage, financing, performance and efficacy, and results are still

⁸ Methodological note: this figure is temporary as the data collection process is still in course.

unsatisfactory. Additionally, anti-union violence still prevails, and some context factors indicate an increase of the risks for trade unionists.

For its part, the Government has shown progress since 2011 with the creation of the National Protection Unit, NPU⁹ (Unidad Nacional de Protección), including the expanded coverage of the number of protected trade unionists and measures taken, the increase in risk studies, the implementation of measures to accelerate the response to requests for protection, the increase of economic and human resources; the creation of the Committee for the Evaluation of Risks and Recommendation of Measures (CERREM¹⁰ in Spanish) and the granting of labor guarantees for threatened teachers¹¹, considering that this is one of the most victimized union sectors¹². As of March 2016, the NPU argued some of its main achievements to be the creation of the User Support Group (Grupo de Atención al Usuario), the assignment of a union consultant-link, the labor centrals participation in the CERREM and the participation in the Inter-Institutional Commission on Workers' Human Rights¹³.

Even though these changes mitigated some of the problems of the trade-unionist protection program, they didn't really translate into substantial changes in its focus and performance: **i)** protection must not be individual, its target population must comprise trade union organizations and union members; **ii)** the risk assessment must include context analysis, in the social, political, economic and trade union fields; and **iii)** protection must be more preventive than reactive. In addition to this, operative issues are reiterative: **i)** delays in risk assessment procedures and in the implementation of measures, **ii)** some trade unionists need to be included in the program and yet remain unprotected, **iii)** withdrawal and / or reduction of the assigned protection measures; **iv)** progress in collective protection has not yet been achieved; and **v)** there are no monitoring and evaluation mechanisms.

Additionally, results aren't sufficient to positively evaluate the efficacy of the protection program. The fact that trade unionists from the protection program are still alive does not represent an unequivocal indicator; **1449** trade unionists have been murdered since **1998**, date of creation of this program. As the following table shows, despite the economic resources invested in the protection of trade unionists during the last years, which according to current available data was of 277.503.259.047 million Colombian pesos from 2012 to

⁹ The UNP is created in 2011 by Decree 4066. At: <http://www.unp.gov.co/la-unp/Documents/dec406631102011.pdf> [accessed on March 16, 2015].

¹⁰ The CERREM (Committee for the Evaluation of Risks and Recommendation of Measures) is created in December 26, 2011 by Decree 4912. At: <http://wsp.presidencia.gov.co/Normativa/Decretos/2011/Documents/Diciembre/26/dec491226122011.pdf> [Consultada Marzo 16 de 2015]

¹¹ The Ministry of Education issued resolution 3900 of May, 2011 "Partially modifying Resolution 1240 of 2010 which defines the procedures for the protection of teachers and school directives"

¹² According to Sinderh, 1004 Fecode associated teachers were killed between 1981 and 2017 in Colombia.

¹³ NPU's reply to ENS' right to petition, OFI16-00010596, March 15, 2016.

2016, anti-union violence persists; there was a total of 2.220 violation against the life, freedom and integrity of Colombian trade unionists, which reveals a limited impact in terms of the guarantees needed to exercise union activity in Colombia.

**Chart. Indicators variation between 2012 and 2016
(Budget, risk assessment, coverage, assigned measures, figures of anti-union violence)**

Indicators	Analysis of NPU's performance in the last years				
	2012	2013	2014	2015	2016*
Budget	\$51.929.740.084	\$61.668.384.875	\$56.722.947.423	\$55.608.070.428	\$51.574.116.237
Risk level assessment	973 (ordinary: 468, extraordinary: 288, 217 refusals)	667 (ordinary: 346, extraordinary: 249, extreme: 1, 71 refusals)	181 (ordinary: 85, extraordinary: 84, 12 refusals)	Not available	Not available
Coverage	619 protected	619 protected	677 protected	Not available	Not available
Assigned measures	Not available	Not available	607 bodyguards, 60 armored vehicles, 187 conventional vehicles, 163 bulletproof vests and 312 communication devices	Not available	593 bodyguards, 66 armored vehicles, 176 conventional vehicles
Figures of anti-union violence	24 murders, 5 enforced disappearances, and 9 attacks with or without injury	37 murders, 1 enforced disappearance, 4 kidnaps and 18 attacks with or without injury	21 murders and 24 attacks with or without injury	21 murders, 2 enforced disappearances, 2 kidnaps and 17 attacks with or without injury	20 murders and 18 attacks with or without injury

Sources: *UNP's reply to the ENS' request on elaborating the OECD report, October 31, 2014 and Human Rights Information System, Sinderh, Escuela Nacional Sindical

* UNP's reply to the ENS' right to petition, OFI16-00010596, March 15, 2016.

There is still a significant gap between the protection needs of trade unionists and trade-unions and the measures implemented by the government. The program currently in charge of the protection and guarantees for exercising union activity is still insufficient and inadequate; there are structural flaws in terms of its formulation, effectivity and monitoring, and above all, it is not articulated to a public protection policy for unionized workers and union organizations.

* Value estimated according to NPU's reply to the ENS' right to petition, OFI16-00010596, March 15, 2016.

Two aggravating factors add up to this problem: corruption within the NPU and the lack of operative capacity. Former NPU secretary Julián Marulanda was prosecuted for his responsibility in the budget and administrative deficit within this entity¹⁴, which has had a negative impact on its ability to provide protection to trade unionists and guarantee the exercise of union activity. On the other hand, trade-union centrals had already discussed some problems in providing this service through contractor companies despite the existence of recommendations that forbid such practice¹⁵.

Besides, measures contemplated in the LAP and OECD's Resolution 2628 insist on devoting greater efforts to securing resources, reducing risk assessment times, monitoring the efficiency of the measures, reducing corruption, implementing assessment instruments for a collective protection scheme and improving the rate of indictments for threats and anti-union violence¹⁶.

Cases that illustrate the ineffectiveness of the protection program

- Since 2011, Alex Fabián Espinosa Carvajalino, former treasurer of the National Judicial Association (Asonal Judicial in Spanish) and human rights Coordinator at Central Union of Workers' (Central Unitaria de Trabajadores, CUT in Spanish) Norte de Santander subdivision, started reporting threats. However, upon asking for protection, the response by the NPU was an ordinary-risk assessment, and therefore a refusal to grant him measures to protect his life and ensure his union activity. Alex Fabián was killed on May 30, 2015 in Cúcuta, Norte de Santander.
- Over Libardo Rivera Rodríguez, member of the Union of Prison Workers (UTP in Spanish) had informed about cases of corruption within the prison of La Unión, Nariño. According to the president of the union organization, a threat was reported to the Attorney General. Protection measures were requested before the NPU, but the entity responded with a "no-threat assessment" and thus refused to provide him any protection. Over was killed on May 30, 2015.

¹⁴ "The problems of the NPU" ("*Los líos de la Unidad Nacional de Protección*"), *Semana Magazine*, published on August 11, 2015, At: <http://www.semana.com/nacion/articulo/los-lios-de-la-unidad-nacional-de-proteccion/438132-3>

"Former NPU secretary to be processed in his absence", *Semana Magazine*, published on February 9, 2016

At: <http://www.semana.com/nacion/articulo/unp--julian-marulanda-sera-procesado-como-reo-ausente/460044> [accessed on 10/02/2016]

¹⁵ Human Rights Council, *Report by special rapporteur about human right defenders*, Margaret Sekaggya, Mission to Colombia (September 7-18, 2009), A/HRC/13/22/Add.3, March 4, 2010, par. 156

¹⁶ OECD studies on the labor market and social policies: Colombia 2016. Executive summary, assessment and recommendations. At: <https://www.oecd.org/fr/els/emp/OECD-Reviews-of-Labour-Market-and-Social-Policies-Colombia-AR-Spanish.pdf>

- During the second half of 2016 and the first trimester of 2017, there was a reduction in the security schemes of some union leaders at CGT's Antioquia subdivision in Medellín, Rionegro and Bello, such as president Rubén Darío Gómez Hurtado, general secretary Jorge Iván Diez Vélez, human rights secretary and president of UTP's Bello subdivision Luis Alberto Pinzón, and assistant secretary Gerardo de Jesús Sánchez Zapata. Protection measures for CGT's Urabá subdivision president Albeiro Franco Valderrama were also partially removed.
- In December 2016, security measures for Juan Carlos Valencia, Secretary of Human Rights at Sintraemsdes Pereira, were removed. This decision was appealed by the union leader; in response, a judge instructed for these measures to be reassigned. However, as of October 2017, the leader remained unprotected.

Overcoming impunity is still a pending responsibility

Over these six years, there seemed to be some progress regarding justice for victims of anti-union violence after the implementation of some protection measures. Even though the Office of the Attorney General of Colombia (FGN in Spanish) showed progress in investigating crimes against trade unionists, its efforts do not translate into meaningful results as the impunity rate went from **98,0%** in 2010 to **95,0%** in 2015.

With the available data provided by the Office of the Attorney General of Colombia, the ENS analyzed **502** sentences out of which only **440** ended in judgements, i.e. **87,0%**. Though perpetrators of crimes against trade unionists are identified and judged, the number of sentences is still minimal in relation to the number of violations against trade-union workers in the country.

Additionally, by comparing this report with ENS' database Sinderh, we have estimated impunity rates, and proven a relationship between violations against the life, freedom and integrity of trade unionists and the progress of investigations and judgements. While the impunity rate for murders is **87,0%**, that of threats, the most common violation against trade unionists, is **99,8%**. In general, crimes related to serious violations against human rights of trade unionist account for a considerable impunity rate of around **95,0%**¹⁷.

It should be noted that **497** judgements, (**99,0%** of the analyzed sentences) were issued between 2007 and 2014, time of creation of the Attorney General's subunit devoted to investigating cases of violence against trade unionists. Similarly, there was an unprecedented increase of **125** judgements for **2011** after the signing of the LAP and ILO's High-Level Mission visit to Colombia, a trend that did not continue in the following years. In addition to this limited progress, in 2016 the Higher Council of the Judiciary reduced the number of

¹⁷ Human Rights Notebook N° 24. "Voices that won't remain silent" (*Voces que no callan*) (2016). Escuela Nacional Sindical.

judges exclusively devoted to the prosecution of murders committed against trade unionists from **3** to just **1**.¹⁸

In conclusion, in order to turn impunity into justice, truth and compensation for the victims, it is necessary to adopt measures not only aimed at strengthening the Attorney General's capacity, but also at considering new research methodologies, a pending path of dialogue with the victims, and consolidating an action plan that allows moving from the issuance of just some occasional judgements to an effective investigation policy of clarification of the truth, judgment of perpetrators and implementation of protective actions and early warnings to prevent these events from happening.

To avoid systematic anti-union violence, the State and the corporations are required to avoid stigmatization, criminalization and prosecution of the union activity, which leads or may contribute to crimes against freedom of association in Colombia.

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¹⁸ Ibid.