



# Acknowledging the Past, **Building the Future**

Report on Violence Against  
Trade Unionists and Unionized Workers,  
1984 – 2011



Project on Violence  
Against Trade Unionists and  
Unionized Workers



*Empowered lives.  
Resilient nations.*





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Against Trade Unionists and  
Unionized Workers



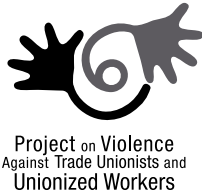
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Report on Violence Against Trade Unionists  
and Unionized Workers, 1984–2011

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# Foreword

This report, titled *Acknowledging the Past, Building the Future*, marks the final stage of a process made possible by the interest, willingness, and commitment of three major actors in Colombia: the national government, acting through the Ministry of Foreign Affairs, the Office of the Vice President, and the Ministry of Social Protection; trade union confederations, namely the Colombian Workers Confederation (CTC) and the General Labor Confederation (CGT); and the business community, represented by the National Business Association of Colombia (ANDI). Without the participation of these three actors, this report—or, to be precise, the project that gave rise to it—would not have been possible.

An effort of this magnitude came to fruition thanks to the interest of all these actors in finding a joint solution to a problem that has afflicted the country for decades. Their active, resolute involvement is, for the United Nations Development Programme (UNDP), a sign of their commitment and willingness to make progress toward agreements and solutions. They took an idea born three years ago and turned it into the first step toward an interdisciplinary, multifaceted, and thorough analysis of the phenomenon of violence against trade unionists in Colombia.

This document—along with the six supporting studies carried out by renowned research centers in Colombia, as well as the 15 discussion events held on the topic, where all the parties involved in this project came together for workshops, forums, and seminars—is the outcome of a unique process of constructive, democratic, honest, and respectful dialogue among actors with divergent and sometimes opposing interests. This dialogue succeeded in opening up space for confidence-building, where the parties could contribute toward a common understanding of the problem.

UNDP's primary role was to promote and sponsor this dialogue between the actors. After a little more than two years, we saw with satisfaction that the parties' interests converged to a single purpose: to move resolutely toward a citizens' democracy in which trade unionism plays a central role. *Acknowledging the Past, Building the Future* is a step along this path. It should lay the groundwork for building agreements to help overcome the phenomenon of violence.



All of this was also made possible by the six research centers on whose input the report was based: the Conflict Analysis Resource Center (CERAC); the People's Research and Education Center (CINEP); the New Rainbow Corporation (CNAI); the Ideas for Peace Foundation (FIP); the Center for Studies on Law, Justice and Society (DeJusticia); and Externado University of Colombia. The teams from these six entities worked tirelessly to gain an understanding, through their analytical work, of the nature and causes of the problem.

Also worthy of recognition is the assistance of a group of educators and researchers from the National University of Colombia, whose experience and diligence helped assure quality in the research efforts and the discussions that sprang from them. Other organizations, such as the National Trade Union School (ENS) and the Colombian Jurists Commission (CCJ)—which were invited to participate as dialogue partners—further enriched the discussions with their contributions.

This initiative would not have been possible without the commitment of the embassies and cooperation agencies of the eight countries that provided support and financing: Canada, France, the Netherlands, Norway, Spain, Sweden, the United Kingdom, and the United States. Their active and skilled participation in the dialogue is proof of their interest in helping to eradicate all forms of violence in Colombia.

Upholding human rights and recognizing the important role of trade unionism in the political system are at the heart of the current government's agenda. We are confident that this report, with its analysis and policy proposals, will aid in this pursuit. We believe that agreements are built through dialogue, a premise that has served as the cornerstone for the project that concludes with the submittal of this report. It is our hope, therefore, that the analyses and conclusions presented herein will prove helpful in nurturing views on democracy in Colombia and the relationship between its actors.

*United Nations Development  
Programme, UNDP Colombia*

# Introduction

## **Violence: a concern for all**

The International Seminar on Human Rights and Trade Unionism—organized by UNDP and held in Bogotá, Colombia on 24–25 November 2010—shone a spotlight on violence against trade unionists and unionized workers as a concern shared by the national government, trade unions, the business sector, and the international community.

This concern was articulated by Colombian Vice President Angelino Garzón in his opening address; by union leaders Julio Roberto Gómez, general secretary of the General Labor Confederation (CGT), and Luis Miguel Morantes, president of the Colombian Workers Confederation (CTC); by Alberto Echavarría, vice president for legal affairs of the National Business Association of Colombia (ANDI), in the seminar's final panel discussion; and in the closing remarks by Lena Nordström, Swedish ambassador to Colombia, speaking on behalf of the countries that provided cooperation and support for this initiative.

The data from both governmental and nongovernmental sources on violence against trade unionists are troubling. Much of the data, particularly on killings, has been tracked down and compared in this report. Even before this document was prepared, however, the available information, discrepancies notwithstanding, called attention to the gravity of the problem.

### **Actors commit, and a project emerges**

The international community has been sensitive to this concern. In particular, eight countries have always expressed a willingness to help seek a better understanding of the problem and, above all, to help overcome it: Canada, France, Great Britain, the Netherlands, Norway, Spain, Sweden and the United States.

Political and labor organizations have made themselves heard in these countries' legislatures and executive branches. Nongovernmental and international organizations played a part as well. Indeed, the international community knows that society as a whole has a stake in this matter, since the right to engage in union activity is one of the main pillars of a citizens' democracy.



Thus, UNDP was asked to serve as the coordinating entity for the “Project to Improve the Knowledge Base on Violence Against Trade Unionists in Colombia and to Help Strengthen Dialogue Between the Actors Committed to Resolving the Problem.”

UNDP recognized that the nature and scope of the project was consistent with its organizational mission. This was an opportunity to cooperate with Colombia in pursuing comprehensive, sustainable human development, at the heart of which would be human rights and ongoing efforts to build democracy by strengthening the country’s institutions and ensuring that political and union rights can be exercised without acts or threats of violence.

The project called for the involvement of three actors in Colombia that were concerned with the problem: the national government; the trade union confederations; and the business sector, represented by ANDI. Discussions with them were held over the course of several months, various suggestions were adopted, and the project got underway with the participation of the government, the CTC, the CGT, and ANDI.

The Unified Workers Confederation (CUT), for its own reasons, decided to distance itself from the project, and UNDP has respected its decision. Still, UNDP remains interested in addressing its viewpoints—including, of course, any criticism.

Although the primary actors did not always agree on how to measure, explain and solve the problem, they all shared a concern over it and agreed that dialogue was needed to understand it better and to work together toward a solution.

Part of the initial agenda, then, was to select the research centers to conduct studies on the six subtopics into which the overall topic was divided. A prestigious university was also to be selected, on a competitive basis, to provide academic assistance to the research centers and UNDP for the sake of quality, rigor, and independence in the studies.

The National University of Colombia was selected as the academic institution. The six selected research centers—each of them with a renowned track record in Colombia—are listed below, along with their respective topics of study:

- ◇ Conflict Analysis Resource Center (CERAC): State of the art in measuring violence against unionized workers in Colombia and state of affairs, 1984–2009
- ◇ People’s Research and Education Center (CINEP): Incidence of violence against unionized workers and the evolution of protests against it
- ◇ New Rainbow Corporation (CNAI): Relationship between the armed conflict and the victimization of unionized workers, 1984–2009
- ◇ Ideas for Peace Foundation (FIP): Study on culture vis-à-vis trade unionism in Colombia
- ◇ Center for Studies on Law, Justice and Society (DeJusticia): Evaluation of the prosecution of crimes against unionized workers
- ◇ Center for Special Projects and Research (CIPE) of Universidad Externado de Colombia: Evaluation of the Colombian government’s policies related to prevention and protection for trade unionists and unionized workers.



Soon after the project got underway in late 2009, UNDP signed a significant, noncontractual agreement with the National Trade Union School (ENS) and the Colombian Jurists Commission (CCJ) for both to participate as dialogue partners, as a way of assuring the quality of these research efforts.

## Discussion with the actors: one aspect of the project

Preliminary results and final drafts of the studies were submitted for discussion to the three main actors (the government, the union confederations, and the business sector), the strategic dialogue partners (the ENS and the CCJ), and colleagues at the National University of Colombia. This occurred at discussion forums held between February and October 2010 and at an international seminar held in November 2010. Also participating in these events were national and international consultants and experts who were invited to attend.

Discussion, especially among the three main actors, was intended to be—and in fact was—just as significant and fruitful in this project as the work of the research centers. At these discussions, which unfolded in a climate of honesty and at a conceptually advanced level, the parties addressed their disagreements effectively and even reached information-sharing agreements while maintaining respect for each other's autonomy.

UNDP has gathered and synthesized the valuable knowledge gained through research and dialogue and has set it forth in this report. The objective is to lend greater depth and nuance to the discussions that will ensue, both privately and publicly, and to facilitate the development of proposals grounded in analysis to help the actors achieve, over the medium and long terms, the improvements needed to move beyond the status quo.

It is hoped that the discussions made possible by this project are the prelude to public debates to follow between the actors.

This report, with its dual purpose as both an aid in understanding and a platform for proposals, can add little to what has already been stated in the six studies by the research centers and at the discussion forums and seminar. The value of UNDP's efforts, if any, lies in making the best possible use of the outcomes of the dialogue and reflection process.

Indeed, the timing of this report could not be more fortuitous. Although the violence unfortunately continues, the government of President Juan Manuel Santos, in office since 7 August 2010, has acknowledged the need to uncover the truth as a first step toward effective solutions. The Santos administration has committed to make a greater effort to see that these crimes do not go unpunished, and to expand protection programs to cover a greater number of at-risk unionized workers.<sup>1</sup>

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<sup>1</sup> These commitments are part of the agreement signed in Washington on 7 April 2011 between President Juan Manuel Santos and President Barack Obama, titled "Colombian Action Plan Related to Labor Rights." This report will refer to the action plan as the agreement signed between Santos and Obama.





## Agreeing on the subject, object and chronological span

Dialogue played a fundamental role in the development of this project. One of the first discussions was held between the research centers, the colleagues from the National University of Colombia, the permanent dialogue partners (ENS and CCJ), and UNDP to define the subject, object and chronological span of the project and the six studies to be conducted in the project's first stage. The three points of consensus that emerged from this dialogue served as a roadmap for this final report:

- ◇ *The subject* is trade unionists and unionized workers who have been victims of violence. These two categories are recognized as distinct from one another yet treated with equal importance.
- ◇ *The object* is violence carried out against trade unionists and unionized workers, with violence understood to mean the violation of their human rights. Types of violence include killings, or lethal violence, as well as nonlethal forms of violence such as forced disappearance, torture, kidnapping, arbitrary detention, and threats.
- ◇ *The chronological span* is from 1984 to 2011.<sup>2</sup>

## Scope of the report

To contribute to public discussion, this report describes the violence to the extent made possible by available sources. It depicts the magnitude of the violence by tracking down and comparing such sources. It assesses the extent to which answers have been provided—by the sources and by government entities—to questions regarding perpetrators and motives as well as to questions on reparation for victims and protection for those who are still in danger, in order to find ways to overcome the problem.

This report does not—nor does it claim to provide absolute truths or exhaustive explanations. Rather, it represents an initial approach that takes stock of what has been learned thus far and, above all, what remains to be learned. It will reveal the information gaps that constitute a challenge for the entities maintaining data, analysts, social actors and, in particular, government agencies responsible for investigating and prosecuting the crimes and providing reparation and protection.

Accordingly:

- ◇ This report does not adopt any particular number or numbers as its own, nor does it issue pronouncements on the accuracy or inaccuracy of the sources' figures. This report does not aim to settle the debate once and for all. Instead, it reveals the various figures that each source has developed in accordance with its own methodologies and criteria, which in turn reflect its organizational identity and mission.

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<sup>2</sup> The appendix to this report provides detailed information on these categories and sets forth the rationale for this chronological span.



- ◇ In no way does this report seek to supplant the State's role in investigating and determining the truth, including the judicial determinations of the motives behind the violence and the perpetrators to be convicted and sentenced.
- ◇ This report does, however, aim to identify the extent to which the sources and the judicial system have succeeded in their quest for the truth, so as to reveal existing gaps and suggest initiatives that may help remedy them.
- ◇ This will lay the basis for proposing actions to be taken by the various actors involved in the project, as well as for proposing new projects that, like this one, can delve into specific aspects of the problem and, through analysis, can help achieve progress toward solutions.


## Structure of the report

Using the available sources, identified primarily through the six studies by the research centers, this report is organized into five parts, a conclusion and an epilogue:

- ◇ Part One sets the violence in its historical and social context by looking at three different contextual aspects: trade unionism and its relationship with politics; violence and its relationship to politics; and predominant perceptions of unionism in Colombia as a result of the interplay between practices and discourses over time.
- ◇ Part Two provides an initial overall description of the problem, starting with a survey of the diversity of sources, including points of discrepancy and complementarity. Reasonable quantitative statements, within the bounds of investigative rigor, are made by using the data to construct chronological series and identify trends, differentiated by geographic area and trade union.
- ◇ Part Three focuses on the three organizations whose members have suffered the most violence—killings, in particular—and explores the characteristics of the victims and the crimes committed against them. These three organizations are the Colombian Teachers Federation (FECODE), the Workers Trade Union (USO), and the Agricultural Workers Union (Sintrainagro).
- ◇ Part Four addresses two ongoing controversies surrounding this problem: Who are the perpetrators, and what are their motives? Both questions are crucial yet difficult to answer, given the still-modest outcomes of the investigations and trials, as well as a lack of information in the sources. Inasmuch as these questions can be elucidated from the information available, this report indicates the broad outlines of an explanation.
- ◇ Once the problem has been clearly described in the first four parts of the report, Part Five tackles the question of what has been done about the problem thus far and what remains to be done. While this question is directed to all of the actors, it primarily focuses on the government. This ques-



tion is one of balanced public policy and the State's duty to be responsive to the victims' rights—their rights to truth and justice, to reparation, and to prevention, nonrepetition and protection for at-risk trade unionists and unionized workers.

- ◇ The report's conclusions highlight the most significant statements that can be drawn from the problem's description, measurement, trends, characteristics and explanations, as well as from the review of what has been done thus far to resolve it.
- ◇ These descriptions and analyses, and especially the review of accomplishments to date in Part Five, set the stage for proposals pertaining to each of the three main actors: the government, the trade union confederations and the business sector. These proposals are laid out in the epilogue, and are framed as the intersection of two aspects: the actors, i.e., the three main actors in this project, other societal actors such as NGOs and the media, and the international community; and the rights of current or potential victims, i.e., their right to truth, justice, individual and collective reparation, prevention, nonrepetition, and protection from risk. 



Photography: Gerardo Chaves Alonso. Courtesy ENS.



# Part One

## The problem in context





**“This is nothing new. This is a drama I have had to live through as a union leader and as a public servant, and it is outrageous that so many crimes against trade unionists, like so many other crimes in Colombia, continue to go unpunished.”**

**Angelino Garzón**  
*Vice President of Colombia*

## At a glance

### *Chapter 1*

Trade unionism: the relationship between unionism, society and politics

### *Chapter 2*

Violence and its relationship to politics and trade unionism

### *Chapter 3*

Views on trade unionism

*Part One is based on, among other sources, the report by the Ideas for Peace Foundation titled Estudio sobre la cultura frente al sindicalismo en Colombia [Study on culture vis-à-vis trade unionism in Colombia] (FIP, 2010).*



Violence against trade unionists and unionized workers in its various forms—the object of study in this report—may be approached from at least three different contextual perspectives that can provide greater insight into the scale and nature of the problem, as well as into the factors that may, to a greater or lesser extent, explain it while never justifying it.

These three contextual approaches are as follows:

- ◇ Trade unionism: viewed historically, through the prism of the historical relationship between unionism, society and politics.
- ◇ Violence: again, viewed historically, through the prism of the historical relationship between violence, unionism and politics.
- ◇ Predominant perceptions in Colombia about trade unionism, which are also the result of a historical construct.

# Chapter 1

## Trade unions: the relationship between unionism, society and politics

**B**ecause this study is about trade unionists and unionized workers who have become victims of violence, and as such their identity is defined here by their union activity, we must first understand the history of such activity in Colombia and all that it entails. It is, after all, the evolution of unionism—the result of historical processes—that has given rise to the defining characteristic of the victims who are the subject of this report.

From the perspective of the United Nations, union activity comes under the rights and freedoms stemming from the fundamental human right to freedom of association, which are internationally recognized in Conventions 87 of 1948, 98 of 1949, 151 of 1978, and 154 of 1981 of the International Labour Organization (ILO).

Although these conventions have been formally ratified by the Colombian government, the ability to effectively exercise the union rights and freedoms recognized in them has had, and continues to have, a problematic history in Colombia.

This troubled history has plagued everything from the very founding of labor unions (Convention 87) to the right to bargain collectively to agree on working conditions (Convention 98), including the right of workers and employers to enter into collective agreements with one another and the right to strike when necessary in the period leading up to the signing of such an agreement.

Thus, these rights have come up against legal restrictions, employer hostility, disparaging rhetoric, the treatment of labor disputes as disruptions of public order, and ultimately the use of violence in violation of human rights.<sup>1</sup>

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<sup>1</sup> In accordance with the objectives established at the project's outset, this report only addresses acts of violence—which, as noted, are understood to mean human rights violations—within the limits of the agreed time span, between 1984 and 2011. It should be noted, however, that this horizon includes obstacles and hardships that, while not violent per se, have hindered the ability to associate freely and to carry out union activity. The history of trade unionism and labor struggles in Colombia is addressed in numerous works referenced in the reports prepared by the ENS and CINEP, as well as a significant number of published books, such as Archila Neira (1991), Archila Neira and Delgado Guzmán (1995), Cuéllar (2009), Bergquist (1988), and, on the question of legal restrictions in the history of Colombian labor law, Silva Romero (2005).





Photography: Courtesy Cinep.

As a result, some actions undertaken by workers to assert their rights have had to be “contentious,” as defined by Tarrow (1994)—i.e., actions taken by “people who lack regular access to representative institutions, who act in the name of new or unaccepted claims, and who behave in ways that fundamentally challenge others or authorities.”

The relationship of trade unionism to political activity in the broad sense (political, civic and cultural activity) has hardly been a smooth one either, due to the highly polarized climate and the interference of irregular organized armed groups in politics.

Ever since the right to strike was legally recognized in Colombia (Law 78 of 1919) during the Conservative presidency of Marco Fidel Suárez (1918–1921), this recognition was saddled with numerous restrictions, especially for what were deemed to be “public services.”

Similarly, a ban on union participation in politics was included in Law 83 of 1931, passed under Liberal President Enrique Olaya Herrera (1930–1934), which acknowledged workers’ fundamental freedom of association.

The right to strike is still restricted by the Labor Code,<sup>2</sup> but only for “essential public services” (as opposed to public services in general), as amended by Article 56 of the Constitution of 1991.

<sup>2</sup> The current code was issued via Decree 2663 of 1950 during the Conservative presidency of Mariano Ospina Pérez (1946–1950). It has been amended numerous times over the years, most notably by Law 50 of 1990. A number of analysts, however, believe that it is not yet in full compliance with ILO conventions ratified by the Colombian government, and that the code’s restrictions on the right to strike still exceed the provisions of Convention 98.



## 1. Ban on political participation

Public-sector workers and their unions were long barred from participating in partisan politics. While legislation on this topic abounds, as do the legal disputes surrounding it, the linchpin for this restriction up until the 1991 Constitution was Decree-Law 2400 of 1968, issued during the period of the National Front (a power-sharing arrangement between the Conservative and Liberal parties) under the administration of Liberal President Carlos Lleras Restrepo (1966–1970).

**From the perspective of the United Nations, union activity comes under the rights and freedoms stemming from the fundamental human right to freedom of association, which are internationally recognized in Conventions 87 of 1948, 98 of 1949, 151 of 1978, and 154 of 1981 of the International Labour Organization (ILO).**

Under Article 127 of the new Constitution, passed by Legislative Act 2 of 2004, this restriction applies only to government employees in the judicial branch and in electoral, oversight and security entities.

Workers in other areas of public service—such as teachers and health care workers—are therefore allowed to participate in politics. They had been demanding this right since the 1980s, when unions saw the need to become politically involved, spurred by a section of the union movement that advocated an approach known as sociopolitical trade unionism.<sup>3</sup>

Legal restrictions aside, ever since the right to strike was first recognized in 1919—and the right to unionize, in 1931—many business and government leaders have been highly suspicious of the inevitable, necessary relationship between trade unionism and politics.

In particular, when union activity has taken aim at economic or labor policies that adversely affect workers, trade unions have been accused of inappropriate participation in politics. As a result, unions have come to be viewed not only as oppositionist, but often as subversive or as enemies of the institutional order. This, in turn, has set the stage for union members to be persecuted, including through the use of violence.

Such was the treatment received in the 1940s by trade unions affiliated to the country's oldest labor confederation, the Colombian Workers Confederation (CTC), from leaders of the ruling party under President Mariano Ospina Pérez (1946–1950).

Although the numerous work stoppages and strikes of the time were in response to the rising cost of living and frequent dismissals of workers, government officials

**3** This was an approach to trade unionism in Latin America for which the leading spokesperson was Julio Godio of Argentina. One of Godio's many books, *Sindicalismo y política en América Latina* [Trade Unionism and Politics in Latin America], played a major role in disseminating this school of thought in the 1980s. This approach was advocated in Panama by Luis Anderson and in Colombia by Beethoven Herrera and Orlando Obregón, among others. They believed that trade unionism should be responsive to its own labor interests, and that such objectives should be linked to broader aims related to society as a whole and government, especially for democracy-building. For more information on this topic in Colombia and Panama, see Herrera (2005) and Carrillo, Rodríguez and Garzón (1987).



Photography: Courtesy Cinep.

and progovernment media outlets politicized the situation and attributed it to a conspiracy by the opposition, which at the time consisted primarily of the Liberal Party.

In fact, however, the main leader of the Liberal opposition during President Ospina's term, Jorge Eliécer Gaitán, took a hesitant, indifferent stance toward the historic nationwide strike called by the CTC in May 1947. In this way, Gaitán's brand of populism set itself apart from the more classical Latin American populist movements—such as Peronism in Argentina—for which trade unions were a primary constituency (Box 1.1).

Meanwhile, Ospina and his successors—Laureano Gómez (1950–1951) and Roberto Urdaneta Arbeláez (1951–1953—helped create a new labor confederation to serve as a counterweight to the CTC. Thus was born the Colombian Workers Union (UTC).

The UTC consisted primarily of unions in the manufacturing sector, especially in the department of Antioquia. These unions adopted the paternalistic model of the factory owners, largely as a result of a Jesuit-led movement known as Young Catholic Workers (JOC). Also due to this religious influence, these unions were supporters of the Conservative Party.

The CTC went from being the grand trade union confederation born of the 1935 labor reforms and allied with government during the Liberal Republic through the mid-1940s, to being considered a dangerous organization by the government when the Conservative Party held sway in the early part of the period known as “La Violencia” (The Violence). This was due to two factors that to this day weigh heavily in the stigma on union activity: (a) the CTC's sympathies with opposition political parties, i.e., the Liberal Party and Communist Party at the time; and (b) its inclusion of public-sector workers, in addition to the long-belligerent oil workers.

The unions of public-sector workers were in a stronger position to change the course of public policy, particularly if they sympathized with the opposition, as was the case. These unions had far more members than those in the private sector, and therefore could have a greater impact through their mobilizations. Whenever one ruling party was replaced in power by another, workers affiliated with the outgoing party would be fired and their jobs given to workers friendly with the incoming party, providing ample reason for protests and mobilizations that in turn triggered a response from the government.

The CTC ended up severely weakened by the tremendous pressure brought to bear on it during the aforementioned Conservative Party administrations and the de facto military government of



General Gustavo Rojas Pinilla (1953–1957), although it would recover in the years immediately following. This pressure was also a reason why members of the Communist Party left the CTC to start another organization: the Trade Union Confederation of Colombian Workers (CSTC).

Tensions between the Conservative administration of Ospina Pérez and the Liberal Party—with the latter acting as the opposition, albeit with some periods of bipartisan collaboration—were particularly exacerbated by the urban-based social movement led by Gaitán as a current within the Liberal Party, known as the People’s Liberal Movement (MPL), and by the labor strikes and work stoppages of CTC-affiliated unions that, despite Gaitán’s wishes, were closely tied to the MPL.

The violence fueled by these growing tensions spread to almost the entire country under the Gómez and Urdaneta Arbeláez administrations. Paradoxically, it unfolded in the countryside and small towns more than in the cities where most unionized workers and “Gaitanists” lived and worked.

The countryside and towns in the Andean region, as well as in the vast plains to which the violence began to spread, had not experienced the same degree of social mobilization that in the cities had exacerbated the increasingly violent partisan conflict.

This paradox may be explained as the result of a process whereby the Gaitanist movement within the Liberal Party, in a disorganized state after the death of its leader, began to mobilize around slogans based on the distinction between “oligarchy” and “people,” recalling the character of the old partisan conflict. This was a legacy of the 19th-century conflict between Liberals and Conservatives, spurred by national political leaders and local chieftains or bosses from both parties.

In the period that followed, under the pacifying effect of the National Front, the CTC was no longer seen as the government’s enemy. The National Front resulted from a series of bipartisan agreements reached under the de facto rule of General Rojas Pinilla and from a referendum-approved constitutional amendment, which called for power in all branches of government to be shared by the two formerly opposing parties.

This did not mean, however, that the CTC was safe from violence in subsequent years. The president of the CTC, José Raquel Mercado, was kidnapped in 1976 by a guerrilla group known as the April 19th Movement (M-19) and killed two months later, on 19 April 1976.

In those years of shared rule by the two traditional parties, mistrust toward trade unions perceived as unfriendly to them was common, especially among the most intolerant elements in the government and the armed groups.

The CSTC-affiliated trade unions, due to their leanings toward the pro-Soviet Colombian Communist Party (PCC), were viewed with particular suspicion, as were the unions not affiliated to any confederation, which proliferated and became more active and restive during

**Legal restrictions aside, ever since the right to strike was first recognized in 1919—and the right to unionize, in 1931—many business and government leaders have been highly suspicious of the inevitable, necessary relationship between trade unionism and politics.**





this time. These unions—with no ties to either of the traditional political parties, the National Front, or the PCC—came to be referred to as independent trade unions.

In reality they were not independent in the sense of being apolitical or independent of political organizations. Rather, they were sympathetic—and, in some cases, structurally linked—to leftist groups other than the PCC. Some of these groups were independent of guerrilla forces: e.g., the Revolutionary Independent Workers Movement (MOIR), the Socialist Bloc, and the Revolutionary Socialist Union (URS). Others were closely linked with guerrilla forces: e.g., the Marxist-Leninist Communist Party (PC-ML), whose identity came to be blurred with that of the guerrilla People's Liberation Army (EPL); other splinter groups from this party; and groups close to the National Liberation Army (ELN), a guerrilla force that drew inspiration from the Cuban Revolution.

These political orientations were more noticeable among union leaders than among rank-and-file members. In no way could trade unions be reduced to or explained by such orientations, since much of the unions' activity was around the collective interests of labor and related goals. Still, these political orientations, and the nonacceptance of ties to the parties in the National Front coalition, led the governments of the 1960s and 1970s to stigmatize such unions and, in some cases, to commit violence against them.

Some of this violence occurred within the institutional framework—e.g., by subjecting strikers to summary courts-martial authorized under the “state of siege” that could be declared in accordance with Article 121 of the Constitution of 1886. In other cases, the violence came about through illegal abuses of power, ranging from harassment to homicide.

Among the more memorable acts of violence were those carried out by Army troops during the strike against Cementos El Cairo in 1963. This episode, known as the Santa Bárbara massacre, targeted workers from a union affiliated to the Workers Federation of Antioquia (FEDETA), which had political ties to the Communist Party. Similarly noteworthy were the events in 1976 at the Riopaila sugar mill, where the union had ties to ML (Marxist-Leninist) Maoist groupings.

The CSTC's lack of ties to the co-ruling parties was a barrier to gaining institutional legitimacy. Not until 1975—after more than a decade—was it recognized as a legally constituted entity. One hardly struggles to imagine the negative effects that this exclusion from legality had for the initiatives and actions of its affiliated unions. These unions were forced to act outside the bounds of legality set by labor law, and many of their actions were, as a result, “contentious.”

**In particular, when union activity has taken aim at economic or labor policies that adversely affect workers, trade unions have been accused of inappropriate participation in politics. As a result, unions have come to be viewed not only as oppositionist, but often as subversive or as enemies of the institutional order. This, in turn, has set the stage for union members to be persecuted, including through the use of violence.**



Also during the time of the National Front, in 1961 a core group of unionists with ties to the Christian Democratic Party split from the UTC, which was then led by members of the Conservative Party. Over time, this new labor confederation would grow much larger than the political party to which it initially had ties, and today it is one of the three largest and most important union confederations in the country: the General Labor Confederation (CGT).<sup>4</sup>

Only three years after the end of the National Front, during the presidency of Alfonso López Michelsen (1974–1978), the nationwide strike of September 1977—often cited by historians of unionism—marked the culmination of activity by organizations outside the orbit of the traditional Liberal and Conservative parties, many of them independent (leftist) trade unions. The call to strike drew the support of the four main

<sup>4</sup> Recent acts of violence against trade unionists have also claimed victims among unions in this confederation—e.g., the correctional workers' union (ASEINPEC), which is part of the public sector.



### BOX 1.1

## 1947: Political tension and general strike

*May 1947 was a month of high political tension in Colombia, amid preparations for the upcoming national strike and conflicting positions between the national government and labor organizations. In her article titled “Crisis y recomposición del sindicalismo colombiano (1946-1980)” [Crisis and Restructuring of Colombian Trade Unionism], researcher Rocío Londoño Botero, in discussing the general strike of 1947, explains why this was such a crucial year for trade unionism and how Gaitán’s movement, with its leader at the helm, related to the events of May 1947. Her article is excerpted below:*

The pro-strike movement and the popular mobilization spurred by Jorge Eliécer Gaitán was taking on [by 1946] a clear character of opposition to the Ospina Pérez administration. In December 1946 the Liberal-Communist alliance in the CTC was reestablished, and a truce of sorts was reached with the Gaitanist movement [the conflict between the CTC and Gaitán had escalated considerably: the CTC accused him of being fascist and divisive, and Gaitán, in an alliance with Conservatives, encouraged the anti-Communist campaign and the founding of the National Workers Confederation (CNT) around the call for a general strike against the Conservative regime, as proposed by Gaitán. In January 1947 the Communist Party announced its support for Gaitán to halt the advance of the reaction.

In the actions and conflicts of 1946, pro-strike slogans were heard repeatedly. The March 1947 electoral victory over the traditional sector allowed Gaitán to use this success as a threat to the Conservative Party. Strikes intensified in April and May, giving CTC leaders hope that the general strike could finally be successful. A general strike was underway in Barranquilla, as was a strike by road construction workers in Nariño, a work stoppage by rail workers in Antioquia, and a students’ strike.

Against this backdrop, the CTC approved a general strike on 11 April 1947 and carried it out on 13 May, but it only drew the support of the most strident sectors of the union movement: rail workers, the laborers of Buenaventura,



union confederations (CTC, UTC, CGT and CSTC) around a nationwide list of demands. This was one of the strike's greatest achievements, thanks to the participation of unions close to the Liberal and Conservative parties.

This achievement surely caught the attention of the next administration, that of Julio César Turbay Ayala (1978–1982), which opted for a heavy hand against the rise of unionism and the growing popularity of M-19, a new urban-based guerrilla force quite different from previous ones.

The government acted not only against members of M-19—which dealt spectacular blows against it, such as the theft of Army weapons from the Cantón Norte military base—but also against leaders and activists of unions, of so-called civic movements, and of all other social protests and mobilizations. The government even moved against intellectuals who expressed sympathy for this citizen activism. The legal framework for this course of action was known as the “Security Statute.”

and workers from the utility companies of Medellín . . . . The government ordered some 1,300 people arrested, and transportation was partly provided by the military.

Gaitán was silent, the Communist Party faction led by Augusto Durán renounced the strike, and the government, along with the church hierarchy, portrayed this event to Colombians as an attack on law and order and on society. On 14 May, when the failure of the strike was apparent, Gaitán stated his opposition to such a movement . . . . Gaitán sought to weaken the CTC in order to increase his influence in the union movement and bolster his tactic of both opposing and negotiating with the government.

The assassination of Jorge Eliécer Gaitán on 9 April 1948 triggered a spontaneous work stoppage and a call by the CTC for a general strike. But with the popular revolt heading in directions different from those of the CTC, its call for a strike—adapted to the circumstances, no doubt—went unheeded. The people were overrunning the streets, and the Liberal leaders in the halls of government were seeking to negotiate with President Ospina.



◇ **Source:** Based on Londoño Botero, Rocío. 1989. “Crisis y recomposición del sindicalismo colombiano (1946–1980).” *Nueva Historia de Colombia*, Volume III. Bogotá: 271–306

◇ Headline in *Jornada* newspaper: 17 May 1947. Jorge Eliécer Gaitán speaks about the national strike.





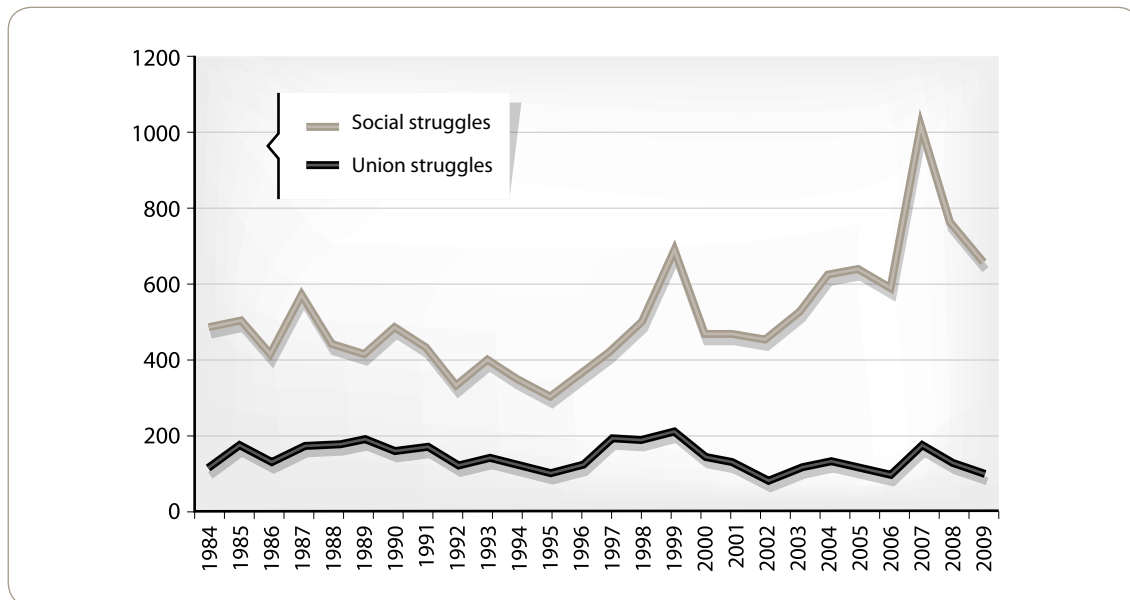
## 2. Political participation amid an ambivalent democratic opening

In contrast with the heavy-handed Turbay administration, the succeeding term of President Belisario Betancur (1982–1986) provided, at least until 1985 (when the Palace of Justice was attacked), an opening described by many as democratic. The institutional framework was expanded to incorporate—or neutralize—the armed insurgent groups, which were increasingly well equipped, aggressive and organized, and in the case of M-19, increasingly popular as well. A key part of this opening was the amnesty that the administration got Congress to pass in Law 31 of 1982, as well as the signing of “peace agreements” and ceasefires with a number of guerrilla groups. These agreements would soon be broken by both sides.

This opening was conducive to union activity and other forms of social mobilization. CINEP’s data on social struggles indicate that actions classified as social struggles increased between 1984 and 1989, including union actions such as strikes and work stoppages (Figure 1.1).

**Figure 1.1**

**Social struggles and union struggles per year, 1984–2009**



Source: CINEP, 2010: 42.



The outbreak of civic movements and of local and regional “civic strikes” was one feature of the Betancur administration. The guerrilla groups—which, under the newly signed agreements, were allowed to proselytize and carry out political activity—attempted, sometimes successfully, to involve themselves in many of these actions.

The agreements signed with the Revolutionary Armed Forces of Colombia (FARC) cleared the way for the founding of a political group known as Patriotic Union (UP), of which the Communist Party was a member; though not the only member. Soon afterward came the deplorable strategy of using violence against UP members to punish the FARC for breaching the agreements and for its self-proclaimed “combination of forms of struggle.”

Another part of this opening was a constitutional amendment, proposed by the president and approved in 1986, to have mayors elected by popular vote. The CNAI (2010) shows how this reform, implemented in 1988, led to increased interest among trade unions, other previously unheralded forces, and civic movements in participating in politics, specifically in local elections.<sup>5</sup>

However, what is described here as a democratic opening had its limitations:

- ◇ Aside from the reform of mayoral elections, many government initiatives, including the most important ones, remained as informal proposals and never came to fruition. Notably, the peace agreements were not signed by the president or incorporated into executive orders or laws; they were signed by the chairman of the Peace Commission, who did not have a constitutionally mandated position—as would a minister or institute director—within the government’s organizational structure.
- ◇ Meanwhile, the flip side of this lack of formality was that some officers from the Army, from other branches of the armed forces, and from the police—as well as civilian officials—surreptitiously became involved in, or condoned, the incipient armed groups that would come to be known as “paramilitary” groups (Pardo Rueda, 2007: 18–19; Romero, 2003; Medina Gallego, 1990; Ortiz Sarmiento,

**Some of this violence occurred within the institutional framework—e.g., by subjecting strikers to summary courts-martial authorized under the “state of siege” that could be declared in accordance with Article 121 of the Constitution of 1886. In other cases, the violence represented illegal abuses of power, ranging from harassment to homicide.**

<sup>5</sup> “Under the protection of the peace negotiations, the Patriotic Union and the Popular Front expanded their political presence by participating in the first mayoral elections to be decided by popular vote, a reform approved in 1986 and first implemented in 1988. The UP’s participation not only helped shore up the traditional influence of the Communist Party in some areas, but also helped extend its reach to new municipalities and departments. For the Popular Front, participation in municipal elections meant turning its back on a long history of belligerent abstentionism, which had been promoted by the PCC-ML and the EPL. In the municipalities, the political alliances that emerged from the peace negotiations and ceasefire attempted to join up with the civic movements, which had carried out a major effort, starting in the late 1970s, to organize and unify their struggles at the national level. The 1984–1986 period saw the founding of social organizations such as the National Association of Peasant, Black and Indigenous Women of Colombia (ANMUCIC), in 1984; the National Association of Users of the Integrated Rural Development Program (ANDRI), in 1985; the National Council on Low-income Housing (CONAVIP), which emerged from the First Unified Conference of Grassroots and Housing Organizations, held in 1985; and the CUT, founded in November 1986, which undoubtedly represents the most historically significant unification process” (CNAI, 2010: 36–37).



1991; Gutiérrez Sanín, 2006; Reyes Posada, 1991). In this way they acted from their institutions or through these irregular armed groups to hinder the agreements with the guerrilla forces and the opening of spaces for social struggle under government auspices.

They saw this as their response to the “combination of forms of struggle” used by guerrilla forces that spoke of peace and democratic opening and signed agreements while continuing to plan and strategize for war. In the case of the FARC, these plans were clearly outlined at its Seventh Conference in May 1982, two years before signing of peace agreements that did nothing to change this dynamic (CNAI, 2010: 41–42; Pizarro Leongómez, 2001; Dudley, 2004; Echandía Castilla, 1999; Echandía Castilla, 2006).

With the support of these ranking officials, the irregular armed groups had free rein for what in principle were counterinsurgent aims. This was noted by the attorney general under President Betancur (Jiménez Gómez, 1986) and documented two years later by the Administrative Department of Security (DAS) in a report for President Virgilio Barco (1986–1990) that was leaked to the press (Box 1.2).

As a result, these years of democratic opening also saw some killings of trade unionists and unionized workers. The guerrilla forces, as well, may have also used violence against supporters of leftist organizations close to them who believed in the discourse of peace and democratic opening and, therefore, did



not support the “combination of forms of struggle,” although the available data indicate that this occurred less frequently (see Dudley, 2008).

Amid this ambivalent situation—with a democratic opening on the one hand and violence on the other—a new labor confederation emerged in 1986: the Unified Workers Confederation (CUT). The CUT started out with 600 unions and 45 labor federations: all of those from the former CSTC, most of the so-called independent trade unions, and several unions from the UTC and CTC. Thus, from its beginnings the CUT was intended as a multipartisan organization.

According to the ENS, in 1990, only four years after the CUT’s founding, it had 842 unions and 504,053 workers. Prominent among its unions and federations were the oil workers’ union, known as the USO; the two main banana workers’ unions from Urabá, known as Sintagro and Sintrabanano; and the federation of teachers’ unions, FECODE. Also, according to the ENS, the CUT is the labor confederation with the highest number of members killed since its founding: 2,495.

One year after it was formed, in 1987, the Strike of the Colombian Northeast took place, followed by a wave of killings, threats and other forms of violence particularly directed, as will be noted below, at union leaders who had organized the strike, primarily from the USO and FECODE. The strike covered the departments of Arauca, Norte de Santander, and Santander, as well as northeastern Antioquia and southern Bolívar.

Large numbers of trade unionists and unionized workers were killed in the 1980s: 357, according to CINEP, between 1984 and 1989 (CINEP, 2010: 20); and 343, according to the ENS, between 1986 and 1989 (ENS, 2011).

Since the 1980s, then, trade unionists have had to contend not only with the challenges of new circumstances common to all workers in the region, but also with the unique features of Colombian trade unionism, including the problematic relationship between trade unionism and politics, as well as the repercussions of violence on both unionism and politics.

These new circumstances common to workers in Latin America were greater flexibility in labor law, as provided in Colombia under Law 50 of 1990, and the proliferation of “associated work cooperatives” under Law 79 of 1988 and its regulatory provisions in Decree 468 of 1990.

The next chapter addresses the climate of violence that took shape in the latter half of the 20th century, not only for trade unionism but for many other activities as well, with repercussions that inevitably continue to be felt today.

**The CSTC’s lack of ties to the co-ruling parties was a barrier to gaining institutional legitimacy. Not until 1975—after more than a decade—was it recognized as a legally constituted entity. One hardly struggles to imagine the negative effects that this exclusion from legality had for the initiatives and actions of its affiliated unions. These unions were forced to act outside the bounds of legality set by labor law, and many of their actions were, as a result, “contentious.”**



## BOX 1.2

### Paramilitary “dossier”

*In March 1989 the DAS prepared a confidential report with a detailed description of an organization called the Magdalena Medio Self-Defense Forces. The report, which was submitted to the administration of President Virgilio Barco, was leaked to the press. On 12 June 1989, *Semana* magazine published an article—titled “El ‘dossier’ paramilitar” [“The Paramilitary ‘Dossier’”]—about this investigation. This article is excerpted below.*

The government has ample and detailed information. This information reveals how the paramilitary groups began, how they developed and how they are currently structured. Also known are how they finance their operations, how they operate, how they communicate and how they train their men. The ties between paramilitary groups and the drug-trafficking industry have been established. Moreover, the exact identity of their highest-ranking leaders is known.

It is known, among other things, that Israeli and British specialists were secretly brought to Colombia to train the elite commando units of these organizations. In short, much is known. *Semana* learned of this by reviewing a package of documents from various government entities and security bodies, which was handed to President Virgilio Barco and contains a vast amount of information based on intelligence activities, intercepted documents and phone calls, and, most importantly of all, the valuable testimony of deserters from the paramilitary groups

....

In mid-1983, the residents of Puerto Boyacá and surrounding areas—already the victims of a vicious pattern of protection racketeering, extortion and kidnapping by

the FARC—started to witness something that initially struck them as merely odd and eye-catching. Groups of civilians, sometimes armed, began to tour the region, taking health care brigades to visit various districts. This provided an opportunity to come into contact with residents of the countryside, learn about their concerns, and identify which of them were associated with the FARC and which were fed up with the FARC’s practices. The brigades were originally the idea of the Magdalena Medio Cattle Ranchers Association, whose leaders were quite enthusiastic about this strategy.

... The first armed “self-defense” organization then emerged in that municipality [Puerto Boyacá]. According to the information, its founders were Pablo Guarín (killed in 1987 by the FARC), Carlos Loaiza, Luis Suárez and Gonzalo Pérez. They collected donations from landowners in the region and recruited children of peasants to attend the first self-defense school, El Tecal, located on the La Paz estate near Puerto Boyacá.

The initial contingents of this group patrolled the area, sometimes accompanied by troops from the Bárbula Battalion, based in Puerto Boyacá. These patrols were intended not only to expel the FARC from the region, but



also to intimidate the FARC's former collaborators and turn them into allies of the self-defense force . . .

In early 1985, an incident near Dos y Medio, a few kilometers from Puerto Boyacá, would change the history of the organization forever. A self-defense commando unit set up a roadway checkpoint and intercepted an all-terrain vehicle loaded with cocaine. According to one of the government's documents, the cocaine belonged to Jairo Correa and Pacho Barbosa, the latter being the owner of the La Suiza estate in Puerto Nare, not far from there. The owners of the cargo contacted the chiefs of the self-defense group in Puerto Boyacá, and negotiations led to an agreement. Drug traffickers and self-defense groups found common ground in their opposition to both guerrillas and Communists.

. . . The operations of what by then were paramilitary groups readily expanded to new areas. The Urabá–Córdoba–Bajo Cauca–Magdalena Medio–Meta axis was virtually engulfed by the tentacles of the paramilitary octopus.

. . . The information on connections between the organization and members of the armed forces and police is zealously guarded by the government. However, *Semana* was able to determine that, in addition to the accusations against Major Echandía, currently a fugitive from justice, there is information about how Henry Pérez [who organized the Cero-81 paramilitary school near Ciénaga de Palagua in Puerto Boyacá] would arrange for safe

passage and purchase Indumil-manufactured weaponry through the Bárbula Battalion.

The government's documents also talk about the connections between paramilitary groups and officers operating in Montería, Puerto Boyacá, Puerto Berrío, Puerto Salgar and San Vicente del Caguán. One witness whose statement was taken by the authorities said that on Christmas Day 1987, several members of the Army and the police assigned to the Puerto Boyacá area arrived at Henry Pérez's house "to receive their Christmas bonus."



◇ **Source:** *Semana* magazine, Monday 12 June 1989. Available at [www.semana.com/especiales/dossier-paramilitar/25679-3.aspx](http://www.semana.com/especiales/dossier-paramilitar/25679-3.aspx) (accessed on 30 August 2011).



# Chapter 2

## Violence and its relationship to politics and trade unionism

**T**here is no doubt that union activity in Colombia—despite having to contend with the universal contradictions between capital and labor, and the sharpening of these contradictions in recent decades—would be quite different if there were no armed groups such as guerrillas, paramilitaries and other groups, with their levels of organization and resources. Experts on this matter, such as LeGrand (2010) and Pécaut (2010), agree on this point.

I find that violence against trade unionists has increased the most whenever and wherever there are territorial conflicts between guerrilla and paramilitary forces (LeGrand, 2010).

As noted by many analysts, the Colombian armed conflict, as with most contemporary internal conflicts, tends to come primarily at the expense of the civilian population. It is no surprise that trade unionists are among the main victims of paramilitary groups and their allies, along with human rights advocates and grassroots leaders. But it is almost impossible to distinguish between antiunion actions carried out for primarily political purposes and those with primarily social aims: both types tend to mix together (Pécaut, 2010).

The interference of organized armed groups—and of the violence to which they contribute—in union and political activity is nothing recent. A general idea of how this dynamic has evolved, at least since the mid-20th century, is needed to understand this issue that has such an impact on union activity and politics today.

### 1. From “La Violencia” to the National Front

Chapter 1 examined how the political conflict of the 1940s grew increasingly violent, so much so that politics and violence were nearly synonymous and the entire period came to be known as “La Violencia” (The Violence). This conflict was spurred and exacerbated by the opposition parties’ social mobilization and, from the other side, by the government’s containment strategy.





During those years—most intensely from 1947 to 1953, but continuing on through 1965—most political activity (and related union activity) became violent or was at a high risk of violence. Moreover, all sorts of violent acts came to be colored by partisanship (Liberal or Conservative, primarily). In short, all violence became political in nature.

This is reflected in data from the period, primarily provided by police sources, which are inconsistent and often discontinuous. A comparison of homicide data from 1947 to 1965 (the period known as “La Violencia,” including eight years under the National Front) to post-1965 data reveals the following:

- ◇ Overall homicide figures plummeted sharply to per capita rates on par with those of countries such as the United States and other Latin American countries.
- ◇ While killings from the 1947–1965 period are classified in the sources as “political homicides” (killed for being Conservative or Liberal) as opposed to “common homicides,” after 1965 the latter category predominates and that of “political homicides” disappears.<sup>6</sup>

This means that the National Front accomplished its goal of reducing violence and minimizing what was described as political violence—or, more precisely, as partisan violence between Liberals and Conservatives.<sup>7</sup> Of course, this does not mean that rights were guaranteed to political groups other than the two parties that signed the agreement forming the National Front. Nor did it mean that union activity could be freely carried out, especially if, as noted above, the unions were linked to parties and movements outside the co-ruling parties.

Indeed, M-19 guerrilla group—created in the wake of fraud allegations by Rojas Pinilla’s supporters in the 1970 presidential elections—stated that its purpose was to fight for institutional legitimacy and guaranteed rights for political options outside the two parties that signed the agreements and the reform measure for the National Front.

Even taking into account the isolated, sporadic acts of violence related to political or union activity between 1965 and 1978, the incidence of violence over that period is not comparable to that of 1947–1965 or to the wave of violence in the 1980s, particularly after 1984.

Sociologists and historians offer varying explanations for the intense, widespread violence of 1947–1965<sup>8</sup> and its resurgence, albeit with different features, in the mid-1980s.

The various explanations agree, however, on the significance of the fact that the government as a whole, headed by the executive branch, opted for a course of action not entirely within the institutional framework to deal with the social mobilization and political opposition.

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<sup>6</sup> These figures and their trends over time may be found in Cubides et al. (1998: 285 and 286, Figures 1 and 2). It is understandable that the impact of changes ushered in by the National Front is reflected in statistics starting in 1965, seven years after the new regime began, and not immediately after the referendum approving the reforms.

<sup>7</sup> Recommended sources on the National Front include Gutiérrez Sanín (2006) and Leal Buitrago (2002).

<sup>8</sup> On the violence of the 1940s and 1950s, see Pécaut (1987); González, Bolívar and Vásquez (2007); Sánchez and Meertens (1982); Palacios (1995); and Ortiz (1985).



**There is no doubt that union activity in Colombia—despite having to contend with the universal contradictions between capital and labor, and the sharpening of these contradictions in recent decades—would be quite different if there were no armed groups such as guerrillas, paramilitaries and other groups, with their levels of organization and resources.**

This course of action consisted in encouraging individual initiative to be channeled through the party apparatus rather than through government institutions, without the restrictions and controls provided by law, but with a high cost in the form of widespread, uncontrolled violence. Fifty years later, this logic must be understood because it is not unlike the conditions that continue to perpetuate violence today.

Joint units of police officers and civilians, nicknamed “chulavitas,” especially after 9 April 1948, or “pájaros” [birds], salaried or otherwise, under the government of General Gustavo Rojas Pinilla, were given free rein supposedly to help restore the public order wherever needed. In reality, though, their actions sprang from all kinds of motives, from the mystical and religious to the mundane and petty.

Meanwhile, the exclusion of the opposition from all parts of the institutional framework led it to provide arms or support to rural-based guerrilla forces. This was initially for self-defense, but opposition forces soon sought to exact revenge, to intimidate, or, like other groups, to pursue all sorts of aims, some of them downright foolish.

The irregular armed groups thus gained strength, and civilians found themselves increasingly under threat from noninstitutional, de facto powers—some in conjunction with government institutions (joint units of police officers and civilians, Conservative squadrons, and “pájaros”), others outside or in opposition to government institutions (Liberal guerrilla forces), with both sides violating civilians’ most fundamental rights.

With these actors on the scene, one can easily see how risky it was to be a supporter of the government or, on the other side, to participate in a strike deemed illegal by the government (as most strikes were). It was even risky to carry out union activity in an organization that sympathized with an opposition party that supported the guerrillas, as was the case with the Liberal Party.

Attempts to expand the institutional framework under the government of General Gustavo Rojas Pinilla and, more successfully, under the National Front ultimately led the government to rely more heavily on the Army to maintain order instead of sponsoring private armed groups, and led the Liberals to cease their opposition to the government and their support for guerrilla groups in exchange for agreeing to a shared-power arrangement. However, the seeds of these patterns lay latent and would revive with a vengeance in the 1980s

Indeed, the remnants of peasant-based guerrilla forces that did not demobilize on the orders of Liberal leaders were reclaimed and politicized by new and old left-wing parties in the 1960s and 1970s. In the 1980s they would become highly intimidating perpetrators of violence.



Meanwhile, the regular Army—which the leaders of both parties under the National Front tried to make the institutionally legitimate force that could supersede the private armed groups and thereby put an end to the violence—paradoxically spawned the elements that would foster the rebirth, in 1980, of private armed groups as a strategy.



Some ranking officers, in fact, condoned and supported armed groups in their jurisdictions when they felt constrained by the policies of the democratic opening of the 1980s. They were accustomed to the free rein they had enjoyed since the time of the National Front, and these prerogatives reached an apex with the “Security Statute” passed by Julio César Turbay’s administration.

## 2. Armed groups and violence since 1980

The resurgence of armed groups outside the bounds of the institutional order in the 1980s was quite different from the circumstances of those that emerged in the 1940s and 1950s, chief among them being the involvement of drug-trafficking organizations.

Drug trafficking, as a transnational criminal activity, became the huge engine behind organization, expansion, recruitment, and provision of arms and technology for long-existing leftist guerrilla forces as well as for emerging guerrilla groups (M-19). Both were products of location and timing, as were the groups newly formed for counterinsurgency purposes, which soon came to be known as paramilitary groups (Pécaut, 2001 and 2003).

Drug trafficking, with its own dynamics and interests at play, cannot always be reduced to the two aforementioned types of groups. It would supply these groups, with the predictable consequence of a rampant increase in violence against political activists, trade unionists and journalists who become wanted individuals. But it also triggers another type of violence that cannot be categorized, at least not directly, as either political or union-related: the settling of scores between traffickers, reprisals for disloyalty, casualties incurred in the quest for routes or crops, and street fights, acts of vengeance, robberies and gang wars, as a result of the availability of weapons and cultural patterns ushered in by drug traffickers.

Nonetheless, trade unionists can fall victim to these diverse forms of violence when their sense of civic duty or social responsibility compels them to take a stand against the criminal networks.



### 3. Strengthening of paramilitarism in the 1990s

The paramilitary groups of the 1980s—the most famous of which was the Puerto Boyacá group in Magdalena Medio, with close ties to the Medellín cartel—seged in the 1990s into a pattern of nationwide coordination. The organization known as the United Self-Defense Forces of Colombia (AUC) was created from the Peasant Self-Defense Forces of Córdoba and Urabá (ACCU), formed in 1993–1994, which in turn had originated from two seminal groups armed by the Castaño brothers on their respective properties in Córdoba and the Darién region.

This organization aimed to link together groups from far-flung parts of the country, and to this end grouped various regions into blocs. The blocs that controlled the most territory were the Bolívar Central Bloc, which covered several departments, and the Northern Bloc, which eventually stretched from Urabá and the Darién region to La Guajira. The Northern Bloc was commanded by Rodrigo Tovar, aka “Jorge 40,” starting in 2001, the year in which Carlos Castaño disappeared and Salvatore Mancuso assumed leadership of the AUC.

The dismantling of guerrilla forces in the Atlantic COAST region—including guerrilla sanctuaries such as Belén de Bajirá for the FARC and southern Bolívar for the ELN—was more the work of this bloc than of the regular Army, though not without the complicity of some ranking Army officers.

**The resurgence of armed groups outside the bounds of the institutional order in the 1980s was quite different from the circumstances of those that emerged in the 1940s and 1950s, chief among them being the involvement of drug-trafficking organizations.**

Beyond turf disputes with the guerrillas, however, the AUC pursued the strategy of terror, especially in the form of massacres, to subdue entire villages. In some cases, residents were forcibly displaced to make way for the raising of livestock or the planting of oil palms. This was achieved by threatening and killing trade unionists, politicians and university students, as is now being learned from the testimony of demobilized fighters seeking coverage under Law 975 of 2005, known as the Justice and Peace Law.

Negotiations held from 2003 to 2005 between most of the AUC leadership and the Álvaro Uribe administration (2002–2006 and 2006–2010) led to demobilization agreements within the framework of Law 975 of 2005. The provisions of the law that were most favorable to AUC negotiators were struck down by the Constitutional Court, particularly through Ruling C-370 of 2005.

Meanwhile, the Supreme Court trials and first convictions of members of Congress and other politicians with proven ties to paramilitary groups are gradually revealing how deeply rooted these organizations are in regional and national politics.

Chapter 10, in Part Four, as part of its discussion of the perpetrators of violence, cites various sources that describe how a large number of supposedly demobilized paramilitary fighters have joined up with other groups and how new groups, known as criminal bands, have emerged. Among the most feared of these new groups are “Los Urabeños,” “Los Paisas,” “Los Rastrojos,” the Colombian Antiterrorist People’s Revolutionary Army (ERPAC), and a group calling itself “Águilas Negras.”



The numbers of trade unionists killed have declined since 2003, coinciding with the AUC negotiation and demobilization process. Still, the threats have not relented, and in fact have increased, at least in terms of incidents reported and recorded by sources that systematically keep track of them, such as FECODE and the ENS. Chapter 5 compares the various sources to determine peak periods and upward and downward trends in these numbers over time.

In sum, this climate of violence, which has taken shape over several decades, serves as the context for the incidents examined in this report—i.e., acts of violence against trade unionists and unionized workers between 1984 and the present.

The description of this context has highlighted the following as the result of historical processes:

- ◇ This violence has been wielded against a specific population, though not against it alone. However, this population is an important one due to the valuable role it plays in a democracy: exercising the right to freedom of association. Reclaiming these victims' unique identity is, then, a first step toward repairing the harm caused to their rights—for them, their families and their organizations.
- ◇ Playing a major role in this violence are organized armed groups, whose existence and operations have been made possible, directly or indirectly, by the way the State has functioned as a whole. The situation of the 1940s and 1950s bears some similarities in this regard to that of today.

The most significant armed groups since the 1980s have been paramilitary forces—powered by drug-trafficking operations—and guerrilla forces, which also have been increasingly linked to drug trafficking. Determining the involvement of paramilitary or guerrilla forces, or of others, in each instance of violence is no easy task due to a lack of information on perpetrators in the available sources, and due to the limited scope of verdicts and of ongoing investigations and trials.

By no means, however, does highlighting the significance of irregular armed groups mean ignoring the need to determine who outside these groups has benefited politically or financially and who has played a role in masterminding the violence, whether they be government officials, members of the military, or private citizens.



Photography: Courtesy Cinep.



# Chapter 3

## Views on trade unionism

The third contextual approach used in this report to help understand the backdrop against which violence played out is related to views on trade unionism held by various sectors of Colombian society, starting with the workers themselves, unionized or nonunion, and the business owners who are their employers, as well as the media, heads of State and other government officials. These views have been researched using their official statements as well as their words and conduct in private, which are not always consistent with their public statements.

An examination of violence against trade unionists would not be complete if subjective, perception-based factors were not considered alongside historical events and processes.

This report has already described the events and processes (related to trade unionism and violence) that have set the stage for the violence. The time has come, then, to examine the views, socially constructed over time, that underlie current perceptions of trade unionism and the violence perpetrated against people who carry out union activity.<sup>9</sup>

### 1. Negative views, inside and outside the workplace

The study conducted by the Ideas for Peace Foundation (FIP, 2010) for this project found that the national press (the study did not include radio or television) has referred to trade unions and some of their prominent actions—such as strikes and their participation in annual discussions on the minimum wage—in predominantly negative, disparaging terms. This same tone has prevailed in the discourse of government leaders, including after 1991, when the new Constitution proclaimed the “social rule of law.”

<sup>9</sup> Despite this axiom—that the viewpoints underlying current perceptions are constructed socially over time—this third contextual approach will not follow a historical path from the 1940s, as was followed in Chapters 1 and 2. This is because Chapter 3 is based on the FIP’s survey of current perceptions and on an examination of media outlets starting in either 1984 or 1990: the FIP’s sample was of the press from 1984 to 2010 (FIP, 2010), while Tobón (2010) looked at the coverage of nine events in the national and local press, and on radio and television, from 1990 to 2010.





According to a study by Tobón (2010), events that meet standards of newsworthiness but do not reflect the stereotype of disruptive unions—such as the 2006 signing of a tripartite agreement between union confederations, employers and the government—went nearly unreported in the media. The 2005 minimum-wage agreement was barely mentioned either. By contrast, ample news coverage has been given to labor strikes, especially those that are prolonged and cause inconvenience, for example, in urban transportation.

The FIP's study (2010) was based on a survey of 1,200 people, including workers and company managers. This survey found that, contrary to what might be expected, perceptions in companies with a union presence are much less negative—not only among workers who are union members, which may seem obvious, but also among nonunionized workers and managers at such companies, sometimes in contrast to management's public statements.

One possible interpretation of these findings is that negative views of trade unions and their activities do not stem from companies' prior negative experiences with trade unions, but rather from ideologically and politically shaped preconceptions held by employers and many others—preconceptions that can be dispelled, or at least modified, through actual experience with unions (FIP, 2010: 70, 71, 79 and 105).

However, the fact that a union presence at a company has a favorable impact by reducing antiunion actions does not necessarily mean that employers do not often resist the formation of trade unions in their establishments, as noted by the ILO's High-level Tripartite Mission to Colombia, which visited the country from 14 to 18 February 2011 at the invitation of the government.<sup>10</sup>

These negative views surely fuel antiunion discrimination, both in private companies and in the public sector. The aforementioned ILO mission stated that it was "deeply concerned" by the repeated, detailed information it received in this regard.

Would-be perpetrators of violence against unionists are influenced by the negative outlook on trade unionism that permeates this overall climate. Perpetrators seeking coverage under the provisions of Law 975 of 2005 have testified to prosecutors that they were driven by the conviction that trade unions and labor strikes were harmful to society and an obstacle to progress.

Among the preconceptions that are part of negative views on trade unions—as evidenced in the press, in speeches by government leaders, and in official statements by company executives—the FIP's study cites the following: that union structures are outdated and cumbersome; that unions stand in the way of modernization; that they are obstacles to the country's development; that they are bureaucratic and corrupt; that they make excessive, burdensome demands of companies; that they are irrational and blind in their opposition; that they lack credibility and are not representative; that they are in a crisis for which they themselves are responsible.

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**10** The document setting forth the conclusions of the ILO mission includes the following: "The Mission was deeply concerned at the repeated and detailed information it received concerning acts of anti-union discrimination at the enterprise level and in the public sector as well as the failure to take effective action to stop it. ... Information was also provided on frequent cases of anti-union dismissals as a consequence of the exercise of the right to create or join a union."



**One of the contextual approaches used in this report to help understand the backdrop against which violence played out is related to views on trade unionism held by various sectors of Colombian society, starting with the workers themselves, unionized or nonunion, and the business owners who are their employers, as well as the media, heads of State and other government officials.**

The same study also addresses the negative views held, on the other side, by workers vis-à-vis business owners: that they are unyielding; that they care only about their profits; that they are unfair.

The study shows that the press often uses highly unflattering cases to smear the entire union movement (Box 1.3). For example, according to the newspaper *El Tiempo*, the 1992 strike by the port workers' union at Colpuertos represented "everything bureaucratic, deficient, and irregular" (about trade unionism) and "the obvious outcome of a clash between a union movement stuck in the past, refusing to move forward, and a changing country" (*El Tiempo*, 15 February 1992).

The negative portrayals go so far as to use the word "guerrilla" to describe trade unions and their members—either by playing up and generalizing from an unusual situation in which there may have been ties to guerrilla forces, or, more commonly, by making unfounded statements about those who take a critical stance or lead a mobilization.

We know how dangerous this can be for the people thus portrayed, given the dynamic of armed groups and violence.<sup>11</sup>

The media have even spoken of "union terrorism," describing trade unions as a local, legalized vehicle for the objectives and strategies of insurgent groups (see *El Tiempo*, 8 April 1993). One national media outlet, for example, linked the 1991 USO strike in Barrancabermeja to the ELN's bombing of an oil pipeline, flippantly blaming the union for an action that was the work of a guerrilla group (see *El Tiempo*, 9 April 1991). The same outlet described the USO's activity as "a unionism that is in many ways political, [which] stands in the way of the national oil company's reorganization plans" (*El Tiempo*, 28 February 1996).

This would be less troubling if the USO were not one of the unions whose members have most often been the victims of killings and other serious human rights violations, as detailed in Chapter 8.

According to Rey (2010), the attribution of criminal qualities to trade unions is related to the commonly held view of unions as the enemy, to the notion of legality, to a weak societal sense of basic rights, and to a lack of protection for social and political rights. For example, when it was reported in 2009 that large numbers of trade unionists were being killed, one columnist found it more important to attack what he saw as the "fatalism of the negative practices of a bureaucratic union movement and its advisory entities, which use grim statistics to portray themselves as victims and gain prerogatives and international contributions" (*El Mundo* of Medellín, 8 November 2009).

<sup>11</sup> Part Four of this report, titled "Perpetrators and motives," will take a closer look at such unfounded statements inasmuch as they are articulated by perpetrators of violence against unionized workers and they serve as motives.



As for the government's discourse, the depiction of unions as criminal is an especially grave matter when voiced by the head of State.<sup>12</sup> Such references, however, are more often articulated not by the president, but at other levels of the State by officials who are influential in their own right.

Under Belisario Betancur's administration, for example, while the President was calling on all sectors, including the armed groups, to participate in dialogue and negotiations—and was choosing his words accordingly—the National Police magazine *Criminalidad* was categorizing labor strikes and “civic strikes” as hazards to the public order in the same way as armed attacks on villages, piracy of land-based cargo, and weapon seizures, as revealed by the Colombian Jurists Commission (CCJ) and cited by the FIP.

This magazine, it should be noted, was the mouthpiece of the Directorate of Criminal Investigation and Interpol (DIJIN), then the leading source of government data on violence. The commentary published in the magazine in that period and cited by the FIP is quite revealing of its perspective. Below is a sample:

A large portion of the aforementioned protest actions are the result of the subversive training of the unions. In this regard, the formation of the CUT is one of the most significant and important achievements of the leftist political groups and the subversive movements ..., and therefore the subversive strategy is favored since it allows for workers' dissatisfaction to be channeled into pressuring the government (National Police, *Criminalidad* magazine, 1986: 115).

During the subsequent administration of President Barco, who continued his predecessor's course of institutional opening, the magazine nonetheless maintained its perspective:

Behind the “marches” of farmworkers and peasants and other indiscriminate groups toward cities and small towns are several goals, among them the ideological strengthening of farmers to recruit more followers for their political wings, a course of action used in recent times by the main sectors of communism (guerrilla groups and political movements), which have brought together organizations previously isolated from such activity (National Police, *Criminalidad* magazine, 1987: 118).

By linking the underlying viewpoint of this discourse to the ambivalent nature of the democratic opening and peace process of the 1980s—as described in previous pages regarding the relationship between unionism and politics and the relationship to violence—one is more likely to gain an understanding of why killings of trade unionists began to escalate in those years.

According to CCJ analysts, not until 2002 did the magazine significantly change the way it reported on social mobilizations. This shift, in their opinion, was part of a methodological reorientation of the magazine as a whole.

Of course, references by the government, or in the media, to trade unions and union members as “guerrillas” do not in and of themselves cause violence, nor does a shift in discourse immediately produce

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<sup>12</sup> The report on the FIP's study cites some examples, including one from a 2008 speech in which the President accused sugarcane workers who were preparing to strike of acting on orders from the FARC (FIP, 2010: 97).



the opposite effect. The way in which an audience responds to discourse is influenced by individual and collective experiences that vary from one case to another.

Moreover, violence requires the means to commit it, whether through organized armed groups in a strategic, calculated form of violence, or with individual motives and resources in a more expressive, random form of violence.

Still, the viewpoints articulated in such discourse are significant in that they serve as a backdrop, or as a growth medium, for the events and processes in question. It is no coincidence, then, that some of the value judgments expressed in this discourse are consistent with those cited by the perpetrators of violence as the reason for their actions (Box 1.3).



### BOX 1.3

## Trade unionism: views from the media

*The Ideas for Peace Foundation (IFP), as part of the Project on Violence Against Trade Unionists and Unionized Workers, examined a number of print media outlets for their perceptions of trade unionism. Below are some of their conclusions.*

In reviewing the headlines related to the conflict between trade unions and the government, we notice several things. First is the government's rejection of union tactics, such as labor strikes; the government states that it "will not be blackmailed," that it "will not be intimidated," or that "a minority cannot paralyze the country." Second is the government's refusal to negotiate certain issues; this is behind the statements of various government officials in which they issue "alerts" to the unions for them to make "labor peace" and to be "sensible" and "responsible." Third is the portrayal of unions as reluctant to negotiate. Examples of this include headlines such as "Unions fail to agree," "CUT says no to everything," and "Unions refuse to negotiate."

In light of these findings, and as shown in subsequent sections, some observations can be made. First, the depiction of trade unions in the press is clearly linked to situations involving conflict with the government or with companies. This exacerbates negative perceptions of trade unions, since their presence in the media is associated at best with heated discussions with the government, and at worst with the paralyzing effects of a walkout, protest, strike or boycott.

The scant attention paid to trade unions when not in conflict with companies or the government shows how unions become visible in the media through strained relations with their counterparts (government and

# Paro de 24 horas

**Prohibición a Noticias sobre Paros y Huelgas**

*Para Radio y Televisión*

**Diálogo obrero - gobierno:**

**No se logró acuerdo**

**Dirigentes sindicales se retiran del gobierno**

**"El G No Cl ante**

**Enérgico rechazo hace el Gobierno a paro de un día**

BADO 3 DE SEPTIEMBRE DE 19

**Dirigentes sindi**

company). The news item is the result of conflict, as opposed to the establishment of a different type of relationship between the parties . . . .

This media portrayal of trade unions as confrontational, however, also fuels perceptions as to the fundamental nature of union-company-government relations, which seem inevitably framed in what Laclau (1985) refers to as radical social antagonism.

These perceptions, moreover, play into the construct of the trade unionist as a voracious, plundering "other" (e.g., in strikes, demonstrations, or protests) and sometimes even as violent and illegal (with ties to illegal armed groups). However, this review of the press does not allow us to reconstruct the image of the "other" formed of employers or the government. A future study of other sources (e.g., campaigns, websites) may allow for such a reconstruction.

One way or another, trade unionism becomes an "other" that can never adapt to a "normal" way of functioning in society, since its essence is closely linked to confrontation. It is from this framework that we can interpret labels used in the press to describe trade unions, such as "suicidal" or, in the worst-case scenario, "terrorist."



◇ Excerpted from: Fundación Ideas para la Paz (FIP). 2010. *Estudio sobre la cultura frente al sindicalismo en Colombia*: 15–16.



## 2. Views on violence, from trade unions and companies

The survey conducted by the FIP was designed to determine, first of all, whether the discourse attributing criminal qualities to trade unionists and unionized workers is reproduced by workers or company executives. Respondents were asked whether they believed that any trade unionists in the country had ties to guerrilla or paramilitary forces. Those responding in the affirmative were then asked if such circumstances justified killings or other violent acts, as a way of determining the effect of this incriminatory discourse on levels of tolerance or intolerance toward violence.

**As long as harmful stereotypes continue to circulate in society as a whole, and until the government makes a concerted effort to discontinue the use of disparaging language against trade unions and union members, this type of violent crime will continue to sprout from fertile soil.**

The findings indicate, as with nearly every topic explored in the survey, that such criminalizing and antiunion statements were less common than would be expected in view of the discourse found in the media and in speeches of government officials.

Levels of tolerance toward violence—as a possible perverse effect of incriminatory discourse—are actually quite low within companies: More than 90% of those who believe that some trade unionists have ties to guerrilla or paramilitary forces say that this does not justify acts of violence against them (FIP, 2010: 105).

In fact, large numbers of workers (unionized and nonunionized) and managers in the survey said that the level of violence against union members in Colombia is high or very high and that the reports of such violence are true.<sup>13</sup> Many respondents also stated that they are concerned by this situation (more so in companies with a union presence<sup>14</sup>) and are willing to testify to the authorities accordingly.<sup>15</sup>

**13** Seventy percent of the unionized workers surveyed by the FIP said that the level of violence against unionized workers was high or very high at the time of the survey—i.e., the first half of 2010—as did 47% of nonunionized workers at companies with a union presence and 44% of executives at such companies. Moreover, 90% of unionized workers, 60% of nonunionized workers, and 65% of executives in the survey said that reports of high numbers of killings of trade unionists were true and that something should be done about it (FIP, 2010: 77–78).

**14** Seventy-eight percent of the unionized workers surveyed and 60% of executives at companies with a union (FIP, 2010: 79).

**15** The survey asked, “If you had information about those involved in an act of violence against a union worker, what would you do?” The percentages of those who answered, out of the four choices offered by the person administering the survey, that they would report the responsible person or group to the authorities were as follows: 68% of managers, 65% of unionized workers and 58% of nonunionized workers (FIP, 2010: 81).





Photography: Édgar Domínguez. Courtesy MPP.

These responses are certainly the reflection of day-to-day co-existence between workers and executives, as well as direct experience or close contact with trade unions. But they are not enough to put us at ease. As long as harmful stereotypes continue to circulate in society as a whole, and until the government makes a concerted effort to discontinue the use of disparaging language against trade unions and union members, this type of violent crime will continue to sprout from fertile soil.



The viewpoints articulated in such discourse are significant in that they serve as a backdrop, or as a growth medium, for the events and processes in question. It is no coincidence, then, that some of the value judgments expressed in this discourse are consistent with those cited by the perpetrators of violence as the reason for their actions.

# Prohibición a Noticias sobre Paros y Huelgas

Para Radio y Televisión

ALLEGAS RESTREPO, Fundador, de 1911 Director hasta junio 1913.  
SANTOS: Desde julio de 1913.  
Gerentes:  
1913: Enero 1913, Septiembre 1949.  
1949: Enero 1949, Julio de 1968.  
1968: Enero 1968, Agosto 1968.  
1968: Sept. 1968, Agosto 1968.  
SANTOS GARCÍA-PEÑA, Director.  
SANTOS CASTILLA, Subdirector.  
1968: Carlos Pinilla Barrios.  
1968: Luis Fernando Santos.  
Nº 23.065

# EL TIEMPO

44 PAGINAS - 4 SECCIONES - SUPLEMENTO DEL AMOR Y LA AMISTAD

Jueves, 15 de Septiembre de 1977

## Diez muertos

Foque de queda por saqueos y motines en Bogotá.

## Paro Nacional Votan

## Centrales Obreras

se Mantiene en Secreto Fecha y Hora Cero

DEL CANO (Medellín, 1887)  
GABRIEL CANO (Medellín, 1913)  
LUIS CANO (Bogotá, 1915)  
GUILLERMO CANO  
DARIO BAUTISTA  
LUIS GABRIEL CANO

# EL ESPECTADOR

EDICION BOGOTA, D.E.

4 SECCIONES - \$ 5.00

AÑO XC

Periódica N° 3 de la Admón Postal Nat.

## Gobierno No Renunciará a Defender la Constitución y la Ley"

Advertencia a Centrales Obreras por Amenaza de Paro

Fuerte pugna entre grupos de izquierda por el paro





Photography: Mauricio Alexander Cáceres



# Part Two

## Sources, data and trends





**“The Colombian public, employers, the government and nonunionized workers should be made aware that unions play an important role in society and build a better life for workers.”**

***Miguel Morantes***  
*CTC President*

## **At a glance**

### ***Chapter 4***

Sources: Points of divergence and complementarity

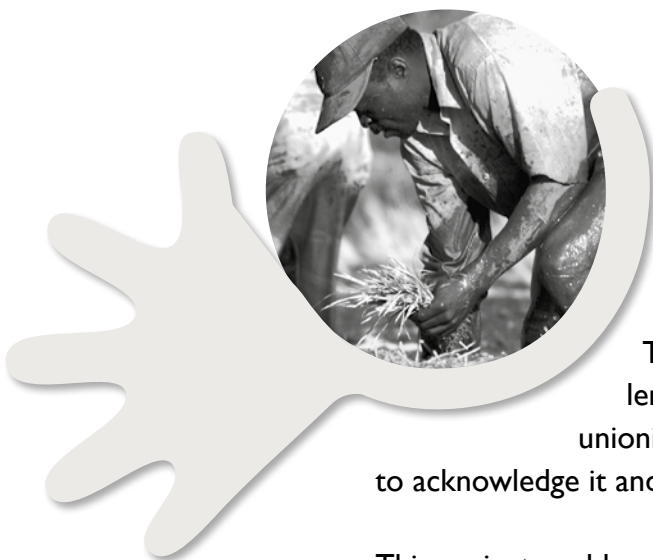
### ***Chapter 5***

Chronological series and trends

### ***Chapter 6***

Differences by area and by union

*This part is based on the report by the Conflict Analysis Resource Center titled Estado del arte sobre la medición de la violencia de los trabajadores sindicalizados en Colombia y estado de situación 1984-2009 [State of the art in measuring violence against unionized workers in Colombia and state of affairs, 1984–2009] (CERAC, 2010).*



The first step toward overcoming a problem such as that of violence against trade unionists and unionized workers in Colombia is to acknowledge it and gather information about it.

This project could not have gone forward without with the valuable information previously gathered, at least as far back as the 1980s, by the government and various other entities: nongovernmental organizations (NGOs), international bodies, and trade union organizations and entities tied to them.

The first step, therefore, is to acknowledge these sources and then use the studies conducted by the participating research centers to perform an initial analysis of the statistics that may be calculated from the data. A comparison of these statistics is carried out to the extent possible, and an analysis is conducted of their variation over time and across different geographic areas and trade unions.

This part addresses the following topics:

- ◇ Sources: points of discrepancy and complementarity
- ◇ Chronological series and trends
- ◇ Differentiation by areas and by union

# Chapter 4

## Sources: points of discrepancy and complementarity

**B**ecause they originate from a multitude of sources, the statistics on violence are not necessarily consistent. This is mainly due to variation in the methodology for recording and counting incidents; in variables selected; in inclusion criteria for incidents and victims; in criteria and categories for classifying, aggregating, and disaggregating data; in data sources; and in methods for screening sources and cleansing data.

These discrepancies should not come as a surprise, nor should they be viewed solely in a negative light. They should not be construed merely as opposing positions in the debate, because they also indicate the wealth of available information. It is, however, important that each source explicitly and publicly disclose its criteria, methodologies and categories. This will allow individuals or entities to use the various data sets in such a way that they complement, rather than exclude, one another.

Discrepancies can also be used by one source to discredit another, or by political interests of any stripe, in a way that can be more polarizing at certain historical moments than at others. Indeed, statistical disparities can allow some to argue that a phenomenon is quite severe even as others claim the opposite, either nationwide or in a specific region or labor organization.

Similarly, any discrepancy in the statistical trends over a given period of time can also be used to either praise or criticize the work of an entity, a political party or a political leader.

### 1. Diversity of sources

For violent incidents of the specific type under review here, the first organizations to systematically gather and quantify data were the CUT, starting with its founding in 1986; and the ENS, which has close ties to the labor confederations, and whose consolidated data, for the purposes of this document, span from 1986 to March 2011.





CINEP had been keeping data since 1988 on all incidents categorized as political violence meeting the definition of human rights violations, violations of international humanitarian law, belligerent actions, and what rank-and-file supporters refer to as political/social violence, albeit without distinction regarding violence against trade unionists and unionized workers. For this project, CINEP retroactively disaggregated this specific population of victims from the universe of its data.

Although this database was started in 1988, it includes cases from previous years, in accordance with criteria and categories that have been explicitly disclosed, defined and published.<sup>1</sup>

The CGT and FECODE, meanwhile, keep records and maintain totals on acts of violence against their own members. The CGT started doing so primarily because of the killings reported by its unions, and particularly for the purpose of having these crimes prosecuted. FECODE, founded in 1959, has used agreed standards to build a database since 2006, which is automatically tied to reports of threats filed with the departments of education as well as the reports of killings it receives from member unions.

Founded in 1988, the Colombian Jurists Commission (CCJ) has maintained data since 1996 on violations of human rights and international humanitarian rights against trade unionists as well as other vulnerable populations. The CCJ obtains its data from various sources, including national and regional human rights organizations; the authorities; the press; other sources cited here, such as the ENS, CINEP and labor confederations; and its own teams working in various parts of the country.

Data from national organizations, such as NGOs and trade unions, are a major source of the data kept by international organizations, including international labor confederations such as the International Trade Union Confederation (ITUC), NGOs such as Amnesty International and Human Rights Watch, multilateral entities such as the Organization of American States (OAS) and its Inter-American Commission on Human Rights (IACHR), the Office of the United Nations High Commissioner for Human Rights (OHCHR), the Conference Committee on the Application of Standards and the Committee on Freedom of Association of the International Labour Organization (ILO) (Figures 2.1 and 2.2).

The Colombian government decided that violence-related data from its various entities would be channeled to and centralized in an agency created for this purpose in 1999. This agency is the Observatory of the Presidential Program on Human Rights and International Humanitarian Law (ODDH),

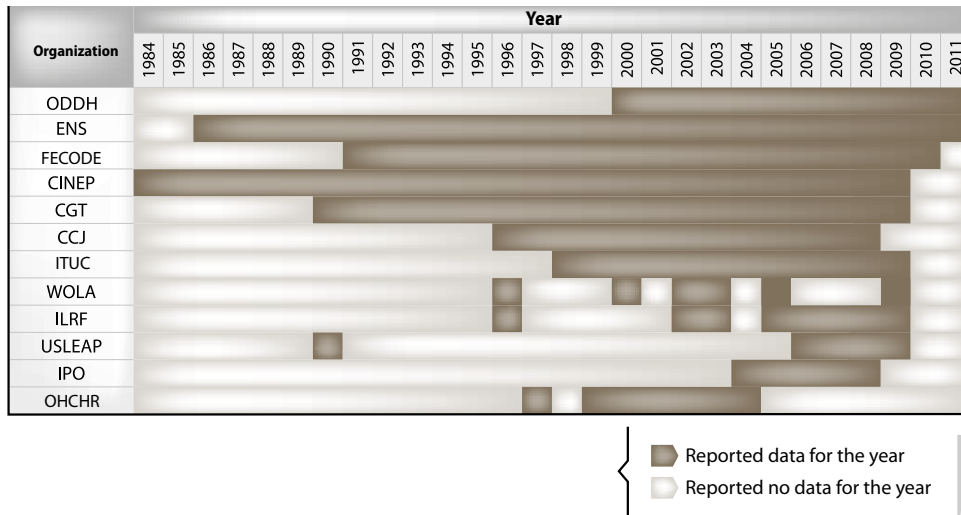
**This project could not have gone forward without with the valuable information previously gathered, at least as far back as the 1980s, by the government and various other entities: nongovernmental organizations (NGOs), international bodies, and trade union organizations and entities tied to them.**

<sup>1</sup> These criteria and categories are set forth in an article in the CINEP magazine *Noche y Niebla* (2008). "Marco conceptual: Banco de datos de derechos humanos y violencia política." The categories are listed on pages 6 and 7 and explained later in the same article.



**Figure 2.1**

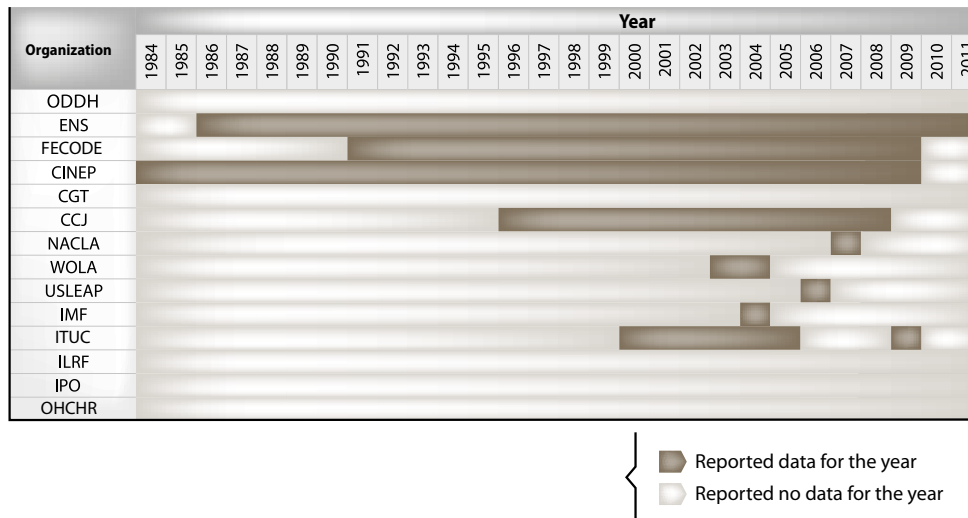
**Chronological coverage of violence by source**



Source: CERAC, 2010: 60.

**Figure 2.2**

**Chronological coverage of nonlethal violence by source**



Fuente: CERAC, 2010: 60.

**Note:** A list of abbreviations alongside their full names is provided at the end of this report.



under the Office of the Vice President. The ODDH's data-collection efforts date back to ten years before its founding, to the administration of Virgilio Barco.

Data on violence against trade unionists and unionized workers are supplied by the Ministry of Social Protection (MPS, now the Ministry of Labor), and therefore are subject to the MPS's inclusion and exclusion criteria.

The ODDH's data on human rights violations date from 2000 and are categorized into homicides, massacres, forced disappearances, kidnappings and other, nonlethal forms of violence, as is the case with some of the other sources cited here.

In this regard the classification criteria closely follow the Colombian Penal Code, which places an emphasis on vulnerable populations, one of which is trade unionists. Others are mayors, former mayors, city council members, former city council members, indigenous people, journalists and teachers (with unionized teachers categorized separately from other unionized workers and from nonunion teachers).

Because it combines data from other government entities—such as the National Police, the National Legal Medicine Institute (INML), and particularly, as mentioned above, the MPS—the ODDH will be considered the government's data source for this project. It should be noted that the MPS does have data on killings from before 2000; however, these data have not been cleansed or released by the MPS.

Other important data to consider, alongside those on violence from the sources cited thus far, are data related to the State's effectiveness in prosecution, risk prevention, and protection of those under threat, which is addressed in Part Five of this report.

In addition to the government's source of data—i.e., the ODDH—a diverse variety of other data sources, which may be referred to as nongovernmental sources, is also available.

Given the complexity entailed in recording violent incidents, determining totals and discovering trends, this report does not commit to only one figure, whether from the government or any other source. Instead, it draws on data from both governmental and nongovernmental sources for comparative purposes to describe, to the extent possible, the magnitude and intensity of the violence.

**For violent incidents of the specific type under review here, the first organizations to systematically gather and quantify data were the CUT, starting with its founding in 1986; and the ENS, which has close ties to the labor confederations, and whose consolidated data, for the purposes of this document, span from 1986 to March 2011.**



The statistics do vary widely, not only between governmental and nongovernmental sources but within each data source as well. It should also be noted that the government's figures are not always lower than those of nongovernmental sources, but in some cases are even significantly higher.

## 2. Categories of violations in the various sources

**Given the complexity entailed in recording violent incidents, determining totals, and discovering trends, this report does not commit to only one figure, whether from the government or any other source. Instead, it draws on data from both governmental and nongovernmental sources for comparative purposes to describe, to the extent possible, the magnitude and intensity of the violence.**

Killings, forced disappearances, torture, kidnapping, arbitrary detention, and threats are the main types of violence experienced by Colombian trade unionists and unionized workers, and are reflected as such in the data of the aforementioned sources.

Although *killings* are only one form of violence against trade unionists, they constitute the only category for which all sources have kept records, thereby allowing for comparison. Their high frequency also allows for the development of chronological series, which in turn can be used to depict trends in the form of statistical curves that can be compared across sources, time periods, geographical areas, trade unions and types of violence.

Other forms of violence, such as *forced disappearance and torture*, may be even more serious than killings, but because they are more sporadic in nature, they do not lend themselves to this quantitative analysis. They are therefore addressed using a descriptive approach consistent with standards of qualitative research.

Although threats occur frequently—generally more so than killings—they entail far greater difficulties in meeting the requirements of quantitative analysis. As a result, this report has refrained from approaching them in a quantitative manner.

The main difficulties in addressing this type of violence include the diverse forms it takes and the disparate degrees of severity from case to case; the subjective element in how it is reported, as compared to other types of violence; the risk of underreporting; and the likelihood of divergence between events (or incidents) and reports, since circumstances of timing and location (particularly in relation to the control of powerful actors) play a role in enabling the victim to report the incident.

While some sources keep records on threats—and some of them, such as FECODE, do so in a diligent, systematic way—this report, for the reasons described above, will rarely cite statistics on threats, and it will certainly not attempt to combine them with statistics as disparate in nature as those on killings.

This does not mean that this report ignores the impact of threats on people's fundamental rights and on the freedom to carry out union activity. Nor does it mean disregarding the role that threats may



play when issued by armed groups and their accomplices and instigators in their efforts to subjugate—as experienced by members of the teachers' union, to name one of the hardest-hit groups.

## 2.1 Killings: discrepancies in data and totals

In taking a closer look at records of killings, it is useful to compare data from one government source and two nongovernmental sources, with utmost respect for the pain caused by the tragedy that lies behind each case represented in the data.

Table 2.1 and Figure 2.3 show, for example, that in the first four years of the 11-year period covered by the ODDH's data—i.e., from 2000 to 2003—this source recorded a higher number of killings each year than the ENS, and in two of those years, in fact, recorded a higher number than CINEP.

This may be even more surprising in view of the fact that the ODDH only records killings in which the victim belonged to a legally recognized trade union, as certified by the Ministry of Social Protection, which is somewhat understandable given the ODDH's status as a government entity. Of course, the inclusion criteria used by the two nongovernmental sources (ENS and CINEP) are broader in that the union may not yet be—or may no longer be—legally recognized, or the MPS may not have been able to verify the worker's membership status even if the other two sources were able to do so.

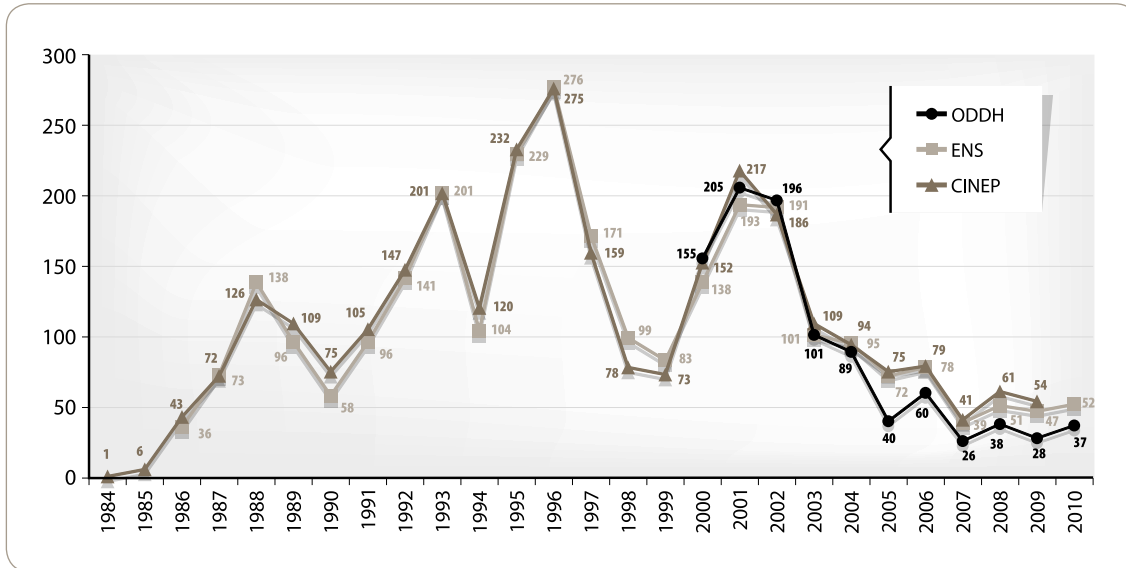
Starting in 2004, this relationship is reversed, and the differences grow sharper: i.e., the numbers recorded by the ODDH are much lower each year than those of the ENS and CINEP.





**Figure 2.3**

**Killings of trade unionists and unionized workers in the municipalities with the most victims, 1986–2011**



**Source:** CINEP, 2010; CERAC, 2010; ODDH, 2011; and ENS, 2011

The explanation lies in the aforementioned discrepancy factors that are inherent to the gathering and counting of data. Particularly crucial are the criteria and categories for including/excluding, classifying, and aggregating/disaggregating incidents and victims, while not ignoring the importance of sources' logistical and organizational capacities to gather information in a systematic manner at a given time.

Specifically, the data sets of the ODDH and the MPS contain discrepancies with those of the ENS and CINEP—discrepancies identified in the study by CERAC (2020: 77 and 78) and in supplementary notes within the sources themselves:

- ◇ The ODDH and the MPS—and, in some cases, the ENS and CINEP—were unable to verify the status of some victims as union members.
- ◇ The MPS did not count members of rural workers' organizations as union members, whereas the ENS and CINEP did count them as such.
- ◇ The ODDH and the MPS used separate categories for teachers overall and unionized teachers, whereas the ENS counted only unionized teachers and combined the victims who were unionized teachers with victims from other unions.
- ◇ A few cases, according to the ENS, entail discrepancies stemming from inclusion/exclusion criteria based on the motive for the violent act, although today this would not be a criterion for exclusion,



**Table 2.1****Killings of trade unionists and unionized workers by source, 1984–March 2011**

Year	Governmental source	Nongovernmental source	Nongovernmental source
	ODDH	ENS	CINEP
1984			1
1985			6
1986		36	43
1987		73	72
1988		138	126
1989		96	109
1990		58	75
1991		96	105
1992		141	147
1993		201	201
1994		104	120
1995		229	232
1996		276	275
1997		171	159
1998		99	78
1999		83	73
2000	155	138	152
2001	205	193	217
2002	196	191	186
2003	101	101	109
2004	89	95	94
2005	40	72	75
2006	60	78	79
2007	26	39	41
2008	38	51	61
2009	28	47	54
2010	37	52	
2011(marzo)	4	5	
<b>Total</b>	<b>979</b>	<b>2,863</b>	<b>2,890</b>

Note: The original table prepared by CERAC, on which Table 2.1 is based, also includes as data sources the CGT and FECODE (which keep records only on their own members and not on all unionized workers, and therefore were not included here), as well as the CCJ (whose data are not intended to be exhaustive and do not necessarily coincide with the data from other sources, but nonetheless enrich the landscape of available data).

\* In their work for this project, the research centers used data from 1984 to 2010. The ENS, however, has data from 1986 to March 2011.

Note: The empty cells in Table 2.1 are for years in which the corresponding source provides no data.

Source: CERAC, 2010: 76.



**In the first four years of the 11-year period covered by the ODDH's data—i.e., from 2000 to 2003—this source recorded a higher number of killings each year than the ENS, and in two of those years, in fact, recorded a higher number than CINEP.**

at least not explicitly so, from any of the sources, as it may have been in the past for the MPS (previously the Ministry of Labor).

Still, at the UNDP-organized discussion forums for this project—which brought together representatives of the various stakeholders<sup>2</sup> on more than ten occasions—the lack of consistency in the statistics was not a topic of considerable discussion among the participating social actors (union confederations, employers and the government), among the three attending organizations representing data sources (ENS, CINEP and ODDH), or between the actors and the sources.

Instead, the discussion forums were predominantly characterized by the willingness to work to improve data quality, cleanse the data and fill in the gaps. Information-exchange initiatives emerged, and it was agreed that, due to the public nature of the information, the coordinating entity for these efforts should be the ODDH, a government entity.

In fact, the UNDP-sponsored dialogues marked the start of a productive exchange of information between the entities, which was even formalized in an agreement.<sup>3</sup> Underlying this willingness to exchange information is the imperative of striving for the truth as a way of honoring the rights of the victims, their organizations and Colombian society as a whole.



- <sup>2</sup> As part of the project, UNDP brought together the actors at 12 discussion forums held between February and October 2010 for the purpose of presenting and discussing the studies conducted by the research centers. Participating at the discussion forums were representatives of the government, the CTC, the CGT, ANDI, the ENS, and the CCJ as permanent dialogue partners, as well as the colleagues from the National University of Colombia. The discussion forums were held in two phases: The first six forums looked at the preliminary outcomes of the studies by the research centers, and the next six dealt with the final reports on the studies, with additional support from national and international academic experts.
- <sup>3</sup> This agreement was signed between the ENS and the ODDH in 2011.



# Chapter 5

## Chronological series and trends

A number of trends may be noted in the number of killings, according to the various sources, over the 27-year period from 1984 to March 2011 (Figure 2.3) (the ENS's consolidated data, however, are from 1986 onward):

- ◇ According to the nongovernmental sources covering the 1980s and 1990s, the number of killings peaked in 1996: at 276 according to the ENS, and at 275 according to CINEP.<sup>4</sup>
- ◇ According to all governmental and nongovernmental sources, the number of killings declined between 2003 and March 2011. Within that trend, all sources agree that the sharpest decreases occurred between 2002 and 2003 and between 2006 and 2007; on both occasions, the numbers fell by nearly half. Also within the overall trend, the sources show increases in some years and decreases in others. The government's source, it should be noted, shows a steep increase from 40 killings in 2005 to 60 in 2006, whereas the nongovernmental sources show that the number of killings remained stable at the time, with even a slight decrease.
- ◇ The number of killings from 2003 to March 2011, though much lower than from 1992 to 2002, is still a concern. Moreover, it remains to be seen whether this downward trend will take hold and the numbers will continue to decrease (Maps 2.1 and 2.2).
- ◇ In contrast to the downward trend in the number of killings from 2003 to 2011, sources such as the ENS, CINEP, the CCJ and FECODE (whose data are specific to teachers) have documented a rise in the number of threats over the same period, and incidents involving forced disappearance and torture have continued to occur, according to the ENS and the CCJ.

<sup>4</sup> The ODDH, as previously noted, only has data from 2000 onward.



A decrease in the number of killings is not enough to conclude that the problem of violence against trade unionists and unionized workers is being resolved as long as they continue to experience other types of severe human rights violations, and as long as threats continue to generate fear among them, inhibiting their ability to carry out union activity. Determining who is responsible for the threats that continue to be recorded by the sources is a challenge confronting the government and the judicial system.

It would seem, then, that the violence—rather than coming to an end, as one would hope—has undergone transformations in recent years. Subsequent chapters will attempt to understand the scope and significance of these transformations.





# Chapter 6

## Differences by area and by union

**O**n their own, nationwide statistics such as those cited thus far do not support strong conclusions regarding proof and causation. To this end, however, it can be useful to disaggregate the data from the national level to the regional level, to the labor organizations to which the victims belonged, and to their occupational sectors as an economically active population.

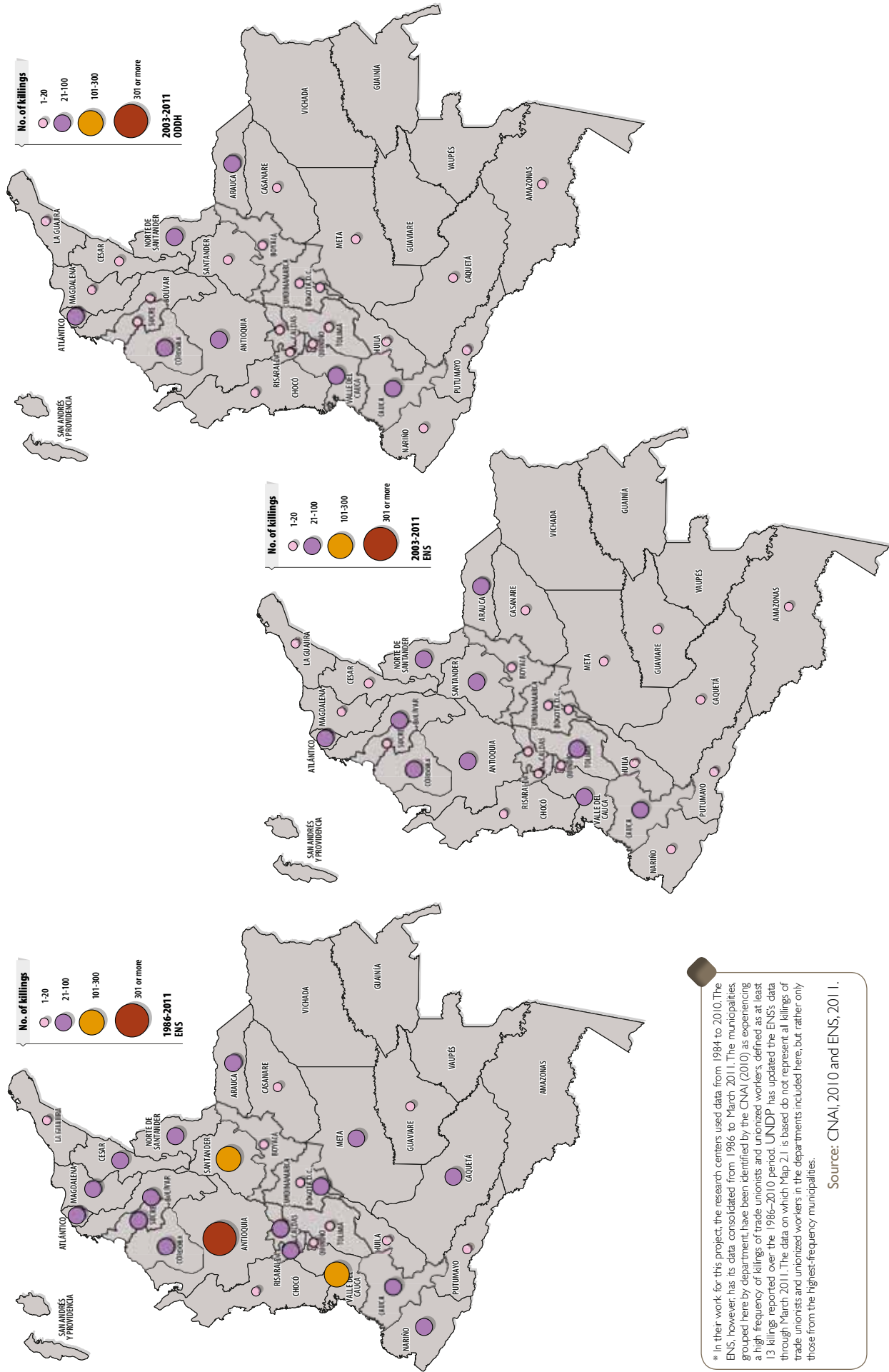
From a geographical standpoint, violence against trade unionists and unionized workers is not evenly distributed across all regions or across all departments, the capital district, and municipalities. Some of these areas have higher numbers of killings and homicide rates than others over the entire period or in shorter intervals within that period.

According to all governmental and nongovernmental sources, the department with the highest number of killings of trade unionists and unionized workers over the entire period covered by the report was Antioquia, with especially high concentrations in its capital, Medellín, and in the municipalities of Urabá, in order of frequency: Apartadó, Turbo, Chigorodó and Carepa. Following Antioquia, in order, are the departments of Santander (the municipality of Barrancabermeja in particular), Valle del Cauca, Cesar and Magdalena (Map 2.1).



Photography: Ana María Rodríguez. Courtesy ENS.

Killings of trade unionists and unionized workers by department, based on highest-frequency municipalities, as reported in the sources, 1986–March 2011



\* In their work for this project, the research centers used data from 1984 to 2010. The ENS, however, has its data consolidated from 1986 to March 2011. The municipalities grouped here by department have been identified by the CNAI (2010) as experiencing a high frequency of killings of trade unionists and unionized workers, defined as at least 13 killings reported over the 1986–2010 period. UNDP has updated the ENS's data through March 2011. The data on which Map 2.1 is based do not represent all killings of trade unionists and unionized workers in the departments included here, but rather only those from the highest-frequency municipalities.

Source: CNAI, 2010 and ENS, 2011.





Year-to-year data show that Antioquia posted by far the most killings every year through 2002. Not until the period from 2003 to 2011, amid a nationwide decline in the number of killings, do the numbers in Valle del Cauca come close: 68 killings in Antioquia and 61 in Valle del Cauca over this period, according to the ENS; 49 in Antioquia and 48 in Valle del Cauca, according to the ODDH. From 2009 to 2010, however, ENS data show an increase in Antioquia from 1 to 11 (in the ODDH's data, this increase was from 2 to 5).

The other departments show some year-to-year variation in their ranking by the number of killings. The numbers are sometimes higher in some departments, and at other times higher in others. On the whole, however, vying for the dubious distinction of following Antioquia in the rankings are Santander, Valle del Cauca, Cesar and Magdalena. These rankings shift slightly in the 2003–2011 period, with Arauca coming in third and Norte de Santander and Cauca sharing the fifth spot (Figure 2.4 and Map 2.2).

As for the municipalities within each department that have seen the most killings, the data show that some areas are particularly hard-hit and vulnerable, such as the aforementioned Urabá region (in Antioquia) and the Magdalena Medio region, which includes municipalities in multiple departments: Barrancabermeja and Puerto Wilches (Santander), Puerto Nare and San Roque (Antioquia), and San Alberto and Valledupar (Cesar).

It is even more revealing to examine which labor organizations to which the victims belonged in each of the identified departments and municipalities, and which years or periods saw the most killings.

Another important consideration is why some areas, despite having high numbers of trade unions and unionized workers, saw fewer acts of violence against them. This line of analysis may be complementary to the other:

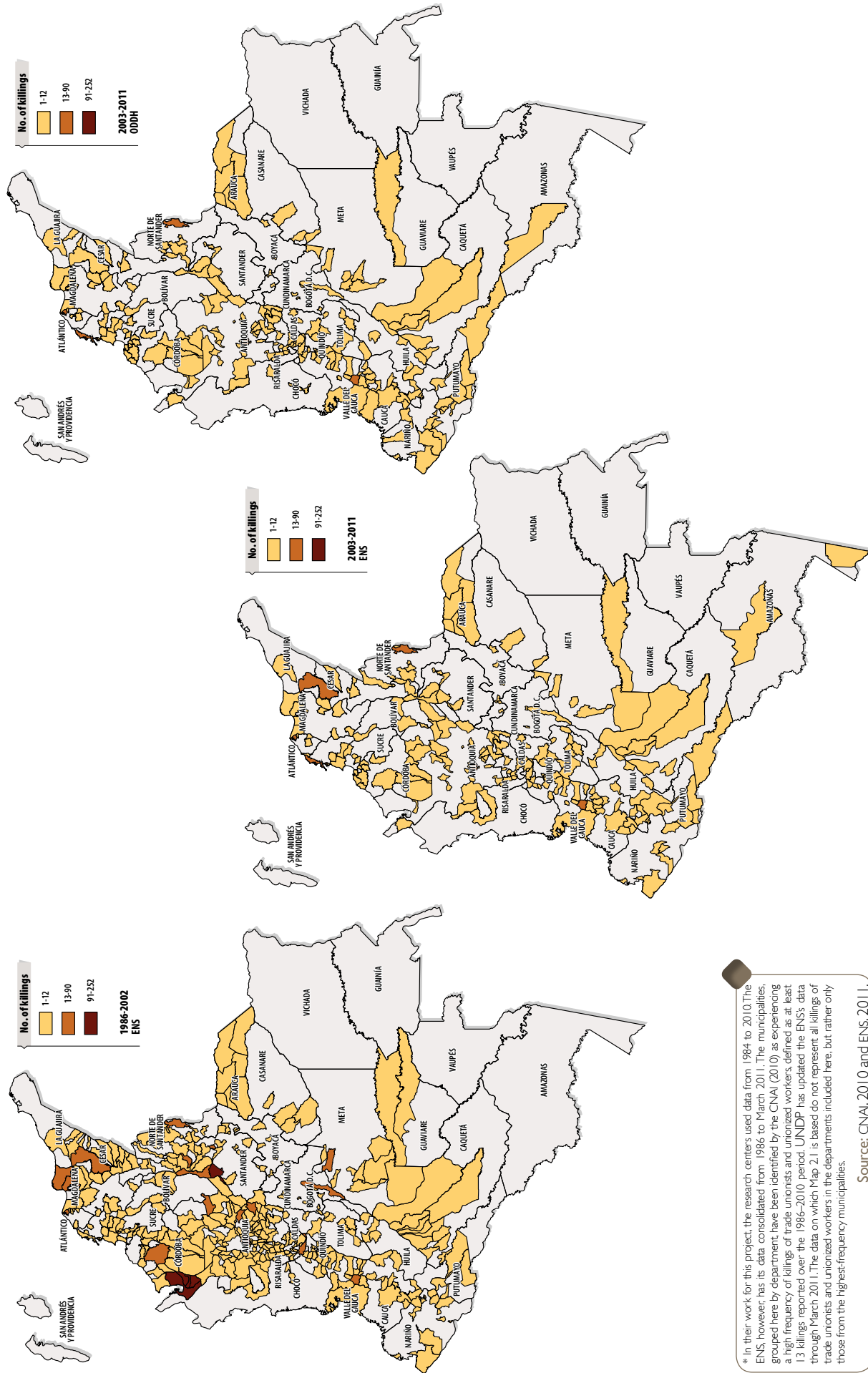
By cross-referencing the geographic areas with the victims' organizational affiliation, as the sources allow, we can determine where the violence—lethal or nonlethal, as the case may be—is most or least concentrated and, in turn, which trade unionists and unionized workers are most or least at risk, according to their union affiliation.

FECODE is the organization with the greatest number of victims throughout many departments over the entire period—particularly in the Antioquia teachers' union, known as ADIDA (340 killings, according to the ENS), although the numbers are also high in Santander, Valle del Cauca, Cesar, Magdalena, Córdoba, Arauca, Norte de Santander, Nariño, Caldas, and Risaralda.

Sintrainagro (the Agricultural Workers Union) and its two predecessor banana workers' unions, Sintagro and Sintrabanano, also suffered a high number of killings, and these killings were more geographically concentrated than those suffered by FECODE: in the four banana-growing municipalities of Urabá from 1986 to 2002, and in Ciénaga (Magdalena) in 1994 and 1997.

The USO (Workers Labor Union) also had a high number of killings, particularly up until 2003, which were concentrated in one location: the municipality of Barrancabermeja (Santander). Other killings were reported, though in lower numbers, in Bucaramanga, the capital of Santander; in the department of Arauca; and, more sporadically, in other locations as well (Cartagena, Orito, Puerto Berrío).

Killings of trade unionists and unionized workers in identified municipalities, as reported in the sources, 1986–March 2011



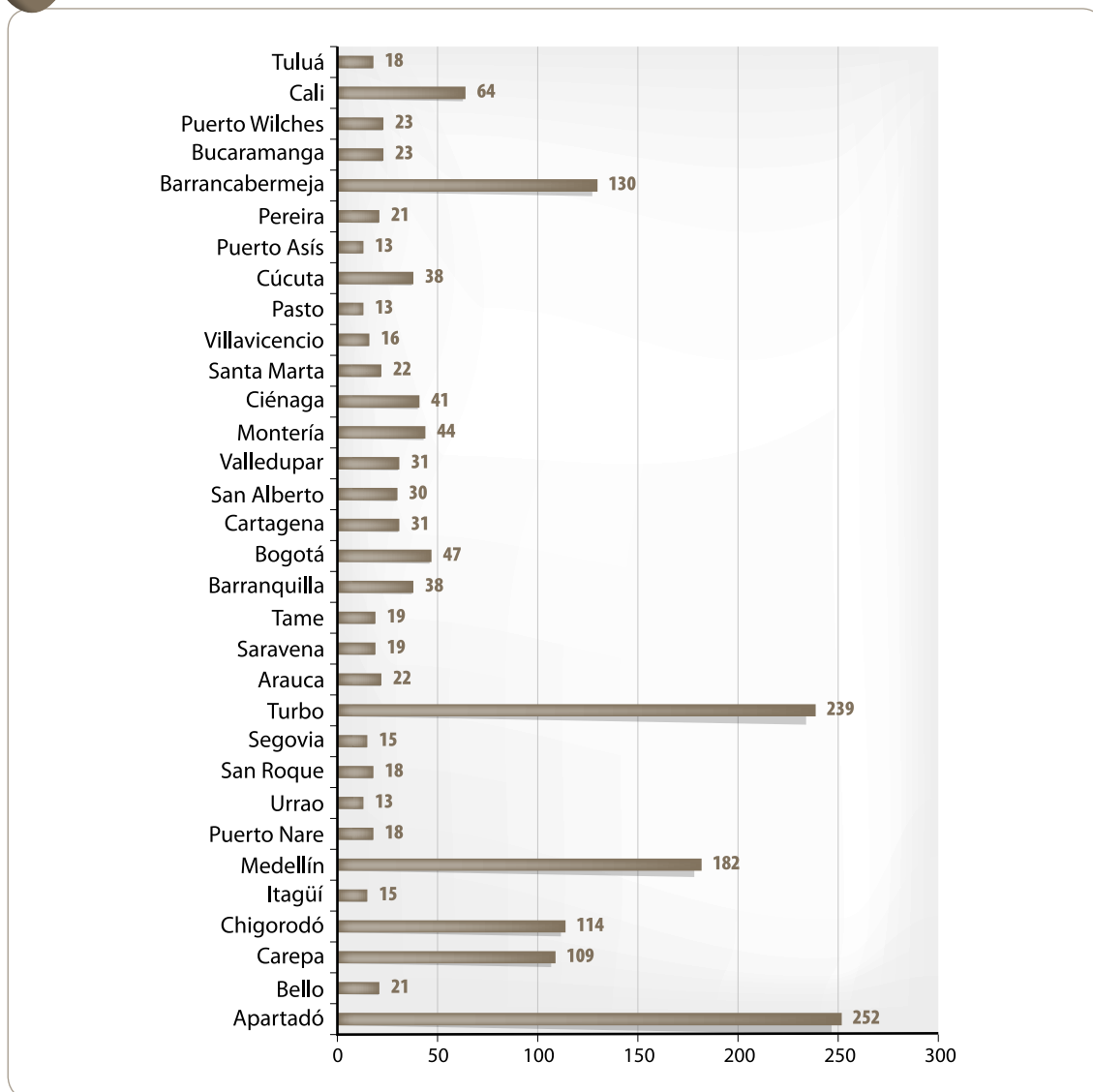
\* In their work for this project, the research centers used data from 1984 to 2010. The ENS, however, has its data consolidated from 1986 to March 2011. The municipalities grouped here by department have been identified by the CNAI (2010) as experiencing a high frequency of killings of trade unionists and unionized workers, defined as at least 13 killings reported over the 1986-2010 period. UNDP has updated the ENS's data through March 2011. The data on which Map 2.1 is based do not represent all killings of trade unionists and unionized workers in the departments included here, but rather only those from the highest-frequency municipalities.

Source: CNAI, 2010 and ENS, 2011.



**Figure 2.4**

### Killings of trade unionists and unionized workers in the municipalities with the most victims, 1986–2011



Source: ENS, 2011.

A geographic breakdown of the data further reveals that several palm oil workers' unions, in San Alberto and Puerto Wilches, and the industrial workers' union known as SUTIMAC (cement and construction) also experienced high concentrations of killings in specific economic sectors (oil palm cultivation and cement).

A number of trade unions (whether they are called unions or associations) have seen many of their members killed in various parts of the country. These unions vary in nature—some have a nation-



wide presence, while others are specific to one municipality; some are in the health sector, while others are from municipal power, water and sewage utilities. All of their members, however, are public-sector workers, a characteristic they share with FECODE. Moreover, most of them are affiliated to the CUT.

The following unions of this type were frequently victimized during the period in question: ANTHOC (the National Trade Union Association of Workers and Public Servants in Health Care, Comprehensive Social Security and Supplementary Services of Colombia), which has a nationwide presence and experienced the most killings in the cities of Barranquilla and Arauca and in the municipalities of Tame and Carmen de Viboral; Sintraemcali (the Cali Municipal Utilities Union), whose presence is limited to the municipality of Cali, and which suffered the most killings in the 2000–2004 period; Asonal Judicial; the ASPU (Union Association of University Professors); and Sindesena (Public Employees Union of the National Learning Service), which has been victimized in recent years.

It is also important to differentiate victims by gender. According to ENS data, women have increasingly become victims, particularly in killings of teachers belonging to FECODE and of health care workers belonging to ANTHOC.

Another question that should be explored is the extent to which this increase in the number of female victims is associated with the more prominent role played by women in union activity; with the type of tasks they take on within the unions; with sexist attitudes that may intensify op-



Photography: Bianca Bauer. Archive UNDP.

position to union activity or to union leaders; or with strategic calculations of the results attained by victimizing women.

This chapter has analyzed the overall data and trends related to killings and other human rights violations by noting their incidence by geographical location and by type of trade union. A number of conclusions, then, can serve as a prelude to the questions addressed in subsequent chapters.

One major conclusion is in support of the hypothesis that violence against trade unionists and unionized workers in Colombia is systematic in nature.

It is possible that numbers and arguments may be found in overall nationwide statistics to support this or that theory. But in view of the high concentration of killings in a particular trade union—and, even more tellingly, in a particular union in a specific municipality or municipalities—one would be hard-pressed to insist that this violence is random or that it is part of the violence experienced throughout the country by the population as a whole.

While recognizing the systematic nature of this violence in view of its concentration in certain unions and at certain places and times—which is all that can be deduced for now—it would be incorrect to leap from there to claim that a particular purpose was behind it, or that the perpetrator or responsible party was a particular actor—a government official, an insurgent fighter, a common criminal or a paramilitary fighter:





Photography: Francisco Arturo Gómez. Courtesy ENS.

To get to that point, a number of steps must first be taken. Cases must be examined more closely to become more familiar with them through the descriptions contained in the sources. In that way, cases will no longer be seen as mere statistics, but rather as stories and testimonies, which at once constitute reality and discourse.

These steps—to the extent made possible by the data in the sources, and as a way of compensating for the precarious nature of “judicial truth”—will lead to the second major question surrounding this problem: the question of perpetrators and motives. These topics are addressed in the pages to follow, in Parts Three and Four of this report.





Photography: María Julieta Colomer. Courtesy ENS.



# Part Three

**The victims and the violence, as described in the sources**

**“It is no surprise that trade unionists are among the main victims of paramilitary groups and their allies, along with human rights advocates and grassroots leaders. But it is almost impossible to distinguish between antiunion actions carried out for primarily political purposes and those with primarily social aims: both types tend to mix together.”**

**Daniel Pécaut**

*Professor, School for Advanced Studies in the Social Sciences, Paris*

## At a glance

### *Chapter 7*

Violence against the teachers of FECODE

### *Chapter 8*

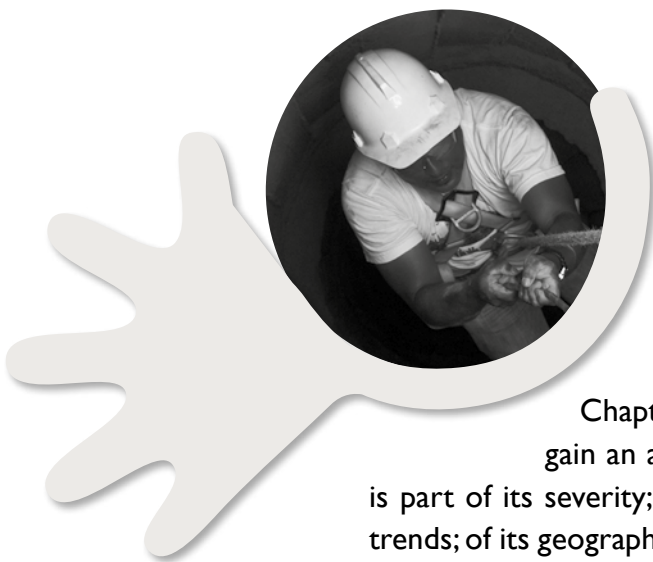
Violence against members of the USO

### *Chapter 9*

Violence against members of the banana workers' unions

*Part Three is based on the report by the People's Research and Education Center, titled *Incidencia de la violencia contra los trabajadores sindicalizados y evolución de su protesta [Incidence of violence against unionized workers and the evolution of protests against it]* (CINEP, 2010); and on the report by the New Rainbow Corporation, titled *La relación entre el conflicto armado y la victimización de los trabajadores sindicalizados 1984-2009 [Relationship between the armed conflict and the victimization of unionized workers, 1984–2009]* (CNAI, 2010).*





Chapters 4, 5 and 6 used the available sources to gain an appreciation of the problem's scale, which is part of its severity; of its changes in frequency, expressed as trends; of its geographic distribution; and of its differentiation by location and by trade union.

Organizations such as FECODE, the USO and Sintrainagro have experienced large numbers and high concentrations of killings against their members, as have ANTHOC, Asonal Judicial and Sintraemcali, as public-sector unions; Sintrapalmas, Sintraindupalma, and Asintraindupalma as unions of oil palm workers; and the cement and construction workers' union known as SUTIMAC (Unified Union of the Construction Materials Industry).

This does not mean that human rights violations against members of these organizations are the only ones worth counting and analyzing. In some cases, the victims are scattered among many unions, and some smaller unions have also been hit hard by the violence.

It is instructive, however, to start with the organizations that have suffered the most violence. These cases may feature commonalities and correlations that can shed light on the next part of this report, which will address the question of perpetrators and motives (Box 3.1).



Judicial verdicts, the trials that preceded them, investigations by prosecutors, and both governmental and alternative sources—which were previously consulted for statistics and trends—contain valuable narratives and testimonies that can be explored for the sake of describing the human rights violations and their victims.

Because Part Five of this report examines the accomplishments of State action taken by prosecutors and judges, this part will focus on the information available in other sources. Specifically, the ENS and CINEP will be used as alternative data sources, while the ODDH will serve as the government’s data source, despite its well-known limitations in terms of chronological coverage and types of violence included. It should be noted that the records of the affected union organizations themselves have not been directly consulted for now.

Part Three includes three chapters:

- ◇ Violence against the teachers of FECODE
- ◇ Violence against members of the USO
- ◇ Violence against members of the banana workers’ unions





### BOX 3.1

## “One killing every twenty days”

*Below are testimonies of leaders and workers interviewed by CINEP and the New Rainbow Corporation (CINEP, 2010; CNAI, 2010). These testimonies describe some of the violence committed against workers in the teachers', banana workers', and oil workers' unions—three of the sectors that have suffered the most violence in Colombia.*

“For a year, it was one killing every twenty days. Someone would be killed every twenty days, and that’s why the situation suddenly went from the insurgency having the upper hand in Magdalena Medio, especially in Barrancabermeja, to the radical right having the upper hand with its paramilitary and self-defense forces. I don’t hesitate to admit that the insurgency made huge mistakes. When one loses the sense of social awareness, the revolutionary perspective, the political ideal . . . when one of these organizations starts bothering the common shopkeeper, damaging the electricity system, cutting off water service to part of the population, one generates some resistance.”

◇ Testimony in 2004 by Gabriel Alviz, former USO president (CINEP, 2010: 161 and 183).

“There are some phenomena affecting students in the schools, such as forced recruitment. The teacher in a philosophy class was telling them not to let themselves be recruited, and the armed groups showed up the next day and told him not to get involved in what they were doing with the young men and children ....

“Other times, teachers would happen to be in the hallways when some armed group would pass by, and they would be pressured to buy groceries, to do and go along with whatever they wanted, and any teacher who refused would immediately become a target for killing.”

◇ Testimony in 2010 by a teacher and ADIDA member (CNAI, 2010: 127).



# Chapter 7

## Violence against the teachers of FECODE

**A**ccording to the 2009 trade union census published by the ENS, FECODE (with unions in each of the 32 departments and one in the capital district) had 215,273 members, or 26.43% of all unionized workers in Colombia in that year.

According to the Ministry of Education, 69.23% of the 310,918 public-school teachers at the preschool, primary and secondary levels were union members in 2009. This is an extraordinarily high percentage in comparison with the rest of the workforce, both public and private, and atypical in view of the country's overall unionization rate of only 4.24% for that year.

FECODE is also the organization that has experienced the most human rights violations against its members. The ENS counted 958 killings between 1986 and March 2011, including 340 in the FECODE-affiliated union known as ADIDA, with 98 of these in Medellín alone. The ODDH counted 488 killings in the country as a whole between 2000 and 2011 (Figure 3.1).

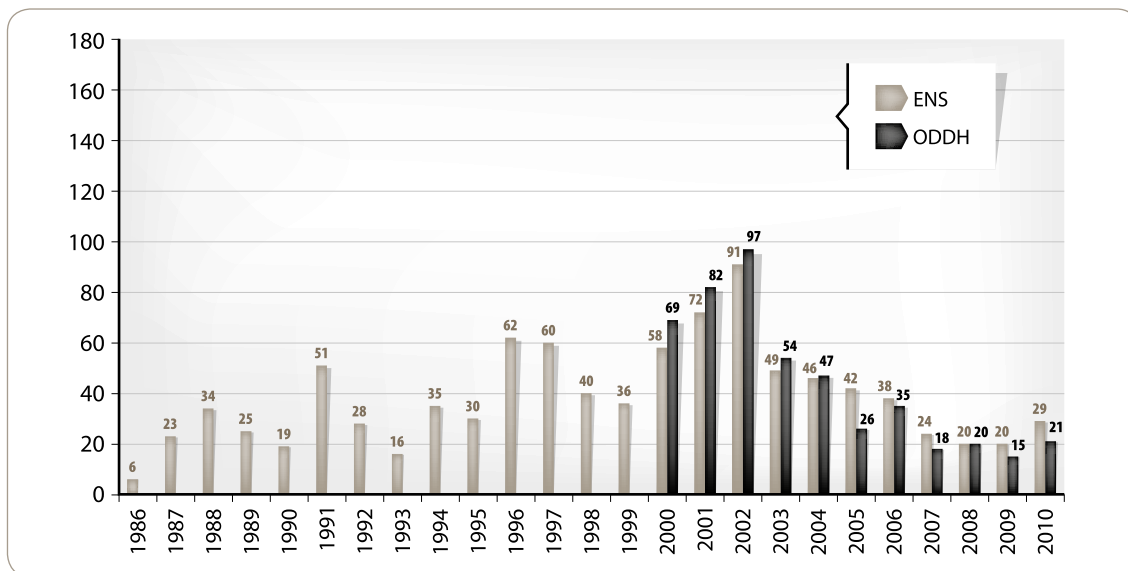
The ODDH, which is the government's data source, uses separate categories for victims who are unionized teachers and victims who are members of other unions. This distinction may prove interesting and useful, provided that the two categories are combined when generating consolidated statistics to appreciate the severity of the problem. Otherwise, the problem may be distorted and underestimated due to the high percentage of victims from this sector.

Unlike other organizations such as the banana workers' unions, FECODE experienced frequent violations throughout the entire period, although the number of killings peaked, according to the ENS, in 1996 with 62 victims, of whom 32 were from ADIDA; and in 2002 with 91 victims, of whom 20 were from ADIDA.



**Figure 3.1**

**Killings of trade unionists and unionized workers in FECODE by source, 1986–2010**



Source: ENS, 2011 and ODDH, 2011.

## 1. Who are the victimized teachers?

Luis Felipe Vélez, the president of ADIDA, was killed on 25 August 1987. Years later Carlos Castaño, by then the head of the United Self-Defense Forces of Colombia (AUC), tried to justify this act in an interview that served as the basis for Aranguren’s book (2001).<sup>1</sup> In this interview, Castaño revictimizes the victim by accusing him of indoctrinating students at the Liceo Antioqueño and Pascual Bravo schools into the ideology of the People’s Liberation Army (EPL) guerrilla group, and of being “a warlord hiding in a union.”<sup>2</sup>

The AUC leader’s comments are quite revealing of the purposes behind the killings and other violations committed by paramilitary organizations. This is not to say that all violence against FECODE members has necessarily shared the same cause; this question will be examined in Chapter 10.

Castaño’s accusations are even more serious in view of the fact that the Army had detained him multiple times before this killing, but he was never prosecuted. Moreover, a series of threats foreshadowing the killing were made after these detentions (Abad Faciolince, 2006: 238).

<sup>1</sup> Author Héctor Abad Faciolince (2006: 238) mentions this interview in his book *El olvido que seremos*, stating that the paramilitary chief, in taking responsibility for the crime, admitted to having done so “with advice from Army intelligence.”

<sup>2</sup> It should be recalled that the EPL was one of the guerrilla groups that had agreed to pursue dialogue with Belisario Betancur’s administration and had signed a ceasefire agreement on 23 August 1984—an agreement that was broken, according to the EPL, by the killing of a senior EPL leader, Óscar William Calvo, on 20 November 1985. Several years later, the EPL would again agree to a dialogue with the Virgilio Barco administration, which culminated in the demobilization and incorporation into civilian life of much of the EPL in 1991, during César Gaviria’s term.



**According to the 2009 trade union census published by the ENS, FECODE (with unions in each of the 32 departments and one in the capital district) had 215,273 members, or 26.43% of all unionized workers in Colombia in that year.**

The reasons put forward by Castaño are in line with statements given to prosecutors by various AUC leaders seeking protection under the provisions of Law 975 of 2005. What stands out in their testimony is that they would brand their victims as guerrilla fighters before and after the attacks as a way of criminalizing them for their activity as leaders of social movements, political opposition groups, human rights organizations, or groups devoted to grassroots organizing or advocacy.

According to various sources, including the ENS, many of FECODE's victims fit this description, as do many victims from other unions.

Needless to say, even if the situation were different and evidence existed to support the perpetrators' depiction of the victim as a criminal, this could never justify the killing of a defenseless victim in a country that defines itself as governed by the "social rule of law," where the death penalty is banned by the Constitution.

However, in their testimony under the provisions of Law 975 of 2005, known as the Justice and Peace Law, the AUC commanders do not claim to have killed on the basis of any evidence that the victims had participated in a criminal act by guerrilla forces, but rather because the commanders "thought they were guerrillas" or they were "told they were guerrillas."<sup>3</sup>

In the absence of evidence, then, the guerrilla label pinned on many teachers as a cover for violence is actually a distorted perception of the leadership role that the teachers of FECODE—as noted in Chapter 1 regarding the relationship between unionism and politics—have long played in taking an insubmissive or even rebellious stance toward traditional mechanisms of political control, especially at the regional level.

Whenever the victims' political affiliations are mentioned in the sources—whether the ENS or CINEP—they are described as lying with leftist groups. In the 1980s, some were related to the guerrilla forces' participation in political processes as part of the agreements pursued by the government.

By the 1990s, several of these guerrilla groups had demobilized. Even if the political organizations close to or originating from these groups had nothing to do with any armed actions, their members would continue being stigmatized, contrary to all evidence, as guerrillas.

<sup>3</sup> This is noted in the reports submitted by prosecutors to the Justice and Peace Chamber of the Superior Court for the Bogotá Judicial District, as part of the public hearings in the trials of Uber Enrique Banquez, aka "Juancho Dique"; Edwar Cobos Téllez, aka "Diego Vecino"; and Iván Laverde Zapata, aka "El Iguano." The Justice and Peace Chamber handed down its verdict against the first two defendants on 29 June 2010, and against the third on 2 December 2010. The public hearing for the first trial addressed the killing ordered by "Juancho Dique" in Cartagena against Aury Sara Marrugo, a leader of the oil workers' union, in a case described in Chapter 8. In addition, the verdict handed down on 29 June 2010 against "Diego Vecino" and "Juancho Dique" states, in paragraph 140: "The confessions of these demobilized individuals contain detailed information about their ties to the armed criminal organization of the self-defense forces, the crimes committed to acquire territory occupied by guerrilla forces, the harm caused to the rights of civilians who they believed were aiding, or were sympathizers of, those they were fighting ..."



In no way does this diminish the victims' status as trade unionists; to the contrary, it highlights this identity and its compatibility with other convergent identities in an individual, as a manifestation of the relationship between unionism and politics in Colombia and the backdrop of violence for this relationship.

The president of ADIDA who was killed in 1987 had combined his role as a union leader with human-rights advocacy and his membership in the Popular Front, an unarmed political organization of civil society that had originated as a way for the EPL guerrilla group, before it demobilized, to participate legally in politics.

One day after this assassination, two leading university professors who were members of the University of Antioquia Professors Association, Héctor Abad Gómez and Leonardo Betancur Taborda, were killed as they attended the wake at ADIDA headquarters. Neither was even a member of a leftist party, but they were involved in human rights advocacy work. Abad Gómez was also a member of the Liberal Party and chairman of the Antioquia Human Rights Committee.

It is also troubling that use of the guerrilla label—not only against FECODE members, but against any unionists whenever they took critical positions within the union or outside it—was also found in the media and sometimes in the remarks of government officials, including those at the highest levels. This was noted in Part One of the report in describing the contexts for violence.

To restate this observation is not to say that every such remark in the media or by a government official causes violence or victims. However, the repetition of such disparaging statements fosters a hostile climate that—in the presence of a trigger such as the various paramilitary groups that have emerged since the 1980s—can fuel acts of violence, acts that sometimes find niches of appeasement, even if only through the tolerance of silence.

According to the sources, moreover, a lower percentage of homicide victims in the education sector, whether union members or not, are killed by local armed groups or individuals. The motives in these cases appear to stem from school-related interests and conflicts, such as disputes over grades or punishments, or from teachers' denunciations of the armed groups' arbitrary behavior (CNAI, 2010: 91–92).



Photography: Ana María Rodríguez. Courtesy ENS.





**Teachers in regions outside the capital continue to be pursued and killed, particularly if they take an active part in mobilizations, and even more so if they are politically active in stigma-bearing organizations, regardless of whether FECODE is in the process of negotiating or reaching agreements with the national government.**

Standards of analytical rigor require distinguishing between acts of passion or revenge by isolated individuals or groups of assailants and the more frequent violations against teachers for their public work as leaders, watchdogs or civic leaders. However, both types of motives—vengeance as well as the strategic aims of organized armed groups—can be mixed together as well.

Also, the assailants may plan a criminal act in such a way that underlying motives related to union and political activity are concealed as an apparent act of passion or vengeance. The motives behind the violence, a topic merely touched on here, will be the focus of Chapter 11.

## **2. FECODE's action**

Throughout FECODE's history, a number of goals have driven its forms of action and mobilization, which have varied according to the needs of the moment: from strikes, marches and protests to assemblies and statements to days of reflection, negotiations and consensus-building processes.

These various forms of action, including strikes, should be examined to find out whether any of them are related to the violence. In view of the role of teachers in the public sphere, any connection to local and national political developments should be considered as well.

According to CINEP's data on social struggles and the different periods it has identified, the first phase of FECODE was marked by labor struggles, including numerous strikes, due to repeated nonpayment of teacher salaries in the 1960s and 1970s, as well as in pursuit of new legislation to govern the teaching profession, which was finally achieved with Decree 2277 of 1979.

The second phase of FECODE's history was shaped by the so-called Pedagogical Movement. At its 12th Convention, held in Bucaramanga, FECODE defined itself as:

... a national movement entailing the restoration of teachers' role as cultural workers with an orientation toward the inside of each community. Thus, the struggle for a democratic pedagogy and education should be linked up with the ongoing union and political struggle waged by teachers for better conditions and an education at the service of the people.

According to CNAI (2010: 39), the main goals of the Pedagogical Movement were set forth in the General Law on Education, or Law 115 of 1994, which was agreed to by FECODE and the César Gaviria administration (1990–1994) in the latter's final months. Then, under the administration of Ernesto



Samper (1994–1998), FECODE achieved much more favorable wage adjustments for 1995 and the following three years than those ordered for other workers, although this arrangement would not last until the end of Samper’s term.

These agreements are indications that—despite frequent mobilizations in the 1991–2001 period, in which CINEP counted 335 strikes by FECODE (an average of 34 per year)—neither FECODE nor the FECODE-affiliated politicians took an unyielding or uncompromisingly radical stance toward the administrations or the government, although they did adopt an independent position.

Other signs of flexibility in the relationship between FECODE and the government include: (a) the appointment of a well-known FECODE leader—who had led the Pedagogical Movement—as deputy minister of education near the end of Samper’s term; (b) the support given to Samper’s presidential campaign by a group of FECODE-affiliated politicians, who also backed him throughout the corruption scandal known as “Proceso 8,000.”

Political developments at the national and institutional level, then, are not enough to explain why so many FECODE members became victims in the 1990s—with 128 killed during Gaviria’s four-year term, and 186 during Samper’s, in addition to cases of forced displacement and threats.

Local dynamics, then, must be examined for factors leading to the extreme polarization of the period in the relationship between unionism and politics, which was discussed in Part One.

Teachers in regions outside the capital continue to be pursued and sometimes killed, particularly if they take an active part in mobilizations, and even more so if they are politically active in stigma-bearing organizations,<sup>4</sup> regardless of whether FECODE is in the process of negotiating or reaching agreements with the national government.

This is also why FECODE members are victimized in higher proportions in areas outside the capital, even though the capital is home to the organization’s national headquarters and the scene of marches and protests that involve more members and receive greater media coverage.

At the national level, the four years of Andrés Pastrana’s presidency (1998–2002) were a time of constant disagreement and no consensus between FECODE and the government, unlike the relationship that prevailed under his predecessor:

**In their testimony under the provisions of Law 975 of 2005, known as the Justice and Peace Law, the AUC commanders do not claim to have killed on the basis of any evidence that the victims had participated in a criminal act by guerrilla forces, but rather because the commanders “thought they were guerrillas” or they were “told they were guerrillas.”**

<sup>4</sup> Stigma-bearing political organizations are those that have had ties to now-demobilized guerrilla groups, even if these groups have complied with the agreements, or organizations born under the agreements reached between a still-active guerrilla group and the government, such as the Patriotic Union (UP) of the 1980s and 1990s.



Mobilizations continue, especially against the national development plan included in Law 508 of 1999, which FECODE deems harmful to public education. Unable to stop the law, FECODE issued a call for “civil resistance.”

These years also saw an increase in the number of killings over the already-high total of the previous four years: 236 killed during Pastrana’s term, up from 186, as previously noted, during Samper’s term (CNAI, 2010: 163).

Despite the confrontational relationship between FECODE and the government during those four years, this was also a time when FECODE, as part of the CUT, participated in the labor confederation’s efforts to distance itself from the guerrilla forces. Also distancing itself was the CUT-led Social and Political Front.

Under the leadership of its president, Luis Eduardo Garzón, the CUT did not agree to take part in the dialogues with the FARC, to which it had been invited as a prominent member of civil society. These dialogues were being conducted in the Caguán demilitarized zone created for this purpose during Pastrana’s term.

The reason given at the time by the CUT for not participating in the dialogues was that the concerns of workers and the various social sectors are not discussed or resolved with guerrilla groups.

This, however, did not change the fact that union members such as those in FECODE were readily labeled as “guerrillas” in areas outside the capital, nor did it reduce the number of human rights violations against them.

After Pastrana left office, FECODE continued to take a contentious stance during the subsequent two terms of Álvaro Uribe Vélez (2002–2006 and 2006–2010). Mobilizations, however, became much less frequent, according to CINEP’s data.

FECODE, like the rest of the CUT, opposed the referendum pursued by President Uribe early in his first term. It also opposed the efforts of the Ministry of Education to fill teaching vacancies with applicants from outside the teaching profession. Still, only 166 strikes and work stoppages were recorded from 2003 to 2006, and 150 from 2007 to 2009; also, fewer people participated in strikes during this time than in previous years (CINEP, 2010: 31).

### 3. Shifting forms of violence against teachers: 2003 to 2011

Forms of violence against teachers during the eight-year period from 2003 to 2011 underwent clear shifts, as did those used against members of other unions. These changes are evident in the declining number of killings recorded by both governmental and nongovernmental sources. However:

- ◇ Forced displacements,<sup>5</sup> one of the most common forms of violence against teachers since the 1980s, continued to occur frequently, and the sources recorded sharp increases in the number of threats (CNAI, 2010).

<sup>5</sup> Alternative data sources such as the ENS and CINEP have been used for displacements since neither the statistics issued by Acción Social of the Office of the President nor those of the ODDH break down this type of violence by population group.



- ◇ Although the number of teachers killed in Antioquia declined in step with the country as a whole, the number of killings actually increased in departments such as Arauca and Córdoba.

Future research should take a close look the correlation, if any, between violence against unionized teachers—in view of the differences between FECODE’s 33 subnational unions—and the multifaceted, complex nature of FECODE’s union activity, particularly in actions such as strikes and marches, which CINEP’s data (2010) also show as in decline since 2003.<sup>6</sup>

The study conducted for this project by the New Rainbow Corporation (CNAI, 2010: 110 and 111) found that during this eight-year period (2003–2010) FECODE’s leadership has been less inclined toward union action—labor struggles, strikes and marches—and instead has pursued electoral and legislative strategies through the opposition party known as Alternative Democratic Pole (PDA).

Unionized teachers outside the capital have continued to advocate for such actions to address the problems confronting them: e.g., reductions in teaching staff, the filling of teaching vacancies with temporary personnel under short-term contracts with no benefits, and continued cases of delay in payment of teacher salaries.

<sup>6</sup> Among the questions that need answered is why the number of strikes and work stoppages did not decline in the years of greatest violence against FECODE members—as measured by the number of killings, which peaked in the 1990s—but has declined from 2003 onward.



As with another of the most frequently victimized organizations, the banana workers' union Sintrainagro, violence has not caused a decline in membership, but the opposite has occurred. Sintrainagro and FECODE, after experiencing so much violence, have the highest membership rates in the country—rates not typical for Colombian unions—in a sign that the strength of these two organizations has been greater than the violence it has faced.

It is still too early to tell whether the downward trend in the numbers of teachers killed in the 2003–2011 period will continue—not only in the country as a whole and in the departments hardest hit in the past, but also in those more recently affected. It is also unclear if this shift in forms of violence will someday revert back to an increase in killings, and whether a correlation may be established between this shift and questions surrounding perpetrators and motives.







# Chapter 8

## Violence against USO workers

Like FECODE, the USO is one of the organizations that have experienced the most killings and other human rights violations, thus supporting the hypothesis of systematic violence. These killings were heavily concentrated from 1996 onward in the municipality of Barrancabermeja, hub of the oil industry, as well as in parts of Arauca, Casanare, and Norte de Santander.

The 116 USO members killed between 1986 and March 2011,<sup>7</sup> as counted by the ENS, cannot easily be explained as a coincidence. This is especially so in view of the timing of the killings and other violations—usually during or immediately after strikes and other union mobilizations—and the way the aforementioned sources describe the violence and the victims (Figure 3.2).

### 1. The USO: trade unionism and politics

The USO, founded in 1923 as a union of workers from the multinational Tropical Oil Company (Troco), has a longstanding tradition of belligerence outside the two traditional political parties, Liberal and Conservative. Its political leanings have been toward the opposition. During the period known as “La Violencia,” in fact, it was part of the opposition formed by the Liberal Party and Communist Party, where it stood alongside the latter.

On 9 April 1948, the USO played a prominent role when, after the assassination of opposition Liberal leader Jorge Eliécer Gaitán, municipal authority was temporarily overthrown in half of Colombia’s municipalities and “revolutionary governing councils” were established. The most enduring of these was the council in Barrancabermeja thanks to the organizational qualities contributed by the USO, and after the council was dissolved, its leaders were persecuted by the joint police/civilian units.<sup>8</sup>

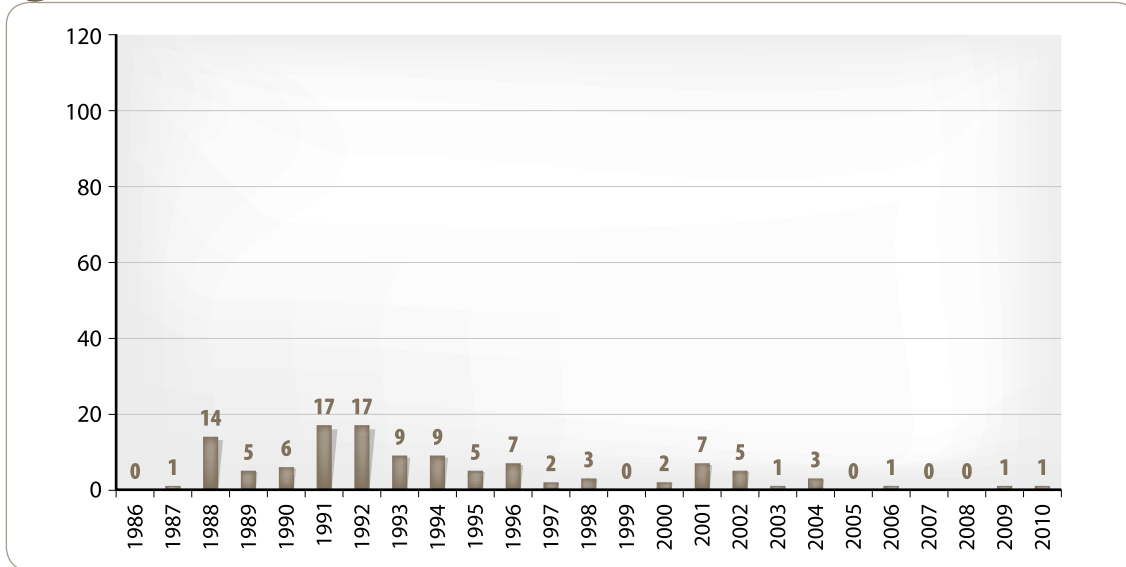
<sup>7</sup> This is a very high number of killings for a single union over just 26 years (a total exceeded only by Sintrainagro and the FECODE-affiliated ADIDA), especially when compared to the number of members at various times during this period: about 12,000 in 1986 and some 4,000 in 2006 (a number severely diminished by massive layoffs as a result of restructuring at Ecopetrol). In internal elections for the union’s board of directors, held in April 2011, nearly 19,000 members were counted because the union had opened its doors to outsourced workers and the regional leadership had made a major effort to encourage such workers to join the union (see ENS, *Cultura y Trabajo* magazine, 26 May 2011).

<sup>8</sup> See figures in the pro-Gaitán newspaper *Jornada* from this period and the newspapers *El Tiempo* and *El Siglo*.



**Figure 3.2**

### Killings of trade unionists and unionized workers in the USO, 1986–2010



Source: ENS, 2011.

This episode is quite telling of what the USO has been since its founding in terms of the relationship between unionism and politics, the impact of violence on this relationship, and the relationship between the union and the people of Barrancabermeja.

Not until the 2000s do these ties seem to have been weakened, according to analysts at CINEP (2010: 152), when paramilitary forces gained control in the municipality. In the 1980s and 1990s, the USO worked closely in Barrancabermeja with the People's Coordinating Unit of Civic Movements.

Sixteen years after the abortive movement of 1948, the ELN guerrilla group was formed in the densely forested area of San Vicente de Chucurí (near Barrancabermeja). Among its founders were those who had been persecuted for being part of the short-lived "revolutionary council" of 9 April.

Since then, a certain degree of ideological convergence has existed between the USO and the ELN under the banners of a nationalist reclaiming of oil wealth vis-à-vis the interests of foreign capital; of opposition to a foreign presence in oil companies and in security apparatuses, both public as well as private; of challenging the country's oil policy; and of opposition to the privatization of Ecopetrol.<sup>9</sup>

<sup>9</sup> Beethoven Herrera, an analyst who specializes in the union movement, recalls that the USO played a decisive role in the founding of Ecopetrol as a State-owned company in August 1951, when the offshore concession that had been assigned by the initial licensee to Troco was to revert to the State. It is not at all surprising, therefore, that the union has always opposed the privatization of Ecopetrol.

The longstanding insubordination of the USO toward the two traditional parties, which union leaders themselves describe as a “leftist” position; the USO’s convergence, since the 1960s, with some of the ELN’s political causes; its permanent state of mobilization, with high numbers of strikes at least until 2004, many of them accompanied by unrest (84 strikes from 1984 to 2009) (CINEP, 2010: 151); its joint efforts with social movements of the surrounding population, specifically in Barrancabermeja—all of these factors have played into the hands of those both inside and outside the government who have sought to stigmatize the USO’s activities and refer to its leaders as guerrillas.

This is despite the USO’s repeated condemnation of ELN attacks on the Cañolímón–Coveñas pipeline (404 attacks between 1988 and 1996, according to the Occidental Petroleum Company) and the human rights violations occasionally committed by guerrillas against the company’s mid-level managers or security personnel.

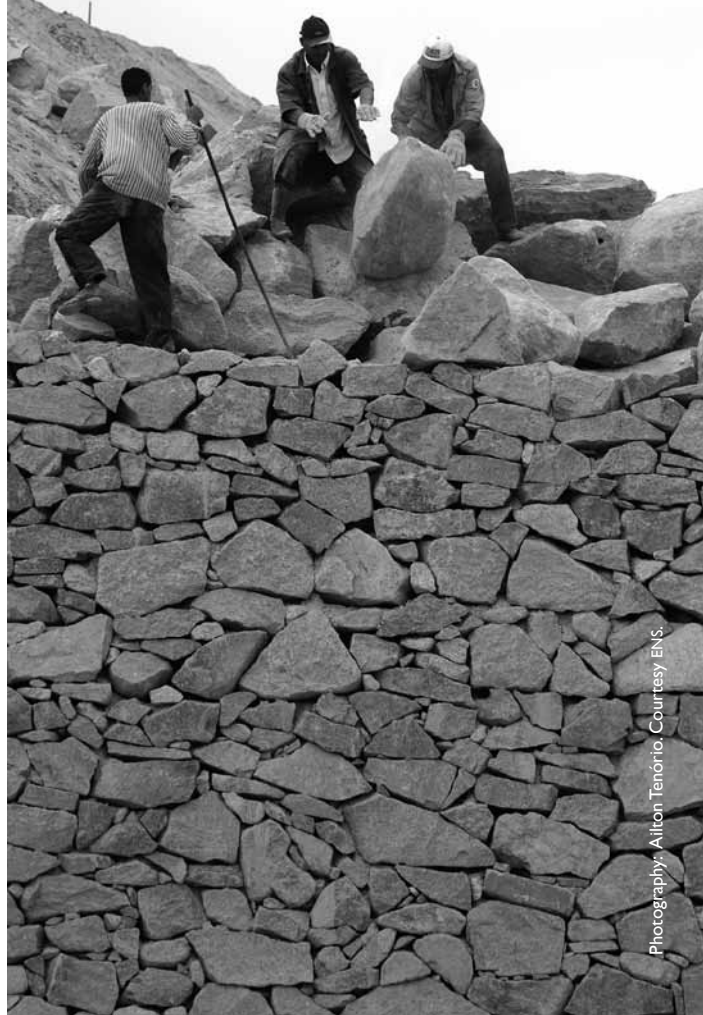
The ELN and the Simón Bolívar Guerrilla Coordinating Unit (CGSB)—of which the ELN was by then a part—hardly did the USO any favors in the 1980s when it would issue statements in support of USO strikes and interfere in USO marches by mixing in with demonstrators to attack the Army with explosives and firearms and take reprisals in the middle of a strike.

One example of this is the bombing of a supervisor’s home in the oil district of El Centro and the killing of the crew chief for the Carare–Opón project during the 1991 strike.<sup>10</sup>

These actions by the ELN have served as ample pretext to violent individuals inside and outside the government who seek, unjustifiably, to depict a victim as criminal—a depiction that typically precedes a killing or other human rights violation.

It has not mattered to these violent individuals that union leaders have explicitly rejected the guerrillas’ support, or that Ecopetrol executives have issued statements to the same effect.

When the Simon Bolívar Guerrilla Coordinating Unit offered open military support to strikers during the strike of January–April 1991, USO president Cesar Carrillo stated emphatically, “We do not need such support and we reject all terrorist activity” (*El Espectador*, 9 April 1991).



Photography: Alton Tenório. Courtesy EN.

<sup>10</sup> The acts of interference described in this paragraph are related in CINEP’s 2004 interview of USO leader Hernando Hernández (CINEP, 2010: 161 and 164).



Along the same lines, Alberto Merlano, a senior executive at Ecopetrol, had stated two months earlier:

Although the guerrillas have supported the list of demands, Ecopetrol believes that this does not mean anything, and that the destruction of pipelines and facilities cannot be tied to any active support for the USO in the negotiations (*El Espectador*, 13 February 1991).

Nonetheless, the perpetrators of violence responded to the strike by carrying out an attack on a USO union officer, who came away unharmed, and by killing a former USO leader, whose son would become the union's president years later.

## 2. Similarities and differences between violence against the USO and violence against other unions

Human rights violations against USO members have some similarities to those committed against the teachers of FECODE, discussed in Chapter 7. These include the high frequency of violations during the 1980s and 1990s and continuing through 2002; a decline in the number of killings since 2003, albeit with high numbers of threats continuing to be recorded by the sources; and a sharp decrease in the number of strikes over the same period in which killings declined, i.e., since 2003.

However, the violence against USO members and the union's response to it also exhibit unique features that should not be overlooked:

- ◇ The dates of the violations coincided with, or were in close proximity to, those of union mobilizations in which the victims participated, such as strikes—more so than has been the case with other unions (CNAI, 2010: 50). As noted in Part One, a number of USO leaders were killed after the Strike of the Colombian Northeast in 1987.



Photo: Courtesy of CINEP.

- ◇ According to CINEP and the book by Vega Cantor et al. (2009: 395), many killings were committed by the Colombian Navy's 07 Intelligence Network during the 1991 strike and immediately afterward in early 1992. In response to one such killing of a USO member, the union held a march that included political figures and even administration officials such as the peace adviser (*Vanguardia Liberal*, 27 January 1992).

- ◇ In the course of negotiations over a list of demands in 1995, Gabriel Pineda, one of the negotiators, was killed. Hours



later, at a USO-organized protest march on 10 October 1996, one of the organizers, the secretary of the El Centro branch, was killed (CINEP, 2010: 166).

- ◇ The USO has responded to violence against its members with mobilizations and strikes more frequently than other organizations. By the end of the 1980s, the union had decided that whenever one of its leaders or activists was killed, production would be stopped (Carrillo and Kucharz, 2006: 303, cited in CINEP, 2010).
- ◇ At least since 1988 and through 2009, 46% of the USO's struggles<sup>11</sup> were in defense of human rights (calculation based on CINEP, 2010: 156) and in opposition to the violence. These included walkouts in response to the killings of presidential candidates Bernardo Jaramillo Ossa of the Patriotic Union and Carlos Pizarro Leongómez of M-19 in March and April 1990, respectively.
- ◇ In comparison to other unions, agents of the State have played a larger role in actions against USO members. In some cases these actions have been legal (though not necessarily fair), such as trials and convictions by military courts-martial immediately after strikes or marches; Part One of this document refers to this as institutional violence. Other cases involve illegal, criminal actions or complicity with irregular armed groups.

**Human rights violations against USO members have some similarities to those committed against the teachers of FECODE, discussed in Chapter 7. These include the high frequency of violations during the 1980s and 1990s and continuing through 2002; a decline in the number of killings since 2003, albeit with high numbers of threats continuing to be recorded by the sources; and a sharp decrease in the number of strikes over the same period in which killings declined, i.e., since 2003.**

### **3. Legal actions combined with human rights violations**

The fact that legal actions entailing arrest and prosecution have been combined with human rights violations against the same person—or that one type of action has followed the other—is a grave matter. Indeed, the sources contain records of such cases.

On more than a few occasions since before the 1980s, detachments or members of the military participated in actions against USO members (CINEP, 2010: 152). Clearly, the Army has placed great importance on its mission to maintain order for the operations of Ecopetrol, the State-owned oil company, as well as for foreign companies in the sector. Also evident is the challenge that the USO's actions, in conjunction with its political insubordination, posed for the military during the generation of the "state of siege" and the Cold War.

<sup>11</sup> As defined in this source, social struggles constitute a category broader than—and inclusive of—labor strikes.





In one revealing case, a commander of the Army's 5th Brigade whose jurisdiction included the detachments in Barrancabermeja sustained an ongoing confrontation with USO leaders; later, as defense minister, he would continue to vilify them. The 3 February 1994 issue of *El Espectador*, cited in a publication on unionism in the oil industry, reported that the minister, when questioned about a statement by the USO, replied: "You should ask the guerrillas who are in the union" (cited in Romero, 1994: 171–172).

In the hard-fought strikes of 1971 and 1977, during the administrations of Misael Pastrana Borrero (1970–1974) and Alfonso López Michelsen (1974–1978), respectively, the Army's involvement was a decisive piece of the government's overall strategy and had major repercussions for strikers. In the 1971 strike, the Army occupied the Barrancabermeja refinery; the Ministry of Labor suspended the union's legal status; 142 workers were fired, 75 of whom would be rehired, whereas 36 were court-martialed and 24 of them convicted. In the 1977 strike, 103 workers were fired (CINEP, 2010: 154).

During the 1980s and 1990s, amid an increase in "contentious" actions by the union, the Army acted on several occasions (25 strikes occurred from 1984 to 1990, out of 30 actions that CINEP classifies as protests or social struggles, and 62 strikes occurred from 1991 to 2001, out of 74 social struggles).

Starting in the 1980s, direct actions by the Army coincided, for whatever reason, with the increasingly frequent killings, disappearances, and threats by unknown perpetrators or paramilitary forces. Included in the latter are the Ariel Otero Urban Commando Unit in the 1990s, as well as the Bolívar Central Bloc and the Southern Cesar Self-Defense Forces, both of them of the AUC, in the 2000s.

Romero's publication (1994: 176) quotes a passage from a 1992 booklet that reads as follows: "The Ariel Otero Urban Commando Unit hereby issues a warning that for each terrorist action by the guerrillas, we will kill three people from the USO and the People's Coordinating Unit" (CINEP, 2010: 166).

One of the more prominent killings of the 1980s was that of USO president Manuel Gustavo Chacón in 1988, which had a far-reaching impact not only on the union but on the people of Barrancabermeja and the newly founded CUT as well.

In protest, the USO called a nationwide strike, which came in addition to a stoppage by the people of Barrancabermeja. At a massive march on the day of the funeral, three people were killed, 29 injured, and 15 arrested as a result of skirmishes with law enforcement, according to CINEP (2010: 158).

The fact that the ELN guerrilla group later named one of its fronts after the slain USO leader has been used by some, including in government circles, to criticize and discredit the union. In response, USO leaders have said that it is not within their power to block such decisions by the guerrilla group.

In 1985, during negotiations over a list of demands, seven USO members were arrested by troops from the Nueva Granada Battalion and accused of belonging to a group called the Ecopetrol Revolutionary Movement. CINEP's records (2010: 157, 162, and 164) indicate that they were tortured and two of them sentenced to two years in prison.



During the strike of January–April 1991, 250 workers were suspended and brought up on criminal charges of sabotage. This was done through the ordinary justice system, as opposed to the military's, since the state of siege was not in effect at the time.

Violence against USO members had been on the rise since 1985, when Chacón began to receive threats. Particularly troubling is the fact that, amid such circumstances, agents of the State were committing human rights violations, such as the aforementioned torture of seven unionists who were victims of an action by troops from the Nueva Granada Battalion.

The same could be said about the cases, also noted above, in which the Colombian Navy's 07 Intelligence Network may have been involved from 1991 to 1993. A member of the Navy was arrested as one of the suspects in the 1998 killing of Chacón (*El Espectador*, 10 June 1988; see CINEP, 2010: 160).

In Colombia's new Constitution, approved on 4 July 1991, the definition of "state of siege" was superseded, with some changes in meaning, by that of "states of exception," one of which is "internal commotion."<sup>12</sup> No longer can trade unionists be subjected to courts-martial in which they are tried and convicted by the military. Still, arrests continued in the 1990s, and the Office of the Attorney General took over such cases. The Army, meanwhile, continued to occupy installations during labor strikes (CINEP, 2010: 152).

Hernando Hernández, USO president until just a few months earlier, was arrested in January 2003 while negotiations were underway over a new collective bargaining agreement. Although he was released one year later, the accusation was the usual one of ties with guerrilla forces (CINEP, 2010: 177).

During the strike from late 2003 to 2004—the goals of which are described by CINEP as having been more political than labor-related, i.e., to protect Ecopetrol and to support a national policy on hydrocarbons—the Army occupied the installations after the strike was declared illegal by the Ministry of Social Protection and 358 workers were fired.

According to CINEP (2010: 179–181), neither that strike nor other USO actions halted the trend toward privatization at Ecopetrol. Not until three years after the strike were some of the fired workers rehired.

During the trial they received notable support from politicians of various stripes and officials in the Catholic Church. Ultimately, a verdict in their favor cited an ILO precept as the basis for the legality of the strike and recommended that the charges against them be dropped.

**Human rights violations against USO members, regardless of who perpetrated them, peaked in the 1990s: according to the ENS, 78 killings occurred between 1991 and 2001, out of the 116 over the entire period from 1986 to 2011.**

<sup>12</sup> Articles 212, 213 and 215 of the Constitution of 1991. The law on "states of exception"—Law 137 of 1994—provides that human rights and basic freedoms may not be suspended during a state of "internal commotion," nor may civilians be investigated or tried by the military criminal justice system.



#### 4. The 1990s: The violence peaks

Human rights violations against USO members, regardless of who perpetrated them, peaked in the 1990s: according to the ENS, 78 killings occurred between 1991 and 2001, out of the 116 over the entire period from 1986 to 2011.

In some cases a known armed group would claim responsibility, or a particular group would come to be known in the region as the likely perpetrator. In other cases the perpetrators remained unknown.

Most of the violence was against individual victims, but at least one massacre—in Barrancabermeja on 18 May 1998—occurred as well. The national AUC organization, under the command of Camilo Morantes, used this massacre as a way of announcing its arrival in the area (Box 3.2).

Preceding this were a group that went by the acronym MAS (“Muerte a Secuestradores,” i.e., Death to Kidnappers, although one unionist said this was translated in Barrancabermeja as “Muerte a Sindicalistas,” or Death to Unionists) (CINEP, 2010: 260) in the early 1980s; Gonzalo Rodríguez Gacha’s group, active in the Magdalena Medio region; the Ariel Otero Urban Commando Unit in the late 1980s; and the Magdalena Medio Self-Defense Forces, commanded by Ramón Isaza and his sons.

Starting in 1996, as noted above, USO members began experiencing human rights violations not only in Barrancabermeja and Bucaramanga, the departmental capital, but in other areas where the USO had a presence as well. In that year the USO became the union for the entire oil sector, rather than just for Ecopetrol.

In Arauca, a hub of operations for Occidental Petroleum (Oxy), USO members have been victimized by violence since 2000. The overall decline in the number of killings over the eight-year period from 2003 to 2011 has not been reflected in Arauca. It is one of the few departments where the numbers increased even in 2009 and 2010, with FECODE, the USO and Fensuagro (National Unified Agricultural Trade Union Federation) particularly hard hit by the violence.

In cases for which the sources identify a known or alleged perpetrator, the violence has been the work of the Vencedores Bloc, which appeared in Arauca department in 1998 and initially had ties to the AUC’s Northern Bloc, though it later grew closer to the Bolívar Central Bloc.

The Observatory of Multinationals in Latin America (OMAL) believes that these groups acted with the complicity of Oxy’s security personnel, and that it is important to society and the victims that the judicial system determine the truth in this matter (CINEP, 2010: 61).

In the same period, USO workers were targeted in acts of violence in the Tibu area of Norte de Santander department, in Casanare department, and in Cartagena (Bolívar).

Gilberto Torres, leader of the union’s pipeline division, was kidnapped by paramilitary forces in February 2002 along the road from Yopal to Monterrey (Casanare), and he was not released until 42 days later as a result of the union’s solidarity strike as well as national and international pressure.



### BOX 3.2

## Violence against the USO

*USO leaders who have been victims of violence describe how union members have been stigmatized with the “guerrilla” label, and a paramilitary leader explains why the USO and Barrancabermeja became targets for their illegal actions.*

“You might not get killed, but prison has its political costs. When a union leader gets out of prison, the scandal of the press causes a lot of people to identify him with the insurgency, and they marginalize not only the leader but the entire organization he belongs to.”

◇ Interview with USO leader Pedro José Chaparro. In Camillo and Kucharz, 2006: 294; as cited in CINEP’s report, 2010: 167.

“If you want to know how many deaths it took to retake Barrancabermeja, I’ll give you the total: about 100 guerrilla militia members were executed by the AUC.”

Several seconds of silence followed, and then Julián Bolívar continued:

“These executions were done periodically to avoid creating fear in the communities—two or three executions a week, for sure. Those who truly were insurgents. That’s how we gained the trust of good people and earned credibility with them. Then we took back the northeastern neighborhoods, block by block. The urban warfare there between the Self-Defense Forces and the guerrillas was waged with rifles, grenade launchers, and 45-millimeter grenades. Huge clashes were fought right there in the neighborhoods, until the militia fighters were forced

out of their homes. In the neighborhoods of Barrancabermeja it was classic guerrilla warfare, since we used the same methods as the subversives. We would mix in among people and pass as civilians, especially to the authorities. We would hide our rifles in the houses and take them out for battles with the ELN militias, who would do the same thing.

[Mauricio Aranguren:] “Why was Barrancabermeja so important to you?”

“The municipality is the country’s largest oil port, the carburetor of Colombia. The State-owned oil company, Ecopetrol, has a union—the USO—that had long been infiltrated by the ELN guerrilla group. Whenever the subversives wanted to bring the country to a standstill, the union would organize a strike, leaving Colombia without fuel in just 48 hours. Ever since the Self-Defense Forces gained control of the area, there have been no major strikes. They’ve tried, but people in the area no longer believe in strikes without a logical reason.”

◇ From the book *Mi Confesión: revelaciones de un criminal de guerra*, by Mauricio Aranguren, in an interview with the commander of the AUC and the Bolívar Central Bloc (2001).



USO members who recall the event describe how paramilitary fighters abducted Torres by forcing him into a vehicle of the multinational oil company Ocesa (Oleoducto Central S.A.), which was operating the pipeline in the area (CCJ, 2011).

These incidents were acknowledged to prosecutors in October 2010 by two of the perpetrators, who belonged to an armed group in Casanare led by a commander using the alias “Martín Llanos.” Both of them also testified about the collaboration of an Ecopetrol and Ocesa security supervisor in the kidnapping (CCJ, 2011).

Aury Sará Marrugo, USO president in Cartagena, and his bodyguard were kidnapped, tortured and killed by an AUC-affiliated group in December 2001. AUC chief Salvatore Mancuso admitted this in a statement he gave before his extradition. Mancuso also described monthly payments of 100 million pesos to his group from Ecopetrol in exchange for security services (CCJ, 2011).

Sará Marrugo had led mobilizations opposing the handing over of the master plans for the Cartagena refinery to the multinational company Glencore.

In Barrancabermeja on 20 March 2002, one month after the kidnapping of Gilberto Torres in Casanare, paramilitary forces killed local USO leader Rafael Jaimes Torra and his nephew, who was with him at the time.<sup>13</sup>

The Superior Court of Bucaramanga, in holding this incident to be a crime against humanity, ruled that the victim was killed for his work as a union leader defending workers in the oil sector:

... It is these factual and legal considerations that shed light on the deplorable nature of the actions of ..., who in an intolerant manner ended the life of Rafael Jaimes for being a trade unionist and also killed his nephew, who was with him on the evening of the events, deploying an entire criminal plan to silence Ecopetrol's workers (CCJ, 2011).



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**13** The information on these three cases was furnished by USO unionists and CCJ-provided documents.





# Chapter 9

## Violence against members of the banana workers' unions

**T**his chapter addresses violence against banana workers who belong to industrial trade unions in the four banana-growing municipalities of Antioquia's Urabá region—Apartadó, Carepa, Chigorodó and Turbo—and, since 1996, in two other municipalities in Magdalena department as well: Ciénaga and Fundación.

The two largest unions whose members have been victimized by this violence have been, through 1988, Sintagro (Agricultural Workers Union of Antioquia) and Sintrabanano (Banana Workers Union); followed by, with fewer victims, Sindijornaleros (Day Laborers Union of Antioquia), Sindebras (Loaders and Laborers Union of Turbo) and Sintraexpobán (Expobán Workers Union). In early 1989, Sintrainagro (National Agricultural Workers Union) became the union of Sintagro's and Sintrabanano's members after the October 1988 strike was declared illegal and the Ministry of Labor revoked the legal status of both unions.

Affiliated to the CUT since its founding, Sintrainagro has also been the union of banana workers in the municipalities of Ciénaga and Fundación since its Magdalena branch was formed in 1996. Ciénaga was the scene of the infamous “banana plantation massacre”<sup>14</sup> of 1928.

Sintrainagro's membership includes workers of palm-growing enterprises in San Martín (Cesar) and Puerto Wilches (Santander). The union also seeks to establish branches in the flower-growing enterprises of Risaralda and eastern Antioquia, despite active opposition from employers and threats of unknown origin.

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**14** Killed in this incident were a very large number of workers from the United Fruit Company, a multinational banana-growing corporation, after gathering in the town plaza of Ciénaga (Magdalena) during a strike by some 25,000 workers. On 6 December 1928 an army detachment commanded by General Carlos Cortés Vargas opened fire on strikers in the plaza. This occurred during the Conservative presidency of Miguel Abadía Méndez (1926–1930). Sources vary as to the number of those killed; most put the figure at more than 1,000, with some estimates as high as 3,000. A 16 January 1929 cable from the United States consulate in Santa Marta, the capital of Magdalena department, to the U.S. State Department estimated 500 to 600 killed that day. Neither the general nor his troops were ever brought to trial. The United Fruit Company merged with another firm in 1970 to become the United Brands Company, which in 1990 changed its name to Chiquita Brands International—the same company that would later be found in a U.S. court to have funded guerrilla and paramilitary groups in the Urabá region of Antioquia in the 1990s and 2000s. Also in the United States, a lawsuit brought against the company by a large group of victims is pending; this case will be discussed later in this report.



Photography: Courtesy: Inep

Based on the total number of those killed throughout the period under review, from 1984 to March 2011, these unions have experienced the highest homicide rate of all unionized workers.

According to the ENS, the 803 killings from 1986 to 2011 include the following numbers in peak years: 45 killed in 1988; 154 in 1993 (a rate of 93 killings per 10,000 members); and 167 in 1996 (a rate of 100 killings per 10,000 members). These homicide rates are much higher, in fact, than those of the USO and FECODE (Figure 3.3).

Also noteworthy, in addition to the high number of killings, is the victims' position in the union. In the case of Sindebras, although the killings were fewer, the victims were recognized leaders of the union and, at the same time, officers of the CTC-

affiliated Workers Trade Union Federation of Urabá (Festraurabá): Hernán Usuga and Humberto Gamboa, president and comptroller, respectively, of Festraurabá.<sup>15</sup> This federation, hit hard by these and other acts of violence, ultimately disappeared.

## 1. Similarities and differences vis-à-vis other organizations

The violence against banana workers reveals similarities with the cases of FECODE and the USO, as well as with the violence against other union activists. But it exhibits significant differences as well.

Below are some similarities:

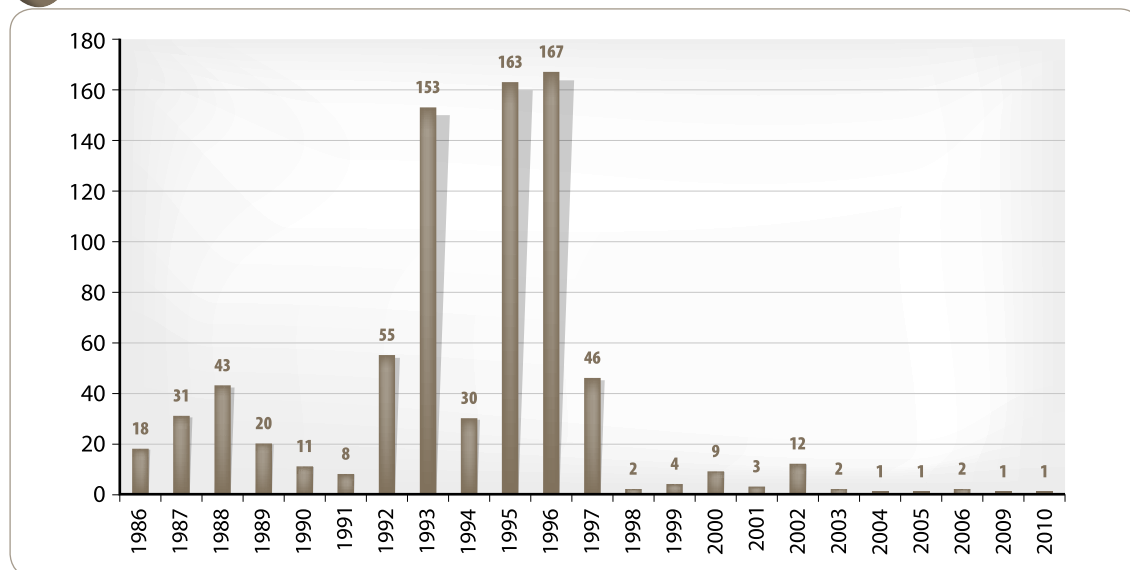
- ◇ The violence extends throughout the period under review if both banana-growing regions—Urabá (Antioquia) and Magdalena—are grouped together. However, the number of killings did decline in recent years in Urabá, as did those against the oil workers' and teachers' unions. In more than eight years, from 2003 to March 2011, only four union members have been killed in the four banana-growing municipalities of Urabá, according to the ENS.
- ◇ The violent acts, by both known and unknown perpetrators, have come against a backdrop of discourse aimed at discrediting unionists by branding them as guerrillas. In 1988, to cite just one example, the future president of AUGURA (Colombian Banana Growers Association), who had recently been a Cabinet minister, called for "attacking subversive and terrorist unions," referring to the two main banana workers' unions (*El Tiempo*, 15 December 1988). While this type of smear campaign has been common in other sectors with victimized unionists, Sintrainagro was also stigmatized by allegations of paramilitary ties in the 2000s.

<sup>15</sup> Interview with Luis Miguel Morantes, CTC president.



**Figure 3.3**

**Killings of trade unionists and unionized workers in Sintrainagro and the banana workers' unions, 1986–2010**



Source: ENS, 2011.

- ◇ As with the oil workers, actions by the Army or some of its members have converged, or at least coincided, with human rights violations committed by unknown or irregular armed groups against the same people (Ortiz, 2007: 155–170).
- ◇ This stems from the fact that the Army has perceived itself, and has been perceived by employers and politicians, as playing a leading role in maintaining order and security for these companies' operations in the banana-growing areas of both Urabá and Magdalena.
- ◇ Regardless of any stated intention, the Army seems to have been, at least until the late 1980s, the only effective—or the most organized and selective—government presence in an area such as Urabá, described by some as recently settled, by others as an “enclave” of outside capital (foreign and domestic), or even as an “area of refuge and exclusion” (see Uribe de Hincapié, 1992; Botero Herrera, 1990; Ramírez Tobón, 1997; García de la Torre, 1996; and Ortiz Sarmiento, 2007).
- ◇ Measures along these lines—such as creation of the “Civil and Military Headquarters of Urabá” in April 1988 and the Army’s issuance of mandatory identity cards for workers as of September 1998—were unsuccessful in reducing the violence, which in fact continued to increase.
- ◇ In another similarity to the USO, many strikes by the banana workers' unions have been in defense of human rights and in opposition to the violence against its members. A number of these acts of denunciation and protest have been met with further violence.



**The violence extends throughout the period under review if both banana-growing regions—Urabá (Antioquia) and Magdalena—are grouped together. However, the number of killings did decline in recent years in Urabá, as did those against the oil workers’ and teachers’ unions. In more than eight years, from 2003 to March 2011, only four union members have been killed in the four banana-growing municipalities of Urabá, according to the ENS.**

- ◇ However, in contrast with the USO—which did not mobilize to reject the guerrilla forces—Sintrainagro did carry out a mobilization against violence by the FARC at a time when it was distancing itself from the armed insurgent movement in recent years.
- ◇ Marching alongside workers at the massive demonstration on 19 November 1997 were employers, truckers, merchants, cattle growers, and supporters of the Hope, Peace and Freedom Party, which emerged from the 1991 demobilization of the EPL and was heavily influential in Sintrainagro. The newspapers estimated 8,000 demonstrators (CINEP, 2010: 139).
- ◇ As with FECODE, the heavy violence has apparently not diminished membership rates in the banana workers’ unions. Their numbers remain among the highest in the country: according to CINEP (2010), 87% of all workers in the sector are currently in a union.

When nationwide statistics on violence against trade unionists are compared in the abstract to the moderate decline in nationwide rates of union membership, the latter appears to be a result of the former. Remarkably, however, when viewed individually, two of the three organizations hardest hit by violence—Sintrainagro and FECODE—have the highest membership rates, despite the violence.

Meanwhile, the banana workers’ unions and the violence against their members also exhibit some differences from the circumstances of other trade unions, such as the following:

- ◇ Unlike the USO, and to some extent FECODE, none of the banana workers’ unions have a long, unwavering tradition of belligerence and insubordination toward the traditional political parties. The two main banana workers’ unions that preceded Sintrainagro did start out this way, partly because employers refused to acknowledge workers’ freedom of association, and the establishment echoed this intolerance. This is a point noted by all researchers who have studied Urabá (Uribe de Hincapié, 1992; Botero Herrera, 1990; Ramírez Tobón, 1997; García de la Torre, 1996; and Ortiz Sarmiento, 2007).
- ◇ As a result, workers embraced unions with leftist political leanings—i.e., away from the two co-ruling parties of the National Front at the time. Sintrabanano, founded in 1964, was sympathetic to the Communist Party and had close ties to the political activity of the FARC’s 5th Front. Meanwhile, Sintagro, founded in 1975, was sympathetic to the PC-ML, which in turn had close ties to the EPL guerrilla group.



- ◇ Sintrainagro, which succeeded these two unions in 1989, initially followed in the tradition of intense union activity and leftist anti-establishment political leanings. As a result, its members were victimized in high numbers.
- ◇ In the 1990s and 2000s, however, the union's "contentious" actions declined, according to CINEP (2010: 131-143), and its political leanings grew much more diverse. Many critics, in fact, felt that the union, or at least its leaders, had abandoned its "leftist" positions.
- ◇ Unionized banana workers have been victims of human rights violations—not only by paramilitary groups and (legally or illegally) by regular military forces (Ortiz, 2007: 152–153 and 170; CNAI, 2010: 72), but frequently by guerrilla groups as well. Specifically, such workers were victimized by the FARC throughout the entire period, by the EPL before it demobilized in 1991, and by EPL dissidents thereafter.
- ◇ This fact differentiates the banana workers' unions from the USO, with only two members known to have been killed by guerrillas, and from FECODE, which had some victims of guerrilla groups, though in lower proportion than the banana workers' unions.
- ◇ Still, it should not be forgotten that the perpetrators in most cases, as noted above, are technically unknown, although the evidence does often point to likely culprits<sup>16</sup> (Figure 3.4).
- ◇ At least in case of the banana workers' unions—not an insignificant one, as it entails the highest ratio of victims to members—the diversity of perpetrators may cast doubt on the notion of a simple or lone cause of the violence.
- ◇ In contrast with the USO, the correlation or at least the coincidental timing between human rights violations and union actions—especially contentious and anti-establishment ones—can be clearly confirmed only for the 1980s.

In the 1990s, incidents of homicide and displacement continued to be frequent and, as noted above, concentrated initially in four, and later in six, municipalities. This may suggest that the violence continued to be systematic, although systematic violence is not necessarily a one-way phenomenon reflecting a single set of interests.

The incidents in the 1990s were apparently not only about preventing strikes to protect profits. The violations were not timed to coincide with strikes, and the strikes themselves were fewer and less heated. Moreover, a number of these violations, including massacres, were committed by guerrillas.<sup>17</sup>

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**16** According to the ENS, the perpetrators of 2,232 out of the 2,863 total killings from 1986 to March 2011 are unknown.

**17** However, the role of business interests in the violence of the 1990s against members of banana workers' unions cannot be fully overlooked. Evidence of this role exists in the case of Chiquita Brands International and its subsidiary Banadex. As noted above, one lawsuit against this company has concluded, and others remain pending before U.S. courts in connection with the funding of and complicity with irregular armed groups.

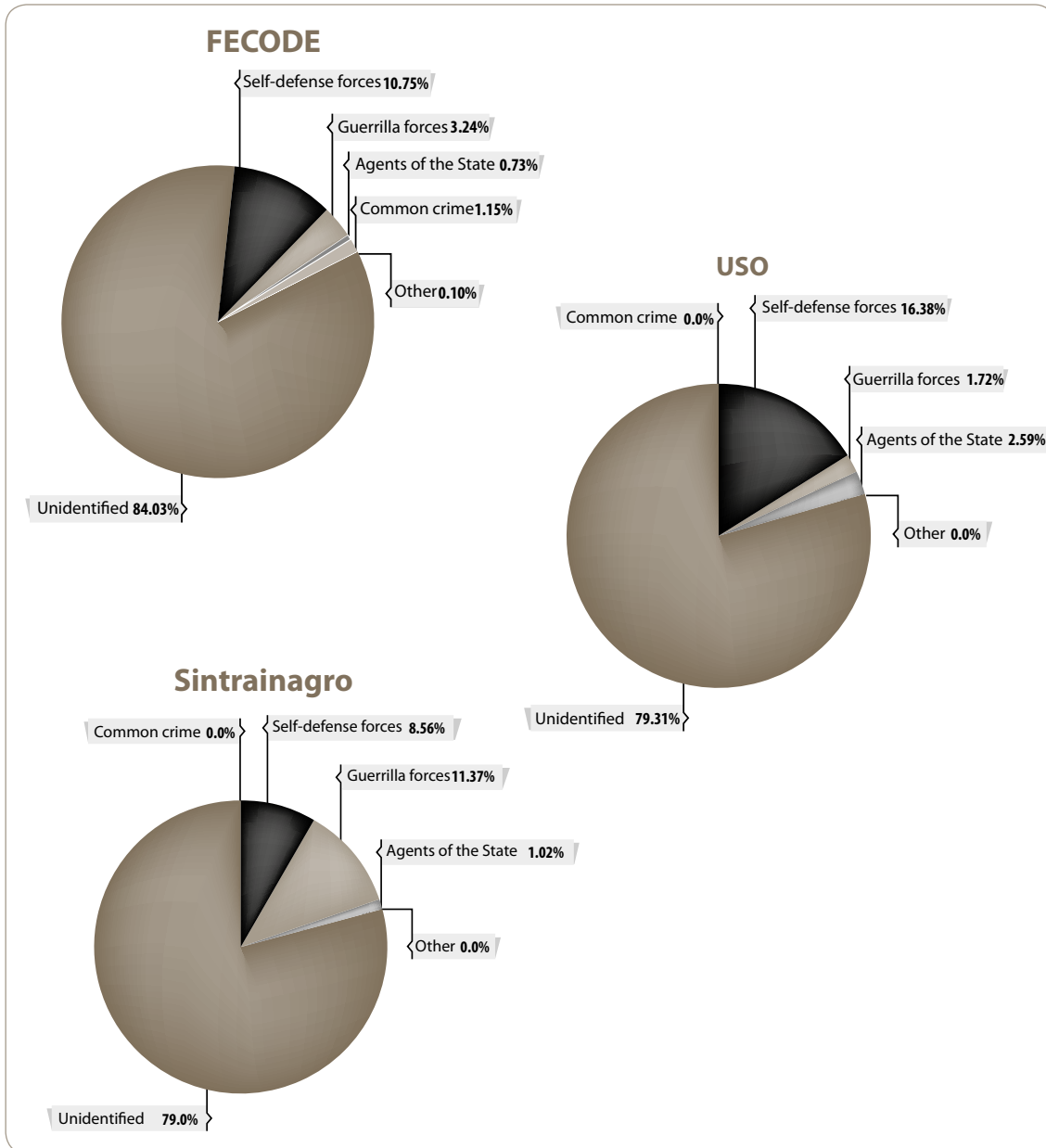




To better illustrate the particular nature of the violence against the banana workers' unions (as outlined in the preceding paragraphs), some episodes in the history of these unions, as part of broader tensions in Urabá and Ciénaga, are described below. As with FECODE, the local dynamics leading to an extremely polarized relationship between unionism and politics must be considered (Figure 3.4).

**Figure 3.4**

### Alleged perpetrators of killings by union, March 1986–2010



Source: ENS, 2011.



## 2. Local dynamics in the relationship between unionism, politics and violence

Starting in 1978, when a FARC column split away from the 5th Front and later joined the EPL—the FARC’s rival in the Urabá region—the two guerrilla groups locked horns in the bloodiest of conflicts, in addition to their respective turf battles against the regular armed forces.

The opening of space for political action during the Betancur administration, under the agreements signed with insurgent forces in 1984, paradoxically intensified the conflict between the two guerrilla groups as each sought to gain supporters at the other’s expense through their parties of choice, as well as through the two unions with political leanings toward these parties. This would become a highly strategic matter, given the rapidly increasing number of members who thereby found a way to assert their rights.

Thus, in addition to the many unionists killed by paramilitary forces, a number of killings were perpetrated by each of the two warring guerrilla groups against the unionized members of the political party tied to the other. At the same time, however, the unions were succeeding in their efforts to sign, on behalf of their members, significant collective agreements with the companies.

In 1986 both unions joined the same labor confederation, the CUT, and the two rival guerrilla groups began coexisting in 1987 as part of the Simón Bolívar Guerrilla Coordinating Unit (CGSB). These developments eased the conflict and reduced the number of related homicides, although other killings did not decline.

Sintrainagro—the new union that brought together the members of the two unions whose legal status was revoked in 1988—experienced recurrent tensions between the two political groups tied to each of the two guerrilla groups, the FARC and the EPL, with the EPL holding majority influence within the union.

When the EPL demobilized in 1991 and transformed into the Hope, Peace and Freedom political movement—known in Spanish by the same three-letter acronym (EPL, for “Esperanza, Paz y Libertad”) as the armed movement in which it originated—the confrontation did not end. Instead, it grew worse.

The nondemobilized faction of the EPL, as well as the FARC, attacked the new political movement, while some of those who demobilized joined together “people’s commando units” to respond in kind to the armed attacks. Some of the demobilized ended up joining the local paramilitary ranks.

In addition to individual cases of homicide, the FARC committed massacres against supporters of the Hope, Peace and Freedom movement and affiliated union members. One massacre was perpetrated against shantytown residents the La Chinita neighborhood of the municipality of Apartadó. Another massacre, carried out on 26 April 2002 in the same municipality by members of the FARC’s 5th and 58th

**In another similarity to the USO, many strikes by the banana workers’ unions have been in defense of human rights and in opposition to the violence against its members. A number of these acts of denunciation and protest have been met with further violence.**



**The heavy violence has apparently not diminished membership rates in the banana workers' unions. Their numbers remain among the highest in the country: according to CINEP (2010), 87% of all workers in the sector are currently in a union.**

Fronts, was directed against seven workers who belonged to Sintrainagro, according to a verdict of the First Criminal Court of the Special Criminal Circuit for Backlog Reduction (CINEP, 2010: 133).

Paramilitary forces carried out an intense onslaught from 1987 to 1989, with armed groups in the Magdalena Medio region committing massacres such as the one in 1988 against banana workers from the Honduras and La Negra plantations. The attacks continued in 1990 and 1991, led by irregular groups from the region—Los Tangueros and Los Tanelas—that were organized by the Castaño Gil brothers and demobilized in 1991 at the same time as the EPL guerrilla group.

In 1993 the Peasant Self-Defense Forces of Córdoba and Urabá (ACCU), led by Carlos Castaño, returned to prominence and became the model for the founding of the AUC as a national paramilitary organization.

These various actors, with their intersecting strategies, killed a very high number of Sintrainagro members between 1991 and 1996.

According to the time segments used by CINEP's analysts, the 1991–2001 period included 639 killings and eight disappearances, almost all of them concentrated between 1991 and 1996, with numbers peaking in 1993, 1995 and 1996. Between 1984 and 1990, 154 unionized banana workers were killed and seven disappeared (CINEP, 2010: 121 and 132).

Between 2003 and 2011, the number of killings of Sintrainagro members in Urabá declined markedly (ENS, 2011; see also Table 2.1 and Figure 3.3).

However, the AUC's Banana Bloc in the Urabá region of Antioquia, as well as the Elmer Cárdenas Bloc in the municipalities of the Darién region or the Chocó portion of Urabá, continued to carry out numerous acts of violence against populations other than banana workers (Ortiz, 2007: 165–167).

Examples include Afro-descendent populations in the Jiguamiandó and Curvaradó river basins, settlers in marginal areas such as Cacarica and Salaquí (Ortiz, 2007: 160–161; Peña, 2004: 55–72) or farmers in the proclaimed "Peaceful Community" of San José de Apartadó<sup>18</sup> (Ortiz, 2007: 169–170; ODDH, 2002: 290; Peña, 2004: 55–72).

<sup>18</sup> Sintrainagro started an organization called Corporación Corpulibertad to assist victims of violence in seeking the reparation to which they are entitled before the State. Most of the cases it handles do not entail acts of violence against union members, but rather against other populations in Urabá (settlers, peasants, displaced Afro-descendants), despite that fact that it was founded to provide assistance in cases involving victims who are union members.



Photography: Emiro Marín Carvajal. Courtesy: ENS.

As noted previously, while the number of killings of Sintrainagro members declined sharply, particularly in Urabá after 2003, the number of contentious actions by the union also fell significantly, as did the number of labor strikes and mobilizations against the violence, and both types of actions became less confrontational as well.<sup>19</sup>

This does not necessarily mean that unionized workers in Urabá have lost job benefits or that the union has been inactive. Despite very few strikes, a number of collective labor agreements have been signed between Sintrainagro and the region's banana-growing companies, represented by AUGURA.<sup>20</sup> Noteworthy agreements include that of 1993 and, most recently, that of 28 May 2011, which was the first agreement to be reached through direct settlement, without the need for a strike.

Sintrainagro is a solid organization. It is the only trade union in Colombia's agricultural sector, and it has achieved a highly developed level of workers' rights. Sintrainagro is represented in every single company in the banana-growing industry.

<sup>19</sup> This is not the case for the union on the banana plantations in Ciénaga and Fundación or the palm-growing operations in Puerto Wilches (Santander) and San Martín (Cesar), where killings of union members have continued, even in the 2003–2011 period, despite a decline in most unions and areas. Nor is it the case for some flower-growing operations in La Ceja (Antioquia) or among sugarcane workers in Risaralda, where efforts to establish union locals have been met with employer obstruction and numerous threats from the AUC's paramilitary successors, such as the Águilas Negras group in La Ceja.

<sup>20</sup> AUGURA is an acronym derived from the association's original name under which it was founded in 1963: Asociación de Agricultores y Ganaderos de Urabá [Farmers and Cattle Growers Association of Urabá]. Its name was changed in 1966 to Asociación de Bananeros y Agricultores de Urabá [Banana Growers and Farmers Association of Urabá], in 1986 to the Asociación de Bananeros de Urabá [Banana Growers Association of Urabá], and finally, in 1994, to its current name, Asociación de Bananeros de Colombia [Banana Growers Association of Colombia].



**Unionized banana workers have been victims of human rights violations—not only by paramilitary groups and (legally or illegally) by regular military forces, but frequently by guerrilla groups as well.**

Moreover, it is the only union in this entire industrial subsector to be signing collective agreements, and it is doing so with 150 business groups, represented by AUGURA, all at the same time.

To overcome periods when one or another guerrilla or paramilitary group would impose managers on the companies, the union has formed joint workers' committees on each plantation and instituted direct voting for all leadership positions, from the workers' committees to the national board of directors.

These are all features of what scholars on unionism refer to as a modern-day trade union. This is a union with extremely high, stable membership rates, forged in the wake of a great deal of violence in a risky, complex environment in which armed and unarmed groups, both institutional and irregular in nature, have been constantly vying for control—an environment in which the AUC rose to preeminence in the 2000s after the weakening of the FARC.







Photography: Jorge Mendoza. Courtesy ENS.



# Part Four

## Perpetrators and motives



**“We have to take a closer look at the tripartite agreement signed in 2006 in Geneva between employers, workers and the government. A policy must be developed to help strengthen trade unionism in Colombia.”**

**Julio Roberto Gómez**  
*CGT president*

## At a glance

### *Chapter 10*

Who are the perpetrators?

### *Chapter 11*

What are their motives?

*Part Four is based on the report by the Center for Studies on Law, Justice and Society, titled Evaluación de la judicialización de delitos contra trabajadores sindicalizados [Evaluation of the prosecution of crimes against unionized workers] (DeJusticia, 2010); on the report by the New Rainbow Corporation, titled La relación entre el conflicto armado y la victimización de los trabajadores sindicalizados 1984-2009 [The relationship between the armed conflict and the victimization of unionized workers, 1984–2009] (CNAI, 2010); and on the report by the People’s Research and Education Center, titled Incidencia de la violencia contra los trabajadores sindicalizados y evolución de su protesta [Incidence of violence against unionized workers and the evolution of protests against it] (CINEP, 2010).*



This part tackles two important debates surrounding the phenomenon of violence against trade unionists and unionized workers in Colombia: perpetrators and motives.

These two debates cannot be circumvented, and they must rise above sharp ideological positions. They are even more complex than the question of statistics, addressed in Part Two, particularly because of huge information gaps in the judicial system and in governmental and nongovernmental data sources.

Except in cases where claiming responsibility for a violent act or its objectives serves to intimidate and coerce, it is often more advantageous for the perpetrators to conceal their identity and motives. Sometimes, for example, the killing of a union activist is made to look like a robbery or a crime of passion so that it will be perceived as a case of common crime.

Neither the trial judges nor the analysts reviewing the cases in the sources can give credence to such appearances without first examining the motives and perpetrators that lie beyond them.

Part Four consists of two chapters:

- ◇ Who are the perpetrators?
- ◇ What are their motives?

# Chapter 10

## Who are the perpetrators?

This question—a critical one for the truth and justice to which victims, their organizations and society are entitled—calls for an answer not only as to those who carried out acts of violence. It also calls for identifying the individuals of rank who gave the orders, in the case of organized armed groups, or those whom DeJusticia (2010) refers to as the “operational leaders.” Above all, it calls for determining who instigated or incited the action from outside the organizational structure or hierarchy of the violent groups, as well as the accomplices in positions of power, including in State entities, who provided financial, political or institutional support to criminal organizations for the commission of these violations.

### 1. Gaps in information on perpetrators

As noted in Part Five of this report, the results of the State's efforts to identify who is responsible for the violence—aside from those who committed the acts and outside the hierarchies of the armed groups—have been inadequate. Despite progress, the Office of the Attorney General and the judges in these cases face a tremendous challenge in upholding their constitutionally mandated tasks of prosecuting and trying such violations, a necessary process in terms of the victims' rights.

Huge information gaps also remain in the governmental and nongovernmental sources identified in Part Two, with regard to armed organizations, individuals of rank, instigators and accomplices. It would be a grave mistake to interpret these gaps as meaning that no one is responsible, that the violence is nonsystematic or random in nature, or that it was not strategically calculated. Doing so would allow those responsible to conceal their involvement and avoid punishment in the courts.

According to ENS records on the unions that have experienced the most killings, the percentage of homicide cases for which information on alleged perpetrators is available is 24.24% in FECODE, 26% in Sintrainagro and 20.68% in the USO.<sup>1</sup>

<sup>1</sup> The data released by the government's source—i.e., the Observatory of the Presidential Program on Human Rights and International Humanitarian Law (ODDH), under the Office of the Vice President—does not include information on perpetrators, known or alleged. This type of data, therefore, cannot be compared between nongovernmental sources and the ODDH. Also, while the ODDH's data only cover killings since 2000, the other sources—as noted in Part Two—recorded the highest annual numbers of killings before 2000, and the peak years in the homicide data were from that period as well. To compensate for the inability to compare alternative sources' data on perpetrators of killings with those of the ODDH, the data cited by Echandía Castilla (2010) will be used.





Strictly speaking, the sources can only provide information on alleged involvement, whether self-claimed or determined from evidence. For the ENS and the CCJ, involvement is determined mostly from the threats that preceded the killing, whenever responsibility for such threats has been claimed. The determination of whether this allegation is true, however, lies beyond their mission and capabilities; this is instead the duty of the judicial system, at least in terms of *judicial truth*.

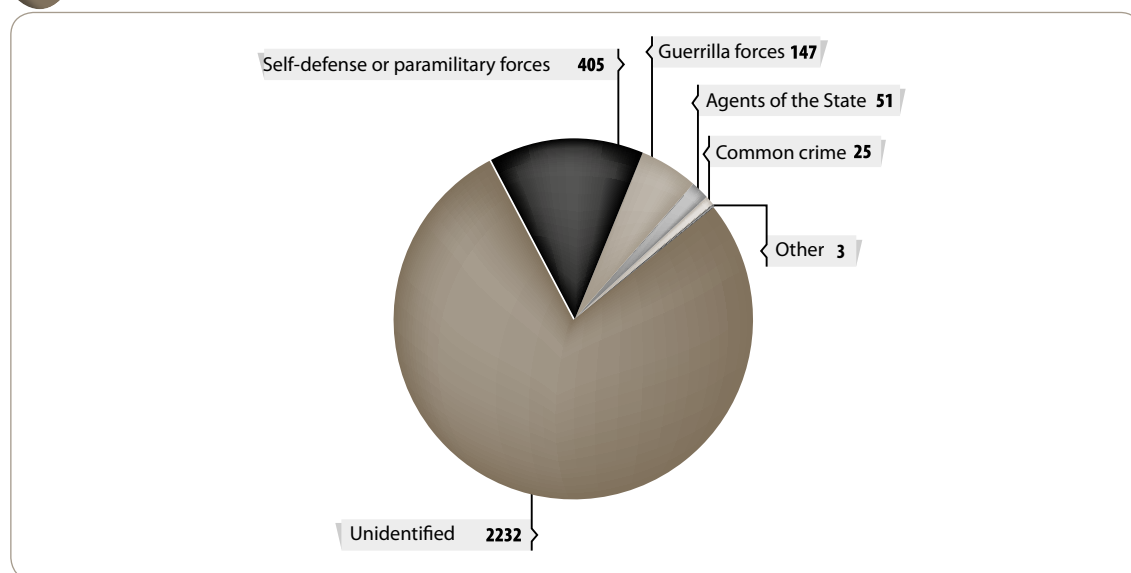
## 2. Major armed groups as perpetrators of killings

Paramilitary groups head up the ranking of alleged perpetrators of killings, as identified in all sources for their respective coverage periods after 1984. They are followed, according to most sources, by guerrilla groups and, in third place, by those described as agents of the State. The data of the ENS, which cover the longest period (1986–2011) with more specific information on victims who were trade unionists, place the respective percentages at 78.11% by unknown assailants, 14.04% by paramilitary forces, 5.09% by guerrilla groups and 1.69% by agents of the State (Figure 4.1).

The data from the Ministry of Public Protection, cited by Echandía Castilla (2010),<sup>2</sup> yield rankings and percentages not dissimilar to those listed above. Out of 1,903 killings reported between 1988 and 2009, 70% were listed as perpetrated by unknown assailants, while 25% were attributed to paramilitaries, 3.26% to guerrillas and 1.37% to agents of the State, leaving 0.37% split between common crime (two cases) and other causes.

**Figure 4.1**

### Alleged perpetrators of killings of trade unionists and unionized workers, 1986–2011



Source: ENS, 2011.

<sup>2</sup> These data are not cleansed or consolidated except from 2000 onward, and for this period they have been incorporated into the data released by the government as the only official data—i.e., those of the ODDH. Echandía Castilla (2010) cites them for years prior to 2000 and uses them as a source in his analysis.



In the study by CINEP (2010), based on its own data, agents of the State rank second on the list of alleged perpetrators and guerrilla groups third, not for homicides specifically—as is the case with other sources—but for all types of human rights violations combined.

The CCJ's data, out of the 744 killings that make up only one part of the violence against this specific population, attribute 53.76% to unknown perpetrators,<sup>3</sup> 36.02% to alleged paramilitary involvement, 6.59% to alleged guerrilla involvement and 3.6% to alleged involvement by the armed forces (a category similar to that of agents of the State).

The CCJ also conducted a study of 269 convictions out of the 290 verdicts that, by its count, had been handed down between 2002 and March 2010 in cases reported by the Office of the Attorney General as involving trade unionists. The verdicts in these convictions offer important information in that

**3** Here the categories "unidentified perpetrator" and "unidentified armed group" from the data of the Colombian Jurists Commission are combined. The CCJ does not claim that its records are exhaustive of the universe of cases from 1986 to 2011 for this type of violence—a universe that, according to the ENS, would consist of 2,863 cases (p. 98).





they set forth the judicial truth established through the investigation and trial. They are limited, however, in that the convictions account for only a small portion of the killings reported in the sources, and they are not a representative sample.

The CCJ found that, out of 335 people convicted (128 in plea agreements), 202 (60.29%) were members of paramilitary groups, 43 (12.84%) were common criminals, 29 (8.66%) were members of guerrilla groups, and another 29 (8.66%) were members of law enforcement (Army and police).

In preparing its report for this project, DeJusticia (2010) evaluated the State's prosecutorial efforts by examining, inter alia, 276 verdicts in cases where the victims were unionists, and found that most defendants—237 out of 400—were members of paramilitary groups (59.25%),<sup>4</sup> particularly the AUC. The findings of this study differ from those of the CCJ's study in the relative ranking of Army and police officers as compared to guerrilla groups.

The DeJusticia study did not classify perpetrators of violence in exactly the same way as CCJ: the former looked at defendants and the latter, at convicts. DeJusticia bases its calculations on "aggregate defendants" and not on individual defendants (the same person might be involved in multiple cases and therefore represent more than one person in the aggregate), while the CCJ based its calculations on individual defendants.

With these caveats, the DeJusticia study found that the number of aggregate defendants who were members of the Army or police (42, or 10.5% of the aggregate) was greater than the number of defendants in the aggregate who were members of guerrilla groups (26, or 9.8%).

Based on the available information—which, as noted, is scant and insufficient—the involvement of agents of the State in these killings is troubling, whether the information comes from the State itself through judicial verdicts or from the other sources.

According to the ENS, 38 of the 2,863 killings were allegedly perpetrated by members of the Army, 7 by police officers, and 4 by members of other organizations, for a total of 49 killings allegedly committed by agents of the State. In the smaller number of cases documented by the CCJ, 27 perpetrators are classified as members of the Army or police.

This phenomenon, to the extent revealed by the sources, is serious enough to be addressed in a separate section later in this chapter.

**Paramilitary groups head up the ranking of alleged perpetrators of killings, as identified in the sources for their respective coverage periods after 1984. They are followed, according to most sources, by guerrilla groups and, in third place, by those described as agents of the State.**

<sup>4</sup> This percentage is based on the 263 out of 400 aggregate defendants found in the verdicts to have belonged to an illegal armed group (DeJusticia, 2010: 41)



Another surprising finding based on data from these sources, particularly from the ENS and the CCJ, is the significant number of killings allegedly perpetrated by guerrilla groups. This is surprising because of the victims' status as trade unionists—which would seem inconsistent with these groups' political discourse, where such discourse exists—and because it contrasts with the muteness of the available literature on killings and other violations by guerrilla groups. The CNAI (2010) has addressed this topic in its work for this project.

Meanwhile, so-called common criminality<sup>5</sup> accounts for a very small share of the killings of trade unionists as classified by sources such as the ENS, and an even smaller share in the data of the Ministry of Public Protection cited by Echandía Castilla (2010).<sup>6</sup> Based on these sources and their data on types of perpetrators, violence against trade unionists cannot be simply explained away as a manifestation of common criminality (crimes of passion, settling of scores, street fights, personal vendettas, muggings, kidnappings for ransom).

The total number of cases involving common criminality is comparatively low: 25 of the 2,863 killings recorded by the ENS, and 2 of the 1,903 killings recorded by the Ministry of Public Protection.

By region, the department of Antioquia (which saw the most killings until 2003) is also where the alleged involvement of paramilitary and guerrilla groups weighed most heavily in the statistics, with paramilitary forces accounting for 12.02% of the killings reported by the ENS, and guerrilla groups for 8.04%. As for union affiliation, the banana-growing sector in Antioquia has the highest percentage of killings attributed to guerrilla and paramilitary forces, at 12.71% and 6.57%, respectively.

Following Antioquia on the list of departments with the heaviest involvement by paramilitary and guerrilla forces are Santander, where paramilitary and guerrilla perpetrators account for 21.96% and 0.78% of the killings, respectively (in Barrancabermeja 5.09% of the killings of USO members are listed by the ENS as having been perpetrated by paramilitary forces); and Valle, where paramilitary perpetrators account for 10% and guerrilla perpetrators for 1.76%. Notably, killings of FECODE and Sintraemcali members in Valle have been attributed to both types of perpetrators.

In Cesar, meanwhile, 19.82% of the killings were allegedly perpetrated by paramilitary forces and 0.86% by guerrilla groups, with FECODE and Astraíndupalma representing a very high percentage of the victims.

### 3. Paramilitary groups as perpetrators

The term “paramilitary” is used in this report to describe groups, funded primarily by drug traffickers and supported by some politicians and military officers, that began arming themselves in the 1980s with the aim or pretext of subduing guerrilla forces, but which routinely committed violations against the civilian population. The core structures of these groups demobilized between 2003 and 2006. The term

<sup>5</sup> The term “common criminality” is used to describe both a type of violence and a type of perpetrator.

<sup>6</sup> As noted in Part Two, statements on the entire period covered by this report, from 1984 to 2011, cannot be based on the government's data source, the ODDH, because it has consolidated records only from 2000 onward.



is also used to describe groups that have continued to commit violations after this demobilization, and similar groups that have been formed since then.

Use of this term has sparked a debate with clear political undertones. This has been true since soon after the phenomenon first appeared, when the Violence Commission of 1987 tentatively dared to put a name to this emerging reality. The ministers in President Virgilio Barco's Cabinet were divided on whether to accept the term "paramilitary," with some fearing that it could lend itself to a recognition of complicity with the military. The president then tried to settle his ministers' semantic debate by proposing the phrase "groups *mistakenly labeled as paramilitary*."<sup>7</sup>

In cases for which information on perpetrators is available, the sources only indicate the general type of perpetrator—guerrilla, paramilitary, drug trafficker, agent of the State, or common criminal—and only rarely do they identify the name of the organization, much less that of the bloc, front or squad. As a result, the number of killings or other violations committed by each group against the members of a particular union cannot be determined or even estimated, especially since no known or alleged perpetrator is identified by the sources in most cases.

<sup>7</sup> The qualifier "mistakenly labeled as" disappeared over time. At first this was because State entities themselves began to identify cases of military complicity for prosecution. Then, other types of complicity—just as conspiratorial in nature, if not more so—would later come to light as well, such as the complicity of politicians, which led to the coining of another term: "parapolitics."



However, between 1997 and 2003 the paramilitary perpetrators went from being concentrated under the inclusive umbrella of the United Self-Defense Forces of Colombia, known by the acronym AUC, to being dispersed among numerous groups, although many of them operate in the same areas formerly occupied by the AUC (Box 4.1).

The organization known as the AUC entailed the operational coordination of many preexisting autonomous groups that in each area were the product of unique, disparate regional histories—a decentralized amalgam with no single chain of command, unlike that which characterized the FARC to some extent.

This federated structure of the AUC, which recognized a hierarchy headed by Salvatore Mancuso after the disappearance of Carlos Castaño, was very different from the variety of groups that proliferated in the same areas immediately afterward. Both the Office of the United Nations High Commissioner



#### BOX 4.1

### 1947: Paramilitary expansion

*In an article titled “Los caminos de la alianza entre los paramilitares y los políticos” [Pathways of the Alliance Between Paramilitaries and Politicians]—published in the book *Parapolítica, la ruta de la expansión paramilitar y los acuerdos políticos* by the New Rainbow Corporation—researcher and analyst León Valencia describes the expansion of paramilitarism in Colombia and the factors that contributed to it. His article is excerpted below:*

The model for expansion was put into practice in the Urabá region between 1995 and 1997, and was later extended to the entire country. In Urabá, Carlos Castaño won his first major battle, and he was able to forge the necessary alliances and secure the acquiescence of the public, which allowed him to rule over the region. In short order he finished off the Patriotic Union, subdued the trade unions and social organizations, and forced the FARC to pull back to the periphery of the region.

By the mid-1990s, the Urabá region was being presented as a model for pacifying the country. The cost in human life had been huge: 1,456 killed in 1996 and 808 in 1997, according

to the human rights observatory under the Office of the Vice President . . . . The hallmarks of this type of political, social and military control over the Urabá region came to be displayed in other regions, revealing the highly rational nature of the paramilitary expansion . . . .

A very similar account of this expansion was provided in 2005 by Iván Roberto Duque, aka “Ernesto Báez,” in a lengthy interview with Mauricio Romero and León Valencia. “Báez” said that throughout 1999 and in subsequent years, the top leadership of the self-defense forces started meeting with regional political leaders, drug traffickers, business leaders



for Human Rights (2006: 11), in its report on the situation in Colombia in 2006, and the Organization of American States' Mission to Support the Peace Process in Colombia (OAS/MAPP) counted 22 such groups in the country in 2006, the year in which the AUC completed its demobilization.

According to the second report of the National Reparation and Reconciliation Commission (CNRR), published in August 2010 and titled *La reintegración: logros en medio de rearmes y dificultades no resueltas* [Reintegration: Progress amid Rearmament and Unresolved Difficulties], the phenomenon of paramilitary groups trended toward growth and expansion between 2008 and 2009, with a combined membership estimated at more than 6,000, although the groups appear to have clustered around six main structures.

The supplanting of the AUC by these groups—and how this development may be related to the shifting forms of violence against union activists—will be addressed later in this report.

and some members of the military who were seeking to collaborate in order to establish paramilitary forces in various parts of the country . . . .

In Medellín, Diego Murillo Bejarano, aka “Don Berna,” won multiple confrontations—over the FARC and the ELN, over the “La Terraza” group, and, lastly, over the Metro Bloc . . . . In Magdalena, the Northern Bloc arrived in 2000 and gained control over all existing paramilitary groups, and meanwhile encountered little resistance in bringing political leaders and local authorities to heel, forming one of the most extensive political alliances ever seen . . . . In Norte de Santander, this arrival occurred in 1998 with the round of killings along the highway between the municipality of Tibú and the Gabarra district, attributed to forces under the direct command of Salvatore Mancuso . . . . The paramilitaries arrived in Meta in July 1998 aboard two charter planes loaded with armed fighters who perpetrated the brutal massacre in Mapiripán, and from there they spread out to multiple municipalities, including the capital, Vil-

lavencio . . . . The paramilitaries arrived in Arauca by way of Tame . . . . In Magdalena Medio and southern Bolívar, the paramilitaries won the war against the ELN and took control in most of the region’s municipalities . . . .

In retrospect, this growth and expansion was truly stunning. In 1998, after their unification, the self-defense forces numbered 6,000 fighters, by the reckoning of Castaño himself. In 2006, when the partial demobilization was carried out as a result of negotiations with President Uribe, the count was 31,000 fighters from 37 groups, who turned over 17,000 weapons.

◇ Excerpted from: Corporación Nuevo Arco Iris. 2007. *Parapolítica, la ruta de la expansión paramilitar y los acuerdos políticos*. Bogotá: Intermedio Editores.





#### 4. Guerrilla groups as perpetrators

As noted in this report, unionists have often been labeled as “guerrillas” as a way to justify the violence against them. One would hardly imagine, then, that in many cases (including 147 killings counted by the ENS, and 73 by the count of the Ministry of Public Protection<sup>8</sup>) unionists have in fact been the victims of guerrilla groups.

This further underscores that the systematic nature of the violence—evidenced by the nature of the violations, their victims, their timing, and their concentration by trade union and geographic area—does not necessarily mean only one perpetrator or type of perpetrator.

Out of the most heavily victimized trade unions, the banana workers’ unions have experienced the most violence perpetrated by guerrilla forces, even more than that committed by paramilitary groups: 90 of the 803 killings reported by the ENS between 1986 and 2011 against members of the banana workers’ unions<sup>9</sup> were allegedly perpetrated by guerrillas, compared to 67 by paramilitary forces.

Moreover, there is reason to believe that the involvement of guerrilla groups is underreported in the sources’ pre-1991 records. The two groups that were in conflict with one another—the FARC and the EPL—in the same areas where the banana workers’ unions were active observed a tacit agreement to conceal their involvement in such acts over the course of their bloody feud (Ortiz, 2007). After the EPL demobilized in 1991, the violations by the FARC and by EPL dissidents against those who had demobilized and their political allies in the unions were much easier to identify.

Although the sources do not make the distinction, the information on the guerrilla presence and activity in Urabá indicate that the FARC’s involvement was divided between its historic 5th Front, created in 1973 as a result of its 4th Conference in 1970, and the so-called Bolivarian Militias, which the FARC began promoting in the 1980s in urban areas of municipalities in Urabá.

Until the EPL’s demobilization in 1991, its involvement was through the Naín Piñeros Gil Column, led by alias “Bernardo Gutierrez.” After demobilization, the splinter group that remained at arms was headed by alias “Francisco Caraballo” and commanded in the Urabá area by alias “Gonzalo.”

FECODE-affiliated teachers’ unions have also been victimized by guerrilla forces, although less so than the banana workers’ unions. ADIDA, the teachers’ union in Antioquia, suffered nine killings allegedly perpetrated by guerrilla forces, out of 340 killings counted by the ENS (2011), and compared to 27 killings allegedly committed by paramilitary forces.

Guerrilla forces have also committed a number of killings and other violations against members of SUTEV (Education Workers Union of Valle) and ASEDAR (Teachers Association of Arauca); and, between

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<sup>8</sup> Data from Echandía Castilla (2010: 5).

<sup>9</sup> The breakdown of alleged perpetrators by union affiliation of the victims is based on data from the ENS’s Human Rights Database (SINDERH). These databases, consolidated from 1986 onward, were designed to make such a distinction in gathering data. A comparison of the various sources, in particular the alternative data sources with the government’s, has not been possible because ODDH does not break down its data by union affiliation.



2008 and 2011, have issued threats against members of EDUCAL (United Teachers of Caldas), SIMANA (Teachers Union of Nariño) and SES (Teachers Union of Santander).

The perpetrators in these cases were various fronts of the FARC and, to a lesser degree, columns of the EPL and ELN, according to maps of the guerrillas' presence in relation to the many municipalities in which the ENS has reported the involvement of guerrilla forces in killings, threats, cases of forced displacement (forced migration) and some kidnappings of FECODE-affiliated teachers.

Unlike the banana workers' unions and FECODE, the USO—the other of the three organizations most frequently victimized in killings and violations—has experienced almost no violence at the hands of

**Another surprising finding based on data from these sources, particularly from the ENS and the CCJ, is the significant number of killings allegedly perpetrated by guerrilla groups.**



Photography: Claudia Rubio, Archive UNDP



guerrilla forces. By contrast, paramilitary involvement in violence against the USO has been significant. Two out of the 116 killings reported by the ENS have, however, been attributed to guerrilla forces: one in Barrancabermeja and one, in 2009, in Arauquita (in the department of Arauca).

Lastly, another trade union whose members have been targeted in killings and violations with significant involvement by guerrilla forces is Asonal Judicial: out of the 47 killings reported by the ENS between 1986 and 2011, six have been attributed to guerrilla forces, and five to paramilitary groups.

## 5. Shifting trends in the violence and its perpetrators after 2003

This report has noted that the number of killings of trade unionists and unionized workers has declined since 2003, even as reports of other, nonlethal forms of violence have remained frequent, including a marked increase in the number of reported threats.

These nationwide trends hold true in most geographic areas and trade unions, particularly in the three unions with the most victims—FECODE, Sintrainagro and the USO—albeit with some variations.

For example, the killings perpetrated against Sintrainagro members in the Urabá region have decreased to the point where they can be said to have nearly disappeared, as have other forms of violence, including explicit threats against individuals. However, the same cannot be said about the union's locals in Magdalena and Ciénaga, or about its divisions in Puerto Wilches (Santander) and Minas in San Martín (Cesar), which cover palm workers instead of banana workers. Acts of violence have been reported against union members in these areas.

By contrast, the decline in the number of FECODE members killed has been less marked, and killings of USO members, despite a noticeable decrease, have not yet been eradicated. In both organizations—the USO and FECODE—the number of reported threats has not decreased. The discussion, then, is about shifting forms of violence, rather than an end to the violence. The same can be said of Asonal Judicial and ANTHOC, which since 2003 have seen the number of killings decrease to 9 and 21, respectively.

Some unions have experienced an increase in killings, counter to the overall decline in this form of violence. ADEMACOR (Teachers Association of Córdoba) and ASEDAR (Teachers Association of Arauca), both of which are affiliated to FECODE, have suffered 22 and 17 killings, respectively, as reported by the ENS during the 2003–2011 period. This is also very much the case for Fensuagro (National Unified Agricultural Trade Union Federation), primarily in Arauca, with 27 killings in the same eight-year period, including six in 2007, eight in 2008, and seven in 2009.

**Meanwhile, so-called common criminality accounts for a very small share of the killings of trade unionists as classified by sources such as the ENS. Based on these sources and their data on types of perpetrators, violence against trade unionists cannot be simply explained away as a manifestation of common criminality.**



ADIDA, the FECODE-affiliated union most frequently victimized over the 27-year period covered by this study, reported 10 members killed in 2010 after having reported none in 2009.

In other unions, while the number of killings has not been as high as those in FECODE, the number of reported threats has increased significantly. This is the case with Sindesena (Public Employees Union of SENA, the National Learning Service), which has seen a spike in the number of reported threats against its members in Medellín since 2007.

The New Rainbow Corporation finds a correlation between attacks by the paramilitary group known as the SENA Front and the increase in union protests against SENA's restructuring process, in which 584 staff members have been laid off (CNAI, 2010: 176–168).

To what extent, then, are the decline in killings and the simultaneous increase in other forms of violence correlated to the shifting nature of the main perpetrators of the violence? Before this question can be answered, we must understand exactly how the main perpetrators—i.e., paramilitary and guerrilla groups—have changed.

These changes may be summarized as follows:

- ◇ The phased demobilization of most of the AUC's blocs between 2003 and 2006 as a result of the Santafé de Ralito talks. Several of these blocs had been present and active in the areas hardest hit by violence against trade unionists.
- ◇ The weakening of guerrilla blocs, fronts and columns after the major upswing they had enjoyed until 2001 (Echandía Castilla, 2010). In some areas, such as the Caribbean coast, this weakening was mainly due to the AUC offensive. In other areas, such as in the Andean region of Antioquia, in coffee-growing regions and in Cundinamarca, it was primarily the result of Army actions.
- ◇ The end or cessation of hostilities between paramilitary and guerrilla forces, and between different guerrilla groups, as a result of the greater stability of some, the weakening of others, or both. The CNAI (2010) and Echandía Castilla (2010) agree that the dynamics of armed groups are such that violence against unionists increases whenever and wherever two or more armed groups remain strong and continue to vie for supremacy. It decreases, by the same token, whenever and wherever one of them establishes control—a point also made by Kalyvas (2000) regarding armed internal conflict in general.

The period in which guerrilla and paramilitary forces nationwide were at their strongest, according to multiple indicators<sup>10</sup>—and waged intense battles for supremacy in various areas—were also the years with the highest numbers of killings and other violations against both unionists in general and the most heavily victimized trade unions, as described in Chapters 4, 5 and 6.

The aim, then, is to examine whether the three aforementioned processes—the AUC's demobilization, the weakening of guerrilla forces, and the end or cessation of hostilities between irregular groups

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<sup>10</sup> Echandía Castilla (2010) cites these indicators, several of them in figures: number and magnitude of self-initiated military operations against government forces, number of members recruited, number of casualties in their own ranks and in those of the opposing armed group, number of municipalities in which they are present and of municipalities in which their presence prevents a steady presence of government forces.



**The term “paramilitary” is used in this report to describe groups, funded primarily by drug traffickers and supported by some politicians and military officers, that began arming themselves in the 1980s with the aim or pretext of subduing guerrilla forces, but which routinely committed violations against the civilian population. The core structures of these groups demobilized between 2003 and 2006. The term is also used to describe groups that have continued to commit violations after this demobilization, and similar groups that have been formed since then.**

in some areas—have played a role in the downward trend in killings against unionists, given that the timing of these developments has coincided, and, if so, whether this suffices to explain the trend.

The first obstacle in seeking such answers in available governmental and alternative sources is, as noted at the start of this chapter, the low percentage of cases in which the type of perpetrator has been identified.

Despite the lack of information, one certainty is that the trade unions that have seen a decline in the number of killings since 2003—which are the majority—have also seen a decrease in the number of killings attributed to groups still referred to here as “paramilitary,” as well as in those attributed to guerrilla groups.

Moreover, the percentage of cases in which the perpetrators are unidentified or unknown has not increased significantly, except in 2004 and particularly in 2005; such cases, as reported by the ENS, accounted for 94.45% of all killings nationwide against trade unionists in 2005. This record percentage of cases involving unknown perpetrators may have stemmed from confusion over the emergence of new groups and the disappearance, at least organizationally, of the best-known forces, which were the AUC.

The proportional similarity between the overall decline in killings of unionists since 2003 and the decline in those attributed to the new paramilitary groups and to guerrilla forces indicates that the decrease in the number of killings attributed to these two types of perpetrators has indeed played a role in the overall downward trend in the number of unionists killed.

However, it seems inadequate to attribute the changing nature of the violence over the eight-year period in question (2003–2011) solely to the three processes related to paramilitary and guerrilla forces.

Institutional and social developments must also be considered carefully, as they may entail fewer comparative advantages for these groups—e.g., the numerous trials related to the “parapolitics” scandal and their initial outcomes, or the statements given by paramilitary leaders under the provisions of Law 975 of 2005, which have made complicity with such groups less concealed and more visible.

Changes in the trade unions and in their strategies for union activity, as well as international pressure, seem to be other factors behind the decline in the number of killings.

The changes in the unions and their strategies are evidenced, for example, in the case of Sintrainagro: the decrease in violence against its members in Urabá since 2003 was not experienced by other vic-





tims in the same area, who remained prey to paramilitary violence in areas where the AUC's Banana Bloc and Elmer Cárdenas Bloc, headed by alias "HH" and alias "El Alemán," respectively, had been active.

By contrast, the same union's locals in the banana farms of Ciénaga (Magdalena) and the palm plantations of Puerto Wilches (Santander) were victimized during the same period. The union has had to wage hard-fought, lengthy strikes against intransigent employers acting in much the same way as did those in Urabá in the 1970s and 1980s, when workers seeking to unionize had to endure persistent acts of violence, pushing them to accept the support of guerrilla forces.

Shifts in the trade unions may have played a role in the decrease in violence against their members, in ways ranging from changed strategies and improved communication with the surrounding community about their aims, to the outsourcing of labor formerly performed by union members, a loss of density due to disaffiliation, and sometimes fear-induced paralysis.

International pressure is also a factor that cannot be underestimated. For a number of years now, international trade union federations and union organizations in various countries, in solidarity with Colombian organizations, have worked to raise awareness about the violence and place the topic on the agenda of political parties and governments in their bilateral relations with Colombia, thus providing an additional possible deterrent for the armed groups.

## **6. The question of accomplices and instigators**

Clearly, criminal liability for violations should not end at the visible hierarchies of organized armed groups. Complicity in or the instigation of violations from outside the organized armed groups, and in association with them, represents an essential part of the responsibility for these crimes. Full scrutiny of such involvement is an ethical and institutional imperative.

Accomplices and instigators have come from both inside and outside the institutional framework, and from both the public and private spheres.

We turn our attention now to the private sector: Section 9 of this chapter will address the public sector—i.e., agents of the State.

One of the categories of perpetrators identified by the sources—in addition to irregular armed groups, common criminals, and agents of the State (from various institutions)—is that of

**According to the second report of the National Reparation and Reconciliation Commission (CNRR), published in August 2010 and titled *La reintegración: logros en medio de rearmes y dificultades no resueltas* [Reintegration: Progress amid Rearmament and Unresolved Difficulties], the phenomenon of paramilitary groups trended toward growth and expansion between 2008 and 2009, with a combined membership estimated at more than 6,000, although the groups appear to have clustered around six main structures.**



“employers.” Only two killings reported by the ENS are listed as having been perpetrated by “employers.”

However, the accomplices of criminal organizations and the instigators of violations—wherever they may be, in the public or private sector—also must be identified.

In recent years prosecutors, courts and judges have made progress in identifying politicians who have acted in complicity with paramilitary forces. Complicity with guerrilla forces has been identified in fewer cases, and is perhaps less substantial. A surprising number of verdicts have already been handed down against prosecuted politicians, including members of Congress.

It should be noted that this does not refer specifically to violence against trade unionists, but rather in general to complicity with paramilitary groups, who have perpetrated violence against other populations as well.

The same diligence with which politicians' complicity has been exposed should also be used to identify other accomplices and instigators in the private sector, where progress remains poor. In the sources, even in the most critical ones, this information is also scarce.

If we look back at the origins of the paramilitary groups financed by drug-trafficking operations since the 1980s, the complicity of business figures other than drug traffickers was just as important as that of members of government forces and politicians.



In some cases, cattle ranchers—though not properly classified as representatives of the business sector, but rather as business people, nearly all of them devoted to investing and trading in land and cattle—are known to have combined these operations with drug trafficking.

Among the well-known cases are that of Iván Roberto Duque, president of ACDEGAM (Ranchers and Farmers Association of Magdalena Medio), who began as an accomplice and supporter and later became an important member of the paramilitary forces under the alias “Ernesto Báez”; that of Hernán Giraldo Serna, a cattle rancher in the coastal region who became the leader of the AUC’s Resistencia Tairona Front; and that of landowners such as the Castaño Gil brothers, Salvatore Mancuso, and Rodrigo Tovar Pupo, aka “Jorge 40.”

It is well documented that many businessmen enthusiastically helped fund these groups, led by drug traffickers starting in the 1980s, primarily to protect themselves from kidnapping and take justice into their own hands against guerrilla forces that carried out kidnappings. The name of one prototypical group, Death to Kidnappers (MAS), is highly telling.

In the latter half of the 1990s, the private surveillance and security cooperatives known as CONVIVIR, covered by the provisions of Decree 356 of 1994, were an important vehicle for the founding and development of such groups, especially in Antioquia, Córdoba and Magdalena Medio. The aforementioned businessmen who would later become leaders of the AUC made good use of them.

Cattle ranchers—who were the businessmen most vulnerable to kidnapping in areas of guerrilla activity—are the ones most frequently cited as private-sector accomplices of paramilitary forces, where such information exists. This involvement can be explained not only by their vulnerability, but also by the nature of longstanding traditions in Colombian cattle ranching, the historical relationship between land and power, and the concentration of land ownership—topics that lie beyond the scope of this report and are examined more closely in UNDP’s 2011 National Human Development Report titled *Colombia rural. Razones para la esperanza* [Rural Colombia: Reasons for Hope], which addresses the land question in Colombia.

Of gravest concern is the fact that an organization initially created to curb kidnappings through methods just as criminal as those of the kidnappers, if not more so, ended up victimizing people who had nothing to do with the guerrillas’ kidnappings, including trade unionists.

This report, in Chapters 1 and 2, has already laid the basis for unraveling the complexity of this logic.

As a practice, stigmatization must be rejected. To label trade unionists as guerrillas is as deplorable as attributing paramilitary proclivities to employers or to any other sector.

**This report has noted that the number of killings of trade unionists and unionized workers has fallen since 2003, even as reports of other, nonlethal forms of violence have remained frequent.**



**The CNAI (2010) and Echandía Castilla (2010) agree that the dynamics of armed groups are such that violence against unionists increases whenever and wherever two or more armed groups remain strong and continue to vie for supremacy.**

This does not mean failing to acknowledge that private interests have been at stake in acts of complicity and instigation, and that some individual employers and companies have sought and obtained, for their own interests, the services of paramilitary forces in committing violations.

Examples include the prosecution of two Barranquilla businessmen, the Hasbúns, in Urabá; the cases in the United States against Chiquita Brands International, a multinational corporation that also operated in Urabá; the Drummond case; and the payments made by some oil companies to guerrilla and paramilitary forces.

## **7. Cases of companies under scrutiny<sup>11</sup>**

A court in the U.S. state of Florida ruled that Chiquita Brands International—since 1985 the successor to the United Fruit Company, which had been the employer of those killed in the infamous “banana plantation massacre” in 1928—made sizable financial contributions to the FARC from 1991 to 1996 and to the

AUC from 1997 to 2004. By 2007 the company acknowledged that it had made periodic payments to the AUC totaling US\$1.7 million, but the company was able, after paying a fine, to negotiate a plea bargain to avoid prosecution against its executives, arguing that the payments were made out of necessity and that no benefit was obtained in return (*La Silla Vacía*, 2011).

The National Security Archive of the United States later published 5,500 declassified internal Chiquita memorandums that brought more details to light (*La Silla Vacía*, 2011). These documents may prove that Chiquita’s collaboration with the FARC and later with the AUC was not simply a matter of necessity, but that Chiquita actively called on one irregular group or the other to guard the company’s assets and to exert pressure and control over its workers (CINEP, 2010).

In addition to the court case in which Chiquita was shown to have made payments to irregular groups that were human rights violators, another lawsuit against the company is pending in the United States, brought by families in Urabá who claim to be victims of Chiquita’s sponsorship of the AUC.

Some of the declassified memorandums show how part of the money found its way to the AUC through a CONVIVIR cooperative, La Tagua, in a process directed by the general who commanded the Army’s 17th Brigade based in Carepa (Antioquia). As noted earlier in this chapter, CONVIVIR played an important role in the formation of the groups that would later become part of the AUC’s Northern Bloc.

<sup>11</sup> Most of these cases and descriptions are based on the report by CINEP (2010), which used methods of qualitative analysis to interpret its own data as well as data from other sources.



What is known as the “Drummond case” is a typical example of antiunion motives (a topic addressed in Chapter 11) and of violence against union leaders that was planned and instigated by employers in response to union actions with the aim of silencing the union.<sup>12</sup>

The victims were the president and vice president of Sintramienergética, a union that represents workers employed by Drummond, which owns coal-mining operations at the Pribbenow mine in the department of Cesar. The two union leaders were forced off a bus on the Pan-American Highway in the municipality of Bosconia and killed on 12 March 2001 by the AUC.

Three people have been convicted for this double murder, including alias “Tolemaida,” a mid-level leader of the AUC’s Northern Bloc. The security chief for Industrial de Servicios y Alimentación (ISA) was arrested in July 2010, and the person charged with orchestrating the crime through the AUC was finally arrested on 6 September 2010. Jaime Blanco Maya—the owner of ISA, a Drummond contractor—was said to have masterminded the killings because of the union’s complaints over the food services provided by his company.

## 8. Companies whose workers have been victims of violence

A number of companies have seen a large number of their unionized workers become victims of killings or other human rights violations committed by unknown perpetrators or, in cases where alleged perpetrators are identified, by paramilitary forces first and foremost, more specifically the AUC.

This section looks at the cases of Nestle and Coca-Cola—whose workers were members of Sinaltrainal (Union of Workers in the Food and Related Industries)—as well as the palm and cement companies.

Labor and human rights organizations call for the culprits in these cases to be identified, including the “operational leaders” of any criminal organizations that have perpetrated such crimes, as well as any accomplices and instigators.

Obviously, the mere fact that a large number of unionized workers at a particular company have been victims does not mean that the company is responsible or complicit, unless evidence to this effect is available for judges to evaluate and use to establish judicial truth—a truth that upholds the rights of the victims and their unions first and foremost, but also upholds the rights of the companies that deserve to have their name cleared of any suspicion.

One such company is Nestlé de Colombia, a subsidiary of the Swiss multinational; 12 of its workers were among the 29 members of Sinaltrainal killed between 1984 and 2011. Gustavo Gómez, a union leader who worked at Comestibles La Rosa, a subsidiary of the consortium, was the last of these workers to be killed, on 21 August 2009 in Dos Quebradas (Risaralda).<sup>13</sup>

<sup>12</sup> On the Drummond case, see *Semana* magazine, 7 September 2010. The verdicts and case files were not accessed directly.

<sup>13</sup> Information on Sinaltrainal was taken from CINEP’s report, regarding unionized Nestle workers (2010: 209–216) and unionized Coca-Cola workers (2010: 216–222).





**The period in which guerrilla and paramilitary forces nationwide were at their strongest, according to multiple indicators—and fought hard for supremacy in various areas—were also the years with the highest numbers of killings and other violations against both unionists in general and the most heavily victimized trade unions.**

Cicolac Ltda. and Comestibles La Rosa (headquartered in Dos Quebradas, Risaralda) have been the Nestle companies that have laid off the most workers, including union leaders (CINEP, 2010). The strikes against these companies in response to the layoffs have also been the lengthiest, and their workers are most heavily represented among the 12 Sinaltrainal members who have been killed (CINEP, 2010). Other Nestle companies where strikes have been waged are Fruco S.A., Nutrinal, and Purina S.A.

Sinaltrainal, which represents the workers at all these companies, was started in Bugalagrande, won legal recognition in 1982 and joined the CUT upon its founding.

When the 12 killings of Sinaltrainal members are broken down by year, the highest numbers occurred in 1996 and 2005, with four each. Killings of trade unionists peaked in 1996, both nationwide and in the hardest-hit unions. By contrast, the killings in 2005 ran counter to the overall trend, as described in this report, of a decline in the number of homicides since 2003.

The sources have identified a new paramilitary group as an alleged perpetrator of violence in the last five years: the “Águilas Negras” (Black Eagles).

The unfortunate guerrilla attack on Cicolac’s facilities in Valledupar on 14 October 1998 complicated matters for the union, even though at the time the union joined forces with the company in defending the integrity of the plant. In September 2003, however, Cicolac laid off 99% of its 400 workers at the Valledupar plant (CINEP, 2010). This move was a precondition of the company’s sale to Dairy Partners Americas Manufacturing Colombia Ltda. (DPA), which switched its hiring practices to temporary contracts, thereby rendering the union obsolete. Two years later, in 2005, a local leader of the now-defunct union was killed.

Coca-Cola is another multinational company whose workers, as members of Sinaltrainal, have fallen victim in high numbers to killings and other violations at the hands of paramilitary forces or unknown perpetrators.

Guerrilla attacks on distribution trucks in retaliation for the company’s refusal to bow to extortion have apparently added to the human rights violations allegedly perpetrated by paramilitary forces against unionized Coca-Cola workers (CINEP, 2010) who have waged strikes largely in response to heavy layoffs at various plants.

In the fliers that have appeared before the killings—such as those from the AUC’s Calima Bloc, threatening unionized workers at the Palmira plant—the paramilitary forces have resorted to the well-worn stereotype of labeling unionists as “guerrillas.”



The bottling company's locations where workers have suffered the most killings also coincide with the locales hardest hit by the killings targeting Colombia's most heavily victimized organizations: the USO, Sintrainagro and FECODE. These cities are Barrancabermeja and Carepa (site of Coca-Cola's headquarters in Urabá), and these two regions—Magdalena Medio and Urabá—have seen some of the heaviest fighting between guerrilla forces and the AUC over control of territory and villages.

After Barrancabermeja and Carepa, other locales that have seen killings of Sintrainagro-affiliated Coca-Cola workers have been cities where the conflict between guerrilla and paramilitary forces has escalated, especially since the latter half of the 1990s: Cali and Palmira, in Valle del Cauca; Cúcuta and Bucaramanga, in Santander and Norte de Santander; and Barranquilla, Cartagena, Montería and Valledupar, in the Caribbean coastal region (Echandía Castilla, 2010).



Photography: Courtesy Cinep.



## 8.1 Workers at palm-growing companies

Cases involving workers at palm-growing operations must also be resolved by the judicial system in order to uphold the right of both the victims and the companies to know the truth.

**Changes in the trade unions may have played a role in the decrease in violence against their members, in ways ranging from changed strategies and improved communication with the surrounding community about their aims, to the outsourcing of labor formerly performed by union members, a loss of density due to disaffiliation, and sometimes fear-induced paralysis.**

These workers—who belong to such unions as Astraindupalma (Indupalma Workers Association) and its affiliate Sintraproaceites (National Union of Workers in the Cultivation and Processing of Oils and Vegetables), Sintrainagro, and Sintrapalmas (Palm Oil Workers Union)—have frequently been victimized in Puerto Wilches (Magdalena Medio region, in Santander department) and San Alberto (Magdalena Medio region, in Cesar department). In cases for which perpetrators have been identified, 104 killings and 119 other violations reported by CINEP (2010) have been largely attributed to paramilitary groups, especially the South Cesar Self-Defense Forces, which has been active in both departments.

The years with the highest numbers of killings and violations were 1988 (13 killings), 1990 (13 killings), and 1994 (11 killings).<sup>14</sup> The period from 1986 and 1990 saw the heaviest concentration of killings, according to the source cited, with a total of 35 killings.

The palm company with the most workers killed, disappeared or otherwise victimized is Industrial Agraria La Palma (Indupalma S.A.), founded in 1961. On 15 August 1977, on the third day of a strike by the union, M-19 guerrilla group kidnapped Hugo Ferreira, longtime manager of the company.

Other palm companies—whose farmlands, along with those of Indupalma, by 1988 covered an area of 14,000 hectares spread across municipalities in Santander and Cesar—include Promociones Agropecuarias Monterrey (in Puerto Wilches, Santander), Las Brisas and Bucarelia (in Puente Sogamoso, Santander), Palmeras de la Costa (in El Copey, Cesar), Palmas Oleaginosas Hipinto, Hipilandia, and Palmeras del Cesar (in San Martín, Cesar). Workers at some of these companies have been victims of violence.

According to the companies' own reports, the late 1980s and the 1990s were a difficult time for them because, in addition to outdated technology, they faced competition from imported products as a result of measures to open markets starting in the late 1980s.

Indupalma's executives maintained that these difficulties were exacerbated by onerous collective bargaining agreements signed with the union after the aforementioned 1977 kidnapping of its manager. According to CINEP (2010), before the kidnapping the company had taken an unyielding stance toward the union

<sup>14</sup> This and subsequent paragraphs on the palm workers' unions are based on CINEP's report (2010: 188–208).



and carried out antiunion activities, but it had also been attacked by guerrilla forces. The 1972 killing of a company official was attributed to the guerrillas.

After a period of relative acquiescence to union demands from 1978 through the 1980s, new management at Indupalma—and coincidentally at other companies as well—began to see the need for restructuring, which often entailed laying off workers or replacing permanent employees with temporary ones. This prompted the palm workers' unions to wage strikes and, when paramilitary forces and unknown perpetrators responded with killings and other violations, numerous strikes were called to protest these actions as well.

In 1990 alone, according to CINEP (2010), the palm workers' unions carried out nine strikes against the violence and in support of human rights; the violence against them, in turn, grew worse.

Not until 2003, as in most Colombian trade unions, did the number of killings of palm workers begin to decline substantially. The 2003–2011 period saw no more than one killing per year, and in some years there were none. Yet union activity has clearly declined, with very few strikes reported by CINEP during this period.

## 8.2 Workers at cement and construction companies

Cement and construction companies are among those whose workers have been most heavily victimized, especially in the 1980s and 1990s.

The two cement companies most affected by violence committed against their workers by paramilitary and unknown perpetrators have been Cementos El Cairo, mentioned earlier in this report for the infamous Santa Bárbara massacre carried out by members of the Army in 1963; and Cementos del Nare, in the heart of Antioquia's Magdalena Medio region, the successor to the first cement operation founded in 1933 in the district of Puerto Nare (now a municipality) under the name Mármoles y Cementos del Nare. Most of the victims in the cement industry since 1986 have been workers at the latter company.

At Cementos del Nare a union named after the company was founded in 1945, and its members accounted for nearly 90% of the company's workers, a rate unusually high among Colombian trade unions. Until 1959 it was affiliated to the UTC, which was heavily influenced by the Catholic Church.

The union merged with others in 1960 to form the National Federation of Construction, Cement and Construction Materials Workers (Fenaltreconcem), which in turn was affiliated to the Antioquia-based FEDETA. This union leaned politically toward the pro-Soviet Colombian Communist Party (PCC) and in 1964 joined the CSTC, a Communist-oriented confederation founded that year. Also joining Fen-

**Clearly, criminal liability for violations should not end at the visible hierarchies of organized armed groups. Complicity in or the instigation of violations from outside the organized armed groups, and in association with them, represents an essential part of the responsibility for these crimes. Full scrutiny of such involvement is an ethical and institutional imperative.**



**In recent years prosecutors, courts, and judges have made progress in identifying politicians who have acted in complicity with paramilitary forces. Complicity with guerrilla forces has been identified in fewer cases, and is perhaps less substantial. A surprising number of verdicts have already been handed down against prosecuted politicians, including members of Congress.**

atraconcem was the Cementos El Cairo union at the time of its 1963 strike, during which the aforementioned massacre took place.

The 1960s, 1970s and 1980s were a time of many labor conflicts for these unions, although no more killings occurred after the massacre.

In the 1980s, however—after Fenaltraconcem had been superseded by the Construction Materials Industry Workers Union (SUTIMAC), which began to combine union activity with leftist political activity through the Patriotic Union (UP)—the Puerto Boyacá paramilitary group, led by Gonzalo Rodríguez Gacha, appeared in Puerto Nare in 1986 to oppose the union's efforts and to threaten and kill SUTIMAC members.

Meanwhile, the guerrilla forces began interfering, to their misfortune, in the actions of Fenaltraconcem in the 1970s, according to CINEP (2010).

The incident that signaled the preeminence of paramilitary forces in Puerto Boyacá was the December 1986 killing of Cementos del Nare's union president, who was a member of SUTIMAC and a Communist member of the city council. He was forced off a bus and executed.

Killings of SUTIMAC members increased sharply after that. Besides being unionists, all of the victims were also local politicians—almost all of them city council members—who belonged to the Patriotic Union (CINEP, 2010).

The 1986–1990 period alone saw 25 killings. This number includes two boards of directors of the Cementos del Nare union that were completely wiped out. Twenty-eight people were killed between 1991 and 2001. The years that saw the most killings were 1987 (6), 1988 (9) and 1993 (7).

CINEP (2010) found that union activity declined significantly in the cement sector in the 1990s, and that the number of workers in SUTIMAC decreased as well. The extent to which this decrease was the result of violent acts by unknown or paramilitary perpetrators remains to be determined, as does the extent to which it may have resulted from drastic changes in the company's staffing and hiring practices, with a shift toward temporary contracts, often through outsourcing.

According to CINEP (2010), after four of the union's members were killed in 2000, no more than one or two were killed per year after that, and none since 2007.

It is important for SUTIMAC, the victims' families, and the aforementioned cement companies that the judicial system prosecute such cases to uncover the truth; convict the guilty; provide reparation to victims, their families and their unions; and, above all, restore their dignity and good name, while clearing the companies of any unfounded accusations of involvement.





Also in this decade, the cement sector has witnessed one of the most interesting cases of employer respect for union autonomy and activity, attentiveness to the union's proposals, and proper labor relations. This is the case of the companies in Grupo Argos, which is part of the business consortium known as Sindicato Antioqueño.

## 9. Involvement of agents of the State in violations

As noted earlier in this chapter, 49 of the 2,863 killings between 1986 and 2011 are listed by the ENS as having been perpetrated by officials or agents of various State institutions.

The data from this alternative source cannot be properly compared to those of the government's source, the ODDH. This is true even for the years since 2000, when the ODDH was created, because this type of consolidated data is not available in the ODDH.

Although the number of killings perpetrated by employees of the State is lower than the numbers attributed to paramilitary and guerrilla forces, it is still high in view of what would be expected of State officials, whether military or civilian.

The geographic areas where agents of the State have been most heavily involved as alleged perpetrators of killings are, according to the ENS, the department of Antioquia with 13 killings, Putumayo with six, and Santander and Meta with four each.

By institutional affiliation, the Army heads up the list of alleged perpetrators of killings (38), with the police (7) a distant second.

As previously noted, the support of some Army and police officers was an important asset to the paramilitary groups from the time they first emerged in the early 1980s, as was the funding and organization provided by the drug cartels. Some of these officers, including a few generals, have been prosecuted—although not as many, it would seem, as should have been.

International organizations such as the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights have also investigated a number of cases and, in some of them, have ordered precautionary measures or issued convictions.

The Colombian government, meanwhile, acting on behalf of the entire State, has expressed its willingness to support any investigations leading to the conviction and sentencing of State employees involved in acts that have violated the human rights of trade unionists.

**In the latter half of the 1990s, the private surveillance and security cooperatives known as CONVIVIR, covered by the provisions of Decree 356 of 1994, were an important vehicle for the founding and development of such groups, especially in Antioquia, Córdoba and Magdalena Medio. The aforementioned business owners who would later become leaders of the AUC made good use of them.**



Photography: Courtesy CINEP.

## 9.1 The urgent need to identify those responsible

There is a pressing need for the State to identify and punish, first and foremost, those who are its own representatives. In this all-important task, the government's own sources of data—in conjunction with others such as the ENS, the CCJ, CINEP, trade unions, and international sources—can contribute their wealth of documentation to the mission led by the Office of the Attorney General and the judges.

The alleged involvement of agents of the State in violations against trade unionists and unionized workers has sometimes entailed their direct participation as assassins or masterminds, while other cases entail complicity, support, concealment, or provision of information in violations carried out by irregular armed groups.

Sometimes these two types of behavior have been combined. Some violations have been carried out by military or police forces in conjunction with paramilitary groups aided by the complicity of these agents, as discussed in Chapters 8 and 9 and based on data from the New Rainbow Corporation and CINEP.

Due to their nature, acts of complicity are less frequently reported in the sources than direct violations, or they are reported as rumors. This leads to underreporting in some cases and overreporting in others. Of course, it is the duty of prosecutors and judges to uncover the truth.



## 9.2 Links between State institutions and irregular groups

One particularly troubling case involves complicity and collaboration between the AUC and senior officials at the DAS (Administrative Department of Security)<sup>15</sup> between 2001 and 2006 along the Caribbean cOASt.

Rafael Enrique García Torres, former head of information technology at the DAS, submitted a statement as part of the case against alias “Jorge 40” for the killings of university professor Alfredo Correa de Andreis and his bodyguard. This testimony contained valuable information:

I was told by officials from the Analysis Office that lists of union leaders, leftist activists and university professors and students had been given to self-defense groups in the Northern Bloc so that they could carry out attacks on them. I was told that there were DAS officials who apparently participated in this extermination campaign and were responsible for the killing of professor Alfredo Correa de Andreis in Barranquilla. I was a witness when Jorge Noguera [DAS director at the time] requested the AUC’s approval for the appointment of Rómulo Betancourt as DAS director in Bolívar, and it is said that he was behind this extermination campaign. The lists were passed on to the AUC by Jorge [Noguera] through Álvaro Pupo, a relative of Rodrigo Tovar Pupo, aka “Jorge 40,” commander of the Northern Bloc. I saw Álvaro Pupo in the director’s office several times.<sup>16</sup>

Correa de Andreis taught at Universidad del Atlántico, Universidad del Norte, and Simón Bolívar University; he was also a member of Asoprosimbol (Simón Bolívar University Professors Association) and had served as an adviser for land claims in the district of Palermo, municipality of Sitionuevo (Magdalena). He had been accused of belonging to the 34th Front of the FARC’s Caribbean Bloc. On the basis of this accusation—which was false, according to the judge—the DAS had detained him a few weeks prior to his death.

The false nature of this accusation—and the purpose it served, in a collaborative effort between directors at the government agency and criminals from the illegal armed group—was clearly set forth in the judge’s verdict. This falsehood, moreover, illustrates the effort to criminalize union activity and related political, civic and social activity, an effort carried out against a victim by irregular armed groups, in conjunction with their accomplices and instigators (who in this case were from the State), in a futile attempt to justify the killing.

**Of gravest concern is the fact that an organization initially created to curb kidnappings through methods just as criminal as those of the kidnappers, if not more so, ended up victimizing people who had nothing to do with the guerrillas’ kidnappings, including trade unionists.**

<sup>15</sup> This agency, under the Office of the President, was established in 1960 (transformed from the former Colombian Intelligence Service, or SIC, which itself was created in 1953) and disbanded by presidential decree on 31 October 2011.

<sup>16</sup> This testimony was included in the case file for this trial (pp. 130–140, vol. 4), which ended on 30 March 2011 with the conviction (reached by plea agreement) of Rodrigo Tovar Pupo, alias “Jorge 40,” in a verdict handed down by Judge 11 of the Bogotá Specialized Criminal Circuit for Backlog Reduction. García’s testimony is mentioned by the judge on page 32 of the verdict: “The fact that this information was gathered by the intelligence agency [DAS] and leaked to AUC’s Northern Bloc was an aspect of García’s testimony that was confirmed by other evidence in the case.”



In her verdict, the judge unmasked this scheme as part of her task of establishing the judicial truth:

... This conduct [referring to that of the defendant, alias "Jorge 40"], carried out with support from the organized apparatus of power, is closely related to the motive behind the killing of the professor, whose academic and social work brought him into contact with displaced populations. Such work is prone to clashes with the interests of paramilitary groups, inasmuch as claims such as those seeking restitution of lands taken from displaced farmers deny the legitimacy of land ownership wrongfully acquired by armed actors. As a result of this work, he was accused of being a guerrilla supporter and, with the help of the State intelligence agency (DAS), was falsely accused of being an ideologue of the FARC (verdict, page 23).

This is described in Chapter 11 of this report as the antiunion motive manifested through the stigmatizing stereotype of "guerrilla unionist" or "insurgent prejudice."

Jorge Aurelio Noguera Cotes, DAS director from 2002 to 2005, was sentenced by the Supreme Court, in an unappealable decision, to 25 years in prison for his responsibility in the murder of Correa de Andreis, committed through a conspiracy with the AUC's Northern Bloc.<sup>17</sup>

The lists mentioned in the testimony quoted above, in the verdict by Judge 11, and in the Supreme Court's decision are known as the "DAS blacklists," as described in the 8 April 2006 and 12 July 2009 issues of *Semana* magazine, or as "Noguera's blacklist," thus termed by U.S. Congressman George Miller in referring to the DAS director who was directly responsible.

The lists contained 20 names—mostly of trade unionists, some of leftist leaders, and a couple of professors, one of which was precisely that of Correa de Andreis, university professor and trade unionist.

Out of the other unionists who have been victimized, six were members of Sintraagrícolas (Agricultural Workers Trade Union) in the department of Atlántico—of whom four had been killed and dismembered by the time the Office of the Attorney General became aware of the list, one had disappeared, and the other had been threatened. Three of the victims were members of ANTHOC<sup>18</sup> in Atlántico (one of them the national vice president). Both Sintraagrícolas and ANTHOC are affiliated to the CUT.

Sintraagrícolas is a trade union made up of farmers struggling to reclaim their land in the Caribbean cOAStal region. Of the four killings of union members who were on the DAS lists, only one is reported in ENS data. Among the first to be killed were the union president in 2001 and his successor in 2003.

ANTHOC, at the national level, opposed Law 100 of 1993 and has continued to oppose reforms that it sees as promoting privatization, as well as plans to restructure government entities that provide health services. At the local level, it has mobilized in cOAStal cities such as Barranquilla, Montería and Valledupar against acts of corruption and the misappropriation of public resources at EPSs (health care promotion enterprises) and IPSs (institutional health care providers) by politicians and paramilitary forces for private gain.

<sup>17</sup> Criminal Appeals Division of the Supreme Court, Justice Alfredo Gómez Quintero writing for the court, document 331, 14 September 2011.

<sup>18</sup> The union was originally named the National Association of Colombian Hospital Workers and is now the National Trade Union Association of Workers and Public Servants in Public Health, Comprehensive Social Security and Complementary Services.



The New Rainbow Corporation reports that 40 ANTHOC members from the Atlantic coastal region received death threats between 2001 and 2006 and that, of those, 20 had to relocate elsewhere in the country and five were forced into exile (CNAI, 2010: 219).

Another three people whose names appeared on the DAS lists were killed in Ciénaga between 2004 and 2006. They were activists for a land rights movement in the district of Palermo, municipality of Sitionuevo (Magdalena), where a massive project to build a port as an alternative to Barranquilla was being discussed at the time. Professor Correa de Andreis, who was also killed, had been involved in these victims' social struggles.

The fateful lists shared by the DAS, a government agency, with the AUC, a criminal organization with a record of human rights violations, were revealed not only in the testimony of the former head of information technology for the DAS, but also in a file titled “Información Amigo DAS,” as noted by Judge 11 in her verdict.

This file was seized in 2006 from alias “Don Antonio,” leader of the José Pablo Díaz Front of the AUC's Northern Bloc in Atlántico and—according to multiple statements submitted in this and other cases—a personal friend of José Miguel Narváez, DAS deputy director of intelligence in 2005. Narváez, in turn, enjoyed the full trust of director Jorge Noguera. The file also contained the names of other trade unionists targeted for violations in joint operations by the DAS and the AUC.

According to the uncovered files, Noguera and Narváez had created a group called Special Intelligence Group 3 (G3) within the DAS. This irregular unit did not even appear on the agency's organizational chart and was disbanded when its two cofounders left the DAS in 2005; its coordinator, however, remained at the DAS until he was finally removed in 2008.

Narváez has also been implicated in other cases, such as the killing of journalist Jaime Garzón and the kidnapping of former senator Piedad Córdoba, both of which occurred in 1999 and have since been identified as the work of the AUC. Statements given by the AUC's senior leaders reveal their close relationship with the former deputy director of intelligence and the role he played vis-à-vis the AUC even before assuming his post at the DAS.

In a pattern seen in multiple cases involving these lists, many victims were first arrested by the DAS and later killed, either by the AUC or by DAS detectives with help from the AUC. This happened to both Correa de Andreis, the university professor, and unionist Adán Alberto Pacheco Rodríguez of Electricaribe. The former was arrested by the DAS in June 2004 and killed on September 17 of the same year; the latter, arrested in April 2004 and killed in May 2005.

**Private interests have been at stake in acts of complicity and instigation, and some individual employers and companies have sought and obtained, for their own interests, the services of paramilitary forces in committing violations.**





### 9.3 Making sense of these ties

However, such instances of common ground and mutual complicity between some agents of the State and criminal groups that commit human rights violations have not been unique to the DAS or to the 2001–2006 period. Similar cases involving Army soldiers and officers at various times during the period covered by this report (1984–2011) have been uncovered as well.

As noted in Part Two, a number of trade unionists in the USO who were killed by unknown or paramilitary perpetrators had previously been detained by the Army and, in some cases, even prosecuted (CINEP, 2010).

In some cases, then, agents of the State have undoubtedly been complicit with criminal groups, specifically paramilitary groups. Though more rare, cases of complicity with guerrilla forces have occurred as well, most often at the local level, as in the massacre by FARC militia members in the La Chinita neighborhood of Apartadó (Antioquia), for which municipal officials were among those charged.

The human rights division of the Office of the Attorney General has also initiated disciplinary proceedings, in cases dating from the 1980s, against then-members of the Department of Citizen Order (DOC) in Envigado for human rights violations committed in complicity with the Medellín cartel. A more recent case involves the well-publicized trial against the director of the prosecutors' office in Medellín for complicity with the so-called Envigado Office and the units under the command of alias "Don Berna."<sup>19</sup>



Photography: Leonardo Liberman Lifschitz. Courtesy ENS.

In no way can these cases of complicity, proven or alleged, be used to conclude that the State had a specific plan *per se*. What does seem clear is the immense power of private criminal groups—for which this complicity is a major asset—and the State's *modus operandi*, which has allowed for such complicity in the cases cited above. This *modus operandi* is not just a recent phenomenon; it has roots in the latter half of the 1900s, albeit with some changes, as described in Part One of this report.

For the sake of society, governance, and the right to carry out union activity, severing any ties of this nature must be a priority. This will require identifying effective strategies, some of which will be presented for discussion later in this report.



<sup>19</sup> Criminal Appeals Division of the Supreme Court, Justice Jorge Luis Quintero Milanés writing for the court, decision approved in document 078, 9 March 2011.



# Chapter 11

## What are their motives?

This chapter tackles one of the most difficult questions to answer, but one of the most crucial as well: that of the motives behind the many acts of violence addressed in this report.

This is crucial first and foremost for the victims, who have a right to know the truth. It is also crucial for society and for government, which must punish the guilty and send out a clear message to ensure that the situation improves and such acts are not repeated.

The question, however, is a difficult one because, despite modest gains, judicial verdicts rarely address it and relevant information is sorely lacking in the available sources, including in the most critical alternative sources.

As previously noted, the lack of information on motives is also a result of the strategy of concealment and diversion employed by perpetrators and accomplices. This is precisely why every effort must be made to counter it, especially by the State. The fact that a motive is known or unknown cannot be a criterion for including or excluding cases, because such a criterion would indulge the perpetrators and deny justice by excluding and ignoring a large population of victims.

The same harmful effect is produced if the motives, in lieu of being scrutinized, are assumed on the basis of clichéd explanations, doctrinaire beliefs or statistically unsound inferences.

The question of motives is very much linked to that of the systematic or nonsystematic nature of the killings—and of the violations overall—but the two questions are not one and the same. The systematic character of the violence is proven by the concentration of cases in certain geographic areas, trade unions, and periods; by the nature of the violence and the profile of the victims, to the extent that can be determined from the available information; and by the little that is known about the (multiple) perpetrators. The evidence presented thus far shows that the violence has not been random.

The fact that the violence is systematic, however, does not mean that only one motive lies behind it, nor does it constitute proof of any particular motive—especially in view of the multiplicity of perpetrators, some of them from opposing camps, such as guerrilla and paramilitary forces.



**The support of some Army and police officers was an important asset to the paramilitary groups from the time they first emerged in the early 1980s, as was the funding and organization provided by the drug cartels.**

The victims' status as trade unionists or unionized workers, their union affiliation, and their place of residence or activity have systematically made them targets of one group or another. But this is not enough to determine which specific motive or purpose placed them in the crosshairs.

The question of motives—as revealed in judges' verdicts in cases of homicide and other violations in which the victims had union ties, according to the Office of the Attorney General—is addressed below, using the study conducted by DeJusticia (2010) for this report, along with other complementary sources.

### **1. The motives as identified in verdicts, according to DeJusticia**

As part of this project, DeJusticia (2010) reviewed the 223 verdicts handed down from January 2000 to March 2010 in cases where the victims were trade unionists.<sup>20</sup> These cases include those heard since 2008 by judges of the Specialized Criminal Circuit for Backlog Reduction. This jurisdiction was created on 15 January 2008 precisely for cases involving human rights violations against this specific population (although, as of October 2009, only 35% of the circuit's cases coincided with the cases categorized as such by the ENS).

In its review of these 223 verdicts, DeJusticia noted the following:

- ◇ In 12% of the verdicts, the judges did not address the motives behind the offense.
- ◇ In 16% of the verdicts, the judges concluded that the motives were unrelated to union activity and instead were associated with the type of crime categorized by default as “common crime,” which DeJusticia refers to as “ordinary crime.”
- ◇ In 9% of the verdicts, the judges ruled that the victims belonged to an illegal armed group, in which case the crime—while still worthy of condemnation (since all crime is reprehensible regardless of the victims' actions and responsibilities)—is not categorized as violence against trade unionists.
- ◇ In 7% of the cases, the study found that the verdict identified motives that reflected the particular interests of an armed group and were unrelated to the victim's union activity.

**20** According to DeJusticia, which conducted this analysis, there were 223 verdicts involving cases in which the victim was associated with union activity (regardless of perpetrators or motives). Of these 223 verdicts, 213 were convictions. However, a total of 283 rulings were handed down between 3 January 2000 and 17 March 2010, and 276 of them were verdicts (convictions or acquittals). The remaining seven were other types of rulings (DeJusticia, 2010: 50–52, Table 12 and Figure 19).



This, then, leaves 56% of the verdicts involving antiunion motives. The study supports this generalization, but antiunion motives can include a variety of specific purposes that may vary from one type of perpetrator or assailant to another—e.g., from guerrilla to paramilitary fighters. These purposes can also vary depending on the type of union activity and on the victims' individual actions associated with their union activity.

Dejusticia's study takes this 56% of cases involving motives related to union activity in general, and breaks them down into three different categories: 11% in which the motive is solely and explicitly related to the victim's union activity; 2% in which the motive is related to the victim's social or political activity (which, regardless of the categories used in the study, is closely related to union activity); and 43%, or 98 cases, in which the motive lay in the perpetrator's subjective portrayal of the victim as a "guerrilla" on the basis of union activity—a phenomenon that Dejusticia's describes as "insurgent prejudice."

Judges have addressed this "insurgent prejudice" in various ways. Some verdicts, 12% of the 223, make no comment on it—i.e., the judge did not bother to examine whether the facts supported the defendant's prejudice against the victim. Three verdicts (1.3%) confirmed, as legal fact, that the victim was involved in guerrilla activity.<sup>21</sup> In 9.4% of the 223 verdicts, the validity of the "insurgent prejudice" was implicitly dismissed in the finding that some aspects of the victim's union activity are or were associated with the stereotype of a guerrilla fighter. The largest number of verdicts—44, or 20% of the total—explicitly dismissed the validity of the "insurgent prejudice" in light of the investigation and trial.

Examples of the latter group of verdicts include:

- ◇ The verdict of 20 February 2009 in which the 10th Criminal Court of the Special Criminal Circuit in Bogotá, in response to testimony by alias "HH" that he considered the victim to be a guerrilla fighter, stated the following:

There is no evidence in this case to prove membership in such organizations ... and therefore the mere citing of alleged membership in subversive groups does not suffice to negate that the homicide ... occurred as a result of [the victim's] union leadership.

- ◇ The verdict of 31 January 2008 by the 2nd Criminal Court of the Special Criminal Circuit took a similar approach:

**There is a pressing need for the State to identify and punish, first and foremost, those who are its own representatives. In this all-important task, the government's own sources of data—in conjunction with others such as the ENS, the CCJ, CINEP, trade unions, and international sources—can contribute their wealth of documentation to the mission led by the Office of the Attorney General and the judges.**

<sup>21</sup> These three verdicts, in which the judge confirmed as a legal fact the hypothesis related to the perpetrator's "insurgent prejudice," are separate from the 21 cases described above, in which the judges ruled of their own accord—not on the basis of the perpetrator's "insurgent prejudice"—that the victim was part of an illegal armed group.



[The AUC] declared those who were in any way propounding Marxist ideology to be a military target, which on a fundamental level implies that, within the framework of such rhetoric and rationale of conflict, union activity led to their being considered members of guerrilla groups ... with the necessary outcome that people both innocent and guilty of such actions have been killed (DeJusticia: 2010: 16).

- ◇ The aforementioned ruling of 30 March 2011 by the 11th Criminal Court of the Special Criminal Circuit:

... Professor Alfredo Rafael Francisco Correa de Andreis, as a result of his academic and social work with displaced people, was the victim of a frame-up by agents of the State's intelligence agency (DAS), whereby he was identified as an ideologue for the Caribbean Bloc of the FARC, investigated, and wrongfully deprived of his freedom, which he subsequently regained. In reality, it was his status as a champion for social causes, his research in that field, his reputation, and his recognition within the communities and by the very State, that formed the basis for this unscrupulous campaign that decided the professor's tragic fate, since this slanderous information was shared by DAS agents with the José Pablo Díaz Front of the AUC's Northern Bloc, whose members proceeded to kill Correa de Andreis and his bodyguard, under the pretense that they were eliminating a guerrilla fighter (verdict, p. 36).

**In no way can these cases of complicity, proven or alleged, be used to conclude that the State had a specific plan per se. What does seem clear is the immense power of private criminal groups, for which this complicity is a major asset.**

As for the 9% of the verdicts in which judges ruled on their own initiative that the victim belonged to a criminal organization (guerrilla or paramilitary) and the 1.3% where they confirmed the factual basis for the perpetrator's "insurgent prejudice," the ENS and the CCJ, as dialogue partners in this project, have put forward their critique. They maintain that judges should not make such rulings unless as a result of separate charges brought against the alleged perpetrator, who in this case would be the victim of the homicide or other violation in question. Thus, before making determinations of such gravity that run the risk of "revictimizing" the victim, there should be a trial to ensure due process and protect all rights.

The discussion of DeJusticia's study of verdicts may be concluded as follows: However the aforementioned percentages are analyzed, most of the 223 identified verdicts found that the decisive motives behind the violations against trade unionists were overwhelmingly union-related (at the general level for now, without breaking down the specific antiunion goals or purposes pursued by the perpetrators on trial, either directly or as ordered or prompted by a third party).

## **2. The motives as identified in verdicts, according to the study by ANDI**

While this report has used the study by DeJusticia (2010) as a reference, it has made supplementary use of a study conducted by the National Business Association of Colombia (ANDI) of 282





judicial rulings deemed related to cases in which the victims were trade unionists, and handed down by judges between 2000 and 2010. This number of cases almost matches the universe of 283 verdicts reviewed by DeJusticia, from which it selected the 223 verdicts for its breakdown of the motives as determined by the judges.

ANDI, like DeJusticia, looked only at verdicts (convictions and acquittals)—i.e., 276 of the 282 rulings. However, it used a different criterion for exclusion, discarding only those not deemed homicide cases. With this restriction, the universe ultimately consisted of 244 verdicts in homicide cases.

The two studies, despite using different universes, agree on the figure of 26 verdicts in which motives are not mentioned, were not investigated, and posed no concern for the judges.

The percentage of rulings in which the motives were deemed related to “ordinary crime” or common crime—clearly not associated with the victim’s union activity—does not vary greatly between the two studies. DeJusticia calculated that such motives were cited in 35 of the 223 verdicts it reviewed (16%), while ANDI found that 46 of its 244 verdicts (19%) identified any of the following motives: personal reasons, theft, extortion, and other.

The modest difference in the percentages found in the two studies is easily explained because, as previously noted, DeJusticia expressly excluded rulings in cases there the victim appeared to have

no ties with trade unions. In these cases, motives such as those listed above are more readily assumed, since any union-related motives are excluded by definition.

In other words, both studies found that a low percentage of these cases involve motives of common crime or ordinary crime. This ultimately undermines the position of those who claim otherwise in an effort to deny any link between this violence and union activity.

The major difference, however, between ANDI’s and DeJusticia’s studies is the scope and understanding of the category of union-related motives and, of course, the resulting interpretation. ANDI (2010: 11) decided to rule out union-related motives for the many verdicts (122) in which the motive was described as being the defendant’s perception of the unionist as a guerrilla. DeJusticia, by contrast, decided that this very motive—in which the unionist was viewed as a guerrilla or insurgent (so described in 98 verdicts)—falls within the definition of the union-related motive.

In this regard, DeJusticia’s study introduces a crucial distinction between the motive based on “the victim’s [actual] status as a guerrilla” (for which ANDI’s study uses the phrase “guerrilla ties”) and the motive based on the victim’s status as “a trade unionist whom the perpetrator perceived as guerrilla” (a category that DeJusticia termed “union activity/insurgent prejudice”). Thus defined, this motive is union-



related, although the category would of course exclude the verdicts (1.53%, or 3 out of 223) in which the judge, going beyond the mere existence of the defendant's "insurgent prejudice," found that the victim was in fact a member of a guerrilla group.

Still, aside from these significantly different interpretations, the two studies agree that the motives behind these violations—or more specifically the killings, in the cases examined by ANDI—are predominantly union-related, as opposed to, for example, motives of theft or "personal" reasons.

In short, both studies found that in about half the cases decided up until 2010, the verdicts ruled that the trade unionists were killed, or their human rights violated, for their union activity or their status as unionists, which was associated by the perpetrators with a stereotype: that of the guerrilla. This means that the trade unionist is first stigmatized, branded as a guerrilla, to be later turned into a victim.

### **3. The motives in rulings, according to the CCJ study**

Another supplementary document consulted for this report was that of the Colombian Jurists Commission (2011), whose universe of 269 verdicts, all of them convictions, was selected using criteria



somewhat different than the previous studies,<sup>22</sup> but with similar findings. According to the CCJ's categories and definitions, 40.52% of the verdicts in its study involved cases in which the motive was "the description of [the victim] as a subversive for carrying out union activity." This matches the antiunion motive articulated as "insurgent prejudice" according to the terminology of DeJusticia's study. In 18.21% of the verdicts, moreover, the explicit motive was the victim's union activity.

The CCJ study reveals an interesting correlation between the types of perpetrators who were convicted and the kinds of motives that, according to the verdicts, led them to perpetrate the crimes.

According to this study, the motive based on describing the victim as a subversive by virtue of union activity ("insurgent prejudice")—i.e., the "guerrilla unionist" stereotype as a prelude to victimization—is predominant among paramilitary perpetrators (109 of the 201 paramilitaries convicted) and among perpetrators categorized as government forces (13 of the 29 convicted members of the Army or police). Meanwhile, this motive accounted for a small percentage in cases of ordinary crime (8 of 43 such convictions). Obviously, this motive is inapplicable to cases in which the perpetrators were guerrillas.

Cases in which the victim's union activity was the explicit and direct motive behind the crime are also more common among paramilitary perpetrators (51 of 201) and among perpetrators from government forces (7 of 29).

The testimony given by paramilitary commanders under the transitional-justice provisions of Law 975 of 2005 is consistent with the verdicts from regular courts (including those handed down by judges in the special courts for backlog reduction) that were reviewed in the three aforementioned studies.

Examples include Salvatore Mancuso's testimony on trade unionists and teachers killed at Córdoba University; testimony from alias "Jorge 40" on violations against trade unionists named in DAS blacklists in Altántico; testimony from alias "Diego Vecino" and alias "Juancho Dique" on killings of leaders of the land movement in Montes de María and union leaders in cities such as Cartagena. Their statements all describe how they killed these unionists and professors because they thought they were guerrillas.

This is noted in the reports submitted by prosecutors to the Justice and Peace Chamber of the Superior Court for the Bogotá Judicial District, as part of the public hearings in the trials of Uber Enrique Banquez, aka "Juancho Dique"; Edwar Cobos Téllez, aka "Diego Vecino"; and Iván Laverde Zapata, aka "El Iguano." The Justice and Peace Chamber handed down its verdict against the first two defendants on 29 June 2010, and against the third on 2 December 2010.

The public hearing for the first trial made mention of the killing of Aury Sará Marrugo, leader of the oil workers' union, on orders from "Juancho Dique." This case was described in Chapter 8.

The verdict against alias "Diego Vecino" and alias "Juancho Dique," handed down on 29 June 2010, states in paragraph 140:

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**22** The verdicts selected by each of the three studies do not fully match because they did not use the same exclusion criteria. Their universes of reference do not match either: ANDI and DeJusticia drew from 283 (or 282) decisions handed down between 3 January 2000 and 17 March 2010, of which 276 were verdicts. The CCJ, meanwhile, drew from 290 verdicts handed down between 2002 and March 2010, some 269 of them convictions, which are those it used in its study.



**The victims' status as trade unionists or unionized workers, their union affiliation, and their place of residence or activity have systematically made them targets of one group or another. But this is not enough to determine which specific motive or purpose placed them in the crosshairs.**

The confessions of these demobilized individuals contain detailed information about their ties to the armed criminal organization of the 'self-defense' forces, the crimes committed to acquire territory occupied by guerrilla forces, and the harm caused to the rights of civilians who they believed were aiding, or were sympathizers of, those they were fighting.

In describing the complicity of agents of the State and private citizens, these defendants' testimony also made it clear that these accomplices (State agents and private citizens) shared the defendants' perception of the victims as guerrillas. The same recurring motive is noted in the case files on judicial and disciplinary proceedings against officials, both military and civilian, who conspired with irregular groups, such as the cases in which DAS officials were implicated.

Union-related motives, as acknowledged in the verdicts, are manifested much more often under the "guerrilla unionist" label than as a killing or violation of the victim simply for being a trade unionist or unionized worker. This is not surprising, especially since it can hardly be denied, at least outwardly, that union membership and activity per se has as much institutional legitimacy as business activity and political participation.

However, while mere union membership or routine union activity may not lead to victimization by irregular armed groups or by individual perpetrators and accomplices, many of the unions' actions and positions have indeed done so—e.g., a lack of subservience to local authorities who hold either formal or de facto power; rebelliousness; sympathy with the political opposition; monitoring or watchdog-oriented activity; and actions undertaken to pursue demands (labor strikes in the strict sense or for other reasons, short-term work stoppages, marches, acts of denunciation).

Such actions and positions have elicited a violent response ever since the first half of the 20th century, as noted in Part One of this report. Part One also described the historical construction, over the course of that century, of a negative image of trade unionism in Colombian society, which went so far as to stereotype trade unionists as "guerrillas," a stereotype adopted by perpetrators of violence against trade unionists.

It was also noted that, according to the study by the FIP (2010), this historically constructed perception is even stronger in societal settings outside companies than inside them—particularly inside those that have experience with trade unions—and that this perception is perpetuated in part by the media and by the official discourse of successive administrations.

This means that overcoming the type of violence addressed in this report will require more than a variety of actions to deter perpetrators (assassins, operational leaders, accomplices, instigators). It will also require actions aimed at changing, over the short and medium terms, the negative image and stereotyped stigmatization of union activity aimed at demanding rights or performing a watchdog role.



Along these lines, initiatives taken by the media and by purveyors of government discourse are extremely important, as are those taken by trade unions and their labor federations and confederations as they continue and further their efforts to explicitly distance themselves from guerrilla forces.

#### 4. The specific motives behind the violence

The 223 verdicts reviewed by DeJusticia (2010), the 244 reviewed by ANDI (2010) and the 269 reviewed by the CCJ (2010) have provided an initial glimpse into the motives behind the killings and other violations against trade unionists in general terms. This analysis clearly shows that the motives in these cases were predominantly union-related—in half the cases (ANDI) or in more than half (DeJusticia and CCJ)—whether stated explicitly or under the stereotype of the “guerrilla unionist.”

But these were only 200-some verdicts, compared to a universe of 2,863 trade unionists and unionized workers killed between 1986 and 2011, according to the ENS, or the 979 killed between 2000 and 2011, according to the government’s source, the ODDH. Moreover, the cases represented in the verdicts cannot be considered a statistically significant sample.

The three aforementioned studies and this report, therefore, constitute only initial efforts along with previous ones such as the ENS and CCJ analyses on the crucial question of motives. Public debate on this question is critical and should continue, and we hope that it can do so with ever more information, and increasingly better input, both from official documentation on cases brought to trial and from research work conducted by research centers and NGOs.

Along these lines, new initiatives must look beyond general categories of motives to examine the specific purposes of violence against certain unions or unionists, which obviously may vary according to the type of perpetrator (at least broken down into guerrillas, paramilitaries and State agents).

A new initiative of this nature should distinguish between specific purposes within the general union-related, or antiunion, motive behind the violence. This will require access to records, not only on the 283 cases already adjudicated, but also on pending and future cases. It will also be helpful to have direct access to the descriptions contained in the sources’ records, at least in those of leading sources such as the ODDH, the ENS, the CCJ and CINEP.

This task is a daunting one, to be sure, but nonetheless essential. It should be approached as a way to complement the State’s duty to solve these cases, for the sake of the truth to which the victims, their families, their unions and society are entitled.

**According to DeJusticia’s review of the verdicts, most of the 223 identified verdicts found that the decisive motives behind the violations against trade unionists were overwhelmingly union-related.**





More specifically, union-related motives may be manifested differently in some acts of violence than in others, depending on the types of trade unions and workers who become victims, and especially depending on the types of criminal organizations (or individual perpetrators) that victimize them.

## 5. The impact of violence on trade unions: from aims to gains

Union activity in and of itself is targeted for attack by perpetrators from starkly opposing camps—e.g., paramilitary and guerrilla forces—albeit in different ways. Both types of perpetrators, as well as those who are agents of the State, share a discomfort over the unions' organizational potential, especially those that are or strive to be independent and do not bow to them. Herein lies the importance of trade unions to societies and States, such as Colombia, that purport to be democratic, and herein also lies the unions' vulnerability to organized armed groups.

Unions gain even greater strength by linking up as part of entities that transcend area and sector, such as in labor federations and confederations, in what are known as industrial trade unions, and through relations with political parties and movements and with international trade union organizations. Paradoxically, these links make unions stronger yet at the same time more vulnerable to armed groups.

This does not, however, mean that all unionists are persecuted for the same reason. The purpose is not always to wipe out unionists or smash the unions by physically eliminating all or some union members in order to terrorize or drive away the others. The purpose may also be to subdue unionists through fear, even if they do not leave their union, or through a combination of fear and negotiated protection. The perpetrators may come to accept the existence of trade unions provided that the unions stop or cut back on their efforts to demand rights through sometimes “contentious” actions; provided that they stop acting as watchdogs of local or national authorities who hold formal or de facto powers; provided that the unions do not interfere with profitable activity, whether legal or illegal.

As noted in Part Two, rates of union membership have historically been very low in Colombia and have declined during the period examined here (1984 to March 2011), although the decline has never been commensurate with the increase in violence. Various factors have been at play in the decline in union membership, and there is not enough evidence to conclude that violence is the main factor.

One important factor is the outsourcing of labor, a method of indirect hiring that many establishments, both private and public, have been progressively using to replace regular, permanent staff members with temporary workers hired through what are called “associated work cooperatives” or the like. The administration of Juan Manuel Santos has agreed to revisit the issue, including measures as part of the agenda he agreed to with U.S. President Barack Obama on 7 April 2011.

**The two studies, despite using different universes, agree on the figure of 26 verdicts in which motives are not mentioned, were not investigated, and posed no concern for the judges.**



Photography: Courtesy Cinep.

Moreover, if the perpetrators' sole purpose had been to force workers out of the union or to destroy the union, then they did not always succeed, at least not in two of the organizations that have suffered the most casualties.

Sintrainagro, which ranks second among Colombia's trade unions in number of workers killed, now has an even higher membership rate. As noted in Part Three of this report, its membership rate is almost 90% and shows no signs of decreasing.

FECODE's membership rate, as previously noted, is also quite high at 69.2%, and the rate among all teachers would be even higher if the few teachers' unions not affiliated to FECODE were counted as well. It was also noted, however, that some FECODE-affiliated unions in certain areas have been weakened—and in some cases have seen their membership decline—as a result of the violence.

One union that has experienced a drastic decline in membership is the USO. Upon closer examination, however, this may have been more a result of outsourcing as part of the rapid restructuring of Ecopetrol.

According to data released by the USO and the ENS, Ecopetrol's regular, permanent workforce went from 11,835 workers in 1990 to 7,076 in 1998 and 5,885 in 2008. However, its regular, permanent workers are now almost all members of the USO, an industrial trade union. Also, as a result of an intense



campaign to gain members among workers not directly hired by Ecopetrol, as of 2011 the union has returned to and surpassed its former membership rates, although the character of its membership and its approaches to union activity are now quite different.

Fear, meanwhile, has indeed taken hold in a number of smaller unions, to the point where they have suffered declining membership and in some cases disbanded. The ENS maintains that 450 small unions have been weakened as a result of violence, with a significant number of them now defunct.

The aforementioned acts of violence carried out by perpetrators and their accomplices and instigators vary according to trade union and type of perpetrators:

- ◇ The purpose of intimidating them into ending or cutting back on their actions in pursuit of demands (strikes, marches, acts of denunciation), and particularly their “contentious” actions, may have been more frequent among paramilitary forces and State agents than among guerrilla forces. Also, this purpose may be aimed more at unions such as the USO, where the violations—including killings, disappearances and false arrest—coincided more closely with the timing of strikes and marches than in other unions.

Paradoxically, however, and contrary to what might be expected, antiunion motives have not been completely foreign to perpetrators who hailed from guerrilla forces. The cases in U.S. courts against Chiquita Brands International have revealed that the company in Urabá systematically gave money to the FARC up until 1997 and to paramilitary forces after that.

- ◇ The aim of scaring union members away from acting as monitors and watchdogs, and away from interfering with criminal activities, can be pursued by both paramilitary and guerrilla forces, as well as by agents of the State. The victims are more likely to be workers whose social leadership roles and civic involvement are closely related to their occupation and their mission in the public sphere—teachers, judges, prison guards—and whose presence is most disruptive to criminal groups and their accomplices as a result of their organization into unions.

This is why teachers have been killed, but mostly unionized teachers. The ODDH reports that 86 nonunion teachers were killed between 2000 and March 2011, compared to 188 unionized teachers (almost all of them FECODE members).

This is why judges have been killed, but mostly those who are members of Asonal Judicial. The National Historical Memory Commission, in its report on the La Rochela case, documented 1,487 violent incidents against members of the judiciary between 1979 and 2011.

This is why prison guards have been killed, most of them union members. Thirty-five members of ASEINPEC (Trade Union Association of Employees of the National Corrections Institute), a CGT-affiliated union, were killed between 1979 and 2011.

The two specific types of antiunion motives described above tend to be combined, leading to an increase in violations, sometimes from perpetrators in opposing camps. FECODE-affiliated unions are an example: Teachers are targeted due to the nature of labor strikes and for their unattainable electoral



potential (violations by paramilitary forces and their instigators), as well as for their acts of vigilance and civic participation (violations by paramilitary forces, guerrilla forces and State agents). This is documented in the data of CINEP and the ENS's Human Rights Database (SINDERH).

## 6. In conclusion

The information in presented Chapters 10 and 11 leads to the following conclusions:

- ◇ The scant information available from the sources and from the few existing verdicts indicates that the most common motive for killings and other human rights violations against trade unionists is antiunion sentiment. However, the specific nature of this general antiunion motive varies depending the type of armed group perpetrating the violation and the type of union activity for which the union members are victimized.
- ◇ This identification of a predominant antiunion motive goes a step further than acknowledging the systematic nature of the violence, which was initially based on the concentration of cases in certain unions, areas and periods. In other words, not only can we say that the violence is systematic; we now know to some extent why it is systematic, from the perpetrators' perspective.
- ◇ Within the general antiunion motive, different types of perpetrators—some of them from mutually opposing camps, such as paramilitary and guerrilla fighters—exhibit different specific motives. Little is known thus far about these specific motives, however; and greater efforts are needed from the sources to explore them, and from analysts to distinguish among them.
- ◇ As for the specific motives or objectives pursued by different types of perpetrators, paramilitary forces and agents of the State most frequently target unionists for their actions in pursuit of demands and for their labor, political and civic struggles. A second specific motive, shared by paramilitary and guerrilla forces alike, is to target the victim for disrupting or interfering with drug trafficking, other illegal activities, misappropriation of public assets, or electoral influence in a given area.
- ◇ The perpetrators of these killings, and their instigators and accomplices, do not always intend to physically eliminate union members or destroy the union. They may be aiming to weaken, immobilize or co-opt the union. Alas, the desired effect is not always achieved: the three organizations that have experienced the most killings and other serious violations against their members—FECODE, Sintrainagro and the USO, and particularly the first two—have proven very resilient in terms of the effects of the violence on their membership rates and union activity.

**However, while mere union membership or routine union activity may not lead to victimization by irregular armed groups or by individual perpetrators and accomplices, many of the unions' actions and positions have indeed done so.**



- ◇ Smaller, less robust unions, however, can experience an indirect destructive or deterrent effect even if the victims are not their own members but rather are from stronger unions.
- ◇ Attempts to explain this violence tend to counterpose two hypotheses: one based on national and local strategies of armed groups and the conflict between them over land and population centers, versus another based on the relationship between violence and union activity.<sup>23</sup> In fact, however, these two hypotheses are not counterposed but complementary, since the first one refers to the perpetrators, and the second to motives.

The armed groups that perpetrate today's violence have been gradually shaped over the course of a historical process described in Part One of this report with regard to the context of the violence. The conflict between these armed groups is a major factor in the concentrated, intense nature of the

violence against trade unionists at certain times and places (CNAI, 2010; Echandía Castilla, 2010). Whenever these groups are present and active, union activity—construed broadly as labor, civic and political activity—triggers antiunion sentiment as a motive for these groups and their instigators and accomplices (CINEP, 2010).

Armed groups, instigators, and accomplices commit violent acts against trade unionists and unionized workers in response to their lawful union activity. They do so either to preserve a social order in the face of what they see as destabilizing activity, or to defend private interests, whether unlawful by nature—e.g., drug trafficking, extortion, and corrupt dealings—or lawful in origin but not in implementation.

What, then, have the authorities and agencies of the State done on behalf of society to deal with these circumstances, and what they could do better? This will be the focus of Part Five.



**A negative image was constructed of trade unionism in Colombian society, which went so far as to stereotype trade unionists as “guerrillas,” a stereotype adopted by perpetrators of violence against trade unionists.**

<sup>23</sup> According to the division of subtopics that UNDP—in conjunction with the State, trade union confederations, and business leaders—established at the outset of this project, the subtopic of armed actors was assigned to the New Rainbow Corporation, and that of trade unions, to CINEP. The findings of this research work, as set forth in the respective reports prepared by the two research centers, has formed the primary basis for this report, as noted previously.





Photography: César José Herrera. Courtesy ENS.



# Part Five

**The challenge before the State in  
confronting the violence**

**“I think a policy of social dialogue between employers and workers in various sectors should be promoted; I think that if this policy of permanent dialogue between employers and unions is encouraged, it will help create a climate conducive to lowering the risk for unionists.”**

**Alejo Vargas**

*Researcher, National University of Colombia*

## At a glance

### *Chapter 12*

Truth and justice: challenges for the judicial system

### *Chapter 13*

Challenges in individual and collective reparation

### *Chapter 14*

Protecting trade unionists and unionized workers

*Part Five is based on the report by the Center for Studies on Law, Justice and Society, titled Evaluación de la judicialización de delitos contra trabajadores sindicalizados [Evaluation of the prosecution of crimes against unionized workers] (DeJusticia, 2010), and on the report by the Center for Special Projects and Research (CIPE) of the Externado University of Colombia, titled Evaluación de las políticas del Estado colombiano, de prevención y protección a líderes sindicales y trabajadores sindicalizados [Evaluation of the Colombian government's policies related to prevention and protection for trade union leaders and unionized workers] (CIPE, 2010).*





Amid the violence described earlier in this report—and in view of the debt owed to the victims—a joint obligation is imposed on all of society, on trade unions, on employers and on the State, which by definition is the guarantor of rights. This is no easy task. An extraordinary problem poses an extraordinary challenge.

Part Five addresses the role of the State and public policy from a decidedly proposal-oriented perspective.

Victims and society expect the government to uncover the truth about what happened; to bring those responsible to justice; to provide individual and collective reparation for the harm caused; to create conditions to discourage repetition of the act, starting with risk prevention; and to protect those whose safety remains under threat. This report has emphasized that these rights remain to be fulfilled.

The time has come to examine what society, starting with the State, should do to uphold these rights. This also requires acknowledging and assessing how little or how much progress has been made thus far, so that future efforts may build from there.



This examination is organized around the State's obligations vis-à-vis the most significant rights of the victims and of society:

- ◇ Truth and justice: challenges for the prosecution
- ◇ The challenges of individual and collective reparation
- ◇ Protecting trade unionists and unionized workers



Photography: César Augusto Ceballos Montoya. Courtesy: ENL.



# Chapter 12

## Truth and justice: challenges for the judicial system

**P**revious chapters raised critical questions about the perpetrators of violence and their motives. The answers to these questions revealed how the lack of information benefits the perpetrators and compounds the harm done to the victims. This underscores the need for perpetrators to be prosecuted and brought to justice—a responsibility that falls to the Office of the Attorney General and the judiciary, as appropriate, through the phases of preliminary investigation, formal investigation, filing of charges, and trial.

Complementary to this are the disciplinary proceedings that certain oversight agencies are responsible for conducting against employees of the State—civilian, military or police. These proceedings are often related to ongoing criminal proceedings in other venues, whether by virtue of the victims, of acts subject to penalty or discipline, or of the perpetrators and their accomplices. Due to limitations of coverage, however, these oversight agencies are not included in this examination.

It is not the case that the State's duty to act through the judicial system can fully satisfy the right of victims, their families, their organizations and society to know the truth. The only aspect at issue here is judicial truth, which must be established by the State through the judicial system; beyond that, the challenge is one of the victims' truth and the historical truth.

Much has been said about impunity in Colombia's judicial system, with its impunity rate estimated at 96% to 98%. Impunity is defined by Joinet and Orentlicher (1997) as follows:

The impossibility, *de jure* or *de facto*, of bringing the perpetrators of human rights violations to account—whether in criminal, civil, administrative or disciplinary proceedings—since they are not subject to any inquiry that might lead to their being accused, arrested, tried and, if found guilty, sentenced to appropriate penalties, and to making reparations to their victims (quoted in Dejusticia, 2010: 7).

As a result of the Tripartite Agreement on Freedom of Association and Democracy—signed by the government, labor confederations and the employers' association in June 2006 as part of the 95th Session of the International Labour Conference—a subunit for investigating crimes against trade unionists was established that year under the Human Rights and International Humanitarian Law Unit of the Office of the Attorney General (itself established in 1994 by Resolution 2725 of the Office of the Attorney General).



**Amid the violence described earlier in this report—and in view of the debt owed to the victims—a joint obligation is imposed on all of society, on trade unions, on employers, and on the State, which by definition is the guarantor of rights. This is no easy task. An extraordinary problem poses an extraordinary challenge.**

This subunit was created to conduct specialized, expedited investigations into cases selected by the three parties as human rights violations against unionized workers (Interadministrative Agreement 154-06 of 2006 between the Office of the Attorney General and the Office of the Vice President). This agreement was reached under the auspices of the United Nations system acting through the International Labour Organization (ILO).

Also as a result of the Tripartite Agreement, the Supreme Judicial Council—which oversees the judicial branch in accordance with the Colombian constitution—created a special jurisdiction called the Special Criminal Circuit for Backlog Reduction. This circuit consisted initially of three judges who, as of 15 January 2008, were responsible for adjudicating cases involving violence against trade unionists.

Nobody questions that this agreement, aimed at closing or at least narrowing the impunity gap in violations against a specific population, constitutes a positive step. The question that remains, then, is to what extent the subunit and the special criminal circuit have narrowed this gap, and what can be done to make further progress.

As a result of complaints from labor federations over acts of violence against trade unionists in Colombia, case number 1787 was opened by the ILO's Committee on Freedom of Association.<sup>1</sup> In response, the new subunit of the Office of the Attorney General expressed its intent to ensure that the judicial proceedings pursued by it and by regional offices with prosecutorial jurisdiction over cases of violence against trade unionists were as consistent as possible, in terms of facts and victims, with the information contained in case 1787.

Despite this stated intent, the labor confederations and some NGOs tied to them maintain that this has not been fully achieved. They have argued—at the UNDP-sponsored dialogue forums held as part of this project—that there is a considerable difference between cases pursued by the subunit and regional prosecutors and the overall universe of cases of violence against trade unionists as recorded by the trade union organizations, the ENS and the CCJ.

This discrepancy stems from the way in which the subunit and regional prosecutors' offices selected the cases they would take on, as well as from the nonsystematic nature of the information in case 1787, which does not meet—nor is it designed to meet—the standards to which a full-fledged database would be held.

Moreover, the subunit and regional prosecutors can access the information in case 1787 only through the organizations that signed the Tripartite Agreement—i.e., through the trade union confederations, which are most knowledgeable about the complaints brought before the ILO's Committee on

<sup>1</sup> The Committee on Freedom of Association just opened a new case in November 2009 for complaints about violence against trade unionists in Colombia: case 2761.





Freedom of Association. But relations between the Office of the Attorney General and the labor confederations and NGOs have been less than smooth, especially from 2008 to 2010.

The agreement signed in April 2011 between presidents Juan Manuel Santos and Barack Obama calls for overcoming this discrepancy through regular meetings between the Office of the Attorney General and the union confederations, with the explicitly agreed participation of the ENS.

Under the agreement, these meetings are to be held on an ONGOing basis to review the list of cases taken on by the Office of the Attorney General to ensure that they are as consistent as possible with the union confederations' and the ENS's records on cases of violence against trade unionists and unionized workers.

This is a noteworthy step forward, one that addresses a matter that is no minor concern in the struggle against impunity for such crimes.

## 1. The verdicts in numbers

After the subunit and the Special Criminal Circuit for Backlog Reduction were created as a result of the 2006 agreement, the number of verdicts and convictions increased.

From an average of 10 verdicts per year in cases involving violence against unionists through 2006, the number of verdicts increased to 45 in 2007 (a 246% increase), 83 in 2008 (an 84% increase) and 81 in 2009 (DeJusticia, 2010: 37). The number of persons convicted—after averaging 16 per year through 2006—jumped to 83 in 2007, 89 in 2008, and 57 in the first eight months of 2009.

The study by DeJusticia (2010) found that the Office of the Attorney General, as of August 2009, had handled 1,343 cases involving violence against trade unionists and unionized workers, out of which 224 verdicts had been handed down, as reported by the attorney general's office. These verdicts convicted 312 people. As of July 2010 there had been 1,722 cases, of which 1,016 were for homicide.

Despite this significant progress, it is worth reiterating that the figure of 1,343 cases through August 2009—when compared to the total of 2,791 killings recorded by the ENS between 1986 and 2009, not to mention cases involving other forms of violence—is still insufficient.<sup>2</sup>

Also insufficient is the aforementioned total of 1,722 cases, which includes 1,016 for homicide, compared to 2,841 homicides recorded up to July 2010 by the ENS.



Photography: Jesús Bolívar Erazo, Courtesy ENS.

<sup>2</sup> It is understood that, by definition, there cannot be an exact match between the number of trials and the number of victims, or for that matter the number of perpetrators, but the discrepancies seen here between these numbers are too wide.



The results are not yet satisfactory, considering that 35.4% of the victims in cases handled by the subunit of the Office of the Attorney General in conjunction with regional prosecutors do not match the victims listed by the ENS, according to the ENS's records.<sup>3</sup> This constitutes a risk inasmuch as these 35.4% of victims may not be union members, save for the possibility of underreporting in the ENS's data.

Using data from August 2009, DeJusticia calculated the rate of impunity for killings of trade unionists to be 94.4%, slightly below the overall rate for the judicial system, which was noted at the start of this chapter:

## 2. The verdicts beyond the numbers

In assessing the State's judicial efforts in a constructive spirit of seeking opportunities for improvement, it is not enough to use a quantitative approach to measure impunity by comparing the universe of violations to the number of verdicts issued, victims assisted, perpetrators convicted and defendants acquitted.

The verdicts must be examined for quality as well. This is to ensure that assessment efforts do not create a perverse effect whereby qualitative aspects that have a significant impact on the right to truth and justice are overlooked in the drive to improve percentages.

### 2.1 Investigating and prosecuting beyond those who carry out the killings

A qualitative assessment looks at, for example, the efforts made by judges—and the extent to which these efforts were successful—to identify the masterminds by going beyond the person who carried out the crime, and the operational leaders of the armed group.

DeJusticia's assessment of efforts to identify mid-level and even top-ranking operational leaders is favorable. The operational leader of the armed group was identified in some 70% of the verdicts and convicted in 42% of them; 25% involve high-ranking leaders (bloc commander or higher). Out of the 223 verdicts for cases in which the victims had ties to organized labor, 77.9% state the name of the armed group to which the defendant belonged, and 66% identify the bloc and its geographical area of operations.

However, the assessment is not favorable with regard to the identification and conviction of accomplices, instigators and masterminds, who lie beyond the orbit of the armed criminal group per se. The study refers to these people as "strategic masterminds" (DeJusticia, 2010).

These people are primarily civil servants; members of the Army, police and security bodies; and private citizens. Only 9.9% of the 174 rulings that named the armed groups provided any information on the people responsible, which does not necessarily mean that they were prosecuted or convicted in such cases, either in this trial or in a related one. This percentage is low, even with the acknowledgement that not all acts of violence by armed groups necessarily have outside instigators and accomplices.

<sup>3</sup> This percentage is close to that calculated by DeJusticia for the 276 verdicts it reviewed. DeJusticia found that 30% of the 296 victims identified in these cases did not match the unionized workers listed as victims by the ENS (see DeJusticia, 2010: 40).



The study by DeJusticia (2010) poses the need to ensure that prosecutors and judges do not allow defendants' confessions—which occur in about half the cases—or testimony under the provisions of a transitional-justice law to take the place of their own work, and that they go beyond the confessions and testimony to identify the masterminds, instigators and accomplices of the crime.

## 2.2 The need for systematic investigations into violations that have been systematic

A qualitative assessment should also consider whether the investigations and trials have looked into connections and affiliations that go beyond the individual defendants. It should also examine whether investigative methods are consistent with the systematic nature of such violations, as frequently noted in this report. If the violations have been systematic, they should be investigated and prosecuted using a systematic approach.

As for connections between cases, the assessment is somewhat positive: 61% of the 223 verdicts explicitly drew on evidence from other cases, especially from transitional-justice cases. The testimony offered by paramilitary commanders under the provisions of Law 975 of 2005, also known as the Justice and Peace Law, have made a particularly noteworthy contribution to cases involving trade unionists.

This progress notwithstanding, the exchange of information between cases and judges' issuance of referrals for other courts to take action<sup>4</sup> do not suffice as strategies to uncover the truth, especially regarding responsibilities and motives for violations that are systematic in nature. The investigative approach and methods must be systematic as well, although this has happened, according to DeJusticia (2010: 44), on an exceptional basis in only five cases.

The lack of a systematic methodology and the prevalence of the opposite—i.e., an individualized approach to crimes, perpetrators and victims, and a positive-causation outlook linking motive to crime—is the result of a number of factors that cannot be quickly changed, factors that lie outside the scope of this report. These include current criminal legislation, the country's traditional practices in trying cases, and higher education for attorneys, which is the same as for judges in Colombia.

Moreover, the lack of a systematic approach has an adverse effect on the truth and justice owed not only to the victims, but also to other populations that have suffered systematic violations: political parties and movements such as the Patriotic Union of the 1980s and 1990s, ethnic groups such as indigenous people, and activists such as human rights advocates.

**From an average of 10 verdicts per year in cases involving violence against unionists through 2006, the number of verdicts increased to 45 in 2007 (a 246% increase), 83 in 2008 (an 84% increase), and 81 in 2009. The number of persons convicted—after averaging 16 per year through 2006—jumped to 83 in 2007, 89 in 2008, and 57 in the first eight months of 2009.**

<sup>4</sup> The CCJ (2010) found that judges referred matters to other courts in 83 of the 290 verdicts (i.e., 28.62%) issued between 2002 and March 2010 in cases deemed by the judges to have involved violence against trade unionists.



Photography: Bernardo Alberto Peña. Courtesy: PANA

Prosecutors and judges would be well served to contextualize their individual cases within the country's dynamics related to violence, trade unions, and the areas where these incidents occur, and to trace the evolution of events. Such an approach would foster a better understanding of the systematic nature of the matters they are investigating and adjudicating.

To this end, prosecutors and judges may find it useful to seek supplementary information from available sources such as the ODDH, which is the government's data source, as well as alternative sources (ENS, CINEP, CCJ); to compare such sources to studies performed by academics, NGOs and labor organizations; and to make use of projects such as this one or that of the National Historical Memory Commission, which shed light on the systematic nature of the violence.

A similar resource already exists in a jurisdiction separate from the Special Criminal Circuit for Backlog Reduction. The experience of the Justice and Peace Chamber of the Superior Court of Bogotá could be shared with other judges and prosecutors.



## 2.3 The victims and their rights in the trials

A qualitative assessment should also look at victims' access to the proceedings. The analysis of convictions and DeJusticia's (2010) supplementary interviews of officials, victims, relatives, attorneys, and victims' organizations found that victims had very little access, and almost none when not accompanied by counsel.

Victims' limited access and their minimal role in the proceedings are on display in matters of reparation (to be addressed in Chapter 13), in the unwillingness of prosecutors and judges to hear their ideas on motives, masterminds and accomplices (especially when not part of the visible hierarchy of armed groups), and in a lack of receptivity to any evidence that victims can offer beyond that routinely obtained in investigation and prosecution. These are all ways in which victims could contribute more meaningfully to the proceedings.

Compounding this lack of regard for the victims is the "revictimizing" effect of the ongoing threat posed by powerful criminal organizations and their accomplices. Moreover, the measures in place to protect victims, witnesses and judges are quite weak. The government has acknowledged this problem as part of the reclamation and restitution process begun under what is known as the "Victims' Law" (Law 1448 of 2011).

**Using data from August 2009, DeJusticia calculated the rate of impunity for killings of trade unionists to be 94.4%, slightly below the overall rate for the judicial system, which was noted at the start of this chapter.**

## 3. Overcoming deficiencies

The above assessment ultimately reveals that society and the State should focus their efforts on:

- ◇ Improving success rates in prosecution, based on a certain agreement as to the universe of cases currently in impunity.
- ◇ While doing so, not neglecting quality in the way cases are adjudicated.
- ◇ Making progress in identifying instigators and accomplices outside the criminal organizations.
- ◇ Using systematic methods of investigation and prosecution, given the potentially systematic nature of the acts in question.
- ◇ According a central role to victims.

This agenda requires first acknowledging that these weaknesses are found in the entire Colombian judicial system (CCJ, 2010: 73). This means that many of the efforts to overcome them should be aimed at effecting change throughout the judicial system, although some may be more specific in nature. For some deficiencies that affect the judicial system as a whole, solutions may be initially introduced in





**DeJusticia's assessment of efforts to identify mid-level and even top-ranking operational leaders is favorable. The operational leader of the armed group was identified in some 70% of the verdicts and convicted in 42% of them; 25% involve high-ranking leaders (bloc commander or higher). Out of the 223 verdicts for cases in which the victims had ties to organized labor, 77.9% state the name of the armed group to which the defendant belonged, and 66% identify the bloc and its geographical area of operations.**

cases involving victims who are trade unionists, and then subsequently replicated throughout the rest of the judicial system.

It must also be acknowledged that the judicial system has a backlog of cases involving human rights violations against trade unionists, as a result of years of impunity. Extraordinary measures are needed to reduce this backlog, alongside efforts to improve efficiency and quality in the system as a whole.

Actions other than those taken thus far as a result of the 2006 Tripartite Agreement are needed, while acknowledging the progress signaled by these past measures. This will require an exceptional commitment of human and financial resources, commensurate to the cumulative magnitude of years of impunity.

Some initial steps have been taken by the administration and the Office of the Attorney General, in accordance with the agreement signed by presidents Santos and Obama on 7 April 2011.

These steps include the following:

- ◇ The appointment of 95 judicial-police investigators devoted exclusively to expediting these cases.
- ◇ The plan to increase the number of prosecutors and investigators assigned to regional prosecutorial offices, and to provide them with more training.
- ◇ The selection of cases involving trade unionists and unionized workers for purposes of expedited prosecution, identified jointly at monthly meetings between the Office of the Attorney General and the trade union confederations, with the participation of the ENS as a recognized source of information.

#### **4. Overcoming obstacles**

A number of obstacles are found in the judicial system as a whole and, more specifically, in the prosecution of crimes against trade unionists and unionized workers. Some of these obstacles are more difficult to overcome than others.

Some obstacles lie beyond the judicial system per se, and removing them will require complex efforts on multiple fronts. The results of these efforts may not be seen immediately, but rather over the medium and long terms.



Photography: Emilio Posada González. Courtesy ENI

These obstacles are associated with societal practices and representations, such as tolerance and weak social sanctions for human rights violations. More specifically, some obstacles are related to both formal and de facto powers, including the interference of armed groups (guerrilla and paramilitary forces), drug traffickers, and private individuals and government officials acting as accomplices.

This interference undoubtedly stands in the way of effective prosecution and the quest for truth, justice and reparation.

Other obstacles lie in the judicial system itself, and can be addressed through specific interventions aimed at achieving short- and medium-term results.

Many of these obstacles have been identified in assessments such as the one put forward in CONPES document 3411 of 2006,<sup>5</sup> some of whose 17 recommendations have yet to be implemented; the one conducted by Dejusticia (2010) as part of this project; and the one performed by the CCJ and the ENS in 2009.

**5** This paper is titled *Política de lucha contra la impunidad en casos de violaciones a los derechos humanos e infracciones al Derecho Internacional Humanitario, a través del fortalecimiento de la capacidad del Estado colombiano para la investigación, juzgamiento y acción* [Policy to combat impunity for human rights violations and breaches of international humanitarian law by strengthening the capacity of the Colombian State for carrying out investigations, trials and proceedings.]



**As for connections between cases, the assessment is somewhat positive: 61% of the 223 verdicts explicitly drew on evidence from other cases, especially from transitional-justice cases. The testimony offered by paramilitary commanders under the provisions of Law 975 of 2005, also known as the Justice and Peace Law, have made a particularly noteworthy contribution to cases involving trade unionists.**

Ultimately, these obstacles signal shortcomings in the State's criminal-justice policies, which therefore need to be reviewed and reformulated. Particular attention should be paid to greater coordination and cohesiveness of such policies; closer alignment of goals and objectives with strategies; effective use of human, technical, organizational and financial resources; and mechanisms for systematic, continuous monitoring.

Criminal-justice policies should also specifically address human rights violations, including those perpetrated against trade unionists and unionized workers.

This policy reformulation should be used to make progress on matters identified here, which are almost entirely neglected in the judicial system as it currently operates: a systematic approach to address violations that are themselves systematic, and the important role of victims in the proceedings.

Many of the goals of such policies will be achieved through action by the administration, the prosecuting entities, or the judicial system. However, some will require legal or regulatory reforms: e.g., to amend the penal code to include acts that are not currently defined as crimes, or to modify procedural regulations to make proceedings more effective, speedier, and of greater quality.

The aforementioned agreement between presidents Obama and Santos also calls for initiatives to amend the penal code to make it a crime to threaten those who are organizing unions or negotiating collective bargaining agreements, and to establish minimum sentences for these crimes.

The epilogue to this report outlines the main proposals for action to be taken by the State, along with other proposals for action by trade unions and the business sector.





# Chapter 13

## Challenges in individual and collective reparation<sup>6</sup>

**A** study on violence against trade unionists and unionized workers would not be complete without an assessment of public policies on individual and collective reparation for victims of the violence, their families, and their unions.

The legal framework consists primarily of Law 975 of 2005, known as the Justice and Peace Law; Decree 1290 of 2008, which creates “a program to provide individual reparation through administrative channels to victims of unlawful armed groups”; and, as of June 2011, Law 1448 of 2011, to provide reparation to victims and restitution of lands.

The legal framework provides two avenues through which the State can fulfill its obligation to provide individual and collective reparation to victims of violence resulting from the armed conflict: a judicial option and an administrative option.

Reparation via the judicial option, in turn, may be sought in either of two venues: in regular courts, especially in the Special Criminal Circuit for Backlog Reduction; or in transitional-justice courts under the provisions of Law 975 of 2005, also known as the Justice and Peace Law.

Administrative options include the individual-reparation program established by Decree 1290 of 2008, as well as the 10 pilot projects launched by the National Reparation and Reconciliation Commission (NCCR) as a preliminary step toward a national program to provide collective reparation through administrative channels.

Law 1448 of 2011 merits particular attention for the prospects it opens up for individual and collective reparation to be provided through administrative channels.

While much work remains to be done for collective reparation, we should recall the principles and guidelines that must underpin any policy and the programs arising from it.

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<sup>6</sup> This chapter is based on input from DeJusticia (2010) and Díaz (2010).



**The lack of a systematic approach has an adverse effect on the truth and justice owed not only to the victims, but also to other populations that have suffered systematic violations: political parties and movements such as the Patriotic Union of the 1980s and 1990s, ethnic groups such as indigenous people, and activists such as human rights advocates.**

The assessment put forward in this chapter, therefore, is organized into five sections:

- ◇ Reparation in the verdicts of regular courts, including those issued by judges in the Special Criminal Circuit for Backlog Reduction (reparation via judicial remedy, regular courts)
- ◇ Reparation under Law 975 of 2005 and the judicial proceedings governed by it (judicial remedy, transitional-justice courts)
- ◇ Reparation through administrative channels (individual-reparation program and pilot projects for a governmental collective-reparation program)
- ◇ Prospects and limitations of Law 1448 (for collective reparation through administrative channels)
- ◇ Expectations for a collective-reparation policy

## **1. Reparation in the verdicts of regular courts**

DeJusticia's (2010) study of 276 verdicts in cases of violence against trade unionists yields at least three major findings related to reparation:

- ◇ Victims sought reparation through the criminal trial in only 23 cases—i.e., in only 8.3% of the cases involving victims who were trade unionists eligible for reparation.
  - ◇ Judges in over 80% of the cases acted on their own initiative in ordering financial compensation for nonpecuniary harm, and in 11.6% (32 cases) they did not do so.
- ◇ In no cases were measures taken for rehabilitation, satisfaction or nonrepetition of the violation.

In only one case did the judge order payment of collective financial compensation for nonpecuniary harm to a trade union. In 2007, a judge of the Special Criminal Circuit for Backlog Reduction ordered that ANTHOC be paid an amount equivalent to 50 times the statutory minimum monthly wage for the 2001 killing of a union member in Tibu by a former member of the AUC's Catatumbo Bloc.

Why do the vast majority of victims fail to request reparation in trials conducted through the regular courts? Although no data is available on the percentage of victims represented by legal counsel in the proceedings, DeJusticia's (2010) study notes that neither governmental entities nor other social organizations that have traditionally worked on issues related to union rights have the capacity to provide representation for the victims.





The trade union confederations have issued a number of statements in recent years—and have echoed these statements at victims' conferences—calling for the establishment of special programs to provide representation for the victims and their relatives. The confederations also made this request as part of the tripartite agreement with the government and employers, calling on the State to take effective measures to ensure that victims are better represented in the proceedings.

Moreover, out of the cases in which judges ordered financial compensation for nonpecuniary harm, only nine included an order of compensation for pecuniary harm. According to DeJusticia, the average compensation was 711 times the statutory minimum monthly wage (SMLV), with the amounts ranging from 1 to 7,000 times the SMLV.

As noted above, in no case did the judges of the Special Criminal Circuit for Backlog Reduction order rehabilitative measures or measures to provide symbolic reparation or guarantees of nonrepetition. Such measures are considered part of the victims' right to satisfaction and restoration of their dignity, in accordance with the principles adopted by the United Nations. To this end, the trial and verdict play a central role, as also noted by the Inter-American Court of Human Rights.

For trade unionists, it is important that the verdict identify the victim as a trade unionist and that it acknowledge that the motive for the crime was the victim's union activity, if so proven.



## 2. Reparation under Law 975 of 2005 and the judicial proceedings governed by it

The implementation of Law 975 of 2005—and how it relates to victims' reparation—merits special attention. The law was originally designed to emphasize judicial remedies as the way for victims gain comprehensive reparation, and it did not foresee the creation of a massive program to provide individual reparation through administrative channels.

Only three years after the law was enacted, Decree 1290 of 2008 established a program for individual reparation and, in accordance with Law 975 of 2005, assigned the NCRR to create a program for collective reparation.

Law 975 was originally based on the notion that those generally responsible for making reparation were the convicted members of the armed groups, and that they were only obligated to do so with the proceeds of their illegal activities. The law also assumed that perpetrators would voluntarily return the property they had illegally acquired. The Constitutional Court, in ruling C-370 of 2005, substantially changed this framework.

**A number of obstacles are found in the judicial system as a whole and, more specifically, in the prosecution of crimes against trade unionists and unionized workers. Some of these obstacles are more difficult to overcome than others.**

As amended by the Constitutional Court's ruling, the law now includes three major features related to reparation:

- ◇ The designation of the criminal proceedings under Law 975 as having the role of satisfying the victims' right to comprehensive reparation, linking it to the criminal liability of individual perpetrators or of the armed groups to which the perpetrators belong.
- ◇ The coexistence of two avenues for obtaining comprehensive reparation for the victims: the criminal proceedings under Law 975 and the administrative individual-reparation program.
- ◇ The responsibility of the executive branch for enforcing the orders of the Justice and Peace Courts and for funding the administrative program.

According to information released by the Office of the Attorney General, the statements of those testifying under the provisions of the Justice and Peace Law had, as of 1 November 2010, identified 323 victims who were trade unionists. As of the same date, judicial investigations had been opened in 131 cases involving victims who were unionists, and formal charges had been filed in 36 cases.

According to the Justice and Peace Chamber of the Superior Court of Bogotá, the Justice and Peace Unit of the Office of the Attorney General had documented 266 cases of violent crime against trade unionists as of 2009.<sup>7</sup>

<sup>7</sup> According to the Office of the Attorney General, by 1 November 2010 the Justice and Peace Unit had counted 314,383 alleged victims of illegal armed groups. This figure, however, is not broken down by type of victim—i.e., it is not known how many of these alleged victims were trade unionists or unionized workers.



### 3. Reparation through administrative channels

Individual reparation through administrative channels has been provided under Decree 1290 of 2008, and is based on the principle of “solidarity.” Like the Justice and Peace Law, this decree states in its preamble that while the perpetrators are responsible for the violations, the State “cannot be indifferent to the plight of the victims.”

Herein lies one of the criticisms of the program to provide individual reparation through administrative channels, since basing it on the “solidarity of the State” can have the effect of undermining reparation and restitution of victims’ rights by allowing the State to evade its responsibility for human rights violations committed against those in need of reparation. This principle of “solidarity-based compensation” has not been accompanied by measures aimed at recognition of victims, satisfaction, or symbolic reparation.

The administrative individual-reparation program is actually an extension of the humanitarian-aid program run for a number of years by the Presidential Agency for Social Action and International Cooperation (Acción Social) on the basis of Law 418 of 1997.

This law expressly invoked the principle of solidarity and the concept of “special harm” as the grounds on which victims of political violence had the right to receive humanitarian assistance. Article 47 of the law stated that the policy of providing assistance to victims did not imply an acknowledgement of the State’s responsibility for the violations.

The amount of “solidarity-based compensation” ranges from 27 times the statutory minimum monthly wage as housing assistance for victims of displacement, to 40 times the statutory minimum monthly wage for kidnapping victims and for relatives of people killed. The government can be said to have combined the two programs, since after Decree 1290 the money that had been provided in the form of humanitarian aid became “solidarity-based assistance in the form of administrative reparation.”

In summary, although the humanitarian-aid program has represented a budgetary effort by the Colombian government, it does not meet all of the standards to be considered a full-fledged victims’ reparation program because:

- ◇ By definition it is not based on the obligation to repair, but rather is posed as solidarity-based humanitarian aid.
- ◇ It excludes the State’s admission of responsibility vis-à-vis the victims.

**The State’s criminal-justice policies need to be reviewed and reformulated. Particular attention should be paid to greater coordination and cohesiveness of such policies; closer alignment of goals and objectives with strategies; effective use of human, technical, organizational and financial resources; and mechanisms for systematic, continuous monitoring.**



- ◇ It is not adequately coordinated with other justice measures.
- ◇ Missing from it is any discourse explicitly acknowledging that the victims' dignity has been violated and acknowledging the harm that needs to be repaired.

On the other front of administrative reparation—i.e., collective reparation—Article 49 of Law 975 of 2005 ordered the government to start a collective-reparation program in accordance with the recommendations of the CNRR, the entity established by Article 50 of the same law.

Article 151 of Law 1448 of 2011, known as the Law for Victims' Reparation and Land Restitution, issued the same order and set a deadline of six months from the effective date for compliance (i.e., until December 2011). This law also assigned responsibility to a specific office—the Special Administrative Unit for Comprehensive Care and Reparation of Victims, also created by Law 1448—and, like Law 975, required that the CNRR's recommendations be followed.<sup>8</sup>

For the sake of developing a proposal or multiple proposals to comply with Law 975, the CNRR decided in January 2007 to carry out 10 pilot projects, which the government would then use to make suggestions for its collective-reparation program.<sup>9</sup> A variety of victim populations from various departments were selected for the 10 pilot projects, and eight of them agreed to participate. This report, then, makes reference to these eight projects.

The only one of the eight projects that specifically involves the population of victims who are trade unionists and unionized workers is the project at the University of Córdoba. This project, in fact, includes the university's four population groups: students, administrators, faculty and workers. The latter two groups are represented by their respective unions, ASPU (Trade Union Association of University Professors) and Sintraunicol-Córdoba (Colombian University Workers Union).

<sup>8</sup> Article 171 of Law 1448 provided that within one year—i.e., by June 2012—the CNRR, which was established by Law 975 for an eight-year period, will be disbanded and its duties assumed by the Special Administrative Unit for Comprehensive Care and Reparation of Victims, which was created by Law 1448, Article 166, as a special administrative unit assigned to the Administrative Department of the Office of the President.

<sup>9</sup> The CNRR's proposal calls for a specific chapter on collective reparation in the labor movement.



Photography: Jang Ludmir Araujo, Courtesy ENS.



Albeit with some difficulty, by July 2011 the four groups had agreed on a draft document describing the main harm caused by the numerous, grave human rights violations to which they were subjected over the past two decades, as well as the collective-reparation measures that should be adopted accordingly. The only remaining step, then, was to reach an agreement with the authorities on such harm and reparation.

The draft document begins by describing how the four population groups and, more specifically, their organizations were adversely affected by killings, threats, and forced displacement. It then explores the consequences of those violations, which it summarizes as follows:

Rupture of the tradition of student organizing, widespread fear and psychological and social harm, legal uncertainty, stigmatization of the university, increased administrative corruption, denial of democratic participation, and lack of guarantees of nonrepetition.<sup>10</sup>

The final part of the document proposes the corresponding reparation measures, as agreed upon by the four population groups to which the victims belong.

The information gathered in the eight pilot projects, the discussions and consensus-building activities with the various communities, and the experience of coordinating with the authorities (both local and central) have been a good first step. The challenge before the CNRR, then, is to translate this wealth of information and experience into general categories and formulas that can be used to implement a mass-scale program for collective reparation.

#### **4. Prospects and limitations of the “victims’ law”**

Law 1448 of 2011 marks a step forward in Colombian legislation on the rights of victims, their families, and their organizations to truth, justice, guarantees of nonrepetition, and individual and collective reparation.

This progress is noticeable in how the law defines victims, in the new specific rights it recognizes, in the judicial or administrative actions it calls for, in the new programs and institutions it establishes, and in the new obligations of the State that it sets forth. However, the law also has some limitations, which will be described later.

In defining the victims, Article 3 of this law reflects the principles and guidelines of the United Nations in relation to the struggle against im-

**A study on violence against trade unionists and unionized workers would not be complete without an assessment of public policies on individual and collective reparation for victims of the violence, their families and their unions.**

<sup>10</sup> On the University of Córdoba Pilot Project on Collective Reparations (available at [www.cnrr.org](http://www.cnrr.org)).





punity and to victims' rights, especially when it specifies that a person is a victim "regardless of whether the perpetrator of the violation is identified, apprehended, prosecuted, or convicted and regardless of the familial relationship between the perpetrator and the victim."<sup>11</sup>

**The legal framework provides two avenues through which the State can fulfill its obligation to provide individual and collective reparation to victims of violence resulting from the armed conflict: a judicial option and an administrative option.**

Accordingly, this law does not deny victim status to those who have suffered violations at the hands of agents of the State, signaling a major departure from previous transitional-justice legislation, most notably Law 975 of 2005.

Under this law, the recognition of victim status is included in the law's statement of purpose in Article 1, and the victims' dignity is upheld through enforcement of their constitutional rights. These are no minor matters. In this sense, the law represents a step toward compliance with multiple rulings in which the Inter-American Court of Human Rights calls on States to acknowledge responsibility.

Chapter III of Title IV, which provides for the restitution of lands to those dispossessed of them as a result of violations committed as part of the internal armed conflict, is one of the law's greatest achievements and also poses one of its biggest challenges. The institutions created for this purpose—the Special Administrative Unit for Restitution of Usurped Lands and the Land Restitution Chambers of the Supreme Court and of the Judicial District Superior Courts—will have a huge amount of work to do.

For victims who are trade unionists and unionized workers, their families and their organizations, the differentiated approach set forth in Article 13 of the law is important. This article "acknowledges that there are populations with particular characteristics," among which it explicitly includes social leaders and members of trade unions, specifying that "in the national government's implementation and adoption of assistance and reparation policies ... differentiated criteria should be adopted to reflect the particular characteristics and degree of vulnerability of ... these population groups."

Articles 151 and 152 address collective reparation. Article 151, as noted, calls for implementing a collective-reparation program, as required by Law 975 of 2005. Article 152 specifies that the recipients of collective reparation are social and political groups and organizations, and that these social organizations include trade unions.

This is significant in that the law legitimizes these organizations as entitled to reparation, especially since this recognition is conspicuously absent from rulings of Colombian courts, which apparently have not followed the guideline of the Inter-American Court of Human Rights whereby a human

<sup>11</sup> "Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law" (United Nations General Assembly Resolution 60/147 of 16 December 2005). The Constitutional Court's rulings have embraced this notion that status as a victim should be independent of the type of perpetrator and of whether the perpetrator has been identified, apprehended, prosecuted and convicted (Constitutional Court ruling T-1001 of 2008, on humanitarian aid, and ruling C-1199 of 2008, on reparation).

rights violation against one member of a group is tantamount to a collective harm against the entire group.

The law establishes a new institutional framework to meet its objectives, and one notable feature of this framework is the coordination of various State agencies—including not only the administration, but also oversight agencies, the Office of the Attorney General, and the Office of the Ombudsman—through the national system for comprehensive care and reparation of the victims. The executive committee for this national system is to be chaired by the President of Colombia (Law 1448 of 2011: Articles 159 and 164).

Another noteworthy aspect of the law is its call for active participation by the victims in implementing it.<sup>12</sup>

Although Law 1448 does represent progress—the aspects of which are only partly described here—it also has its limitations, particularly with regard to violence against trade unionists. One of its limitations is the persistence of mismatches and gaps between the judicial and administrative avenues for reparation, which had resulted from Act 975 of 2005 and had created difficulties for victims.

One such difficulty involves compensation payments. Articles 10, 132 and 133 of Law 1448 state that when the Colombian State is ordered to pay compensation in a judicial proceeding, the payment is limited to the amount set forth in the regulations for individual reparation through administrative channels.

Many victims prefer to pursue reparation through administrative channels rather than through the courts, presumably because the process is faster. This, however, constitutes a disincentive to use proceedings that are intended to arrive at the truth about the perpetrators and their motives, as well as to punish those responsible.

<sup>12</sup> Law 1448 of 2011, particularly in Title VIII, “Participation of victims.” The law designates the executive branch as responsible for upholding the principle of active participation by the victims, and therefore the administration must make a special effort to turn this principle into a practical reality.





**Law 1448 of 2011 marks a step forward in Colombian legislation on the rights of victims, their families and their organizations to truth, justice, guarantees of nonrepetition, and individual and collective reparation.**

Despite its limitations, the law on victims' reparation and land restitution constitutes a step forward in the process of acknowledging and upholding the rights of victims—including those who are trade unionists—and significantly clears the way for reparation, particularly in the following three ways, as described above:

- ◇ It sets out to acknowledge and bring dignity to the victims, regardless of who the perpetrators are or whether the perpetrators have been identified and convicted.
- ◇ It does not exclude any group of victims of the internal armed conflict, nor does it exclude victims of acts perpetrated by agents of the State.
- ◇ It provides for a comprehensive response by reorganizing the institutional framework to address various components of reparation for victims, their families and their organizations.

## **5. Expectations for a collective-reparation policy**

Public policy for effective, inclusive, differentiated reparation of victims who are trade unionists should:

- ◇ Provide an acknowledgement from the highest levels of the State that the affected unions, their members, and their labor federations and confederations are victims.
- ◇ Establish a comprehensive nationwide program that is suited to the needs of this community and includes all the elements of satisfactory reparation.
- ◇ Evaluate the work of the judicial system, in both transitional-justice and regular venues, with the aim of finding solutions to any existing gaps.
- ◇ Include the participation of victims and their organizations in designing and developing this policy.

For the type of violence addressed here, acknowledging facts, consequences and responsibilities has not only an individual component but a clear collective dimension as well. Not only must the events in question be recognized as crimes against individuals, but the strategic decisions behind the systematic use of violence—and the impact of these crimes on trade unions as collective entities, and the collective harm caused—must be acknowledged as well.


The government, as leader of the State, could acknowledge, in accordance with the evidence from the judicial proceedings described in this report, that violence against trade unionists has been part of a systematic practice.



The government could also acknowledge, based on the fact that members of the armed forces and police have been convicted on criminal charges, the State's responsibility for the actions of its agents and, based on the convictions of other perpetrators, its responsibility for failing to uphold the rights of trade unionists and unionized workers.

For symbolic purposes, a collective-reparation program should include measures to recall and reclaim the dignity of trade unions as collective subjects alongside the dignity of individual victims. It should also include measures to engage new generations in a public debate on the value of unions in an inclusive, deliberative democracy of citizens.

In addition to publicly acknowledging the State's responsibility, a reparation program can also include measures such as naming or renaming public places to commemorate the victims, and creating or promoting campaigns, lecture series and media events as ways to honor the memory of individual victims and the reputation of the trade unions, which have been the collective victims.

Other effective reparation measures would include initiatives to strengthen the trade unions and institutional-strengthening projects to ensure that freedom of association and union rights are most effectively protected from any interference in the form of violence or threats. The participation of trade unions and the victims' families in conceiving, designing and implementing such measures is an essential step toward satisfaction of the victims. 



# Chapter 14

## Protecting trade unionists and unionized workers

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rotection from the extraordinary or extreme risks posed by the systematic violence perpetrated by various parties is an obligation and essential duty of the State as long as such risks persist.

Indeed, these risks remain despite the overall decline in killings. Among the starkest evidence of these persistent risks are the frequent threats reported by the sources that keep track of them, such as the ENS, CINEP, and the trade union organizations themselves, as noted in previous chapters.

Rulings by the Constitutional Court are emphatic on this question—and rightly so, since the duty to protect its citizens is essential to any State governed by the rule of law.

Again, the point here is to acknowledge what the State has proposed and accomplished thus far, and then to identify any gaps or missteps. This should lay the groundwork for the relevant social actors to discuss the actions proposed in the epilogue to this report with the full support of sober, balanced analytical work.

This is not about protecting the general population from ordinary risk, a service provided by the State through the institution and normal functioning of the police. Rather, it is about protecting a specific population—that of trade unionists—from “extraordinary” and “extreme” risks, as such risks are defined by the Constitutional Court’s rulings.<sup>13</sup>

### 1. Programs related to protection of trade unionists

There are basically three programs related in some way to protection of this specific population and the extraordinary and extreme risks facing it: the program of the Ministry of the Interior for protection of trade unionists; the program of the Ministry of Education, which

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<sup>13</sup> In particular, see Constitutional Court rulings T-719 of 20 August 2003 and T-976 of October 2004.





is governed by Resolution 1240 of 2010; and the program to protect members of the USO. Strictly speaking, the only one of these that meets the standards of a protection program and has been the responsibility of the State is the Interior Ministry's program.<sup>14</sup>

The transfer program for teachers who are under threat (not just union members)—governed by Resolution 1240 of 3 March 2010 and run by the Ministry of Education in cooperation with subnational departments of education<sup>15</sup>—is not a protection program in the strict sense of the term. Instead, some people consider it a risk prevention or mitigation program.

Under this program, threatened teachers facing an “extraordinary” level of risk are offered the opportunity to transfer to another regional jurisdiction with no reduction in pay and with moving costs covered up to certain amounts. Teachers facing an “extreme” level of risk can relocate outside the country while continuing to receive their salary.

Decisions for the program are made by a local committee (the Special Committee for Threatened Teachers) on the basis of a previous risk assessment conducted by the police's Protection and Special Services Bureau (DIPRO). If the risk level is found to be extraordinary or extreme, transfer is recommended. Provisional measures are taken while this process is pending.

The Center for Special Projects and Research (CIPE) of the Universidad Externado de Colombia, in a September 2010 study based on data from the Ministry of Education, found that 541 teachers under threat had requested transfers (without specifying exactly when); of these, 307 teachers had been granted in-country transfers, while 47 were relocated abroad due to extreme levels of risk.<sup>16</sup>

The agreement between presidents Obama and Santos included a joint commitment from both governments to improve the relocation program and the resolution that governs it, to provide better service to program applicants, to study the dynamics of threats and risks, and to conduct bilateral evaluations of the program on a regular basis.

Meanwhile, the protection program for members of the USO industrial union was started in 2001 by Ecopetrol in response to an order of the Inter-American Commission on Human Rights to adopt precautionary measures, and this program was incorporated into the collective agreement signed in June 2009 and effective through June 2014 (Article 168).<sup>17</sup>

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**14** As of August 2011, what was then the Ministry of the Interior and Justice was split into two entities: the Ministry of the Interior and the Ministry of Justice. As this report was being prepared and the research centers were conducting their analyses, this was a single ministry, and the protection program was part of the unified portfolio. The program is now housed in the Interior Ministry.

**15** These correspond to 32 departments, the capital district, and 62 municipalities with populations of at least 100,000, which for these purposes are deemed “certified” subnational entities.

**16** The study by the Externado University of Colombia also found that provisional measures were in place at the time for an additional nine teachers while the risk assessment was being conducted (see CIPE, 2010: 19).

**17** Ecopetrol–USO collective labor agreement, July 2009, Chapter XVII, Article 152 (in CIPE, 2010: 54). This program was not examined in the project.



Photography: Courtesy Claudia Rubio, Archive UNDP.

The government also has protection programs not specifically targeted to trade unionists, but rather to victims and witnesses. These programs are operated, respectively, by the Office of the Attorney General, the Office of the Inspector General, and the Office of the Ombudsman. Other programs, run by NGOs, target at-risk populations other than trade unionists.

The next section examines the Interior Ministry's program to protect trade unionists. This program has been studied in multiple evaluations, the findings of which have already led to reforms; two of these evaluations were sponsored by the United States Agency for International Development (USAID).<sup>18</sup>

## 2. The Interior Ministry's protection program for trade unionists

This program dates back to Law 6 of 1995. Article 6 of this law created a system under the Inte-

<sup>18</sup> These two evaluations were conducted, respectively, by Cristina Iparraguirre, Martha Rocío Mendoza and Luis Alfonso Novoa for the Ministry of Education (2002); and by Jairo Libreros for the Office of the Inspector General (2008).



rior Ministry for safeguarding human rights, granting this ministry the authority to develop programs to protect, preserve and restore such rights.

Article 81 of Law 418 of 26 December 1997<sup>19</sup> created a program to protect people who were at risk for reasons related to the internal armed conflict, among whom it explicitly included *leaders and activists* of trade union organizations.

Decree 2816 of 2006 specified how the program was to be designed and regulated, and was subsequently amended in part by Decree 1740 of 19 May 2010. A nonmaterial amendment on the procedures and entities involved in the risk assessment was introduced by Decree 3375 of 13 September 2011.

As noted by CIPE (2010), the government deemed this program a success at the time of the study because, out of all the union leaders provided protection under the program, only one was killed. If this program did not exist, or if it had done a poor job of protecting the union leaders it served, the number of killings would have been even higher:

However, there is no evidence that this program has been a decisive factor in the decline in the number of trade unionists and unionized workers killed since 2003. As described in previous chapters, multiple factors contributed to this decline—some of them related to armed groups, some pertaining to the institutional framework, and others related to the trade unions themselves.

If the program is evaluated from the perspective of the protection needs of all trade unionists—and particularly of those, including some leaders, who were not granted protection despite requesting it—the assessment is somewhat less favorable. Suffice it to recall the number of killings and other violations noted in this report.

**Protection from the extraordinary or extreme risks posed by the systematic violence perpetrated by various parties is an obligation and essential duty of the State as long as such risks persist.**

## 2.1 Limitations in program coverage

The program's first limitation is inherent to the very nature of the program's stated objective, which was to protect union leaders at risk (extreme or extraordinary risk), but not rank-and-file unionized workers at risk.

The ENS's statistics confirm this limitation. Only 26% of homicide victims between 1986 and

<sup>19</sup> As noted in multiple chapters of this report, in 1997—the year in which Law 418 was enacted under the administration of Ernesto Samper—the number of killings and other violations against trade unionists and unionized workers was already high, as was the number of those committed against political leaders and activists, especially but not exclusively against those of the Patriotic Union (UP). The first resources for protection had been allocated by the government to the DAS for political leaders (of the UP) who were under threat and for former members of guerrilla groups demobilized under the administration of Virgilio Barco.

<sup>20</sup> These percentages are quite different with regard to judicial verdicts. According to DeJusticia, out of 219 verdicts secured by the Office of the Attorney General through August 2009 in cases where the victims were trade unionists, 46.6% of the victims were union leaders and 53.4% were unionized workers without leadership status (DeJusticia, 2010: 42).



2009 were union leaders and 0.21% were advisers, while 73.8% were unionized workers without leadership status.<sup>20</sup>

The restriction of coverage solely to union leaders has apparently begun to change, however. So it seems from the first point of the agreement between presidents Obama and Santos, and one day earlier, ministerial Resolution 716 of 6 April 2011 issued “instructions on the scope of the status of union leader and union activist within the framework of Decree 1740 of 2010.”

This resolution clarified that activists are among the program’s target populations, and those named in the aforementioned agreement include union representatives, members of negotiating committees, and workers merely trying to form a union or join an existing one. Some people say the resolution is less explicit, however, in including other populations named in the agreement, such as former trade unionists who may be under threat because of past union activity.

To ensure fulfillment of this item, the April 2011 agreement between the presidents of the United States and Colombia is accompanied by the provision of additional resources for 2011 and 2012. So detailed is this commitment, in fact, that the initial increase is set at 50%, or 12 billion Colombian pesos, to be reallocated during fiscal year 2011.

This is a significant step toward improved fulfillment of the State’s constitutional duty to protect, as a fundamental right of victims of threats and of those who are potential victims due to the extraordinary or extreme risk entailed in their union activity.

CIPE’s (2010) study found other shortcomings, not in how the program works once a *protection measure* or *protection plan* is approved for a union leader, but rather in the processes leading to these decisions and sometimes in the decisions themselves.

## 2.2 Problems in risk assessment

Requests for protection basically undergo a two-stage process:

- ◇ The first stage is a technical risk assessment. This assessment was performed by the DAS up until Decree 1740<sup>21</sup> and by the National Police’s Protection and Special Services Bureau (DIPRO) thereafter. Now, as a result of Decree 3375 of 13 September 2011, it is performed by a “preliminary assessment group” consisting of five full members, one of whom is the delegate from the National Police, and three permanent guests, representing the Office of the Attorney General, the Office of the Inspector General, and the Office of the Ombudsman.
- ◇ The second stage is a comprehensive case evaluation based on the outcome of the risk assessment, concluding in a positive or negative recommendation. A positive recommendation can lead to protection measures (travel arrangements, relocation stipends) or to what is known as a protection plan (with armored cars and bodyguards), which may be at any of five incremental levels of security.

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<sup>21</sup> The DAS was disbanded by presidential decree on 31 October 2011.



This second stage, based on the technical risk assessment, is conducted by the CRER (Risk Regulation and Assessment Committee). The CRER was recognized in Article 32 of Decree 372 of 1996 in connection with at-risk union leaders (Article 32 speaks of “social leaders” as part of the population to be protected: “witnesses and persons under threat”).

The CRER consists (in accordance with Article 7 of Decree 1740) of six full members, all from the government; four permanent guest members; and four additional guest members representing each of the target populations of the protection program—including trade unionists—who attend only those meetings that take up cases involving their respective populations.

Obviously, the government’s effectiveness in confronting the grave risks of violent situations hinges largely on the amount of time the process takes before the CRER issues its recommendation on a request for protection. This delay has been one of the main complaints of the trade unions.

In this regard, Article 26 of Decree 1740 of 19 May 2010 sets a deadline of 30 working days for responding to requests. This deadline has not always been met,<sup>22</sup> however, and the aforementioned agreement between presidents Santos and Obama included a commitment to observe the deadline from now on, to agree on methods for monitoring compliance, and to have the Interior Ministry develop an emergency plan by 30 July 2011 to reduce the backlog of requests.

Other weaknesses in the process for granting protection measures or protection plans are related to the composition of the CRER and the effect that this composition may have on the objectivity of its decisions, which has been called into question by the trade unions.

As noted above, the six full members of the CRER are all appointed by the government, and the guest members, both permanent and occasional, have a voice but no vote in deciding whether to recommend protection measures or plans, or whether to recommend a level-one or a level-five protection plan.

To uphold its commitments under the Santos–Obama agreement, the administration issued Decree 3375 of 2011, whereby it introduced a new step in the process, between DIPRO’s gathering of technical information and the CRER’s deliberations and decision. The entity created for this new step is the Preliminary Assessment Group, which—unlike the Risk Level Assessment Committee (CENIR) established by Decree 1740—includes representatives not only of DIPRO. In fact, DIPRO holds only one of eight seats on the newly created entity; four other seats are held by government officials as full members, and three are held as permanent guests by representatives of the offices of the Attorney General, the Inspector General, and the Ombudsman.

This may not be enough, and the composition of the CRER may also need to be changed to provide for greater participation by union leaders and unionized workers in processing requests.

Other changes seem necessary as well, such as procedures for applicants to gain access to the findings of the technical assessment and the grounds on which the CRER may have based an unfavorable recommendation (with the understanding that some information is kept confidential for security reasons), as well as legal remedies in the event that information crucial to them is not disclosed.

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**22** In his second progress report issued in October 2010, the then-minister of the interior and justice for the administration that took office on 7 August 2010 reported that decisions were still pending in 1,149 requests for protection submitted to the CRER (not only by trade unionists, but by people from various target populations of the protection program) (Ministry of the Interior and Justice, 2010).





Moreover, the same suggestion made for the methods used in prosecutors' investigative work and in the conduct of trials would also apply to the approaches and methods used by police specialists in conducting risk assessments, which are then subject to the CRER's approval or objection. Because the violations are systematic, as described in this report, the risks associated with them must also be assessed and analyzed in a systematic way. This will allow for risk profiles to be designed more effectively.

### 2.3 Other aspects of the program that merit attention

In another controversial matter, Decree 1740 of 2010 opens the door to private security arrangements. On this question, it is the position of all trade union confederations, trade unionists who use the program, former officials associated with it, and most analysts (CIPE, 2010) that despite the fact that some officials from the government agency that once provided the service (i.e., the DAS) were guilty of complicity, the government's duty to protect should still be fulfilled by agents of the State and not delegated to private citizens. Notably, this topic is not addressed anywhere in the agreement between presidents Obama and Santos.

Another deficiency, also not addressed in the Obama–Santos agreement, is the fact that the entity in charge of the program—i.e., the Interior Ministry—does not monitor the unionists for whom the findings of the risk assessment are not favorable and for whom the CRER does not approve the request or the type of protection (plan and security level) requested.

The Interior Ministry has apparently not kept a record of rejected applications<sup>23</sup> and, even if it has, it does not monitor these unionists to verify whether its risk assessment and subsequent recommendation were correct. Trade unions and society must be allowed to know whether any of the unionists who once sought coverage under the protection program through their organizations but did not receive it have been killed, or whether any of the threats against them have been acted on; and, if so, how many of them have been killed or suffered violations.

There should also be a way to identify the factors that put leaders, activists and rank-and-file union members at serious risk of being killed in certain regions or unions, so that appropriate precautions can be taken even if no specific threat has been made against them.

To this end, it would be helpful if the CRER and the experts at DIPRO who conduct the technical studies used risk profiles that can be developed from available data.<sup>24</sup> A climate of trust must also be built between experts, the CRER and the union movement, so as to foster a better understanding of trade unions and a more comprehensive assessment of the risk factors that plague the unions and their members.

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**23** This lack of information also affected the scope of the study by CIPE of Externado University and the scope of the observations described in this chapter themselves.

**24** CERAC's (2010) report, in its final chapters, defines risk profiles as a tool constructed on a technical basis and offers a preliminary profile for victims who are trade unionists, using data sources available to CERAC during this project. These risk profiles can be a useful tool in prevention-policy design and development and in individual risk assessments by the DIPRO and the Preliminary Assessment Group.



These considerations should be part of a comprehensive program evaluation as a complement to the assessment of how well the program has worked for those covered by it, which is deemed to have been positive. The State has a pending debt to society in this regard, and it should design and implement—sooner rather than later—a monitoring and tracking plan for this purpose.

It would be a good idea for the Interior Ministry, which houses the program, to order an examination of the criticisms and suggestions put forward by the various sectors involved: program users, rejected applicants,

organizations, service providers (from both the government and the private sector), current and former CRER decision-makers, and police experts who conduct the risk assessments.

The Interior Ministry could use the findings of this examination to do an even more effective job in designing subsequent stages of the program and—to the extent deemed necessary—to devise changes that are firmly grounded in the diagnostic assessments and coherent with all program components.

### 3. Protection as public policy

It may not be enough to make specific changes in the two aforementioned government programs, those of the Interior Ministry and the Education Ministry. Rather, a comprehensive public policy on protection over the short, medium and long terms needs to be designed, discussed and agreed upon. This discussion should be both academic and political in nature because it will have practical implications, such as on how actions are prioritized and how funds are spent.

A full-fledged public policy must, at a minimum:

- ◇ Be a policy of State, not subject to change from one administration to another.
- ◇ Be designed for the short, medium and long terms.
- ◇ Constitute a significant institutional commitment of the government budget.



**Obviously, the government's effectiveness in confronting the grave risks of violent situations hinges largely on the amount of time the process takes before the CRER issues its recommendation on a request for protection. This delay has been one of the main complaints of the trade unions.**

- ◇ Clearly define objectives, strategies, programs and expected outcomes that can be evaluated and measured.
- ◇ Include mechanisms and entities for ongoing monitoring and evaluation.
- ◇ Be effectively coordinated with other public policies.

Those who claim that the two aforementioned programs, those of the Interior Ministry and the Ministry of Education, do not technically meet the standards of a public policy on protection (CIPE, 2010) do not necessarily deny that these programs have attained positive outcomes or that they have reduced the numbers of killings and other violations. They simply maintain that, under current circumstances, not all of the essential components are in place to support the existence of a comprehensive public policy.

The leaders of the various branches of government should value this debate as a strategic moment in the inexorable march toward the goal of one day ensuring full protection for a systematically victimized population—not only for unionized workers who hold leadership positions, but also for those who do not. Fulfilling this goal would play a decisive part in reducing current levels of violence in Colombia.







Photography: Chell Melisa Llano Martin. Courtesy ENS.



# Part Six

**Conclusions and epilogue**



**“For employers, violence against the trade union movement is lamentable; trade unionism is the foundation and standard-bearer of Colombian democracy.”**

***Alberto Echavarría***

*Vice President for Legal Affairs, ANDI*

## **At a glance**

*Conclusions*

*Epilogue*





# Conclusions

**A**ccording to all existing sources, governmental or otherwise, the magnitude of what has happened to unionized workers in Colombia since the 1980s constitutes a grave violation of human rights. Statements to this effect have been made over the course of this project by representatives of the national government, ANDI, and the trade union confederations.

The data from various sources do not always match for specific years, locations or unions. This is normal; intervening between the moment a violent act occurs and the moment it is recorded are a source's organizational objectives and the methodologies it uses.

The following factors come into play in this intervening step:

- ◇ The use of categories such as trade unionist, unionized worker, trade union (legally established or otherwise), which can determine whether or not a case is included in the records of a data source or, if included, can affect how it is classified.
- ◇ Inclusion and exclusion criteria, such as motives behind the act—e.g., whether an anti-union motive was behind the crime or it was a case of common crime.
- ◇ Classification criteria such as the victim's occupation; the ODDH's data, for example, treat teachers as a distinct category.

Discrepancies in categories and criteria can lead to discrepancies in data between sources.

However, the resulting discrepancies in data were not such that any of the parties questioned whether the situation was a troubling one.

As for trends over time, almost all sources agree on which years saw the most killings—with the numbers peaking in 1996—and all agree that the number of killings declined from 2003 to March 2011, although other forms of violence (such as threats), as reported by some sources, have not seen a similar decline.

This project began by taking stock of these sources, emphasizing their points of complementarity over their discrepancies. Together these sources constitute a useful resource for prosecutors and judges, who shoulder the State's responsibility to uphold the rights of victims and their organizations to truth, justice and reparation.



This project has strived for a guideline of not relying not on any single source, instead drawing whenever possible from multiple sources for each data point, or at least from two: the government's source, which is the ODDH, and the alternative source closest to the trade unions, which is the ENS. Data from CINEP and the CCJ were often used as well.

However, the dual-source guideline could not always be observed: for cases from before 2000 (since the ODDH's data do not cover those years), for data on violations other than killings, or when a source's data are not disaggregated by trade union or by geographic location.

To the extent that this project has succeeded in bringing clarity through the contributions of the six research centers that joined up with UNDP, it has been thanks to the still-modest accomplishments of the justice system—to which the project had limited access—and, even more so, thanks to the information contained in the aforementioned sources.

The first thing that kept surfacing in convincing fashion was the systematic nature of the violence, especially when incidents and victims are profiled and when numbers and trends are broken down by organization and location.

Indeed, acts of violence are most frequent for some 25 unions, and especially for FECODE-affiliated unions, the USO, and the banana workers' unions; in certain departments, most notably Antioquia, Santander, Valle del Cauca, and Cesar; in certain regions, such as Magdalena Medio and Urabá; and in 32 of the 1,103 municipalities, especially Barrancabermeja, the four municipalities in the banana-growing regions of Antioquia, San Alberto, Puerto Wilches, and, since 1990, in cities such as Medellín, Cali, Montería, Valledupar, and Barranquilla.

All of this valuable information, moreover, needed to be contextualized within longer-term social processes to help figure out what it meant and make some sense of it. To this end, Part One described three different contextual approaches to the violence, which hold the keys to interpreting the information.

The first context is the historical development of trade unionism and union activity, and its important, peculiar relationship with another arena of collective action—i.e., politics. This history dates from the emergence of trade unions in the 1920s and 1930s.

Another context is the historical development of the relationship of union activity and politics to violence—a relationship that manifested itself most clearly in the events of the 1940s and 1950s, in what could be called “the violentization of politics and the politicization of violence.”

At the root of this relationship is the *modus operandi* adopted by the State, whereby private armed groups were given free rein at a time of increasing social mobilization and rising political opposition. The actions of these armed groups combined with displays of force that were initiated, at least formally, from within the institutional framework. The balance between these two alternatives—private groups and government forces—varied from one historical moment to another.

The third context is Colombians' negative views on trade unionism and union activity, fueled by the media and sometimes by the discourse of government officials. This perspective becomes a dark backdrop against which the recurring stereotype of the “guerrilla unionist” emerges.



Feeding on this stereotype are those who disparage anything related to trade unions, those who stand in the way of union activity, and those who—as part of armed groups capable of committing grave human rights violations—turn previously stigmatized unionists into their victims.

With these keys in mind, this report took a closer look at the three organizations whose members, according to all sources, suffered the most killings and other violations during the period under review (1984 to March 2011): FECODE, the USO and Sintrainagro.

Although not featured in Part Three like the three aforementioned organizations, the remainder of the 25 unions most affected by violence in Colombia were discussed in a crosscutting manner in other parts of the report.

To shed light on the problem, the similarities and differences between the three most victimized trade unions were examined.

Below are some similarities:

- ◇ The limitations and difficulties in identifying the perpetrators in the sources, even at the general level of paramilitary forces, guerrilla groups, agents of the State, or private citizens.
- ◇ A convergence of victims' union membership with their political affiliations or sympathies outside the ruling parties or co-ruling parties, as well as with their social leadership, watchdog activity, and human rights advocacy.
- ◇ A history of belligerence among victimized organizations, and the inclusion of contentious actions as part of their union-related initiatives.

However, they are also different in some ways:

- ◇ The violence against the USO over the entire period—and against Sintrainagro up until a certain time—was more clearly related to strikes and contentious actions, and therefore occurred more frequently in certain periods. For FECODE, meanwhile, the violence was associated not only with their strikes or with those of their member unions, but also with local dynamics involving social struggles and election campaigns. The violence against FECODE was also more widespread across the country and throughout the year.

**According to all existing sources, governmental or otherwise, the magnitude of what has happened to unionized workers in Colombia since the 1980s constitutes a grave violation of human rights. Statements to this effect have been made over the course of this project by representatives of the national government, ANDI, and the trade union confederations.**



Photography: Julio Sánchez Ríos.

- ◇ The violence against all three organizations has featured combinations of action by regular military or police forces, on the one hand, and violations by criminal groups, especially paramilitary forces, on the other. These combinations, however, have been more obvious and frequent in the violence against USO members. Army and police forces have also carried out more actions against the USO—e.g., arrests, courts-martial, and disruption of marches, especially during strikes. Some of these strikes have been organized around labor-related demands, while others have been called to pursue public-policy objectives or to denounce the violence.
- ◇ In cases where irregular armed groups are known or assumed to have been the perpetrators, according to the sources, Sintrainagro has most often been the victim of violence by guerrilla groups, followed closely by paramilitary forces. Both types of perpetrators, meanwhile, have committed violence against FECODE, although the paramilitary forces have done so much more frequently. The violence against the USO, meanwhile, is known or suspected to have been almost entirely the work of paramilitary groups.
- ◇ As for the impact of the violence on these organizations, their union activity, and their rates of membership, Sintrainagro and FECODE have proven throughout to be stronger than the violence against them. They are organizationally sound, and their membership rates have not declined. The USO, meanwhile, has seen its ranks diminished as a result of outsourcing, which has combined with the ef-



facts of the violence. Strikes, mobilizations and protests declined in all three unions in the 2000s. This decline occurred for different reasons in each union, and cannot be chalked up to violence alone.

After describing how these three organizations have been affected by violence, the report tackled two difficult questions regarding this violence in Colombia: Who are the perpetrators, and what are their motives?

These two heavily debated questions are not easy to answer, due to the modest results achieved thus far by prosecutors and judges, and also due to a lack of information in the sources.

The ENS—one of the sources with the most systematic data—lists 78.11% of the reported killings as committed by unknown assailants; it attributes 14.04% of the killings to paramilitary forces, 5.09% to guerrilla groups, and 1.69% to agents of the State.

The percentages attributed to each type of perpetrator vary from one union to another. According to the ENS, 90 of the 803 killings in the banana workers' unions (where most victims were members of Sintrainagro) were perpetrated by guerrillas, compared to 67 by paramilitaries; in the USO, two killings are attributed to guerrillas and all other identified perpetrators were paramilitary fighters; and in FECODE, 103 of the 958 killings were attributed to paramilitaries and 31 to guerrilla groups.

However, the most critical aspect of the question surrounding perpetrators and responsibility is not the armed groups committing violations and their commanders or “operational leaders,” as they are referred to in this report, but rather the accomplices and instigators, whom the judicial system has been least effective in prosecuting and about whom the least amount of data is available in the sources.

This report can go only as far as the court verdicts and data sources allow, and it can only emphasize, in the proposals set forth in the epilogue, the need for all actors—but primarily the State—to work together to remedy the current lack of information and high rates of impunity with respect to these crimes.

The report did discuss some cases—the few that have come to light—in which private interests have been complicit in violations perpetrated by armed groups: the cases of Chiquita Brands International in Urabá, and of a contractor for Drummond International at the Pribbenow coal mine in Cesar department. Judicial verdicts have been handed down in both cases: by a U.S. court against Chiquita, and by the Colombian justice system against the Drummond contractor.

Other companies, such as Nestle, Coca-Cola, and a number of palm-growing operations and cement companies, have seen many of their unionized workers killed. For these companies—and, of course, first and foremost for the victims' families and trade unions—it is important that judges uncover the truth about who ordered and carried out these crimes.

**As for trends over time, almost all sources agree on which years saw the most killings—with the numbers peaking in 1996—and all agree that the number of killings declined from 2003 to March 2011.**





**To the extent that this project has succeeded in bringing clarity through the contributions of the six research centers that joined up with UNDP, it has been thanks to the still-modest accomplishments of the justice system—to which the project had limited access—and, even more so, thanks to the information contained in the aforementioned sources.**

On the topic of instigators, the involvement of State agents in the violations was noted, particularly in those perpetrated by paramilitary forces. Also noted was the troubling fact that these criminal acts sometimes occurred in combination with previous actions by military and police forces against the same victims, many of them carried out within an institutional framework. This happened to a number of USO members during strikes and marches called by the union, as well as to Sintrainagro members through the first half of the 1990s.

The report took a close look at instances of collusion between the DAS and the AUC. Verdicts in these cases have already been handed down by the Special Criminal Circuit for Backlog Reduction and by the Supreme Court.

The other major debate addressed in this report is about the motives behind the violence. Here again, the discussion was based on the still-limited information available in judicial verdicts. In more than half (56%) of the 223 verdicts reviewed in which the victim was found to be associated with trade unionism, the judge ruled that the perpetrators had been motivated by antiunion sentiment (DeJusticia, 2010),

This antiunion motive is most often manifested as a subjective, stigmatizing stereotype whereby trade unionists are branded as guerrillas—a phenomenon described in the report as “insurgent prejudice” (DeJusticia, 2010).

Antiunion motives—or, more precisely, union-related motives—for violence are not unique to a single type of perpetrator. They have been the driving force behind the actions of perpetrators from opposing camps, such as guerrilla and paramilitary forces, as well as agents of the State. Nonetheless, these motives have operated among different

actors in different ways. This makes it important to identify the specific motives for each type of perpetrator (as well as for each type of victim and affected organization), within the general category of union-related motives.

Destroying the union or physically eliminating union members is not the only possible specific motive. An armed group and its accomplices and instigators may find it more convenient to control or co-opt a particular union, or to prevent the recurrence or continuation of a protest action, or to disrupt the union’s watchdog activity so that they can continue their criminal ways.

Based on this diagnostic assessment, the report now arrives at one final question, which in turn will spark debate: What has been done so far, and what have been the results? Although the question should challenge each of the actors and society as a whole, it is directed primarily at the State as the venue for all actors to come together, and as the guarantor of the rights of all citizens.



A reckoning of how much or how little has been achieved thus far—i.e., an assessment of public policy—is the necessary first step toward later identifying, from a solution-oriented perspective, what can be done to help overcome the problem, especially from the viewpoint of victims' rights and victims' organizations, and to contribute to truth, justice, reparation, nonrepetition, and protection from risk.

In connection with the right to truth and justice, the State's effectiveness in bringing perpetrators to justice was assessed. Particularly noted were the accomplishments of the Office of the Attorney General and judges, as well as their limitations and shortcomings, in cases involving violence against trade unionists and unionized workers. The Office of the Attorney General assigns these cases to a subunit created in 2006 for this purpose as part of its Human Rights and International Humanitarian Law Unit. In the trial phase, these cases are heard in the Special Criminal Circuit for Backlog Reduction, also established for this purpose in 2008 by the Supreme Judicial Council.

The establishment of these two specialized units—one under the Office of the Attorney General and the other in the judicial system—led to greater success in prosecuting cases involving trade unionists, as evidenced in the annual number of verdicts. The impunity rate for such cases declined slightly as a result to 94.4%, according to DeJusticia (2010), compared to a rate of 96% to 98% in the judicial system as a whole.

By August 2009 the Office of the Attorney General had initiated 1,343 cases, and verdicts had been handed down in 224 of them. But these numbers are modest when compared to the 2,791 killings, plus a much higher number of other human rights violations, reported by the ENS by that time.

In addition to these troubling statistics, the quality of the verdicts is cause for concern as well. The main problem is that verdicts, in identifying the perpetrators, usually go no further than to name those who carried out the crime and the operational leaders of the armed group in question. Very few verdicts identify those who helped plan the crime as accomplices or instigators, and an even smaller number of such individuals are convicted.

This dubious situation stems partly from criminal justice policy, partly from how the entities in question are organized and operate, and partly from the backlog accumulated over many years of impunity. The proposed solutions, then, should address all of these factors.

Individual and collective reparation is another State duty discussed in the report. The law for victims' reparation and land restitution (Law 1448), signed by the Colombian President in June 2011, is undoubtedly a huge step not only toward individual reparation but also toward reparation at the collective level, which has very few precedents in Colombian history.

**The three organizations whose members, according to all sources, suffered the most killings and other violations during the period under review (1984 to March 2011) were FECODE, the USO and Sintrainagro.**



This law starts with a clear definition of the victims of the armed conflict and establishes the criteria that distinguish them, which in this report relate to their identity as trade unionists and unionized workers, as part of the effort to restore the dignity of those harmed and their organizations.

Not only is individual reparation through administrative channels—as a means of transitional justice established by Law 975 of 2005—made more accessible by Law 1448, but this latest law also opens up prospects for collective reparation as well. Of great importance in this regard will be the public-policy proposal on collective reparation to be put forward by the National Reparation and Reconciliation Commission.

Lastly, the report evaluated the State's effectiveness in fulfilling its duty to protect trade unionists and unionized workers who are at risk. Particular attention was focused on the Interior Ministry's protection program created for this purpose, while not overlooking two other initiatives aimed at responding to this risk: the Ministry of Education's policy of transferring at-risk teachers and the protection program provided for in the collective labor agreement between the USO and Ecopetrol.

**As for the impact of the violence on these organizations, their union activity, and their rates of membership, Sintrainagro and FECODE have proven throughout to be stronger than the violence against them. They are organizationally sound, and their membership rates have not declined.**

The report weighed both the positive outcomes of the Interior Ministry's protection program and the concerns raised by trade unionists in connection with it.

On a positive note, to be sure, only one program beneficiary has been killed. Less positive is the failure to monitor trade unionists who have been denied protection as a result of the technical risk assessment and subsequent committee decision. And it is particularly unsatisfactory that, program beneficiaries aside, high numbers of trade unionists have been killed—both union leaders (who have thus far been the program's target population) and rank-and-file union members, who by definition have been excluded from the program.

Some of these shortcomings in protection are addressed in the agreement signed between presidents Juan Manuel Santos and Barack Obama on 7 April 2011. More work, however, remains to be done if public policy is to reach the point where trade unionists and unionized workers facing extraordinary and extreme risks can have their needs met and their rights upheld without having to endure the hardship of threats in order to be eligible for State action to protect them.

This analysis, and all of the discussions that it spurred over a period of more than two years, now constitute a wealth of information that can be used to help eradicate this type of violence. Along these lines, the epilogue to this report outlines proposals aimed at all three social actors: the State, the trade union confederations, and the business sector.





# Epilogue

## Proposals to involve the actors in overcoming the problem

**B**ased on this report's description of acts of violence, a number of actions have been proposed by, or may be proposed to, the major actors involved in this project: the government, the trade union confederations, and the business sector:

Any action that can be taken to overcome the violence that trade unions have experienced—and which they still experience—is what will ultimately give meaning to this report and the process that led up to it.

Of course, overcoming the violence experienced by trade unions and by all of Colombian society entails not only putting an end to the killings and other types of human rights violations against trade unionists and unionized workers. It also means uncovering the truth, punishing those responsible, repairing the victims individually and collectively, preventing risk by ensuring nonrepetition, and protecting those who remain at risk.

It also requires creating the conditions to ensure that freedom of association is unfettered, that union rights are not curtailed, and that union activity may be pursued without fear. This is essential to a citizens' democracy.

The most appropriate venue for the main social actors to consider and, if they agree, adopt the initiatives proposed here is the Permanent Commission on Wage and Labor Policy (CPCPSL), since all three actors—government, trade unions and employers—are represented on it.

If deemed appropriate by the actors through the commission, the initiatives could serve as a basis for discussion and decision-making in at least three important settings:

- ◇ The Human Rights Conference, where these initiatives could be used as input for a State policy on human rights.
- ◇ Discussions in Congress on proposed legislation to reform the justice system, as it pertains to the State's criminal-justice policies.



Photography: María Alejandra Rúa

- ◇ The government's program for collective reparation, which will feature the newly established Unit for Comprehensive Service and Reparation for Victims, along with the recommendations of the National Reparation and Reconciliation Commission.

The proposals put forward here are based on the considerations set forth in the report, and stem primarily from the studies conducted by the research centers and from the discussions on these studies. The proposals can be organized according to the fundamental right of victims and their organizations that is to be satisfied by the recommended action, and they can also be organized according to the social actor expected to be primarily responsible for implementing the action.

The following proposals are presented according to the contribution that each actor and each entity can make in accordance with its mission and its duties—the State, trade unions and employers, as well as other sectors of society, such as the media.

Accordingly, the epilogue is divided into the following sections, according to the initiatives pertaining to:

1. The State, in relation to the judicial system
2. The State, in relation to individual and collective reparation
3. The State, in relation to prevention and protection of at-risk trade unionists and unionized workers





4. The State and nongovernmental sources, in relation to information
5. The business sector
6. Trade union organizations
7. The three social actors as a whole
8. Other sectors of society

## **1. Initiatives pertaining to the State in relation to the judicial system**

### **1.1 The need to build consensus within the State on criminal-justice policy**

Consensus needs to be built within the State—with the participation of all political and social sectors, including trade unions—on effective public policy vis-à-vis violent crime. As part of this, a coherent policy is needed to confront human rights violations and breaches of international humanitarian law, especially those committed against union leaders and unionized workers.

This State policy should transcend the programs of different administrations and rectify inconsistencies resulting from momentary, often piecemeal responses to outbreaks of violent crime.

This policy must also include the classification and definition of crimes in accordance with international standards, objectives, strategies, programs, and human, financial and technical resources. Its goals should be challenging yet achievable. Resources should be provided, and entities put in place, to monitor it on an ongoing basis.

The policy should include systematic approaches and methodologies for investigating and prosecuting human rights violations that are systematic in nature. This will make it possible to dissect the general and specific motives behind such violations, and to identify not only those who carried out the acts and their operational leaders or ranking commanders within the armed groups, but also the accomplices, instigators and masterminds who operate outside the visible structure of the armed groups.

In uncovering the truth, it is imperative that those within the State who are complicit in violations are discovered and severely punished, because such violations undermine the integrity of the State and the institutions that make society viable. The State as a whole should rally behind this cause, and efforts should be recognized through a special system of incentives and rewards.

### **1.2 Increased staffing of the Office of the Attorney General and the judiciary (prosecutors, judicial investigators, judicial police, judges and clerks)**

Staffing increases should be consistent with the important role these institutions play in confronting the violence. This will require a political decision by the State, one that involves the commitment of the administration and legislators and ensures adequate budgetary allocations. Colombia's attorney general stated on 28 June 2011 that her office needs another thousand prosecutors to function more effectively.



### 1.3 Changes to make structural improvements in the Office of the Attorney General and its Subunit for Investigating Crimes Against Trade Unionists, as well as the Special Criminal Circuit for Backlog Reduction

Changes should be made in organizational structures, administrative and management practices and procedures, and internal evaluation systems. Improvements in human resources and increases in technical and financial resources (which have been accomplished in the Subunit for Investigating Crimes Against Trade Unionists since it was established under the Office of the Attorney General in 2006) may not have achieved all expected outcomes due to organizational, administrative or managerial obstacles and inertia in the Office of the Attorney General as a whole or in the judicial system.

The Office of the Attorney General and the Supreme Judicial Council should form commissions of experts with sufficient technical knowledge and political savvy, and including the participation of its own staff, victims' organizations, and trade unions, to evaluate both prosecutorial and judicial efforts and, based on this evaluation, propose specific measures for improvement. These committees can start with existing studies and evaluations, such as the one by DeJusticia (2010) that has been cited in this report, as well as that of the CCJ and ENS (2009) and CONPES document 3411 of 2006.

### 1.4 Regular joint reviews of cases referred to the subunit of the Office of the Attorney General responsible for investigating violence against trade unionists

**It also requires creating the conditions to ensure that freedom of association is unfettered, that union rights are not curtailed, and that union activity may be pursued without fear. This is essential to a citizens' democracy.**

In assigning cases to the subunit responsible for investigating violence against trade unionists, the Office of the Attorney General, in making its independent decision, should consider the suggestions of representatives of the union movement, and it should make an institutional commitment to conduct regular joint reviews of cases between the Office of the Attorney General, trade unions, and the ENS. This commitment was included in the agreement signed by presidents Santos and Obama in April 2011.

Existing data sources, both governmental and nongovernmental, on violence against trade unionists should also be consulted in assigning cases. Also, as long as the practice of giving priority to certain cases continues, the input of the union movement must be considered just as it is in the assignment of cases.

### 1.5 Exceptional, bold measures for backlog reduction

Even if all necessary changes were made in the normal operations of the Office of the Attorney General and the judicial system—and the two institutions became qualitatively and quantitatively more effective in discharging the State's duty to prosecute and adjudicate crimes—the case load accumulated over years of impunity and inefficiency would not necessarily be taken care of.



Exceptional measures are needed to reduce this backlog. The aforementioned subunit within the Office of the Attorney General was created for this purpose, as was the Special Criminal Circuit for Backlog Reduction under the Supreme Judicial Council.

The steps taken in the two agencies have not yielded the expected results, and bolder measures are needed to reduce the backlog of cases—e.g., a large increase in the number of prosecutors, judicial investigators, and judicial police officers. This was partly included in the agreement signed by presidents Santos and Obama on 7 April 2011.

Exceptional measures for staffing, budgeting, and technical resources—as well as for the training of staff members in the capital district and the various regions—require greater financial resources. The administration must work with the legislature to ensure that the budget is increased for the coming years.

This increase was addressed in the agreements signed by presidents Santos and Obama, but it must be approached independently of these agreements, with an understanding of the scale needed to reduce the backlog. If not confronted, this backlog will hinder the State's efforts to attain truth and justice for the victims, and will undermine its credibility and effectiveness in deterring organized violence of all kinds.

Measures to reduce the backlog of cases should also include specific targets in terms of number of verdicts issued, number of violations prosecuted, and timelines for preliminary investigation, formal investigation, and trial.

These targets must be accompanied by methods and procedures for qualitative assessment to ensure that quality is not sacrificed for the sake of quantitative measures. Trade union organizations should be allowed to participate in the setting and monitoring of targets for cases involving victims who are trade unionists.

## **2. Initiatives pertaining to the State in relation to individual and collective reparation**

### **2.1 Actions to repair the historical memory**

Along the lines of Law 1448 of 2011 (known as the “Victims' Law”), this report suggests developing legislative initiatives through consensus with trade unions and broad sectors of society, as well as with support from the National General Archives, for actions aimed at repairing the harm done to the dignity of victims and their organizations, and at honoring their memory.

### **2.2 Collective reparation through administrative channels**

Based on the overall design of the collective-reparation policy developed by the National Reparation and Reconciliation Commission (CNRR), and with the participation of trade union organizations, a specific program for collective reparation through administrative channels should be implemented for the trade unions to which the victims belonged. To this end, the necessary resources should be allocated



through the Victims Reparation Fund (established by Law 975 of 2005, amended by Law 1448 of 2011).

### **2.3 Remediating shortcomings in the program for individual reparation through administrative channels and its supporting Decree 1920 of 2008**

The aforementioned program and decree have the following shortcomings: (a) they do not acknowledge the responsibility of the State (Article 47 of Decree 1290), and they describe what should be a reparative action as “solidarity-based compensation”; and (b) the program is inadequately funded, given the number of victims.

### **2.4 Material collective reparation through judicial recourse**

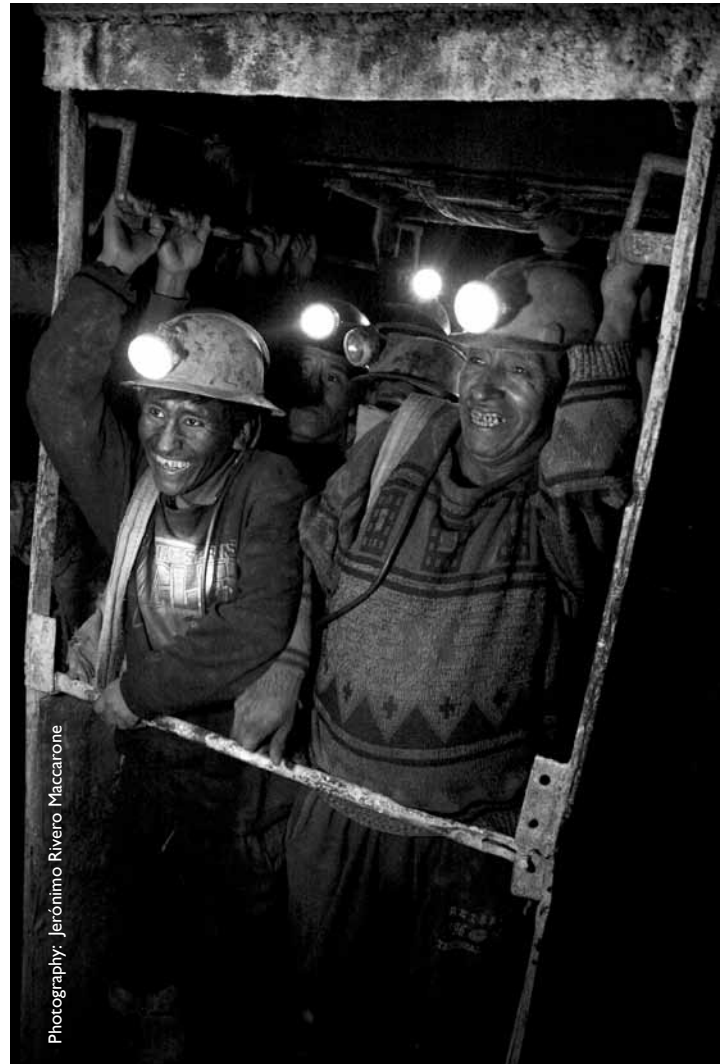
Judges should order collective-reparation measures for trade unions in cases of violence against trade unionists, including financial compensation for nonpecuniary harm. Such measures could be accompanied by orders to pay individual reparation for pecuniary harm even if not requested by the victims or, if the victims are dead, by their families. The Supreme Judicial Council needs programs to train judges for this purpose.

### **2.5 Restoring the reputation and dignity of victims and trade unions**

Greater willingness, further training, and performance incentives are needed if judges are to uphold these fundamental rights of the victims and their organizations throughout the proceedings and in issuing their verdicts. In accordance with international standards, verdicts should dispel any doubts about the stigmatizing “guerrilla” label that perpetrators have pinned on their victims, a phenomenon described in this report as “insurgent prejudice.”

### **2.6 Trade unionism in the government’s discourse**

From the uppermost echelons to the lowest rungs of the State, the practice of equating the contentious actions of trade unions to insurgent or “terrorist” acts—or, for that matter, to guerrilla actions or behaviors—must be eradicated. This will require actions by the government, clear directives to this effect, and a system of incentives and deterrents.





## 2.7 Campaigns to defend trade unionism

These campaigns, which can be implemented through the media and by other means, should include the following features:

- ◇ Portrayal of trade unionism as a pillar of democracy.
- ◇ Defense of union activity and freedom of association.
- ◇ Respect for union independence, collective bargaining, and the right to strike.
- ◇ Clear, timely support for the founding of new trade unions, for the recognition of existing ones, and for the reestablishment of those now defunct due to violence or harassment.

Such campaigns have already been undertaken by the Office of the Inspector General under the auspices of USAID.

## 3. Initiatives pertaining to the State in relation to prevention and protection

### 3.1 Designing, discussing and building consensus on a comprehensive public policy for prevention and protection

A consultation process should be carried out with trade unions and other political and social sectors, in addition to existing programs and any measures taken to improve them. Such programs should be structurally integrated into the proposed public policy.

As part of this effort, some legislative actions may be needed—e.g., in relation to Law 6 of 1995, which established the system for protecting people especially at risk, or Law 418 of 1997, which authorized the first programs under this system.

### 3.2 Specific section in the Early Alert System (SAT) for risks affecting trade unionists and unionized workers

The Office of the Ombudsman and the trade unions should work together to establish a special section within the SAT for trade unionists and unionized workers. This section would receive information on circumstances of risk from trade unions, the ODDH, and the ENS, with the support of technical risk profiles. It would facilitate the issuance of alerts on risks facing this specific population, as well as ongoing analyses of reports on such situations.

The risk maps for this proposed special section of the SAT may focus initially on the 15 departments, 32 municipalities and 25 trade unions most heavily affected. The risk profiles prepared by CERAC (2010) for this project can serve as a technical tool for discussing and designing strategies.





### 3.3 Expanding coverage of the Interior Ministry's protection program

Coverage should be extended to all unionized workers at extraordinary or extreme risk, and Decree 1740 of 2010 should be amended accordingly. Although the agreements signed by presidents Obama and Santos in April 2011 called for expanding the program to various types of nonleader activists, this expansion should include all at-risk unionized workers. Moreover, this should not be a temporary measure; it should be made permanent through appropriate amendments to Decree 1740 of 2010, Decree 2816 of 2006, and Decree 372 of 1996; or, if necessary, to Law 418 of 1997.

### 3.4 Monitoring and tracking of those denied protection under the Interior Ministry's program

For cases in which applicants are deemed not to qualify for the protection program—because the risk assessment did not find them to be at extraordinary or extreme risk—the Ministry of the Interior should design and implement a system, with the necessary staffing and resources, for keeping track of such applicants. The ministry should also provide access to its findings for the sake of transparency and as a way to more effectively uphold the State's duty to protect.

### 3.5 Measures to improve the CRER and the risk assessments

Such measures should take into account, among other inputs, the findings of previous evaluations conducted with assistance from USAID and, most recently, the evaluation by CIPE (2010), of Externado University of Colombia, performed as part of this project.

These evaluations addressed the CRER's composition; its decision-making processes for arriving at recommendations; the fairness of its recommendations; applicants' access to the CRER; legal recourse available to applicants whose requests are denied; the time it takes to process requests, compared to the pressing nature of the risk; the relevance of questionnaire items used for the risk assessment; potential privacy violations entailed in these questions; the lack of information available to applicants on the criteria and reasoning behind the questionnaire items; and other considerations.

The agreement between presidents Santos and Obama addresses some of these shortcomings, such as delays in processing requests. However, efforts should go beyond improvements on these matters to include the considerations addressed by the evaluations.

To this end, the Interior Ministry could form an internal committee (to include members of trade unions, if possible) to synthesize the findings of all evaluations conducted since the program's inception in 2006 and propose the necessary changes to the minister.

Some changes may be administrative or operational in nature; some may relate to staffing or resources; some may concern processing times and requirements, categories and technical criteria, and conceptual approaches and methodologies (e.g., the need for a systematic approach, as frequently noted, to address systematic violations); and some will require amendments to existing laws and regulations.



## 4. Initiatives pertaining to the State and nongovernmental sources with regard to information

### 4.1 Database of the Observatory of the Presidential Program on Human Rights and International Humanitarian Law (ODDH), under the Office of the Vice President

Transparency and the commitment to truth should be maintained and strengthened in the ODDH, which is the centralized source of government data on violations against trade unionists and unionized workers.

The ODDH has moved past the controversy over whether its data should exclude cases involving victims who are union members if it was not entirely clear that the motive was union-related (or antiunion in nature). The ODDH has now announced that the only requirement for a case to be included in its database is that the victim be a union member (legally recognized unions only), regardless of the motives behind the violent act. This signals some progress regarding the right of all victims from this population not to be excluded.

This source and others, however, should make extensive efforts to gather data that can help document the *motives* behind the violations.

To uphold the right of victims and society to know the truth, the ODDH should also gather as much information as possible on the involvement of private citizens, and especially of State agents, as perpetrators and accomplices. Moreover, the identification of these parties should be a priority in the ODDH's data-gathering efforts aimed at documenting such cases.

The ODDH can make short- to medium-term progress in its commitment to the truth by keeping records not only on lethal violence (homicide) but also on nonlethal forms of violence, as the entity's leadership has repeatedly expressed its willingness to do. To this end, the ODDH could phase in the inclusion of cases involving forced disappearance, torture, forced displacement, kidnapping and threats.



Photography: Marco Falhano. Courtesy: BNS.



Lastly, the ODDH should continue exchanging information and cooperating with nongovernmental, or alternative, sources—a process fostered by this project, and one that has yielded groundbreaking agreements between the project's participants and dialogue partners.

## **4.2 Communication and exchange of information between data sources, both governmental and nongovernmental**

All agencies and organizations responsible for the databases used in this report—the ODDH; the ENS; CINEP; the CCJ; trade unions and labor federations and confederations (ADIDA, FECODE, CUT, CGT, CTC); and international labor organizations and NGOs—should foster the exchange of ideas on categories and methods for recording and classifying data, pursuant to the missions and objectives of each entity. This joint effort can be coordinated by the ODDH, in view of its character and mission as the government's official data source.

## **5. Initiatives pertaining to trade union organizations**

### **5.1 Active, independent participation in projects aimed at shedding further light on the problem and helping to overcome it**

The CTC's and CGT's participation in this project is a case in point. They are also encouraged to continue collaborating in the provision of data for their constituent organizations and for other data sources, such as the ODDH and the ENS. The long-term stability of this goodwill should be ensured through the signing of formal agreements between the parties.

### **5.2 Utmost willingness to file reports with the authorities on crimes against members of their own organizations or others, and to cooperate with the investigations into such crimes**

For the sake of the truth to which both society and the victims are entitled, the same willingness is expected in cases where clear evidence exists of involvement or complicity in the illegal acts of criminal groups—whether guerrilla or paramilitary—by people who may turn out to be union members. This willingness will play a decisive role in building democracy and eliminating violence, and it is one of the most effective ways to defend trade unionism.

### **5.3 Initiating claims for collective reparation, through both judicial and administrative channels**

Claims seeking comprehensive reparation for harm caused to trade unions and to their reputation and dignity as a result of violence against their members should be filed before judges, particularly in cases where the victims were branded with the guerrilla stereotype. Given the lack of initiative exhibited by judges in their verdicts on such cases (see Chapter 12), it is even more crucial that trade unions make it a point to bring such claims before them.



Photography: Ruddy Miguel Florentino. Courtesy: ENS.

#### **5.4 Support and counsel for victimized members and their families for the filing of claims for individual reparation through judicial and administrative channels, and assistance for claimants throughout the proceedings**

Because verdicts indicate that claims seeking reparation for victims and their families are filed in a very small percentage of cases involving violence against trade unionists and unionized workers, trade unions should encourage, advise and support victims and their families in bringing such claims before judges, institute training programs to this end, and provide professional legal assistance to victims and their families for this purpose.

The same efforts related to counsel and support should be provided for victims and their families to file claims through administrative channels before the newly established responsible entity: the Special Administrative Unit for Comprehensive Service and Reparation for Victims.

#### **5.5 Training programs for union leaders and members on reparation-related matters**

Victim-protection programs should also be coordinated with victims' claims before the Ministry of the Interior, the Office of the Ombudsman, the Office of the Special Inspector for Human Rights, and the Office of the Attorney General.



## **5.6 Reaffirmation and dissemination of statements—such as those often made in the past—disclaiming any affiliation with irregular armed groups, particularly guerrilla and paramilitary forces**

Such statements should also be accompanied by medium- and long-term strategies aimed at undoing society's "insurgent prejudice" against trade unions.

## **5.7 Coordination of strategies to improve the quality of information on, and the image of, trade unionism in society**

Trade union organizations need greater capacity to pursue such strategies jointly with the media, as well as with institutions of secondary and higher education and the Ministry of Education through lecture series on trade unionism and its role in democracies. Trade unions should also strive to improve their public-relations capacities within their own organizations.

## **5.8 Independent initiatives to monitor cases in which applicants have been denied acceptance in the Interior Ministry's protection program.**

Trade union organizations can monitor such cases on their own initiative, without purporting to supplant the State's obligation to do so (see item 3.5 of this epilogue).

## **5.9 Implementation of self-protection measures**

Such measures should complement, not supplant, those that the State is obligated to carry out, and they should be accompanied, to the extent possible, by the organizations' own training initiatives.

# **6. Initiatives pertaining to the business sector**

## **6.1 Support for projects aimed at shedding further light on the problem and helping to overcome it**

A good example of such initiatives is ANDI's (2010) study, cited in this report, on verdicts issued through 2009 in cases involving slain trade unionists that were prosecuted by the corresponding subunit of the Office of the Attorney General.

## **6.2 To continue to announce its longstanding willingness to cooperate with the authorities**

Employers should cooperate in any cases involving complicity by individuals or businesses with criminal groups in human rights violations against workers. Trade union leaders should issue similar public statements as a contribution toward the joint effort to uncover the truth and expose violators of human rights.





### **6.3 Recognition of the role of trade unions in modern democracies and business enterprises**

The business sector should reaffirm, as it has frequently done, its position on the role of trade unions in modern democracies and business enterprises. Employers' associations can contribute to this effort by including this as an agenda item in meetings, conferences, and continuing-education courses for employers, managers and officers, and by disseminating examples of successful relations between companies and trade unions—such as the experience of Cementos Argos, described in this report—and national and international initiatives in this regard.

### **6.4 Protection of workers as a shared responsibility with the State**

This protection should be a priority, and funds should be specifically allocated for this purpose, which in no way will be construed as supplanting the irreplaceable, inalienable role of the State.

## **7. Initiatives pertaining to all three actors: the State, trade unions and entrepreneurs**

### **7.1 Acknowledging the violence against trade unionists and unionized workers**

A joint commitment is needed to acknowledge that violence against trade unionists and unionized workers has been a problem in Colombia, and to reaffirm the actors' interest and willingness to help overcome it.

### **7.2 Dispelling the stereotype of the trade unionist as guerrilla**

The government, the business sector, trade unions, and the media need to make a joint commitment to counter the stereotyped view of trade unionists as guerrillas and to refrain from evoking such equivalencies in their discourse. This calls for a major pact, one that is discourse-oriented. Employers, represented by their associations (ANDI, SAC, FENALCO, FEDEGÁN, etc.), and trade unions can do their part to achieve this agreement and bring it back to individual companies.

### **7.3 Continued commitment not to protect perpetrators, accomplices and instigators**

Trade unions, employers and the State should continue their commitment to repudiate and in no way harbor those who may bear individual or institutional responsibility as perpetrators, accomplices or instigators in human rights violations against workers, employers, officials or any other victim of paramilitary, guerrilla or other criminal groups.



## 8. Initiatives pertaining to the media and society

### 8.1 Disclaiming the “insurgent prejudice”

The media can contribute to the broader truth-seeking efforts of society and the authorities by scrutinizing cases involving specific human rights violations against trade unionists and cases of complicity or collusion with criminal groups. At the same time, media outlets should strive to distance themselves from the harmful stereotype whereby trade unions’ demand-oriented actions, and even their contentious actions, are seen as insurgent or guerrilla actions. This bias distorts the truth and severely hinders the truth-seeking efforts of government and private citizens alike.



# Appendix

## **Subject, object and chronological span of the study whose findings are presented in this report**

### **1. The subject**

The subject of this report is a subset of the general population of victims in Colombia in recent decades: specifically, the population of workers who were members of trade unions at or near the time of a violent act of which they were victims, regardless of the extent to which the courts have been able to ascertain the motives behind the act.

A trade union is understood here as any organization composed of workers seeking to defend their labor rights and their social, political and economic interests, in accordance with the universal right recognized in point 4 of article 23 of the Universal Declaration of Human Rights: “Everyone has the right to form and join trade unions to defend their interests.” This right is further specified in Convention 87 of 1948 and Convention 98 of 1949 of the International Labour Organization.

In this report, the term is applied in its fullest sense to encompass organizations that may not bear the name *sindicato* (“trade union”) but instead are called “association” or the like. Not included, however, are entities of a different nature, such as cooperatives, whose missions are not primarily or necessarily to defend labor rights and related social, political and economic interests.

The trade unions considered here are not only those legally recognized or “legally formed,” a restriction used by Law 1309 of 2009 in singling out this victim population with the designation of “qualified victims” as an aggravating circumstance in crimes against them. Some workers have been victimized at a time when their unions were banned or during an abortive attempt to form a union.

Union members are deemed in this report to include both those termed “trade unionists” and those described as “unionized workers.” “Trade unionists” are understood to mean leaders and activists with specific duties in trade unions and associations or in labor federations or confederations, whether at the national level or at any of the various subnational levels. “Unionized workers” are workers who are members of trade unions but hold no leadership position or permanent responsibilities in the union.

This is an important distinction because violence against a leader or activist with permanent responsibilities directs a more explicit message of intimidation and coercion at the entire organization, by



virtue of the victim's position. This makes it important to distinguish between these incidents and those perpetrated against union members with no leadership position or permanent responsibilities within the union, although violations against both types of victims need to be accounted for.

According to the data of the ENS, 744 (25.99%) of the 2,863 killings reported between 1986 and March 2011 were perpetrated against union leaders; six (0.21%) were against union advisers; and 2,113 (73.80%) were against rank-and-file unionized workers.

The victims, whether trade unionists or unionized workers, are the subject of this study; their voice must be restored, as an essential part of their rights as victims. The object of this study is the violence they have suffered—i.e., the human rights violations perpetrated against them.

Acknowledging the rightful place of victims and their organizations at the heart of any study—and in the State's constitutionally mandated duties to prosecute, adjudicate and repair—is an imperative embraced by UNDP and the cooperating countries.

This imperative was articulated by the Colombian government in the words of its Vice President, who stated in his opening address at the Seminar on Human Rights and Trade Unionism:

... For many years in Colombia, the State as well as many sectors of civil society were more generous, more caring and more tolerant toward the perpetrators and less supportive of the victims.

## 2. The object

One of the purposes of this study has been to reveal the nature of this violence as tantamount to the violation of human rights. Another has been to identify the various forms or manifestations of this violence through testimonies found in available sources—primarily at CINEP and the ENS for the entire period covered by the study, but also at the ODDH for killings from 2000 onward.

The data sources are not always in complete agreement on equating this violence to human rights violations. Some use similar but not identical categories, such as political and social violence, and government sources tend to deem violence to be those actions defined by law as crimes against life and personal integrity.

Depending on the sources used by the respective research centers, the studies on which this report is based are closer to one interpretation or the other.

The report identifies various types of human rights violations in accordance with the standards set by international courts and international commissions on human rights and international humanitarian law, as well as in accordance with Colombian law.

The main types of human rights violations identified in the report are homicide, forced disappearance, torture, kidnapping, arbitrary detention, and threats.

While forced displacement (either collective or individual) is an effect of some of the aforementioned violations, it may be considered in and of itself a separate type of violence. It is not explicitly



addressed in this report, however: Individual forced displacement is particularly significant in the case of teachers who have been threatened, because the option offered by the State is, in fact, a relocation of their employment.

To differentiate killings from other types of violence, the terms “lethal violence” (killing) and “non-lethal violence” (all other forms of violence) are used. However, care has been taken not to lump together, unless for special effect, the various forms of nonlethal violence, which vary considerably in how they are recorded by the sources and in their degrees of severity.

It is useful to separate killings from other violations—i.e., nonlethal violence—because homicide is the form of violence whose definitions under international and Colombian law (Articles 103 and 104 of the Penal Code) are most consistent. Killings are also the form of violence recorded in all sources, and the data are subject to fewer reporting complications and less controversy—except, as noted below, in determining whether cases are included in or excluded from the category of “killings of trade unionists,” based on whether the victim is deemed to be part of the unionized population.

Because of comparability across sources, homicide (lethal violence) is the form of violence on which this report is focused. This does not imply an underestimation of other, possibly more heinous forms of violence, such as forced disappearance. Nor does it mean that a lack of killings in a particular period or location constitutes proof of an end to the violence, especially if other manifestations of violence, such as threats, continue to occur.

Torture is basically construed as defined in Article 1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which was adopted by the United Nations in 1984 and entered into force in 1987; and in Article 2 of the Inter-American Convention to Prevent and Punish Torture, adopted in December 1985.

Article 1 of the United Nations’ 1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment reads as follows:

... the term “torture” means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.

The Colombian Penal Code, pursuant to Article 178 of Law 599 of 2000, generally adopts the above definition, although it does not limit its definition of perpetrators to public officials or related accomplices and instigators. This report uses the Colombian Penal Code’s expanded definition of perpetrators.

Forced disappearance has also been internationally defined as primarily perpetrated by agents of the State: in Resolution 47/133, adopted by the United Nations General Assembly on 18 December 1992; in the 1994 Inter-American Convention on Forced Disappearance of Persons; and in the International Convention for the Protection of All Persons from Enforced Disappearance, adopted by the United Nations General Assembly in December 2006, which states in Article 2:





... “enforced disappearance” is considered to be the arrest, detention, abduction or any other form of deprivation of liberty by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law.

The Colombian State ratified the Inter-American Convention on Forced Disappearance of Persons in 2005. Even before then, however, Colombian law had established, pursuant to Article 165 of Law 585 of 2000, that forced disappearance can be perpetrated not only by agents of the State or “public officials” and by armed groups, such as paramilitary forces, who often act with the complicity or at the instigation of agents of the State, but also by all sorts of irregular groups, including those who are declared enemies of the State, such as guerrilla forces.

This report uses this latter definition of forced disappearance, combining international standards with those of the Colombian Penal Code.

Kidnapping is distinguished from disappearance in that the perpetrators’ identity is known, either vaguely or precisely, and so are the motives, as revealed in the captors’ demands for release. Kidnapping is addressed in Articles 168 and 169 of the Colombian Penal Code.

Arbitrary detention—or rather, arbitrary deprivation of liberty—is a violation of the right recognized by Article 9 of the Universal Declaration of Human Rights, which states: “No one shall be subject to arbitrary arrest, detention or exile.”

The deprivation of liberty, which a State can impose on a person through administrative or judicial means, becomes arbitrary, as described in Resolutions 1991/42 and 1997/50 of the United Nations, when not carried out in accordance with the laws of the respective country or with international standards set forth in the Universal Declaration of Human Rights and subsequent international instruments adopted by the States.

Threats and forced displacement are viewed as interrelated in international standards, such as the Guiding Principles on Internal Displacement, adopted by the United Nations in 1998 (see item “c” under Principle 11). Threats are defined in Article 347 of the Colombian Penal Code, with aggravating circumstances defined in Article 144 as commission of the act against civilians on the occasion and in the course of armed conflict. Forced displacement is defined in Articles 159 and 180.

### 3. Chronological span

This was the third of three guiding points of consensus reached at the outset of the project. The report spans from 1984 to 2011 (March). The data used in the report, however—with the exception of CINEP’s, which did cover the entire period—did not go all the way back 1984, but dated back more precisely to 1986. Not all of them, moreover, provided information up to 2011.

The consensus to designate 1984 as the start of the coverage period was based on the fact that it saw a confluence of developments with profound contextual implications for union activity and unionists’



lives, specifically affecting the relationship between violence and politics and, in turn, between politics and union activity, from two opposing but complementary angles:

- ◇ The signing of the so-called peace agreements between guerrilla forces and the administration of Belisario Betancur, along with the related vicissitudes.
- ◇ The strengthening of ties of irregular, armed, counterinsurgency groups, with soldiers, politicians, employers and, in particular, drug traffickers, as the first phase of the phenomenon known as paramilitarism, which would grow over the next decade and remains alive today, albeit with somewhat different manifestations.

These two developments unfolded as the Betancur administration was pursuing, at least until 1985, a democratic opening that multiple parties simultaneously sought to exploit and sabotage, and at a time of increasing mobilization by trade unions and by society at large—a trend that was severely hampered by the emergence of both actors, guerrillas and paramilitaries.

Part One, in chapters specifically devoted to setting the problem in context, elaborates on these two developments that signaled the rise to prominence of two types of irregular armed groups, guerrillas and paramilitaries. This makes it possible to understand how phenomena that on their own may seem unrelated to and far removed from trade unionism—i.e., guerrilla and paramilitary operations—end up taking on life-or-death significance for trade unionists.



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# Abbreviations

Acción Social	Agencia Presidencial para la Acción Social y la Cooperación Internacional [Presidential Agency for Social Action and International Cooperation]
ACCU	Autodefensas Campesinas de Córdoba y Urabá [Peasant Self-Defense Forces of Córdoba and Urabá]
ACDEGAM	Asociación Campesina de Ganaderos y Agricultores del Magdalena Medio [Ranchers and Farmers Association of Magdalena Medio]
ADEMACOR	Asociación de Educadores de Córdoba [Teachers Association of Córdoba]
ADIDA	Asociación de Institutores de Antioquia [Teachers Association of Antioquia]
ANDI	Asociación Nacional de Empresarios de Colombia [National Business Association of Colombia]
ANDRI	Asociación Nacional de Usuarios del DRI [National Association of Users of the DRI]
ANMUCIC	Asociación de Mujeres Campesinas, Negras e Indígenas de Colombia [Association of Peasant, Black and Indigenous Women of Colombia]
ANTHOC	Asociación Nacional Sindical de Trabajadores y Servidores Públicos de la Salud y Seguridad Social Integral y Servicios Complementarios de Colombia [National Trade Union Association of Workers and Public Servants in Health Care, Comprehensive Social Security and Supplementary Services of Colombia]
ASEDAR	Asociación de Educadores de Arauca [Teachers Association of Arauca]
ASEINPEC	Asociación Sindical de Empleados del Instituto Nacional Penitenciario y Carcelario [Trade Union Association of Employees of the National Corrections Institute]
Asobancaria	Asociación Bancaria de Colombia [Banking Association of Colombia]
Asonal Judicial	Asociación Nacional de Funcionarios y Empleados de la Rama Judicial [National Association of Officials and Employees of the Judicial Branch]
ASPU	Asociación Sindical de Profesores Universitarios [Trade Union Association of University Professors]
Astraindupalma	Asociación de Trabajadores de Indupalma [Indupalma Workers Association]
AUC	Autodefensas Unidas de Colombia [United Self-Defense Forces of Colombia]
AUGURA	Asociación de Bananeros de Colombia [Colombian Banana Growers Association]
CCJ	Comisión de Juristas Colombianos [Colombian Jurists Commission]
CENIR	Comité de Evaluación del Nivel de Riesgo [Risk Level Assessment Committee]



CERAC	Centro de Recursos para el Análisis de Conflictos [Conflict Analysis Resource Center]
CGT	Confederación General del Trabajo [General Labor Confederation]
CINEP	Centro de Investigación y Educación Popular [People's Research and Education Center]
CIPE	Centro de Investigaciones y Proyectos Especiales [Center for Special Projects and Research]
CNAI	Corporación Nuevo Arco Iris [New Rainbow Corporation]
CNRR	Comisión Nacional de Reparación y Reconciliación [National Reparation and Reconciliation Commission]
CNT	Central Nacional de Trabajadores [National Workers Confederation]
Colpuertos	Empresa Puertos de Colombia [Colombian port company]
CONAVIP	Consejo Nacional de Vivienda Popular [National Council on Low-income Housing]
CONPES	Consejo Nacional de Política Económica y Social [National Economic and Social Policy Council]
CONVIVIR	Cooperativas de vigilancia [surveillance cooperatives]
CPCPSL	Comisión Permanente de Concertación de Políticas Salariales y Laborales [Permanent Commission on Wage and Labor Policy]
CRER	Consejo de Reglamentación y Estudio de Riesgo [Risk Regulation and Assessment Council]
CSTC	Confederación Sindical de Trabajadores de Colombia [Trade Union Confederation of Colombian Workers]
CTAL	Confederación de Trabajadores de América Latina [Latin American Workers Confederation]
CTC	Confederación de Trabajadores de Colombia [Colombian Workers Confederation]
CUT	Central Unitaria de Trabajadores [Unified Workers Confederation]
DAS	Departamento Administrativo de Seguridad [Administrative Department of Security]
DIJÍN	Dirección de Investigación Criminal e Interpol [Directorate of Criminal Investigation and Interpol]
DIPRO	Dirección de Protección y Servicios Especiales (Policía Nacional) [Protection and Special Services Bureau (National Police)]
DOC	Departamento de Orden Ciudadano [Department of Citizen Order]
DPA	Dairy Partners Americas Manufacturing Colombia Ltda.
DRI	Desarrollo Rural Integrado [Integrated Rural Development]
Ecopetrol	Empresa Colombiana de Petróleos SA [Colombian oil company]
EDUCAL	Educadores Unidos de Caldas [United Teachers of Caldas]



EDUMAG	Sindicato de Educadores del Magdalena [Teachers Union of Magdalena]
ELN	Ejército de Liberación Nacional [National Liberation Army]
ENS	Esecuela Nacional Sindical [National Trade Union School]
EPL	Ejército Popular de Liberación [People's Liberation Army]
EPS	Empresa promotora de salud [health promotion company]
ERPAC	Ejército Revolucionario Popular Antiterrorista Colombiano [Colombian Antiterrorist People's Revolutionary Army]
FARC	Fuerzas Armadas Revolucionarias de Colombia [Revolutionary Armed Forces of Colombia]
FECODE	Federación Colombiana de Educadores [Colombian Teachers Federation]
FEDEGÁN	Federación Nacional de Ganaderos [National Ranchers Federation]
FEDETA	Federación de Trabajadores de Antioquia [Workers Federation of Antioquia]
FENALCO	Federación Nacional de Comerciantes [National Merchants Federation]
Fenaltraconcem	Federación Nacional de Trabajadores de la Construcción, Cemento y Materiales de Construcción [National Federation of Construction, Cement and Construction Materials Workers]
Fensuagro	Federación Nacional Sindical Unitaria Agropecuaria [National Unified Agricultural Trade Union Federation]
FIP	Fundación Ideas para la Paz [Ideas for Peace Foundation]
IEPRI	Instituto de Estudios Políticos y Relaciones Internacionales [Institute for Political Research and International Relations]
ILDIS	Instituto Latinoamericano de Investigaciones Sociales [Latin American Social Research Institute]
ILRF	International Labor Rights Forum
IMF	International Monetary Fund
Indupalma S.A.	Industrial Agraria La Palma [palm-growing company]
INTERPOL	International Criminal Police Organization
ILO	International Labour Organization
IPO	International Peace Observatory
IPSs	Instituciones prestadoras de salud [institutional health care providers]
ISA	Industrial de Servicios y Alimentación
ITUC	International Trade Union Confederation
JOC	Juventud Obrera Católica [Young Catholic Workers]
MAPP/OEA	OAS Mission to Support the Peace Process in Colombia
M-19	Movimiento 19 de Abril



	[April 19th Movement]
ML	Marxista-Leninista [Marxist-Leninist]
MOIR	Movimiento Obrero Independiente Revolucionario [Revolutionary Independent Workers Movement]
MPL	Movimiento Popular Liberal [People's Liberal Movement]
OHCHR	Office of the United Nations High Commissioner for Human Rights
OAS	Organization of American States
ODDH	Observatorio del Programa Presidencial de Derechos Humanos y Derecho Internacional Humanitario de la Vicepresidencia de la República [Observatory of the Presidential Program on Human Rights and International Humanitarian Law under the Office of the Vice President]
OMAL	Observatorio de Multinacionales en América Latina [Observatory of Multinationals in Latin America]
NGOs	Nongovernmental organizations
ORIT	Organización Regional Interamericana de Trabajadores [Inter-American Regional Workers Organization]
PCC	Partido Comunista Colombiano [Colombian Communist Party]
PC-ML	Partido Comunista Marxista-Leninista [Marxist-Leninist Communist Party]
SAT	Sistema de Alertas Tempranas [Early Alert System]
SENA	Servicio Nacional de Aprendizaje [National Learning Service]
SES	Sindicato de Educadores de Santander [Teachers Union of Santander]
SIC	Servicio de Inteligencia Colombiano [Colombian Intelligence Service]
SIMANA	Sindicato del Magisterio de Nariño [Teachers Union of Nariño]
Sindebras	Sindicato de Embarcadores y Braceros de Turbo [Loaders and Laborers Union of Turbo]
Sindejornaleros	Sindicato de Jornaleros de Turbo [Laborers Union of Antioquia]
SINDERH	Base de Datos de Derechos Humanos de la ENS [ENS Human Rights Database]
Sindesenena	Sindicato de Empleados Públicos del SENA [SENA Public Employees Union]
Sintagro	Sindicato de Trabajadores Agrarios de Antioquia [Agricultural Workers Union of Antioquia]
Sintraexpobán	Sindicato de Trabajadores de Expobán [Expobán Workers Union]
Sinaltrainal	Sindicato de Trabajadores de la Industria de la Alimentación y Similares [Union of Workers in the Food and Related Industries]
Sintranabano	Sindicato de Trabajadores Bananeros





	[Banana Workers Union]
Sintraemcali	Sindicato de Empresas Municipales de Cali [Cali Municipal Utilities Union]
Sintrainagro	Sindicato Nacional de Trabajadores de la Industria Agropecuaria [National Agricultural Workers Union]
Sintrapalmas	Sindicato de la Palma de Aciete [Oil Palm Workers Union]
Sintraproaceites	Sindicato Nacional de Trabajadores de la Industria del Cultivo y Procesamiento de Aceites y Vegetales [National Union of Workers in the Cultivation and Processing of Oils and Vegetables]
Sintraunicol	Sindicato de Trabajadores de las Universidades de Colombia (seccional Córdoba) [Colombian University Workers Union (Córdoba branch)]
SUTEV	Sindicato Único de Trabajadores de Educación del Valle del Cauca [Unified Union of Education Workers of Valle del Cauca]
SUTIMAC	Sindicato Unitario de la Industria de Materiales de Construcción [Unified Union of the Construction materials Industry]
UNDP	United Nations Development Programme
USAID	United States Agency for International Development
USLEAP	US Labor Education in the Americas Project
UP	Unión Patriótica [Patriotic Union]
URS	Unión Revolucionaria Socialista [Revolutionary Socialist Union]
USO	Unión Sindical Obrera [Workers Trade Union]
UTC	Unión de Trabajadores de Colombia [Colombian Workers Union]
WOLA	Washington Office on Latin America

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