

**João Antonio Felicio**

President  
Président  
Präsident  
Presidente

Office of the United Nations High Commissioner for  
Human Rights  
Palais des Nations  
CH-1211 Geneva 10  
Switzerland

**Sharan Burrow**

General Secretary  
Secrétaire générale  
Generalsekretärin  
Secretaria General

LEX/MS

4 October 2017

**Joint Stakeholder UPR Submission concerning Colombia**

To whom it may concern,

Please find below the joint submission of the International Trade Union Confederation (ITUC) concerning Colombia's Universal Periodic Review during the 30th session of the UPR Working Group.

Yours sincerely,



Sharan Burrow, General Secretary

### ***Submitting Organisation***

The ITUC represents 181 million workers in 163 countries and territories and has 340 national affiliates. The ITUC's primary mission is the promotion and defence of workers' rights and interests, through international cooperation between trade unions, global campaigning and advocacy. Its main areas of activity include trade union and human rights; economy, society and the workplace; equality and non-discrimination; and international solidarity. The information below has been compiled in consultation with the Central Unitaria de Trabajadores (CUT) and the Confederación de Trabajadores de Colombia (CTC).

### ***Summary***

Colombia continues to be one of the most dangerous countries in the world for trade unionists with assassinations and violent attacks continuing to occur with almost complete impunity. The failure to hold employers and paramilitary actors accountable for their role in perpetuating violence against trade unionists is certainly one of the most pressing transgressions. The country's regulatory framework denies basic trade union rights to large swaths of workers, and the judiciary and Ministry of Labour are inadequately equipped to protect those attempting to exercise their labour rights. Organising, collective bargaining and the right to strike are all significantly undermined through both legal and illegal means.

If the violence alone is not sufficient deterrence for labour organisers, however, the additional barriers to organising and the fallout of a strike generally are. Colombian workers may organise only if they are (1) under an employment contract and (2) unionising against a direct employer. These qualifying factors create broad loopholes that employers leverage to preclude workers from legally organising against them, and to ensure that employers retain the ability to legally fire workers who prove too inconvenient. Furthermore, although the law protects workers from being fired solely for their union participation, this protection is waived in cases where the workers participate in an unlawful strike. Because courts almost always declare strikes unlawful, unionists risk their livelihood by striking. Collective bargaining agreements are rarely enforced. Throughout this process, employers further undermine unions by offering alternative deals to non-unionised members to prevent affiliation. In other workplaces, the only unions present are in fact yellow unions who exclusively represent the interests of the employer.

### ***International Human Rights Obligations***

The fundamental labour rights referenced in this report are firmly established in the International Bill of Human Rights: The Universal Declaration of Human Rights, Article 23(4), International Covenant on Civil and Political Rights (ICCPR), Article 22, and the International Covenant on Economic, Social and Cultural Rights (ICESCR), Article 8, which all protect Freedom of Association, including the right to form and join trade unions. Importantly, ICESCR, Article 8, also protects the establishment of national federations and confederations and the right to strike. Colombia has ratified the ICCPR, ICESCR as well as ILO Conventions 87 on Freedom of Association and Protection of the Right to Organize and Convention 98 on the Right to Organize and Collective Bargaining. Additionally, Colombia has ratified the American Convention, and signed the Protocol of San Salvador, both Articles 16 and 8 respectively commit Colombia to Freedom of Association, and the latter requires State parties to permit trade unions, federations and confederations to function freely and protects the right to strike.

### ***Violations to Physical Integrity with Impunity***

The data in the Annex chronicles the serious violations against trade unionists that occurred in Colombia 2015-August 2017, including assassinations, forced disappearances and torture. The Government has failed to thoroughly investigate these violations, to enforce its laws. As such, the severe and widespread violations of personal integrity against trade unionists have continued with almost complete impunity. Specifically, 93% of violations to physical integrity have gone unpunished, with the rate rising to 98% for assassinations.

On July 1, 2017, Alberto Román Acosta González, president of the Guacarí branch of Colombia's National Union of Agricultural Workers was assassinated by two hired men while watching his son play soccer. The union had been engaged in a coordinated effort to formalise workers' jobs in fields and to secure them basic labor rights.

On April 9, 2014, Jesus Adan Quinto, a leader in the fight for land rights of the black communities in the Middle and Lower Atrato River area, was assassinated. His assassination directly followed a reduction in protection measures that the National Protection Unit (NPU) had established for him. Although Quinto's union had requested that the measures be reinstated, the NPU never responded to these requests.

In addition to assassinations, extensive state-sanctioned intimidation and violence is also levied against workers. The Mobile Anti-Disturbance Squadron (ESMAD), Colombia's riot police, has been deployed several times to intimidate workers as they enter bargaining sessions. ESMAD police also use violence to quell labor protests. For example, on February 2, 2016, judicial workers were protesting outside the civil and family courts in central Bogota when about 300 ESMAD police violently attacked them with blows and taser guns, leaving several people injured, including a pregnant woman.

In another event, on January 10, 2014, members of SINTRAELECOL-CUT conducted a demonstration demanding the right to implement their collective agreement and denounced the abuses committed by the Empresas Publicas de Medellin against the communities in Caldas. The demonstrators were violently beaten by ESMAD, and exposed to tear gas. The canisters seriously injured several workers and their families. Among them was the president of CUT and SINTRAELECOL-Caldas, Arturo Oscar Orozco—the fourth attack on his life.

Trade unionists also face threats, as well as attacks on their vehicles and buildings. In 2015, 22 CTC trade union leaders received threats via pamphlets, telephone calls, and WhatsApp messages. In the same year, bullets were fired at CTC's headquarters in Bogota; a building that had been previously bombed.

In April 2014, bombs were thrown at the headquarters of SINTRAEMCALI, a public sector union in Cali. That attack came only days after a major court decision ordering the current Colombian President and Vice President to ask for forgiveness for crimes committed against SINTRAEMCALI, SINTRAUNICOL, and SINTRATELEFONOS under the Uribe government.

In the decade since 2004, at least 15 members of SINTRAEMCALI have been forced into exile, 8 have been killed, and over 100 more have been threatened. The union was also the target of "Operation Dragon," a government-backed assassination plot against then-SINTRAEMCALI president Alexander Lopez Maya and other human rights defenders in the region. On May 21, 2014, SINTRAEMCALI's vice president's vehicle was set on fire, causing second-degree burns to his arms and legs.

### ***Undermining the Right to Strike***

Workers strike with full knowledge that (1) there is a narrow chance that their demands are met; (2) the strike will likely be declared illegal, allowing for sweeping dismissals; and (3) even if the strike is successful, the employer will likely not comply with the resulting agreement, forcing the workers to take further action, like a second strike. The Ministry of Labour declared so many strikes illegal (95% from 1991-2008) that the ILO found the government to be out of compliance with Convention 87, ordering Colombia to put the judiciary in charge of these determinations.

Even though striking is a constitutionally protected right, this is virtually meaningless in light of the obstacles workers face in practice, in addition to issues of safety and possible dismissal, fines, and dissolution of the union.

Public sector workers are categorically barred from exercising the right to strike. The amount of jobs deemed to be "essential services" expands far beyond what it is permissible by the ILO and includes teachers and bankers. Moreover, trade federations and confederations are barred from calling strikes, critically undermining their collective strength.

In a workplace where the union calling the strike holds less than half the workers in membership, more than half of all workers in the workplace must agree to strike. This means that even workers not in the union are included in the vote. This problem is exacerbated in larger workplaces and where multiple unions exist in the workplace.

There are only three circumstances where striking is considered legal: (1) solidarity strikes; (2) strikes due to grave failure to fulfill obligations as an employer; and (3) striking due to an inability to reach a collective agreement in negotiations. Solidarity strikes have never actually been protected. Striking over unfulfilled obligations turns on whether the failure was in fact grave, which courts rarely find. The only truly available reason is over an impasse in bargaining, though even this fails to give workers a meaningful right to strike.

There are two main institutional obstacles to striking even where a legal reason exists. First, employers can utilise an arbitration and appeal process that can take years to complete. In the meantime, strikers may be dismissed, even months after the strike itself, left without remedy or pay. Second, the Labour Hall of the Supreme Court, tasked with determining the legality of strikes, is strained, ineffective, and prone to corruption. Just this year, a judge of the Labour Hall was indicted for corruption charges, calling into question the independence and impartiality of the court.

In addition, the Government has allowed employers to call in the military to repress strikes. In 2016, 28 unionised SINTRAVIDRICOL workers were dismissed for striking. Then, in 2017, 6 union leaders of SINTRAPAZDELRIO, including the union's president, were dismissed. This action effectively dissolved the union's board of directors, severely weakening the union. In the middle of 2017, 37 Cerromatoso workers were dismissed, among them the majority of the union's directive board. Thus, even where circumstances ought to provide for the legal exercise of a strike, the exercise often does more harm than good due to unwieldy judicial interpretation and the power of employers to dismiss workers and effectively dissolve unions.

### ***Organising and Collective Bargaining***

Colombian law as it stands today substantially impedes the ability of workers to organise. As a result, the union affiliation rate has plummeted from 16% to 4.5% in the last 30 years. Of the existing legal impediments, the most egregious consist of (1) the limitation of collective bargaining rights to workers operating under an employment contract and (2) the use of collective pacts to hinder attempts to organise.

A joint reading of §§ 5 and 353 of the Substantive Labour Code (CST) limits collective bargaining rights to workers under an employment contract organising against a direct employer. This provision severely limits the right of informal workers, who compose approximately 65% of the total work force.

Because labour protections are contingent upon a direct employment contract, workers can be exploited through indirect employment alternatives such as subcontracting, outsourcing of labour, or provisional service contracts without the right to organise.

Cooperatives are traditionally understood to be democratic worker-controlled enterprises. Therefore, Associated Cooperative (CTA) workers do not benefit from the same protections, labour rights, or work benefits that direct employees receive in Colombia. In the past, employers leveraged this legal structure by reorganising their *de facto* employees into a CTA and operating as their exclusive "contractor." Under this false but legally permissible "indirect employee relationship," an employer could effectively fire CTA workers who attempted to bargain collectively. Personnel ranging from field labourers to doctors were exploited through the CTA system.

In 2010, Colombian law outlawed the outsourcing of personnel to CTAs and passed formalisation agreements intended to shift informal workers, including unlawfully subcontracted CTA workers, into contracted employment relationships. In response, most CTAs morphed into one of two new, less legally accessible forms: yellow unions or simplified anonymous societies (SAS). In the case of yellow unions, CTAs were absorbed by employers into direct employee relationships, and intermediary CTA leaders became "union leaders" through which employers established abusive "contratos sindicales" or "union contracts." Similarly, the SAS—a legal structure that did not exist until directly after outsourced labor was prohibited—serve as

exploitative intermediaries by “subcontracting” direct SAS employees to indirect third-party employers. Employers may refuse to “subcontract” workers at whim, effectively firing workers via an insulated indirect employee relationship. Because labour protections exist only with respect to a direct employer, workers have no available legal recourse.

Colombia has repeatedly attempted to pass formalisation agreements to shift informal workers, including unlawfully subcontracted CTA workers, into contracted employment relationships. In theory, these agreements benefit informal workers; nonetheless, newly formalised workers are in fact “formalised” through either short-term contracts that are renewed into perpetuity (allowing for non-renewal by the employer should the worker attempt to unionise) or through SAS contracts, frustrating the intended goal of the agreements. Ironically, the cost of paying the SAS intermediary is more expensive than direct employment would be; yet, employers view the additional cost as a worthwhile investment in exchange for a union-free workforce. Many supplemental formalization bills have passed Congress only to be vetoed by the president out of concern that the country cannot financially support a push for mass formalisation.

Even those under direct employment contracts, however, have seen their collective bargaining rights whittled away through collective pacts. Collective pacts are separate from collective agreements in that they are not formed with a union, but rather are “negotiated” directly with non-unionised employees. Although the ILO recommends that collective pacts only be permitted in the absence of a union, Colombia permits pacts in any case where a union represents a third or less of all employees. This severely undercuts established unions, as many of them are job-specific, and because collective pacts bind the entire workforce, regardless of who is unionised. When collective pacts are made, the employer establishes all of the terms and the employees are forced to accept the pact as presented. Although the Constitutional Court has held that it is illegal to grant additional benefits to non-unionised workers, many companies continue to do so through collective pacts. Additionally, if an employer discovers that workers are attempting to unionise, a collective pact containing several worker demands is billed as a “benefits package” and presented to workers in an attempt to persuade them that unionising is not worth the ensuing trouble.

### ***Legal Obstacles***

Two features of the legislation in particular facilitate the violation of labour organising and collective bargaining: the 1951 substantive labour code (CST), and a deeply debilitated Ministry of Labour.

The 1991 Colombian constitution required Congress to promulgate a new substantive labour code in accordance with the new constitutionally guaranteed labour rights. Yet, Congress failed to formulate the new code and as a result, the employer-friendly CST of 1951 still governs labour today, forcing unions to litigate for the reconciliation of individual phrases of the CST with the constitution. Litigation from trial court to the constitutional court may last as long as seventeen years, and the sluggish pace of adjudication has only facilitated employer abuse, as union members often abandon their efforts over the years out of sheer exhaustion. Because the court generally only reconciles individual CST clauses per case, and because the CST is composed of over four hundred articles, it is unlikely that the court could completely reconcile the CST with the constitution in the next decade.

Additional structural weaknesses permeate the Ministry of Labour, crippling its effectiveness in handling labour rights violations and allowing employers to wield the ministry against workers. The ministry’s punitive powers are limited to fines, which SAS companies evade with relative ease. Although criminal penalties are theoretically available, an employer has yet to be jailed for a labour offense.

The ministry is technically empowered to inspect employers for labour violations at will, but the scarcity of available inspectors means that employers are only inspected pursuant to a complaint. Of all labour complaints filed with the Ministry of Labour, only 2.5% are resolved. In most cases, the employer seeks arbitration through the ministry with the knowledge that, in the approximately three years needed to resolve the dispute, union support for the opposing party will dwindle. Employers often release a “benefit plan” after requesting arbitration to expedite the union’s decline.

## Recommendations

1. Investigate violent crimes against trade unionists and prosecute not only the direct perpetrators but also the actors who orchestrate the crimes.
2. End the criminalisation of protests and strikes, as well as the violence perpetrated by state military and police in those scenarios.
3. Reform the list of jobs considered essential services to meet ILO standards.
4. Reform the voting procedure for calling strikes to meet ILO standards, specifically remove the majority vote requirement and the permitting of non-union workers to participate in the vote.
5. Enforce existing prohibitions on employer use of cooperatives as labour intermediaries by outlawing SAS and cracking down on yellow unions.
6. Increase resources allocated to the labour inspectorate and the judicial enforcement systems.
7. Promulgate a new labour code in accordance with the rights codified in the constitution.

## ANNEX

Type of Violation	2015	2016	2017	Total

Threats	120	197	92	408
Harassment	29	28	16	73
Assassinations	21	19	14	53
Forced displacement	0	1	0	1
Assaults (with and without injuries)	17	18	4	39
Arbitrary detention	8	5	9	22
Illegal raid	2	8	1	11
Forced disappearance	2	0	0	2
Kidnapping	3	0	0	3
Torture	4	2	1	7
Total	206	278	137	621