WORKERS' RIGHTS IN COLOMBIA

Reports from respected, international organizations, including the International Labor Organization (ILO), have identified several ways in which the labor laws of Colombia fall short of the ILO core labor standards - considered a *minimum* set of rights that must be guaranteed by all countries regardless of level of development. In practice, Colombia's record is even worse. In recent years, Colombian unions have filed dozens of cases with the ILO's Committee on Freedom of Association (CFA) seeking redress for the government's continued failure to effectively enforce domestic and international labor law through domestic administrative and judicial procedures. In most cases, the CFA has found that the government failed to enforce domestic and/or international law and has issued recommendations to resolve those cases. However, the recommendations have gone largely unheeded by the government.[1]

A. Freedom of Association

Denial or Delay of Union Registration: Under Article 364 of the Labor Code, a new union is to have legal status upon its formation. A union need only file a specified set of documents with the Ministry of Social Protection (MSP) to complete its registration, normally a *pro forma* process. According to Colombian unions, the MSP often invokes reasons not found within the labor law to deny registration. The U.S. State Department found the registration of new unions often takes years.

Temporary Contracts: Employers may hire workers on a temporary basis (up to three years) and may continue to renew such contracts indefinitely—often for many years. While such workers technically have the right to join unions, when they do, their employers exclude them from the workplace by not renewing their contracts when they expire. As a result, workers on temporary contracts are extremely fearful and resistant to exercise their right to join a union, since they believe that it will result in dismissal.

Associated Labor Cooperatives: Hundreds of thousands of workers are currently employed through an associated labor cooperative. Those who work for these cooperative are, under the law, treated as owners, not as employees. Thus, the workers are explicitly excluded from the application of the labor law. This has led to lower pay, no benefits, and, particularly in the rural sector, extreme exploitation. Recently, several public enterprises—many with active unions—have been privatized. The successor private company will often refuse to recognize the union or the existing collective bargaining agreement. Instead, workers are dismissed and rehired through a cooperative or temporary service agencies.

B. Collective Bargaining

Union density in Colombia today is less than 5 percent, and fewer than 1 percent of Colombian workers are covered by collective bargaining agreements—down from 15 percent twenty years ago.

Direct Bargaining with Nonunion Employees: The law permits collective agreements to be directly negotiated with non-unionized workers where the union represents less than one-third of the workforce. In reality, they usually are contracts that workers are unable to negotiate and are forced

[1] A fuller discussion on the shortcomings of Colombia's labor laws and its failure to enforce those laws can be found in our briefing book entitled, *Workers' Rights, Violence and Impunity in Colombia* (Jan. 2008), available online at http://www.aflcio.org/issues/jobseconomy/globaleconomy/upload/colombia_briefing.pdf.

to accept under threat of dismissal. The agreements are used in some cases to undermine union representation and collective bargaining by establishing terms and conditions with workers often selected and favored by management.

Limits on Public-Sector Bargaining: Article 416 of the Labor Code states that public-sector workers do not have the right to bargain collectively; instead, public-sector workers are allowed only to submit "respectful petitions." Convention 98, as well as Convention 151, explicitly provides that public employees who are not engaged in activities involving the administration of the state should enjoy the right to collective bargaining.

Ban on Collective Negotiation over Pension Benefits: In 2005, Colombia eliminated collective bargaining on the subject of pensions. The law also provides that the pension provisions of existing collective bargaining agreements will become null on July 31, 2010.

Blacklisting: The blacklisting of union leaders by employers is widespread in Colombia. The ILO stated categorically that, "All practices involving the blacklisting of trade union officials or members constitute a serious threat to the free exercise of trade union rights and, in general, governments should take stringent measures to combat such practices."

C. The Right to Strike

The ability of unions to undertake a strike, an internationally recognized instrument for defending or promoting collective rights and interests, is heavily restricted. The ILO has found that the law runs afoul of international norms in the numerous ways. For example, there is a total prohibition on the calling of strikes by federations and confederations. The law also bans strikes in several sectors of the economy that are not properly considered "essential services" under international law, such as transportations, civil service, and the oil industry. Further, the law allows for the dismissal of union officers who have participated in a strike that is lawful under international, if not domestic, law. Also a serious problem, the government, not an independent body such as a court, determines whether a strike is legal – particularly troublesome in public sector disputes. Finally, the Minister of Labor has the authority to suspend a strike and refer a dispute to mandatory arbitration when the strike exceeds 60 days – which robs unions of leverage in a labor conflict.

D. Proposed Reforms

Due to intense domestic and international pressure, the government has begun to draft legislation to reform its labor code with regard to the right to strike. One positive proposed change is to transfer the authority to determine the legality of a strike from the Ministry of Social Protection to the courts. However, this reform does nothing to lift the broad ban on strikes by federations and confederations, as well as strikes in many key sectors of the economy. The government has also proposed a new law on compulsory arbitration that does little more than prolong the time before arbitration may be imposed. The government has also proposed legislation on cooperatives that would require them to make contributions to state benefits programs; however, the reform does nothing to address the complete exclusion of workers from the labor law. Finally, there is no guarantee that any of these laws will actually be passed.