

**VIOLATIONS OF THE RIGHT TO LIFE OF TRADE**  
**UNIONISTS IN COLOMBIA**  
**A REPORT BY THE BAR HUMAN RIGHTS**  
**COMMITTEE**

**INTRODUCTION**

1. The Bar Human Rights Committee "BHRC" visited Colombia in March 2004 at the invitation of the International Commission for Labor Rights "ICLA" to investigate into the very high numbers of trade unionists killed, tortured and threatened in Colombia. In respect of almost 4,000 murders of trade unionists since 1986 there is almost 100% impunity - there were apparently just 5 convictions for these murders between 1986 and 2002. In 2002 according to the ILO there were 184 murders of trade unionists yet apparently no-one has been convicted in respect of any of these crimes.

2. The ICLA is affiliated to ICTUR the International Centre for Union Rights, a highly respected international trade union organisation based in London. ICLA had also invited an Argentinian and a Guatemalan lawyer to participate in the visit. The visit was hosted in Colombia by the Colectivo de Abogados Jose Alvear Restrepo, a lawyers' collective involved in human rights, who are based in Bogota.

3. Last June 2003 the ILO voted against sending a Commission of Inquiry to Colombia to investigate into the very high number of trade unionists killed which has been the highest in the world over many years. This was despite the issue of violence against trade unionists having been formally raised with the ILO since 1998 at the very latest. Colombia has in general terms ratified the vast majority of international conventions, including those of the ILO. The real issue therefore is their *de facto* effect.

4. In December 2003 207 UK MPs from all parties signed an Early Day Motion calling upon the UK Government to freeze all military and security assistance to Colombia given the fact that:

*"Colombia is the most dangerous country in the world with 184 people killed for their trade union activities, more than the rest of the world combined ..... the overwhelming majority of abuses against trade unionists are carried out by paramilitary organisations which have documented links to the Colombian state security forces."* See Hansard.

5. It is right to identify at the outset the difficulties which the BHRC had in respect of statistics as there was very little agreement, in particular between the governmental or non-governmental sectors, but also within each sector. The report therefore attempts to identify who compiled the various statistics.

6. Colombia currently has a population of about 44 million [p2 US State Department Report 2003]. According to the Escuela Nacional de Sindicados "ENS" there are about 856,099 union members in about 2,357 different unions. This amounts to about 4% of the labour force.

7. It would be trite to say that Colombia is in general a violent country. The latest US State Department report for 2003 cites the following statistics from the National Police - 23,013 homicides during 2003, apparently showing a drop of 20% from 2002. Furthermore in 2003, according to the same report, there were 3,000 to 4,000 deaths of civilians in the civil war.

8. As to the number of political murders and extrajudicial killings, the Comision Colombiana de Juristas cited a figure for 2003 of 1,781.

9. In respect of the number of trade unionists killed, the BHRC were given the following figures:

2002	ENS 184	Government	121
2003	ENS 90	Government	52

ENS is the Escuela Nacional de Sindicados which collates information from the unions and whose figures are accepted by the ILO. The Government figures are taken from a document provided by the Ministry of Defence which apparently emanates from the Ministerio de Proteccion Social. These figures do not exactly accord with other statistics provided in a document from the Ministerio de Proteccion Social Coordinacion de Derechos Humanos which states that there were 121 murders in 2002 and 53 murders in 2003.

The statistics show that the Colombian Government's statistics are approximately half those of the ENS. It appears to be that this is at least in part explained by figures obtained from the Ministerio de Proteccion Social Coordinacion de Derechos Humanos which indicates that the government disputes that some of the victims were in fact members of unions as they were merely freelance workers subcontracted to the job. The case of Janeth del Socorro Perez Galeano is an example of this. She was killed on 15th February 2004 and is apparently was included in the union figures but the Government does not consider her to be a trade unionist with ADIDA, the Antioquian teachers' union, as she was on a freelance contract at the time. Other cases cited by the Government in its statistics as murders which should not be categorised as killings of trade unionists include Nelly Erazo Rivera who was killed along with her husband Abel Ortega Medina, a prominent trade unionist, on 25th September 2003. Overall for 2003 there appear to be 15 murders which the Colombian Government did not accept should be categorised as killings of trade unionists. However, in most cases the Government statistics do not explain why not.

The disparity may also be because in the statistics from the Ministerio de Proteccion Social Coordinacion de Derechos Humanos trade unionists are separated as a category from teachers - it is not clear how the death of a teacher who is also a member of a union

would therefore be treated. The Government's own figures show for 2002 79 murders of teachers and for 2003 41 murders of teachers. If these figures are added to the government figures for murder of trade unionists, they appear to be about the same as those of the ENS.

10. It is crucial to note that the ENS has analysed the figures further and concludes that of the total violations of human rights of trade unionists in 2003 which includes killings, threats, attacks, harassment, kidnappings, torture, displacement and disappearances that 43% ie 263 cases were against trade union leaders, members of the board of directors, executive committees and sub-directives of the union organizations. The Government's own figures for 2003 would also tend to point to such targeting - of the 51 murders cited by the government, 11 were of trade union leaders. It is not known how the term "directivo" ie leader used by the Government is in fact defined as the statistics do not say.

11. Furthermore, in respect of the presumed perpetrators of killings of trade unionists the ENS 2003 report states that of the 90 murders, 14 were attributed to paramilitaries, 2 to the guerrillas [it is not stated which group] and there was no data on 74. Reports from Amnesty International over the past few years also indicate that the majority of cases of murder of trade unionists in which a perpetrator can be identified are by paramilitaries.

12. The BHRC was also told of the very high number of serious employment disputes in Colombia at the moment. This report does not seek to analyse the rights and wrongs of the many employment disputes that exist, but does seek to emphasise that in a country with a well educated work force, that strong opinions are held on both sides of the many labour disputes. An analysis of individual cases even where the perpetrators are not known also points to a high coincidence between violations of human rights and involvement in industrial disputes. The ENS statistics in their report on human rights for 2003 state that 90% of the human rights violations for 2003 have as their cause union activities - the remaining 10% being in connection with the armed conflict, social violence and unidentified causes. By way of example the US State Department Report 2003 states in terms:

*"Paramilitaries threatened - and sometimes killed - union members who refused to renounce collective bargaining agreements." [p57]*

13. It is worth noting that the ILO in its March 2003 session highlighted that the Colombian national legislation is not yet aligned with the requirements of Conventions numbers 87 and 98 on Freedom of Association and Collective Bargaining respectively. In this respect the ILO has appointed a Multidisciplinary Advisory Team to provide the necessary technical assistance to the Colombian government which included judicial training on international labour standards. Comment is made in the report of this session that *"activities will be sponsored to further the quest for an appropriate solution to this problem."* Apparently at least 3 recommendations made by the Committee of Experts of the ILO, which had been making comments since the early 1990s, are still outstanding.

14. The US State Department Report 2003 identifies various areas in which the Colombian Government has been criticised by the ILO namely:

*"the requirement that Government officials be present at assemblies convened to vote on a strike call; the legality of firing union organisers from jobs in their trade once six months have passed following a strike or dispute; the requirement that candidates for trade unions offices belong to the occupation that their unions represent; the prohibition of strikes in a wide range of public services that are not necessarily essential; the Government's power to intervene in disputes through compulsory arbitration when a strike is declared illegal; and the power to dismiss trade union officers involved in an unlawful strike."* [p56]

The same report also states that:

*"the Government can compel trade unions to provide interested parties with relevant information on their work including books, registers, plans and other documents. The ILO Committee of Experts considers this amendment to be inconsistent with freedom of association."* [p54]

14. One lawyer suggested that 65% of the complaints received by the ILO last year from the whole world emanated from disputes in Colombia. Even if this figure is not correct, it is clear from the fact that the Colombian government is attempting to privatise many state industries that there is enormous scope for serious disputes between the unions and their employers.

15. Appendix 1 lists all of the organisations with whom the BHRC met, whilst Appendix 2 lists all of the documents considered by the BHRC.

## **TRADE UNIONS**

16. There are 856,099 union members in about 2,357 unions. This averages about 363 members per union. In addition there are three different national union confederations -

(a) Confederacion Unida de Trabajadores - CUT. This seems to be the largest confederation and the most politically powerful. It is also the most left wing confederation.

(b) Confederacion de Trabajadores de Colombia - CTC. 120,000 members in 450 unions and the oldest confederation.

(c) Confederacion General de Trabajadores Democratica – CGTD

The BHRC met with CUT and the CTC.

17. Furthermore, the BHRC was also told that many unions are not aligned to any of the confederations.

18. According to the ILO at points in time these three unions have apparently united in a single block "Comando Nacional Unitario" to act together. However, it is worth noting that this united front was never mentioned to the BHRC during its visit and it was not clear that there was any real solidarity between the three confederations. Some union officials themselves noted that there was a lack of solidarity between the unions.

19. The ENS report for 2003 indicates that the majority of violations of human rights were of workers affiliated to CUT. Whether this is a reflection of CUT's better recording of such violations compared to the other confederations or the fact that they are the most left wing confederation or that they represent workers in particularly vulnerable types of employment is not known.

20. The BHRC were told that the trade unions plan to organise a central body to collate all of the cases.

21. The BHRC met with a great number of trade unionists as set out in Appendix 1 and were told of personal cases of violations of human rights. Of particular concern was the visit to the hunger strike being carried out by members of Sinaltrainal at the Coca Cola plant in Bogota as the BHRC were told that participants in this and associated strikes throughout Colombia had been subject to paramilitary threats. The BHRC were shown a copy of a written threat from the AUC stating that all trade unionists were guerrillas received by workers at the plant in Palmira in mid March 2004. The BHRC was also told of telephone threats to members of the union at the Barranquilla plant and at the Cali plant following the start of the strike. All of these threats had been reported to the Fiscalia but it is not known what, if any, action has been taken in relation to them.

22. It is right to say that there is a very high level of dispute between workers and Coca Cola and that allegations have been made in the USA against the company for alleged links with paramilitaries pursuant to the Alien Torts Act. However, there has not as of yet been a trial of the substantive issue. These allegations include attempts to kidnap various family members of leaders of Sinaltrainal as well as 19 murders of their members in the last 18 years.

23. Many of the trade unions, in particular those connected with mining and the extraction industries were very well organised and sophisticated with links to many international organisations and campaigns. Some of them had legal proceedings in the USA, for example against the mining company Drummond.

24. However, some of the unions, in particular Fensuagro which represents landless farmers and Ascaplan which represents vendors of lottery and betting tickets, were extremely humble and modest organisations, composed of those at the very bottom of society who were often illiterate and living in extreme poverty. Ascaplan members in particular are often internally displaced people who have been driven off lands by the civil war and have come to the cities. The selling of lottery and betting tickets is one of the few forms of employment available to such people and it was very moving to listen to the challenges which the leaders of Ascaplan, a small union of 1800 members in Antioquia, had overcome in setting up their union as none of them knew how to read or write.

25. As to the Colombian Government's view on whether trade unions were targeted, the Fiscalia stated definitively yes, the Delegate for Human Rights saying "*obviously*", whilst the Ministry of Defence stated that it depended upon which group they were compared to

- an example was given of cattle breeders who according to the Ministry of Defence are victims of more killings than any other group apart from the armed forces themselves.

26. The BHRC received photographs of demonstrations by a banking union showing that the Colombian Government had deployed riot police in large numbers. Complaints were received from various unions about the behaviour of the riot police and suggesting that they were not properly identified with numbers on their uniform. It was also suggested by unions that the Government response in policing demonstrations was disproportionate. The United Nations High Commission of Human Rights Office in Bogota was itself critical of violence used by certain unions on a small number of occasions.

### **THE JUDICIARY**

27. *“The civilian judiciary is largely independent of the executive and legislative branches; however, it is overburdened, inefficient, and subject to intimidation and corruption by terrorist groups and common criminals”* [p1 US State Department Report 2003]

28. The BHRC met with a number of Judges from the Employment Tribunals in Bogota and watched a conciliation appointment in a case involving an employee who had been waiting since 1978 for his pension - rather like the Gabriel Garcia Marquez story No-One Writes to the Colonel. All members of the mission were concerned that a ruling from the judge meant that only the parties themselves could enter the courtroom for this court assisted conciliation. In this case it seemed very unfair given that on one side was a very humble, elderly employee whereas the representative for the employer happened to be in fact a lawyer for a large state company.

29. The BHRC heard from the Defensor del Pueblo ie Ombudsman how they used to fund representation for employees in Employment Tribunals but that this had stopped in 2000.

30. The employment tribunals seemed to be very busy and the BHRC heard complaints about the volume of work compared to the number of judges which apparently created delays of up to 8 years. The BHRC also heard complaints by various lawyers about the standard of the judges and their partiality towards employers at first instance. It is right to say that this was a complaint made more by the lawyers in Bogota than in Medellin where the lawyers considered that the judges were not partial towards one side or other but were perhaps overly concerned with not upsetting their own employers ie the Ministry of Justice.

31. As to the higher courts dealing with employment matters, namely the Supreme Court Employment Division and the Constitutional Court, the BHRC were told that there was a lack of consistency in their decisions, an example being that the Constitutional Court had ruled that pensions were inflation proof whereas the Supreme Court had ruled that pensions remain linked to the salary at the time of the termination of employment. The BHRC also received criticism about the Supreme Court in that it frequently ruled against

employees.

32. It was noted that the composition of the higher courts was to a large extent dependent upon political patronage. Article 239 of the Colombian Constitution 1991 provides in respect of the Constitutional Court that its members are voted on by the Senate. In the case of the Supreme Court the members are chosen by the Consejo Superior de la Judicatura pursuant to Article 231. However, the majority of the members of the Consejo Superior de la Judicatura are themselves chosen by Congress - Article 254. Complaints were made that none of the most senior judges in these two courts had risen from the ranks of employee or trade union lawyers. It did not appear, however, that the main lawyers' association representing employees and unions had lobbied for any particular candidates.

33. In respect of criminal proceedings and matters involving human rights, the Constitutional Court has shown itself willing to tackle very difficult areas - in particular in April 2003 striking down emergency security legislation passed in August 2002 by the President and making important rulings about the scope of the "foro militar" ie court martial. At present it is considering the new anti-terrorist legislation [see below].

34. The US State Department Report 2003 states that:

*"the suborning and intimidation of judges, prosecutors and witnesses was a serious problem. The judicial system was also extremely overburdened. The administrative chamber of the Supreme Council of the Judiciary [Consejo Superior de la Judicatura] reported that as of October the civilian judiciary - including the criminal justice system - suffered from a backlog of at least 102,000 cases. These backlogs led to large numbers of pre-trial detainees. Impunity remained the greatest challenge to the credibility of the Government's commitment to human rights."* [p20]

## **FISCALIA**

35. This is the Prosecution authority for Colombia. The Amnesty briefing to the UN Committee against Torture from November 2003 states the following at page 17:

*"Since July 2001 when Attorney General Luis Camilo Osorio took office, a marked hostility to human rights investigations and on on-going effort to purge the institution of officials willing to pursue these investigations has become the rule .... In April 2002 seven prosecutors within the Attorney General's Human Rights Unit and one member of the CTI received credible and serious threats related to their work on investigations into high profile cases of human rights violations. Attorney General Osorio failed to take any measures to protect the officials. Subsequently they filed for precautionary measures before the Inter American Commission of Human Rights. Dozens of other prosecutors have either resigned or fled Colombia since Osorio took office ..."*

Human Rights Watch also published a report in November 2002 in a similar vein about the politicisation of the Fiscalía.

36. The BHRC also notes with profound concern that of the five extremely well qualified prosecutors invited to the UK by the BHRC in October 2000, only one is in fact still working for the Fiscalía in Colombia. It is also of concern and, perhaps connected, that the BHRC were told by the Fiscalía that there is no programme for their protection as they do not seem to be included in the protection programme referred to below. Indeed the high numbers of fiscales who have been murdered also bears this out.

37. A number of individual cases in which the alleged perpetrators were paramilitaries and a number in which they were guerrillas were raised with the Fiscalía. However, it appears that there was no progress in any of these cases. Unfortunately, the BHRC did not have time to examine any cases in detail with the Fiscalía.

38. The BHRC were told of very many threats made to unionists which had been reported to the Fiscalía and in respect of which nothing had been done, for example threats made to members of Sintraincalpa, a plastics union in Antioquia.

39. It is correct to say that in the high profile case of the shooting of Wilson Borja, a trade unionist and member of Congress, that progress has been made and the members of the armed forces connected with the shooting have been detained and convicted. However, the impression was left that for less well publicised cases that there had been very little progress, regardless of who were the alleged perpetrators.

40. Lawyers also commented that some Fiscales who had offices in the batallions themselves, were being required to investigate allegations of abuse by the very same batallions.

41. Further complaints were made that even in cases where judicial warrants from the Fiscalía were obtained by the armed forces prior to people being detained [see below in respect of cases in which no warrant was obtained], that such warrants were sometimes issued on the basis of very flimsy evidence provided by the armed forces. Although the criminal procedure did allow challenges to be made to the Fiscal's decision to charge an individual, such appeals were subject to a delay of 6-7 months during which time the accused would remain in custody. The BHRC was provided with an example of a teacher who had been buying food for her class and had therefore been accused of helping guerrillas on the basis of the volume of food she had purchased. The teacher had receipts for the food and was eventually released without charge but only after having spent many months in custody as an alleged guerrilla.

42. Another example given was in respect of false testimony from a witness who was pretending to be someone who they were not. Every witness has to provide their identification number on their statement, however, it takes up to 2 months to check such identification with the central registration authority, the Registraduria, during which time again the accused is held in custody.

## **LAWYERS**

43. There is no one organisation to which a lawyer has to belong. The legal profession therefore tends to be extremely fragmented as noted in previous reports for the BHRC dating back to 1994. Employee and trade union lawyers were frequently members of the Asociacion de Abogados Laboralistas de Trabajadores whilst employment lawyers acting for companies were members of the Colegio de Abogados Especializados en Derecho de Trabajo. The BHRC asked lawyers from both organisations whether they ever met outside of court or held any joint professional events and the answer was a clear no.

44. Both human rights lawyers and lawyers representing trade unionists in the civil side of employment disputes have been targeted. Perhaps the best known case is that of Eduardo Umana Mendoza of the Colectivo de Abogados JAR who was murdered in April 1998. He had represented the Telecom workers in a case which they had won in the Inter American Court of Human Rights.

45. The Inter American Commission of Human Rights has also issued "medidas cautelares" in respect of many lawyers, including again not just lawyers working in criminal cases such as Justicia y Paz etc, but also many employment lawyers and environmental lawyers involved in disputes with multinationals over logging rights etc for example Adriana Gonzalez who is primarily an employment lawyer working in the coffee region.

## **CRIMINALISATION OF TRADE UNIONS**

46. Aside from the most heinous violations of human rights, ie murders, torture, threats etc, of concern to trade unions is that they are being targeted by Government security forces to be detained and then are subsequently released certainly without being convicted and often without even being charged. The detentions can of course last for many, many months, particularly given the very long delays in the criminal justice system – as to which see above.

47. The Ministry of Defence was asked in terms for statistics which showed how many people of the very many who had been arrested - either with or without a judicial warrant [as to which see below] - were subsequently convicted.

48. The Ministry of Defence freely accepted that trade unionists could not be equated with members of the guerrillas. However, it was of concern that the Ministry of Defence had no statistics relating detentions to convictions. Albeit anecdotal evidence suggested that there was not one case in which a trade unionist who had been arrested for alleged guerrilla activities had subsequently been convicted of the same. The case of Hernando Hernandez, the President of USO, the petrol workers' union, being a case in point. Mr Hernandez was arrested on terrorism charges and detained in custody for 14 months before being released in April 2004 without further charges.

49. The previous Minister of Defence, Marta Lucia Ramirez stated in July 2003 that the Armed Forces had captured 125,778 people in the first year of Alvaro Uribe's presidency ie from August 2002 to July 2003. It appears from prison statistics published by INPEC [the Colombian prison authority] that as of July 2003 there was a prison population of 58,877 of which 25,636 were on remand. The startling conclusion therefore appears to be that of the over 125,000 detentions from August 2002 to July 2003, in respect of a maximum of 25,636 people was there sufficient proof to keep them detained. It would therefore appear that over 100,000 people in 2003 were therefore detained only to be released without any charge at all. It is not known what proportion of these people were trade unionists.

50. During the period from August 2002 to April 2003 emergency legislation was in force which allowed the armed forces to arrest people without a judicial warrant. The Constitutional Court subsequently declared this legislation Decree of 2002 to be unconstitutional although the Government is currently still attempting to bring into force an anti-terrorism act with similar provisions to allow the armed forces to detain people without a warrant in cases of emergency. This new legislation is apparently based in part upon the UK's 2000 Terrorism Act which allows detention without warrant in emergencies, together with a period of incommunicado detention for 7 days, albeit that the armed forces have to file a report to the Home Secretary in any cases in which they do detain a person without a warrant. The BHRC was told that this provision was necessary in Colombia because of the logistic difficulty in members of the armed forces communicating with judicial authorities to obtain the necessary authorisation. It is right to say that the Fiscalía stated that if such legislation is put into force, they would not expect the armed forces to use such powers to arrest people without warrants in cities at the very least.

51. This proposed anti-terrorist legislation is being challenged in the Constitutional Court in an action brought by the Colombian Commission of Jurists. It has been subject to substantial international criticism from the United Nations High Commission of Human Rights and the United Nations Committee Against Torture amongst others as well as many NGOs.

52. According to statistics from CINEP and Justicia y Paz from 9th September 2003, between August 2002 and April 2003 there were 831 detentions by the armed forces without warrant. Of this number, of the cases in which it was possible to establish the social sector of the person [which was only 406] 48 were trade unionists. This is a similar figure to that used in the report of ENS which lists 42 arbitrary detentions by security organisms of the state for the year 2003.

53. Given that the Colombian Government itself apparently does not know how many arrested trade unionists are then convicted, there is a potential for the use of detention, in particular without the need for a judicial warrant, as a means of harassment. This concern was raised by Amnesty International in its briefing to the 91st Session of the ILO in June 2003. This briefing also highlighted many specific cases of raids and arbitrary detentions upon trade unionists, their offices and homes.

## ILLEGAL GROUPS

54. There are two main illegal groups – paramilitaries and guerrillas.

## PARAMILITARIES

55. Paramilitaries have been a part of the political scene in Colombia for many years in one form or another. They have a variety of roots including being private armies for drug barons and industrialists, illegal groups set up on ideological grounds specifically to combat guerrillas and legal self-defence groups set up by the Colombian Government ie Convivir etc. They are well armed, well funded and probably exceed 10,000 members in total.

56. The paramilitaries are responsible for very many human rights abuses, in particular disappearances, massacres and forced displacement of people from their lands and do not abide by the Geneva Conventions.

57. There are various different groups of paramilitaries which, in the same way as the guerrillas, sometimes act together but maintain their own interests. Some of these groups, under the umbrella of the AUC, have laid down their arms and are being offered an amnesty, the terms of which have yet to be legislated upon by the Colombian Government.

58. The alleged nexus between paramilitaries and the Armed Forces continues to be disputed by the Colombian Government. Any serious analysis of this complex topic is clearly beyond the remit of this BHRC. However, suffice it to say that in the most recent report of the UN Office of Human Rights dated 17th February 2004, paragraphs 23-28 note that despite pronouncements by the Colombian Government that the UN Office of Human Rights continues to receive allegations about links between paramilitaries and the Armed Forces. Furthermore, paragraph 26 makes it clear that in the opinion of the UNHCHR that the impunity with which the paramilitaries continues to act is a sign that the Colombian Government is failing to act in an appropriate way. The report also criticises the way in which the process of negotiation between the paramilitaries and the Government fails to take into account any judicial consequences as an amnesty is planned without even a truth and reconciliation process. The report also notes that the Fiscalía had failed to act upon the recommendation of the UNHCHR in November 2003 to set up a special unit to investigate possible links between the paramilitaries and the armed forces.

59. The US Department of State Report for 2003 also states that:

*"There continued to be credible reports that some members of the security forces co-operated with illegal paramilitaries ..."* [p7]

Further comment is made at page 28 of the report:

*"Contrary to the explicit directives of civilian defence authorities and members of the military high command, some members of the public security forces - principally enlisted personnel and NCOs, but also some more senior officials - collaborated with or tolerated the activities of illegal paramilitaries. Reasons for collaboration or tolerance varied from ideological sympathy and perceived*

*operational exigencies to corruption and participation in illegal paramilitary activities such as drug trafficking. Evidence suggested that there were tacit arrangements between local military officers and paramilitary groups in some regions and some members of the security forces actively assisted paramilitary groups by passing them through roadblocks, sharing intelligence, providing them with weapons and ammunition and joining their ranks while off duty ."*

60. The BHRC was told by the Ministry of Defence that contrary to the suggestion by the UNHCHR, that there was no policy of collusion between the security forces and paramilitaries and that this was evidenced by the increasing numbers of combat killings, detentions and warrants for arrest of paramilitaries by the armed forces. The US State Department Report for 2003 cites that the armed forces killed 346 paramilitaries in combat in 2003 compared to 187 in 2002 and that 3,166 were captured during the year a 133% increase from 2002 [p28]. However, according to figures from the Ministry of Defence 1,042 members of the AUC have already been released pursuant to the amnesty [see above].

61. It is undoubtedly correct that the Ministry of Defence's own figures for the number of captured paramilitaries increased by 175% from 1,703 to 4,698 when comparing the periods under the previous President between January 2001 and July 2002 and under President Uribe between August 2002 and February 2004. However, the numbers of guerrillas captured between the same periods also rose by 176% and in brute terms is double the number of paramilitaries arrested.

62. The figures for killings in combat for each group also reflect a similar trend in that 550 paramilitaries were killed from August 2002 to February 2004 compared to 2,993 guerrillas.

## **GUERRILLAS**

63. There are currently two main guerrilla groups, FARC and the ELN. At points in history these groups have formed a common front although this is not the case at the moment. The two groups do share some common aims as they are both rooted in communist ideals. Both groups have been in existence for many years and are well armed. There is very credible evidence of the links between the drug trade and the guerrilla groups, in particular FARC. The total combatants for both groups is around 20,000.

64. Like the paramilitaries the guerrillas are also responsible for very many human rights abuses, although their pattern is distinct from that carried out by the paramilitaries. They tend to be associated with killings and kidnappings in particular and also do not abide by the Geneva Conventions. Like the AUC both guerrilla groups are listed as terrorist organisations by the USA although apparently are not proscribed organisations pursuant to Schedule 2 of the UK's Terrorism Act 2000. Furthermore, again in common with the AUC, various high ranking leaders have arrest warrants from the USA and/or requests for extradition outstanding against them.

65. It is important to make clear that the BHRC raised with the Fiscalía issues of trade union killings by guerrillas as well as by paramilitaries. In particular, the case was raised of the massacre on 26th April 2002 of 9 banana workers in Apartado, Antioquia, 7 of whom were members or leaders of SINTRAINAGRO in which the Fifth Front of FARC is suspected of being responsible. It appears that this case also remains in total impunity.

### **PRACTICAL MEASURES TO PROTECT TRADE UNIONISTS**

66. The Ministerio del Interior y de Justicia provided information about the funding of protection programmes - the Special Protection Programme for Witnesses and Threatened Persons - of which protecting trade unionists is but one part. The figures show that for 2003 the Government contributed almost \$10,000,000 and in addition received another \$1,721,763 from the US AID programme. The same statistics showed that in 2003 protection was given to 8,840 people of whom 2,633 were trade unionists. This amounts to \$1357 per person protected. The statistics go on to state that in fact for 2003 \$19,000,000 has been spent protecting trade unionists, however, this would seem to include budgets for each year going back to 1999.

67. However there are structural, operational and financial criticisms of this programme. In particular, reference has been made to inadequate budgetary allocations and the low level of professionalism of some of the bodyguards. In addition, given that in many cases allegations have been made of collusion between the armed forces and paramilitaries who have targeted trade unionists, there must be a question mark about how appropriate it is to provide state officials as bodyguards. One trade union official who was receiving protection complained that he had no choice over the selection of the guards and that there was apparently no money for an armoured car.

68. When the BHRC met with the Defensor del Pueblo, the BHRC received criticisms by the Defensoria of the trade unions for their failure to work with the protection scheme.

69. The US State Department Report 2003 states at page 46 that the Colombian Government through the Ministry of Interior and Justice and DAS [internal security agency] spends about £10,000,000 in total in its programme to protect human rights activists and other vulnerable populations which it is assumed includes the programme in respect of trade unionists. The report states that protection was provided to over 3,000 human rights activists during the year and bullet proofed 15 additional offices and residences. Requests for protection increased by 7% which was a decline from the 106% increase in requests for protection in 2002.

70. The same report also identifies that the Colombian Government's protection programme for trade unionists had secured 30 union headquarters and residences and had provided protection to 1,424 union members and activists [p56]. This figure is about two thirds of the figure cited by the Colombian Government above.

71. The UK Embassy provides financial assistance for witness protection programmes. However, there are concerns highlighted in the recent report by Oxfam amongst others in

respect of the provision of arms to Colombia, albeit that these are mainly small arms.

72. The UK TUC also has a plan to offer respite care in the UK although it is not clear whether this has in fact been set up. The UK Embassy expressed its willingness to assist in providing visas for trade unionists who need to leave Colombia urgently.

73. According to information given to the ILO 6 union leaders had been assisted in leaving Colombia by March 2003 under the umbrella of a project run by the ILO and the American Centre for International Labor Solidarity of the American Federation of Labour and Congress of Industrial Organizations.

### **CORPORATE RESPONSIBILITY**

74. The UN Global Compact was set up in 1999 by the United Nations as a voluntary code to which companies can subscribe. It contains 9 principles which are derived from the Universal Declaration of Human Rights, the International Labour Organisation's Declaration on Fundamental Principles and Rights at Work and the Rio Declaration on Environment and Development. The principles include:

- (i) Principle 1: Businesses should support and respect the protection of internationally proclaimed human rights within their sphere of influence
- (ii) Principle 2: Businesses should make sure that they are not complicit in human rights abuses
- (iii) Principle 3: Businesses should uphold the freedom of association and the effective recognition of the right to collective bargaining
- (iv) Principle 4: Businesses should eliminate all forms of forced and compulsory labour

75. A perusal of the website [[www.unglobalcompact.org](http://www.unglobalcompact.org)] reveals that not one Colombian registered company has signed up to these principles, nor have most of the large multinationals operating in Colombia.

76. The BHRC met with lawyers from Ecopetrol, the Colombian state oil company which is in the process of being privatised. This company operates in some of the most dangerous regions in Colombia. On entering the headquarters in Bogota there was a proliferation of posters for the petrochemical union USO. However, the BHRC notes that at the start of May 2004 the main leaders of the unions were dismissed from their jobs for taking strike action, apparently illegally. This will apparently effectively prevent them from continuing with their roles in the union. This dismissal came almost immediately after the head of USO, Hernando Hernandez, had been released from custody after 14 months having acquitted of terrorism charges [see above]. Ecopetrol had explained that during this period Hernando Hernandez had been paid the equivalent of his net salary.

77. The BHRC asked Ecopetrol about the protection given to its employees who are frequently exposed to extreme danger and some of whom have been killed. Ecopetrol explained that it had set up a human rights commission with USO which provided armoured cars and guards for union members who were being threatened. This appeared to be a part of the Colombian government's trade union protection scheme.

78. However, the BHRC was disappointed to note the refusal by Ecopetrol to accept that union members in particular were more likely to be targeted, despite being told that the Fiscalía accepts that this is the case.

79. The issue of corporate responsibility is especially relevant where the employer is the state, as it will or should know, better than any other employer, of the risks posed in particular regions. In this regard it is especially worrying that teachers in the Antioquia region who have been threatened by either paramilitaries or guerrillas are being sacked by their employers, who are presumably emanations of the state, for refusing to return to the same regions to work.

## **CONCLUSIONS**

80. The situation in which trade unionists find themselves in is extremely concerning as whilst the Colombian Government accepts that they are being targeted, the virtual total impunity in which the cases of murder remain means that there is no real deterrent for the perpetrators of the killings.

81. The sad reality is that it is probably quicker, cheaper and less risky to murder trade unionists involved in an employment dispute than it is to use the civil procedures laid down for the resolution of such disputes by arbitration or litigation.

82. The BHRC would therefore suggest the following:

### **I. ILO**

- (i) It conducts a thorough and detailed investigation with the Fiscalía, in particular, of all of the cases in which trade unionists have been killed and a consideration of why each case has remained in impunity, to the extent that that is the case. A proper analysis needs to be carried out of the background circumstances of each case, identifying the level of leadership of the trade unionist in question and the nature of the employment dispute with which they were involved;
- (ii) It conducts a thorough investigation of the relationship between the number of trade unionists detained and the number who are subsequently convicted;
- (iii) It ensures that the Colombian Government complies in full with all ILO Conventions to try at least to minimise the possible sources of conflict between employees and employers.

### **II. Colombian Government:**

- (i) More resources should be devoted to the protection of trade unionists and their lawyers;
- (ii) More resources should be devoted to the protection of Fiscales, Judges and witnesses;

- (iii) There should be an impartial investigation into the very serious allegations that the Fiscalia has been politicised;
- (iv) As suggested by the UNHCHR, a unit should be set up in the Fiscalia to investigate possible links between the armed forces and paramilitaries;
- (v) There should be no amnesty for any individuals alleged to have committed breaches of human rights or international humanitarian law. To the extent that criminal proceedings are not brought, a Truth and Reconciliation Committee should be held;
- (vi) The relationship between detentions, both with and without judicial warrant, and convictions in all cases [but particularly those of trade unionists] needs to be examined in detail;
- (vii) The new anti-terrorism legislation needs to be reconsidered in the light of the very many serious concerns expressed by the international community, including the United Nations;
- (viii) There needs to be more clarity in the statistics from the Colombian Government as to violations of human rights against trade unionists especially to explain why they do not accept that many cases should be categorised as such;
- (ix) A clear message needs to be sent from the Colombian Government, in particular from the armed forces, that Trade Unions are not equivalent to guerrillas and that they have the right to exist and to make their views heard;
- (x) Legislation needs to be passed to ensure that the Colombian Government is complying in full with the ILO Conventions;
- (xi) More resources need to be directed towards the functioning of employment courts, including the funding of representation of workers, such that they become a more viable, more certain and more speedy means of resolving labour disputes;

### **III. Trade Unions:**

- (i) One data base should be set up of all human rights' abuses from all sources;
- (ii) Consideration should be given to all of the unions working together as three confederations, plus other non-affiliated unions weakens the union sector as a negotiating power;
- (iii) All unions need to ensure that regardless of their feelings that the policing is disproportionate, that their demonstrations are carried out in a peaceful manner at all times;

### **IV. Guerrillas and Paramilitaries:**

- (i) All groups should abide by the very minimal standards set out in international humanitarian law, in particular the Geneva Conventions.

**V. Corporations**

- (i) All corporations should abide by the very minimal standards set out in the UN Global Compact;
- (ii) All corporations should acknowledge that employees working in certain regions are in danger and should provide appropriate practical protection, including allowing them to move to other regions if necessary;
- (iii) All corporations should publicly acknowledge that trade unionists are more at risk than their other employees and should take appropriate steps to ensure their safety;

**VI. Lawyers**

- (i) There should be one central body to which all lawyers belong as a way of establishing links and solidarity in the profession;
- (ii) All employment lawyers representing both employees and employers and the two specialist professional bodies ie the Asociacion de Abogados Laboralistas de Trabajadores and the Colegio de Abogados Especializados en Derecho de Trabajo should publicly condemn all violence against anyone involved in any employment dispute, be they trade unionists, employees, employers, lawyers or judges;

Sarah Lucy Cooper

18<sup>th</sup> May 2004

## **APPENDIX 1**

### **LIST OF ORGANISATIONS WITH WHOM THE BHRC MET**

#### **NGOs**

Colectivo de Abogados JAR

Brigadas de Paz

Comision Colombiana de Juristas

Comite Permanente para la Defensa de Derechos Humanos

Corporacion Juridica Libertad [Medellin]

#### **UNIONS**

##### **Bogota**

Human Rights Officer of CUT - Domingo Tovar

President CTC - Confederacion de Trabajadores de Colombia Carlos Torres Corredor

Sinaltrainal - Coca Cola Union, hunger strike in Bogota on 22nd March 2004 also members in Medellin

Sintraminercol - oil and minerals

Fensuagro - peasants/farm labourers

Asonal - Judges and employed government lawyers' union

San Juan de Dios Hospital Union - prominent Bogota public hospital

##### **Medellin**

Escuela Nacional de Sindicados

CUT - Antioquian President and Vice President

UNEB - banking union

ADIDA - teachers' union in Antioquia

Sinaltraproal - biscuit manufacture

Sinthol - hotel workers

Ascaplan - betting and lottery ticket sellers

Sintraincalpa - plastics

Sintrainal - Coca Cola

Sintra Shellmar - food packaging

Sintraeme - metal industry

Sinratextil - textiles

Anthoc- hospital workers

Telecom - telecommunications workers

Sindesena - further education workers

Sintraencapula - plastics

### **COLOMBIAN GOVERNMENT INSTITUTIONS**

Vice Minister of Defence - Andres Penate

Juzgados Laborales 1, 13 and 16 - Employment Tribunals

Defensoria del Pueblo ie Ombudsman - Delegada de Comunicaciones - Consuelo Rivera Pineda

- Directora de Quejas - Maria Teresa

Vice Fiscal ie vice DPP – Andres Ramirez

Jefe de la Unidad de Derechos Humanos de la Fiscalia - Elba Beatriz Silva Vargas

Procuradaria

### **LAWYERS**

Asociacion de Abogados Laboralistas de Trabajadores

**OTHER**

British Embassy - Jackie Brown

United Nations High Commission for Human Rights Office in Bogota - Juan Carlos Monge

Ecopetrol

Wilson Borja - Colombian MP

## **APPENDIX 2**

### **DOCUMENTS CONSIDERED BY THE BHRC**

ILO Convention no.87 Freedom of Association and Protection of the Right to Organise Convention 1948

ILO Convention no.98 Right to Organise and Collective Bargaining Convention 1949

ILO Committee Reports from the 280th Session in March 2001, 286th Session in March 2003

Inter American Commission on Human Rights Report 8/2004

Human Rights Watch Report on Massive Detentions to the Inter American Commission of Human Rights in its 118th Session October 2003

Report of ILO into a massacre of 9 banana workers in Apartado, Antioquia, 7 of whom were members or leaders of SINTRAINAGRO on 26th April 2002 in which the Fifth Front of FARC is suspected of being responsible

Minutes of the 31st Session of the UN Committee Against Torture 11.11.2003

Report of the Office of the High Commission for Human Rights on Colombia 17th February 2004 E/CN.4/2004/13

Report of Public Services International BHRC to Colombia in December 2002

Newsletters from ICTUR

Amnesty International Reports including its briefing to the UN Committee Against Torture November 2003 and its briefing to the 91st Session of the ILO in June 2003

Report of ENS on Human Rights violations in 2003

Statistics from the Ministerio de Proteccion Social

UN Global Compact - [www.unglobalcompact.org](http://www.unglobalcompact.org)