

Committee on the Application of Standards

Date: 20 May 2021

Governments appearing on the list of individual cases have the opportunity, if they so wish, to supply written information to the Committee

▶ Information on the application of ratified Conventions supplied by governments on the list of individual cases

Colombia (ratification: 1976)

Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)

The Government has provided the following written information.

The Government of Colombia is compliant with international Conventions, both in legislation and in practice our commitment is firm in respecting the right to unionize. A proof of this is the creation of new unions from 2018 to 2020, where 611 new union organizations were created.

The impunity gap was broken: Our Government strongly rejects any act of violence whatever its origin and we reiterate the State's willingness to advance in the investigations to clarify the facts and convict those responsible, while protecting our workers, in particular activists and trade union leaders. Colombia has made significant progress in the fight against impunity; today the country has more than 960 convictions, and the number of acts of violence against trade unionists has been reduced. We wish to reiterate that we reject all acts of violence against trade union leaders and that we will continue to fight until the number is zero.

State strategies

The National Immediate Reaction System for the Advancement of Stabilization (SIRIE) was created and activated through the General Command of the Military Forces, which establishes a series of coordinated actions to concentrate capacities to control territories in order to respond to any situation that threatens or affects the exercise of human rights defenders, social leaders, trade unionists and union leaders.

Investigation and prosecution strategy for crimes committed against trade unionists

In order to provide guarantees for access to justice for unionized persons who are victims of crimes and with the objective of contributing to the materialization of the principle of freedom of association, the Attorney General's Office prioritized investigations of crimes that may affect union activity. The above, through the following

actions, which will be strengthened based on the provisions of the strategic direction 2020–24, “Results in the street and in the territories”:

- analysis of the crimes of greatest impact against trade unionists in the development of their work: homicides, violation of the rights of assembly and association and threats;
- definition of the universe of prioritized cases and situations;
- interinstitutional articulation with the Ministry of Labour;
- training to strengthen the investigation of prioritized crimes;
- strengthening the investigation of the crime of threats against human rights defenders;
- the issuance of precise guidelines for the investigation of the crime of homicide against human rights defenders; and
- a work plan that allows the internal articulation of the various units of the Attorney General's Office with competence in the investigation of these crimes.

Results

1. The impunity gap was broken, it went from one conviction in 2001 to more than 960 convictions in 2021, 70 convictions were handed down in 2020 alone.
2. From 205 homicides of trade unionists in 2001, there was a reduction of more than 94 per cent to 14 homicides in 2020, with one being a high figure.
3. Those who hinder the right of association and whoever offers better guarantees in collective agreements are penalized.
4. The Ministry of Labour together with the ILO is conducting a study that systematizes and analyses 814 judicial decisions taken in the context of crimes committed against unionized workers and trade union organizations in the period 2002–20. This study that takes stock of progress in judicialization against anti-union violence, as a follow-up mechanism to the anti-impunity strategy agreed tripartite in 2006. This study presents the overall results of the analysis of the 814 judicial decisions, identifying their main achievements and fallacies, and making recommendations for successful judicialization.
5. We have negotiations in the public sector, Colombia being one of the few countries in the region that carries it out successfully with all the Unions' Centrals of the country.
6. Trade unionists are protected. The National Protection Unit has actively participated in the National Bureau of Human Rights with the Ministry of Labour and the Unions' Centrals, in the National Committee to follow up transfers to educators for security reasons with the Ministry of National Education and FECODE, on the other hand, participation in the Committee of Follow-up of Teachers threatened with the Secretary of Education of Bogotá. These spaces for dialogue are used to analyse different risk situations that may affect the fundamental rights of members of the target population, union leaders and/or activists and their representatives. There are currently 292 protected trade unionists.
7. The Budget for Trade Unionists is guaranteed by the government which annually makes a significant increase to safeguard the protection of union leaders, from 2018 to 2020, nearly 37 million Colombian pesos (COP) has been invested in the protection of union leaders.

8. The Protection Unit serves, in accordance with the Decree that regulates it, applications for protection, in case of extreme risk there is an emergency route to provide protection expeditiously.

It is important to note that although the National Protection Unit protects social leaders and union leaders, the strategies and outcomes referred to the commission only account for measures for union leaders, to whom Convention No. 87 applies exclusively.

Collective repair measures in favour of the trade union movement

The Government in the framework of the National Table of Guarantees held on December 14th, 2020, during its fourth session of the permanent table, presented the commitments by the Government related to the hiring of the technical liaisons of the Union Movement to support the systematization of the information for the presentation of the statement, which included the timely sending of the proposal of contractual specifications agreed with the Union Movement, and its subsequent hiring by the national Government from the month of May 2020.

Currently, we are waiting for the declaration of the trade union movement in order to continue the development of the collective reparation route that will allow the formulation and implementation of its Integral Plan for Collective Reparation (PIRC), which will establish the actions and measures that will contribute to the reparation of the damages and historical affectations of the Trade Union Movement.

Article 200 of the Penal Code

The Attorney General's Office, between 2017 and 2020, received a total of 865 complaints for the crime of violation of the rights of reunion and association. Some, 714 cases have been completed and 151 are active, which means, 17.45 per cent, of the cases.

In the crime under analysis, the following actions were carried out for the termination of the criminal action of the proceedings that entered to the prosecution, from the first of January 2017 to 31 December 2020: ¹

- In 59 cases, an agreement was reached with conciliation. For these cases, the parties, in front of the Prosecutor, agreed to terminate the criminal proceedings under the fulfilment of conditions in the same manner agreed.
- Some 95 processes were terminated by withdrawal of the worker or the reporting trade union organization. This is important, as these are cases that had a negotiated exit between the worker and the company.
- In 68 of the cases, the process was conexas, that is the Prosecutor made the decision to continue the investigation under other criminal news that shared the same facts, to analyse the situation together.
- 407 cases (57 per cent) were archived. In 57.25 per cent of these cases, it was established that criminal conduct did not exist. In 29.98 per cent of cases, the file was filed as an illegitimate complainant.

¹ Procedural management data is delivered cumulatively and not per year, which means that the results in cases have been obtained throughout the period, not in one year.

- Other causes: 85 cases culminated in the investigation by termination of criminal proceedings, by preclusion, termination of the complaint, among others.

For events that have occurred between 2017 and 2020, 151 active cases, 106 cases in the pre-process stage, likely to reach conciliation, 42 in search and three cases at trial were identified. Some 57 prosecutors offices are advancing in the active processes, of these, three prosecutors have been assigned to the areas with the highest number of prosecutions.²

The above actions are discussed within the framework of the Inter-Agency Commission on Human Rights, where tripartite actors have the opportunity to interact directly with judicial authorities and express their concerns to them, as well as make recommendations for greater effectiveness of measures taken in terms of protection and investigation. This Committee introduced the Law establishing the abbreviated verbal procedure and incorporating the figure of the private accuser, who the victim can act as an accuser, that is, in the role of the Public Prosecutor's Office.

Articles 2 and 10 of the Convention: union contracts

Concerning the measures taken by the Government to control the misuse of the trade union contract, the Ministry of Labour has designed and is implementing the Trade Union File Information System – SIAS, which aims to record, store and manage information to generate indicators and reports necessary for the development of trade union policies and projects; in which it is in pre-production and quality review version. This system of trade union file information of the Ministry of Labour will monitor the registration of the deposits of the Trade Union Contracts, carry out a characterization of the contracts in force in the period covered by each annuity, disaggregated by economic activity and planning inspection actions focused on the monitoring of them.

Right of workers' organizations to organize their activities and formulate their programme of action: legislative questions

As the ILO has been informed, within the framework of the Subcommittee on International Affairs, we hope to jointly build a road map to enable us to move forward on concerted solutions to effectively comply with the provisions of the Conventions ratified by Colombia and the comments of the experts.

On the other hand, the Ministry of Labour and the Supreme Court of Justice signed a Memorandum of Understanding, in April 2021, on labour rights, which object is the creation of effective mechanisms for the promotion, compilation and dissemination of the jurisprudence rules of La Sala on individual and collective labour rights, to contribute to the enjoyment and guarantee of the fundamental rights of the Colombian population.

As can be shown, the State's commitment is total. While the fight against trade union violence remains a major challenge, the above data demonstrate Colombia's strong commitment to this issue, making significant progress in the protection of trade union leaders and closing the impunity gap in recent years.

² In previous years, it had been reported that seven prosecutors had stood out for the address of article 200 crimes. Currently, as the number of active cases has decreased, three prominent prosecutors' offices are maintained, with the same criteria, i.e. areas with a higher concentration of cases.