

Business and Organized Labor Amidst the Colombian Conflict: How To Build Trust?

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For decades the relationship between trade unions and business in Colombia has been a tense one. Given the divergent interests of each group, disagreements are expected; however, the historically high level of friction can be attributed partly to the country's armed conflict. The political, ideological, military, and economic dimensions of the conflict have deepened the distrust between unions, business, and the State –regarded as an ally of private capital. To untie this Gordian knot of distrust is no simple matter. Deep prejudices and historical and even personal grievances related to both violence and poverty impregnate the accusations leveled by both sides. Today one must be careful when analyzing the business–trade union relationship and, in particular, the strategies of the guerrillas and the paramilitaries with respect to these economic actors. Generalizations do not tell the whole story. There certainly are businesses that respect unions and unions that are committed to democracy and the economic growth of the country. Nevertheless, it is hard to ignore the truly tragic events that have occurred, such as the killing of more than 2,200 trade union members in Colombia from 1990 until today¹. This tragedy has earned Colombia a reputation as “the most dangerous place in the world” for trade union activity².

Some in the business community, in particular those respectful of trade unions, feel frustrated with the tensions and consider that business and the State should embark on a constructive transformation of their relationship with unions, admitting past mistakes, if necessary. However, other members of the business community justify the distrust and the killings because of the historical connections of some trade unionist sectors to the revolutionary ideals of the Marxist guerrillas and believe that the

State is to blame. Indeed, public sector unionists comprise more than half the threats and deaths. Teachers have been the most affected – according to the figures of the Office of the Vice-presidency; of 846 murders between 2000 and 2006, 410 were of public sector teachers³.

Unquestionably, businesses both national and multinational have been affected by violence against trade unions and by the negative image unions have in Colombia and internationally, as the following examples illustrate. The Coca-Cola Company faced an international boycott and a lawsuit in the United States for the murder of Isidro Segundo Gil -director of Sinaltrainal, the Colombian Foodworkers Union- by paramilitaries in December 1996⁴. Despite the fact that Gil was not a direct employee of the multinational but rather of one of the bottlers that produce and distribute Coca Cola products, Bebidas & Alimentos de Uraba, S.A. (located in Carepa, Antioquia), the Coca-Cola Company was added to the lawsuit⁵. Similarly, the

³ The second most affected sector by economic activity is the agricultural, hunting and fishing sector. There have been a considerable number of attacks again union members and leaders working in the banana industry, especially in Uraba in the first decade of the 1990's. See: Banco de Datos de Derechos Humanos de la Escuela Nacional Sindical. Violaciones por sector económico 1991-2006.

⁴ The lawsuit was brought against The Coca-Cola Company, Coca-Cola de Colombia, S.A., Richard I. Kirby, Richard Kirby Kielland, Bebidas y Alimentos de Uraba, on July 20, 2001 in the United States District Court for the Southern District of Florida by Daniel M. Kovalik for the United Steelworkers of America and Terry Collingsworth and Natacha Thys for the International Labor Rights Fund under the Alien Tort Claims Act (ATCA) and the Torture Victims Protection Act (TVPA). The lawsuit was rejected and the cases closed in September 2006. In the judgement, the court said that there was insufficient proof to show the responsibility or complicity of Coca-Cola in the acts. The court recognized that it is not easy to prove such responsibility and that high legal standards of proof make it difficult to administer justice in the cases of violations that the ATCA seeks to prevent. However, the court warned that the ATCA is not a “wild card” that can be played to apply political pressure and that cases brought to the United States Courts under the Act should be rigorously argued and proved.

⁵ The oil industry went through a similar learning process when various companies faced lawsuits for the actions of their hired security forces that were staffed by military personnel of the country in which they operated and sometimes by members of private security companies. This was the case of Occidental Petroleum and its security contractor, Airscan, Inc., who were sued for participating in the murder of civilians in the town of Santo Domingo, Colombia on December 13, 1998. The lawsuit was brought in April 2003 by the International Labor Rights Fund (ILRF) and the Human Rights Center of Northwestern University School of

¹ Such murders go back to the 1970, but there are no consolidated historical records. Currently, both the Escuela Nacional Sindical (ENS) and the Observatorio de Derechos Humanos de la Vicepresidencia keep figures of murders of union members, which do not always coincide.

² “Colombia ‘Most Dangerous’ Place for Trade Unionists”, *Financial Times*, June 7, 2006.

floriculture sector has been the target of strong campaigns by NGO activists and local and global trade unions accusing it of forcing workers to work long days, exposing them to toxic pesticides without adequate protection, and obstructing unionizing efforts through selective firing and blacklisting. To support these arguments, NGOs and trade unions cite the murders of union members: "Since the mid 1980's, approximately 4,000 union members have been murdered in Colombia" – reads Amargo Florecer (Bitter Bloom), a publication of the NGO War on Want. Even if there have not been deaths recorded in the floriculture sector, information about the large amount of killings in Colombia makes such accusations more credible and arouses the sympathy of the good-faith reader. Francisco Ramirez of the energy workers union Funtraenergetica used the same reference to call the attention of Democratic US Congressional Representative Jim McGovern, who has opposed free trade agreement between the United States and Colombia on account of, among other things, the lack of guarantees that Colombian trade unionists have⁶. This goes to show how tensions between trade unionists, the business community and the State have managed to affect key issues for the country, as indicated by the April 10, 2007 headline in the Washington Post: "*Unionists' Murders Cloud Prospects for Colombia Trade Pact*".

International NGO attention to the security of unions in Colombia has had not only positive but also counterproductive effects for some union leaders. Although the attention has been useful in pressuring the government to take preventive security measures and to pay more serious attention to judicial investigations into killings and threats, the issue of the killings has been a distraction from other important issues relevant to the union movement such as the salary gap between workers and executives, overall inequality, the advantages and disadvantages of cooperative business associations and the effects of globalization on job security, among others. Moreover, despite the decline in strike action in the past decade, the idea that confrontation of this kind is the only way to guarantee workers' rights has foreclosed other less draining but effective methods to win these rights⁷.

It is in the interest of both the union and business

Law. For more information about this and other cases see the Business and Human Rights Resource Center, Lawsuits: Selected Cases at <http://www.business-humanrights.org/Categories/Lawlawsuits/Lawsuitsregulatoryaction/>

⁶"Colombian Coal: Coal Workers Make Themselves Heard in the US", Inter Press Service News Agency, March 19, 2007.

⁷In the past decade there has been a decline in strikes, due mainly to the fact that public sector unions in essential public services are prohibited from striking.

communities to formalize agreements on fundamental human rights – the respect for life and free association – which would not only reduce the mutual distrust and ideological polarization but also create a space to discuss, in a more structured manner, the challenges posed by globalization to both sides. While the differences of opinion between the union and business communities regarding the optimal economic model for the country might never see resolution, the discussion would help make the debate more mature and constructive and would, above all, contribute to the creation of a context more favorable to peace. Now, let us review in detail what has happened in Colombia.

Effects of the Armed Conflict: Facts and Perceptions

Some NGOs and international trade unions view Colombian trade unions as victims of a conservative business class allied with authoritarian governments that discriminate against the left because it questions the status quo's distribution of power and wealth. "They must be empowered; after all, they are weak and lack security"⁸, as a member of a North American NGO commented recently at a forum in Bogotá. Colombia's rate of unionization, 4.6% of workers⁹, is low compared to other countries. Mexico has 16.2%, Chile 13.8%, the United States approximately 13%, and France 8%¹⁰.

The circumstances that create risks for trade unionism in Colombia are complex. Colombian Vice-president Francisco Santos acknowledged that "The enemies of trade unionism are many. Paramilitary groups are killing union leaders, but also FARC and ELN. And there are also some businesses that don't have organizations, albeit very few, who don't like union members"¹¹. How did the situation get this way?

For many years, Colombian guerrilla groups combined their military activities with political work to win converts to the revolutionary cause. They supported the creation of radical political movements and sought to recruit students, peasant farmers, and union members. "Any association,

⁸ Ethical Trade Initiative (ETI) Seminar for Interested Parties in the Implementation of Workers' Rights in the Colombian Floricultural Industry, April 18, 2007, Bogotá. The identity of the NGO will not be revealed to respect the dynamic of the dialogue that ETI wants to promote in Colombia.

⁹ See: Banco de Datos de Derechos Humanos de la Escuela Nacional Sindical.

¹⁰ France diplomatie, Mexico Laboral, Disminuye tasa de sindicalizados, May 2, 2007, United Press International, Directora del trabajo lamentó baja tasa de sindicalización a nivel nacional, April 27, 2007, American Federation of Labor-Congress of Industrial Organizations (AFL-CIO). American Federation of Labor-Congress of Industrial Organizations (AFL-CIO).

¹¹ News and Press, "Vicepresidente denuncia nexos de empresarios con asesinos de sindicalistas", El Tiempo, August 20, 2003.

union, peasant farmer or student meeting was converted into a platform to distribute Party ideas [Communist/Marxist-Leninist Party], into a place to promote the armed struggle, into a space to discuss the problematic issues of the revolution in Colombia. All the ML (Marxist-Leninist) sectors and the ELN (National Liberation Army) converged at the edges of the so-called independent trade unionism¹², as pointed out by former militants of the ML Communist Party that gave rise to the guerrilla organization EPL (People's Liberation Army). The EPL demobilized in 1991.

The ideology of the guerrilla groups resonated among workers and trade unionists. The ideas that capital has exploited labor, that power and wealth have been concentrated the hands of a few, and that the State is illegitimate because its institutions and laws reflect the interests of the privileged largely appealed to the working sector. While not all unionists agreed with seeking significant changes in Colombia via armed struggle, some developed close links with guerrilla groups, links which severely distorted union identity: they became instruments in a revolutionary strategy that aimed to install a socialist regime as the only way of safeguarding the interests of the people. In this way, sectors of unionism stopped being organizations to defend workers' rights within a democratic framework. Plazas and Villarraga confirm this in their history of the EPL: "The 'national strike' [of 1988] was by no means a general reply from the workers. In the Marxist-Leninist Party, there was a predominant leftist concept of not working to solve the problems of the workers, but rather to use the workers' movement as a tool in their particular view of the struggle, as a tactic in a civil war"¹³. Although no union currently gives institutional support to the illegal armed groups, this legacy may explain the contemporary radicalization of individual union members and the fact that proposals made at labor negotiations by certain union sectors are simply not viable to the long term sustainability of businesses.

In this way, the unions became trapped in the ideological struggle of the Cold War and in the particular disputes of the Colombian conflict. Various leaders were threatened and murdered both by leftist radicals when the unionists were not satisfying revolutionary expectations and by rightist radicals, as the dirty war gained momentum. For

example, in 1976 José Raquel Mercado, president of the Confederation of Colombian Workers (CTC), was murdered by the M-19, and in 1977 Rafael Bayona, president of the Acerías Paz del Río Union, was murdered by the ELN. In the 1960s and 1970s, State-sponsored persecution targeted unionists, who were seen as guerrilla collaborators, and on occasions the State security and intelligence apparatuses participated in forced disappearances and torture. Later, in the 1980s and 1990s, with the growth of paramilitary groups throughout the country, there were murders in which members of the State security apparatus participated in an unlawful manner by sharing information with the illegal paramilitaries. The recent confessions of former members of the Autodefensas Unidas de Colombia (AUC) have confirmed this. For example, in the first part of Salvatore Mancuso's declaration, the former commander of the AUC admitted having performed military operations using information received from military intelligence¹⁴.

With the 1990-1994 demobilizations of the M-19, the EPL, the Quintín Lame Movement, the PRT, and the Corriente de Renovación Socialista (CRS – a splinter group of the ELN), the communication between trade unions and the guerrilla decreased but did not cease completely as the FARC and ELN remained active. Nonetheless, today the union-guerrilla relationship is very different from that of the 1970s, a decade which romanticized armed revolutionary struggle. Today's union leadership, like most Colombians fed up with the violence, has expressly rejected institutional change in Colombia by means of the armed struggle.

How did business react to these dynamics within the conflict? Businesses have always been a target for the guerrillas, who sabotage economic operations, seek to extort financial support from them (the so-called "vaccinations" and other forms of extortion in general), and kidnap both workers and executives. As a result, many companies reinforced their security departments, hired private security companies, or relied on agreements with the public security forces to protect them from guerrilla actions. The fact that the security assessments of companies were frequently conducted by former members of the public security who had internalized the idea that trade unions were potential enemies meant that their anti-union emphasis became part of many companies' security policies. A recently discovered document prepared by a retired member of the military who

12 Nelson Plazas and Alvaro Villarraga, *Para reconstruir los sueños (una historia del EPL)*, Bogotá, Fondo Editorial para la Paz-Fundación Progresar, Fundación Cultura Democrática, 1995, p. 125.

13 *Ibid.*, p. 228.

14 Declaración de Salvatore Mancuso ante la Fiscalía, February 2007.

was in charge of security for Electrocaribe and Electrocosta illustrates this point. The document was a study of the “political tendencies” of trade union members working at these companies who were affiliated with the Central Unitaria de Trabajadores de Colombia (CUT), indicating that 50% of the company workers were connected to the ELN, the FARC, and the EPL. Basically, the document fingered the workers as guerrillas. Given context of armed conflict, it is possible that the document and its assertions contributed to the murders, threats, and kidnapping of workers on the Colombian coast¹⁵.

Furthermore, neither the hiring of private security companies nor the making of agreements with the public security forces have been free from problems. For example, the mining company Drummond was the defendant in a civil suit before the U.S. Federal Court for the Northern District of Alabama. The claimants asserted that there was systematic intimidation as well as killings of company workers, including members of the National Mining and Energy Union (Sintramienergetica), by “members of paramilitary organizations who worked as agents or employees” of Drummond¹⁶. Even though the Company was acquitted last July, the case against Drummond echoes the notion that in Colombia private business undermines trade unionism using pressure tactics and alliances with illegal armed groups.

Other businesses have simply succumbed to paying extortion or to making voluntary alliances with paramilitary groups, as in the case of Chiquita Brands. This American multinational admitted having paid 1.7 million dollars to the AUC between 1997 and 2004. Up to now, evidence has not come forth that would make Chiquita the intellectual author of the actions of paramilitary groups; nonetheless, its payments enhanced the military capacity of the paramilitary groups who, during this same period in the Urabá region, murdered more than 66 trade unionists¹⁷. Similarly, the well-known case of the cattle ranching industry supporting the formation of paramilitary groups has also resurfaced of late. Last May, former paramilitary leader Ramón Isaza stated that with the help of a group of ranchers from the Middle Magdalena region he set up a

paramilitary organization to combat the guerrilla and that he subsequently helped members of the army¹⁸. Unfortunately, such trends, confirmed by recent paramilitary confessions have only heightened the tensions between business and unions.

For decades, many of the trade unionist murders went unpunished. It is certain that the armed conflict and drug trafficking were the indirect cause of this impunity. The conflict and its associated criminality overloaded the Colombian judicial system as guerrillas, paramilitaries, and drug traffickers infiltrated the Public Prosecutor’s Office, the Police, and the courts to manipulate the laws and democratic institutions in their favor¹⁹. In addition, the disappearance of victims and perpetrators of these crimes has made it difficult to investigate and gather evidence: The actors and witnesses are no longer around. In the Gil case, the Public Prosecutor was forced to stop the investigation because it was impossible to find the accused perpetrators; illegal armed groups had displaced them²⁰. The Escuela Nacional Sindical (ENS) points out that in cases of murdered trade unionists between 1991-2006, the people responsible are identified only 35% of the time. Of these, 383 were committed by paramilitaries and 147 by guerrillas²¹. The ineffectiveness of the justice system combined with the perception that the State defends business and landowners interests makes it understandable why trade unions have turned to international legal bodies -such as the Interamerican Human Rights Commission and Court, the International Labor Organization (ILO), and to foreign courts- in search of justice.

Legacies of the conflict

Nowadays business-union relations still suffer the effects of the armed conflict. There are at least three important legacies of the armed conflict that have been an obstacle to any fundamental agreements:

¹⁹ See for example, “Colombia: destituyen fiscales antimafia”, BBC World, April 14, 2004, or Actualidad Colombiana, Independencia en entredicho Informe especial sobre la independencia judicial en la fiscalia, on line at <http://www.cinep.org.co/pdf/ac/idependenciajudicial.pdf>

²⁰ Should new evidence be presented, the investigation would resume. This case also includes the deaths of Luis Enrique Gomez, another union leader who was killed April 23, 1995 in the same community, of Jose Eleazer Manco David, killed April 8, 1994, also in Carepa, of Jose L. Osorio, 65 years old, who turned up dead near the cemetery of Chigorodó, Antioquia, and of Oscar Darío Soto, killed July 21, 2001 in Montería. These investigations are in the preliminary stages and still have not named any suspects.

²¹ See: Banco de Datos de Derechos Humanos de la Escuela Nacional Sindical.

¹⁵ Juan Diego Restrepo E, “Sindicalistas en Colombia, bajo estigma guerrillero”, Semana.com, December 20, 2006.

¹⁶ Civil Action, Complaint for Equitable Relief and Damages, The Estate of Valmore Lacarno Rodriguez, the Estate of Victor Hugo Orcasita Amaya, the Estate of Gustavo Soler Mora, and Sintramienergetica, Plaintiffs v. Drummond Company, Inc., Drummond Ltd., and Garry N. Drummond, Defendants, March 2002.

¹⁷ Ver Banco de Datos de Derechos Humanos de la Escuela Nacional Sindical.

¹⁸ “Ex jefe paramilitar ‘Ramón Isaza’ ofreció entregar 1.500 millones y cinco fincas”, El Tiempo.com, May 2, 2007.

- the stigmatization of the human rights issue as an idea exclusively of the left;
- mutual distrust; and,
- the absence of dialogue.

Stigmatization of Human Rights

The security measures taken in the 1970s against the left and possible guerrilla collaborators (union members among them) as well as the occasional use by the State security forces of unorthodox or illegal methods (forced disappearances, torture) gave rise to the first modern campaigns in Colombia for the protection of human rights, undertaken by the left, liberals and intellectuals. During the Cold War, this dynamic became part of the global human rights movement which targeted both leftist and rightist dictatorships and democracies, including the United States, for human rights abuses. Modern societies evolved, democracies were strengthened, and human rights became a common denominator for all. Unfortunately, Colombia's experience has been markedly different. The armed conflict "froze" peoples' understanding of the war's dynamics, and in the minds of many, the left became synonymous with the guerrilla. Human rights campaigns, therefore, were linked to the insurgent groups. Another complicating factor was the manipulation of the human rights discourse by the guerrillas. Today, many Colombians are ignorant about human rights and do not agree with the criticisms leveled by foreign NGOs and the United Nations on this matter, while the business community commonly holds that human rights are an idea of the left or an issue for NGOs.

Distrust

There is a perception among some circles inside and outside the country that both Colombian and multinational companies were the authors and accomplices in the massacres and threats to trade unionists and that even when they are not directly responsible, the large majority of businesses benefit from the weakness and poor image of the trade union movement. Accordingly, the bulk of the business community justified its policies of legal disincentives towards the formation of unions, which in turn gave the companies higher levels of utilities as they did not have to deal with the demands from workers for higher salaries, social security benefits, and job security. Therefore, some believe that the business community has opted for passivity in the face of violence against unionists. According to one union leader's statement: "Businesses, supported by paramilitarism, began

to violate their agreements and unions found themselves losing ground. Sintrainagro, after having more than 800 or 900 employees, today has less than 400 (...) Businesses are the ones who have grown stronger"²².

For their part, some businesses in Colombia continue to fear the union movement. Some still think that unionists are allied with the FARC or ELN. Others are ready to accept that many of their ties from the past are no longer relevant but think that the movement still holds onto the economic and social worldviews of old Marxism that are not compatible with the globalized world. Therefore, runs the argument, trade unionists are mired in an anti-State discourse, stuck in a labor relations model that views strikes as the only way to make headway, are unable to formulate proposals that are viable for business, are unable to understand the need to be competitive, and are seeking simply to shut down businesses.

Absence of Dialogue Spaces

After years of hostility, today there are few spaces in which the union movement and business can share information based on verifiable data, adjust perceptions of each other, and learn to distinguish those who abide and those who do not. Under the Constitution, the Labor Relations Commission serves as a space for dialogue regarding specific issues, such as setting the minimum wage. However, various trade unionists claim that it is a forum biased in favor of the State and business. Moreover, in practice the Commission does not deal with issues of security and human rights. At the international level, there is the International Labor Organization (ILO), where a Colombian mission made up by the Asociación Nacional de Industriales (ANDI), the Government, and workers participate. They hold regular scheduled meetings, procedures accepted by all parties, and a normative framework that serves as a guide for the defense of workers' rights. However, the Commission's structure does not allow face to face meetings between union members and representatives of the business community. Furthermore, the ILO cannot and should not be the only space for dialogue and action; normally international bodies pose bureaucratic obstacles and are subject to the volatility of international politics. The current tensions between business and unions in Colombia, the discourse used by each side, and the weak flow of information between the two show the need for contacts in addition to those offered by the ILO, without disregarding international standards in labor relations issues.

²² Testimony of trade union member of Sintrainagro, taken by Magda Beatriz Lopez, "Puerto Wilches: sindicatos y actores políticos armados, 1996-2002", in *Controversia* 185, November 2006, p. 124..

Alternatives

In recent years there have been advances in business-union relations in Colombia. One significant area of progress has been the explicit commitment of the union movement to democracy -that is, in other words, the rejection of armed struggle as a means of achieving change in Colombia and of the longstanding dream to install a dictatorial socialist regime (based on the Cuban model, for example). Another advance is the Human Rights Protection Program of the Ministry of Justice and the Interior, which provides physical protection to trade unionists who are at risk of being killed. This particular program has existed since 2006, although the State has for many years provided special protection schemes for trade unionists. A further concrete initiative is the "Tripartite Agreement" signed in June 2006 by the Ministry of Social Protection, the CUT, the CTC, the General Labor Confederation (CGT), and the ANDI. In addition, the ILO has opened a permanent office in Colombia, and the Public Prosecutor's Office continues investigating some 200 murders chosen as priority by unions. Ten months later, according to figures from the Ministry of Social Protection, convictions have been obtained in 31 of the 200 prioritized cases²³. However, in June 2007, the agreement encountered difficulties. According to the unions, the ILO office was established late and did not achieve its objectives, among them the "reactivation of the Workers' Inter-institutional Human Rights Commission". The position of the government and business sector that Colombia should not be included in the serious cases list of the Standards Commission of the 96th ILO Conference has further complicated business-union relations²⁴.

Clearly, these programs and agreements are useful but not sufficient. Today, business is more and more vulnerable to legal and political scrutiny. John Ruggie, United Nations Special Representative of the Secretary-General on Human Rights and Transnational Corporations and Other Business Enterprises, proclaimed that the accelerated development of international criminal law, sparked by the establishment of the International Criminal Court, gives rise to the possibility of judging individuals for crimes against humanity, without national borders impeding the process.

The majority of cases against companies for international crimes have been taken to the United States under the civil Alien Torts Claims Act, and Ruggie predicts that in the future increasing number of national jurisdictions will hear criminal cases against businesses²⁵.

Of course, a preferred first step for Colombia is the promotion of initiatives that bring together unionists and members of the business community. One example is the Voluntary Principles on Security and Human Rights signed by multinational oil companies, NGOs, and governments. It is not a law but rather a voluntary initiative. This is an option for businesses in Colombia. The Fundación Ideas para la Paz, for example, in conjunction with a group of domestic and multinational companies is promoting the Colombia Guidelines on Security and Human Rights, a code of conduct for businesses that tackles issues such as the relationship between business and security, the physical security of trade unionists, and the non-payment of extortion to illegal armed groups. The Guidelines are in their pilot phase, but there have already been consultations with NGOs and unions inside and outside Colombia, and the Guidelines have the potential to become a basis for balanced dialogue which can handle the more complex issues of the conflict and the national need to safeguard human rights. For more information on the Colombia Guidelines, see *Operations in Conflict Zones of Low-Governability: Practical Guidelines for Non-Extractive Sectors*.

²³"Acuerdo Tripartito por el Derecho de Asociación y la Democracia", signed by the tripartite delegation of Colombia to the 95th International Labor Conference, June 2006.

²⁴ CUT, CGT, CTC, Sanción a Gobierno y empresarios colombianos. Evaluación de la aplicación del Acuerdo Tripartito: mandato, estructura, funcionamiento y financiación de la presencia permanente de la OIT en Colombia, May 31, 2007.

²⁵ Intervention of Special Representative John Ruggie, presentation of the process of constructing The Colombian Guides for Security and Human Rights, January 17, 2007, Bogotá.