

**THE TRUTH
ABOUT THE COLOMBIAN**

FTA



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RECALCA: Colombian Action Network in Response to Free Trade and FTAA. March, 2007

Free Trade Agreement
& Labor Rights:

**Labor provisions do not
guarantee protection
for workers**

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At the beginning of the 1990s, the World Bank promoted a policy of making “*labor flexible*” in order to attract investment to developing countries by decreasing labor rights. In Colombia this policy was put into practice by Law 50 of 1990, introduced by then Senator Álvaro Uribe, which permitted the significant reduction of costs by companies, allowing them, amongst other things: to stop the back-payment of unemployment benefits; to privatize unemployment funds which they were allowed to manage themselves; to hire short-term contract workers for less than a year; to summarily fire workers; and to introduce the so-called ‘integral salary’.¹

Years later, as President of Colombia, Uribe approved Law 789 of 2002, which intensified his attacks against labor rights by the lengthening the work day until 10 pm, reducing the compensation for work done on national holidays and reducing the remuneration for those fired without just cause.

In the desperate search for competitiveness, many companies and the government have forgotten that labor stability and a living wage for the workers can prevent urban violence, delinquency, the rise of narco-trafficking and social unrest.²

The United States has strict legal measures that direct the actions of the government in their trade and commercial relationships. Under the Law of Commerce and Development of 2000 and the Trade Policy Authority of 2002, or TPA, the US government is obligated to present reports to Congress about labor conditions within the countries that it intends to sign trade agreements with, as a prerequisite for the signing of the agreements. Although the Republicans have categorically opposed the inclusion of labor standards, the Democrats insist on it.

Colombia does not have any norms that oblige the government to comply with conditions and minimum guarantees in its trade negotiations. They are guided simply by the constitutional principles of preserving the national interest, assuring sovereignty, self-determination and maintaining reciprocal and equal relations. This concept has been interpreted inconsistently depending on the administration.

¹ Yesid García. *The labor reform: adjustment of work legislation to the neoliberal policies*. *Deslinde Magazine*, #10. Jun-Jul, 1991. 15p.

² Joseph Stiglitz. *Globalization and its Discontents*, 2002.



From the North American Free Trade Agreement, or NAFTA, to the Free Trade Agreement with Peru and Colombia, the topic of labor rights has undergone significant changes. In the first place, there appears only one document, and this as an appendix. In 2001 Mexico presented 28 complaints for violations of labor rights which resulted in not a single sanction for the responsible companies.

As the United States has negotiated more trade agreements, the labor rights that are included and that are therefore recognized have decreased substantially. Specifically those sections that referred to non-discrimination on the basis of race, religion, gender or age, the rights to equal pay for men and women, the protection to migrant workers, and the explicit right to strike, have been excluded from the new agreements.³

According to the International Labor Rights Fund (ILRF), the FTA between the United States and Central America, the agreement that most closely resembles the Colombian agreement, will not prevent abuses of labor rights, nor will it prevent the weakening of existing labor laws in the signatory countries. The agreement will only lead to a greater deterioration of workers rights.⁴

Labor Regulations in the FTA between the United States and Colombia⁵

Although the text of the FTA expresses “*that it is inappropriate to encourage trade or investment by weakening or reducing the protections afforded in their respective labor laws*” and that it will “*strive*” for the recognition and protection of international labor rights in this legislation, the FTA will not guarantee that the Colombian government supports labor rights nor can it guarantee that it won’t in fact weaken labor laws. In the last 17 years, Colombian labor legislation has been weakening in comparison to international labor norms set out by the International Labour Orga-

³ César Rodríguez. “Labor rights under the FTA with the US.” (*Los derechos laborales en el TLC con Estados Unidos.*) Foro magazine, 2004.

⁴ Internacional Labor Rights Fund. Testimony Regarding the Central America Free Trade Agreement (CAFTA). Report for the Committee on Ways and Means, US House of Representatives. April, 2005

⁵ Jana Silverman. The false promises of Labor Regulations in the FTA. (*Las falsas promesas del capítulo laboral del TLC.*) The National School of Trade Unions. January 2007.



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nization (ILO).⁶ Besides this, the FTA chapter on labor states that labor standards should not be used for protectionist ends, though the concern of this section is commercial and not labor per se, and it only seeks to prevent what has been called *social dumping*.

In the same sense, there is no mechanism that demands that the United States itself complies with any of the obligations included in this section. According to the actual text, “*Nothing in this Chapter shall be construed to empower a Party’s authorities to undertake labor law enforcement activities in the territory of another Party.*”⁷

This chapter does not provide for the creation of a mechanism through which civil society could directly report violations of labor rights. The only way to resolve these reports of labor violations would be through “*cooperative labor consultations*” arranged by the signatory country. The sad reality is that the Colombian government is more interested in assuring that exports to the United States continue, than in promoting labor rights. It has been clearly shown in these trade agreements that there is no sanction against countries that violate labor rights. Moreover, it is improbable that these measures would apply to friendly administrations, like those of Bush and Uribe.

The continual deterioration of labor conditions for Colombian workers would be reinforced by the intense competition that Colombian businesses would face against the businesses from other developing countries, who would have to fight amongst themselves, by way of further lowering salaries, to obtain access to the US market with lower prices. The ILRF has stated that these agreements would force developing countries to compete against each other to attract the limited American investment available, offering lower salaries and ignoring labor and environmental laws.⁸

⁶ This is described in detail in: [The Report from the Labor Center of Colombia to the 95th International Work Conference of the ILO. April 2006 \(Informe de las Centrales Sindicales Colombianas a la 95ª Conferencia Internacional del Trabajo\)](#). Abril, 2006.

⁷ Text of the FTA between the United States and Colombia. Chapter 17. Labor. Available online: http://www.ustr.gov/Trade_Agreements/Bilateral/Colombia_FTA/Draft_Text/Section_Index.html

⁸ International Labor Rights Fund. Op Cit.

Additionally, although the bilateral and multilateral trade agreements subscribed to by the United States, including NAFTA, include labor regulations, at the same time the US has refused to negotiate around the labor rights of immigrants and has put up every type of barrier against the mobility of manual labor.

The economic policy of the last 16 years in Colombia has substantially deteriorated working conditions. The situation of all of the internationally recognized labor rights worsens each day in Colombia, as evidenced in many reports.

In the report about *Democracy, Human and Labor Rights*,⁹ the US Department of State examined violations of the principle rights recognized by the International Labour Organization (ILO):

- Regarding the right to affiliation, they accepted the concern of the ILO that there is an “*intolerable situation of impunity...that contributed to the climate of violence affecting all sectors of the society and the destruction of the trade union movement.*” Labor leaders allege that the government has tried to marginalize them by arbitrarily arresting their members for supposed suspicion of supporting terrorist activities.
- Regarding the rights to organize and collectively bargain, the US Department of State reports that high levels of unemployment, a large informal sector and the violence against union leaders make union organizing difficult. The individual negotiations between workers and employers are not subject to collective bargaining, and this type of individual negotiation is used by employers to deter any organizing of its workers. In practice, when the unions presents a collective bargaining proposal, the companies offer their employees better conditions and salaries in turn for renouncing the union.
- Regarding the prohibition of child labor and the minimum age of workers, the Colombian Institute of Familial Wellbeing reports that there are at least 2.5 million children working in Colombia and that only 1 out of every 5 children is working legally.

⁹ Colombia. Country reports on human rights practices 2005. US Department of State. March, 2006.

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At the same time, the ILRF, in their 2005 Annual Report¹⁰ makes serious accusations against American multinational corporations for crimes against humanity:

- They accuse Coca-Cola and management at their bottling factories in Colombia of murdering and torturing labor leaders in Colombia.
- The mining company Drummond is accused of financing paramilitary groups to kidnap, torture and kill mine workers in Colombia.

In a campaign initiated by the ILRF, representatives from NGOs visited the US Congress, the State Department and consumer advocacy groups to report that the women who work in the cut-flower industry in Colombia are made to work extensive hours and are continually exposed to toxic pesticides that result in chronic diseases that not only make it difficult for them to work, but also to organize. The flower workers asked US authorities to look for mechanisms to guarantee their labor rights in the negotiation of the FTA.

SNAPSHOT OF COLOMBIAN WORKFORCE

In oil companies like British Petroleum, Petrobras, Hocol, Natural Gas of Spain, Shell and Terpel, unions are prohibited.

In the chain supermarkets and big-box stores like Carrefour, Éxito, Carulla, and Makro, there are employees whose salaries are based on tips.

In Spanish, American and Colombian banks, they eliminated unions in order to overwork their employees.

The national airlines Avianca and Bavaria were sold to multinational companies after doing away with unions and nullifying their contracts.

The public employees suffer under the same circumstances, in the state-run businesses of Ecopetrol, Telecom, the public universities, the health care system, the airports, etc.

Temporary contractual work, outsourcing, consulting and obligatory 'volunteer' service have become the norm.

Source: Gustavo Triana. The Situation of Colombian Workers, United Center of Workers (*Central Unitaria de Trabajadores*). November 2006.

¹⁰ International Labor Rights Fund. 2005 Annual Report.

The unions of Colombia¹¹ have reported to the ILO the various actions taken by the government of President Uribe against the freedom of labor unions. Uribe persists on promoting a legal regimen totally against workers' rights:

- The right to collective bargaining and to strike are denied to government employees.
- The policy of destroying the union movement has not changed.
- The acts of violence against unions continue with impunity.
- The national government promotes conflict resolution through mediation, not through collective bargaining, as the ILO prescribes.
- The violence against union members and leaders has been shown to come from governmental bodies. The Colombian Attorney General is investigating recent allegations that Jorge Noguera, the former Director of the Colombian equivalent of the FBI, the Administrative Department of Security or DAS, gave paramilitary groups lists of union leaders to be assassinated. Noguera worked directly under President Uribe.

**2005 REPORT:
HUMAN RIGHTS VIOLATIONS OF COLOMBIAN UNION MEMBERS**

70 union members killed

56 arbitrary detentions

444 cases of other human rights violations to workers, of which at least 80 are attributed to government organisms and 91 to paramilitary groups

7 attempts were made on the lives of union members.

3 forced disappearances.

Source: Colombian National Union School (Escuela Nacional Sindical de Colombia) 2005

Women and the Labor Rights

As was mentioned previously, the labor regulations of the FTA excluded the principle of non-discrimination in employment, which was proposed by the ILO. This is especially important because of the grave situation that women now face. Besides

¹¹ Report from the Colombian Union Center to the 95th International Conference on Work. April 2006.

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their historic condition of being discriminated against economically and socially, 60 to 70 percent of the new jobs created by globalization have been low-quality, low-skilled, assembly line jobs that are performed primarily by women.¹²

In the Colombian case, the recent modification of the labor legislation has fundamentally affected women. Law 789 has benefited economic sectors like commerce and services, that primarily utilize women's physical labor.

THE WOMEN WHO WORK IN THE AGRICULTURAL INDUSTRY OF FLOWERS IN COLOMBIA

Harut Beatriz Fuentes wasn't far from imagining that DOLE would again close its factories in order to continue reducing labor costs and to avoid negotiating on the petitions that SINTRASPLENDOR, the union that Beatriz presides over, had presented to them. On October 12th, 2006, DOLE had announced that it would close its operations in Ecuador and two farms in Colombia, which would cause more than 3,500 workers to lose their jobs in the flower industry.

When the practice of subcontracting became common, it had the effect of damaging labor rights by overloading the workers. Beatriz said "a huge number of problems developed that only affect workers. It begins with pain in the hands, then the hips, then come the fevers, and the sicknesses of the lungs. This exhaustion and overwork doesn't leave time for you to even take care of your children, because you leave before dawn and return when it is already night."

Of the 111,000 employees that work in the flower industry in Colombia, 60% are women. Of the 1,397 workers contracted by Dole Fresh Flowers, 475 work through subcontractors. The workers are permanently exposed to the inhalation of pesticides, which are used intensively in the flower industry.]

With the deepening of the free trade model, the flower industry has increased its profits from 400 million dollars in 1993 to 900 million dollars in 2005. With this in mind, we must ask ourselves whether it is just that the economic success of this export-oriented agricultural industry is not reflected in the quality of life of those whose efforts have made these results possible.

Source: Women, the flower Industry, and Multinationals in Colombia. Diana Castañeda. Corporación Cactus. June 2006. And OXFAM.

¹² "The free trade agreements are also the business of women." OXFAM



In this economic climate, the ineffectiveness of President Uribe's government in generating employment is evident. Today's statistics show that Colombia has 1.3 million more people employed than in 2002, but the government has begun to include in this statistic those that are underemployed, temporary workers, those that "work for families without being paid", and those that worked one hour per week "paid in cash or in-kind"¹³. About half of the jobs in Colombia are temporary, meaning their income does not come from a salary, is not stable, that they work fewer hours than necessary to have an adequate quality of life and that they don't have the right to a pension or other social benefits.

Through methodological technicalities, the national government has succeeded in decreasing unemployment, considering as "inactive population" those people who are not looking for work. For example, if a person was looking for work for some time and after not finding any stopped looking, now they are not counted as unemployed. The same thing happens if this person leaves the country. In this way, the government doesn't count 1.4 million of its citizens as unemployed.¹⁴

The supposed decrease of unemployment is no more than a statistical artifice that consists of not counting those working in the precarious informal sector or those who have stopped looking for work among the unemployed.

In the year 2006 the political and economic disaster couldn't be hidden despite these strategies. The Colombian National Administrative Department of Statistics (DANE) reported that this year 1.2 million jobs were lost and there were 1.7 million more inactive job seekers.¹⁵

Faced with this precarious situation, the government insists on ignoring and even contradicting the official reports of unemployment. The government said: "We respect the DANE's autonomy, but we have made a rigorous study, and found that

¹³ National Department of Statistics (*Departamento Administrativo Nacional de Estadísticas-DANE*). Continuous Survey of Homes (Encuesta Continua de Hogares)

¹⁴ National Department of Statistics (*Departamento Administrativo Nacional de Estadísticas-DANE*). Longitudinal survey of households. Conducted between January and November, 2001-2006. www.dane.gov.co

¹⁵ Unemployment arrives at 2,352,000. *Portafolio*, January 31st, 2007.



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the number of employees affiliated with the social security system has risen"¹⁶. This has no technical validity, but nonetheless has led to the official policy of following the World Bank's recommendations that indicate, among other things, that raising the minimum wage in Colombia should be stopped.¹⁷ This policy has come to be despite the fact that the US Department of State agrees that the Colombian national minimum wage does not provide a decent standard of living for workers and their families.¹⁸

Although the new Democratic majority in the Congress of the United States has asked for substantial changes in labor regulations of the FTA as a condition for its approval, the truth is that many relevant workers' rights are excluded, the topic of migrant workers is completely left out, there are no mechanisms that would permit workers to claim their rights, and above all else, the structure of the agreement obliges competition over who can provide the cheapest labor, therefore requiring the exploitation of cheap labor. The worsening of the legislation and of the economic conditions of workers have coincided with the persecution of organized labor and the killing of labor leaders.¹⁹

To ignore the importance of protecting labor rights in developing countries inevitably leads to an increase in migration. In the worst scenario, the lack of work opportunities or the deterioration in working conditions will pressure the population to look for income alternatives which the world has agreed to fight. Without a doubt, the increase of rebels and the rise in guerrilla and paramilitary groups in service of narco-trafficking is associated with a lack of job opportunities.

'Free trade' and its management only benefits transnational companies from rich countries, who have found in our countries an efficient way to decrease their labor costs. For this reason, the best way to defend worker's rights in developed countries

¹⁶ Uribe reveals increase in affiliations in social security. Presidency of Colombia. February 1st, 2007.

¹⁷ Colombia labor market adjustment, reform and productivity. World Bank. November, 2005. P. 42

¹⁸ Colombia. Country reports on human rights practices 2005. Op Cit.

¹⁹ 99% of the cases of 2,000 labor activists that have been murdered since 1991 remain unresolved. Letter from Democratic Congressman to Trade Representative Robert Zoellick. January 13th, 2005.



is to promote and demand the enforcement of labor rights in developing countries which are systematically violated. On one side, this situation affects the real income of our residents, worsening the quality of life. On the other side, the migration of our citizens affects the ability of our country to develop.

Neoliberal globalization is at least partially responsible for the loss of stable jobs within the United States. The stagnation of the salaries of US workers has been going on for more than 30 years. Despite the fact that the economy today is much stronger than it was and that the US continues to become richer, workers have never been able to get back to the salary levels of 1973. *“What we see today”, writes Paul Krugman, “is the result of a quarter century of policies that have systematically reduced the buying power of its workers”.*²⁰

²⁰ Paul Krugman. *The Big Disconnect*. The New York Times. September 1, 2006.



ORGANIZATIONS OF RECALCA

Acción Permanente por la Paz; Asociación de Cabildos Indígenas del Norte del Cauca, ACIN; Asociación Censat Agua Viva; Asociación Colombiana de Ingenieros Agrónomos, HACIA; Asociación de Industriales de Bogotá; Asociación de Empresarios por la Salvación Industrial; Asociación Nacional de Mujeres Campesinas indígenas y negras, ANMUCIC; Asociación Nacional por la Salvación Agropecuaria; Central Unitaria de Trabajadores, CUT; Centro de Estudios del Trabajo, CEDETRABAJO; Centro de Estudios Nueva Gaceta; Centro de Investigación y Educación Popular, CINEP; Coordinadora de Mujeres Trabajadoras Andinas, capítulo Colombia, Comuande; Confederación de Pensionados de Colombia, CPC; Confederación de Trabajadores de Colombia, CTC; Confederación General de Trabajadores, CGT; Consumidores de Colombia, COCO; Corporación Cactus; Escuela para el Desarrollo de la Democracia, ESCUDE; Federación Colombiana de Colegios de Contadores Públicos; Federación Colombiana de Colegios de Contadores Públicos; Federación Colombiana de Educadores, FECODE, Federación Colombiana de Estudiantes de Contaduría Pública; Federación Nacional de Profesores Universitarios; Fundación América Latina; Fundación Friedrich Ebert en Colombia, FESCOL; IFARMA; Red Internacional de Género y Comercio, punto Focal Colombia; INDEPAZ; Instituto Latinoamericano de Servicios Legales Alternativos, ILSA; Marcha Mundial de Mujeres; MENCOLDES; Mesa Mujer y Economía; Movimiento Comunal Comunitario; Movimiento Popular Artístico Colombiano, MOPAC; Organización Colombiana de Estudiantes, OCE; Periódico Desde Abajo; Planeta Paz; Plataforma de Derechos Humanos; Democracia y Desarrollo, capítulo Colombia; Colectivo Somos Sudacas; Sindicato de Trabajadores del Instituto Colombiano de Bienestar Familiar, SINBIENESTAR; Red de Veedurías Ciudadanas; Corporación Viva la Ciudadanía; Colectivo Libertario Banderas Negras; Organización Nacional Indígena de Colombia, ONIC; Coordinadora Nacional Agraria, CNA; Convergencia Nacional Indígena, Negra y Campesina; Acción Campesina Colombiana de Juristas; Fundación de Apoyo Comunitario, FUNDAC; Unidad Cafetera; Liga de Usuarios de Servicios Públicos Domiciliarios; Unión Nacional de Usuarios y Defensores de Servicios Públicos Domiciliarios.

