



EMBASSY *of* COLOMBIA

W A S H I N G T O N

Colombia:

An Update on Actions to Strengthen the Rights and Protections for Trade Unions



April 2008



Executive Summary

In October 2007, the Government of Colombia outlined the significant improvements in Colombia's labor environment in a report entitled *Colombia: A Progress Report, Strengthening the Rights, Benefits and Security of Unions*. This document provides an update to that October report, and includes revised data and information on new initiatives taken since that time.

The areas reviewed in this document include:

- **Protecting Union Members:**

The Government of Colombia has implemented far-reaching policies to protect labor union members:

- The Uribe Administration's policy of Democratic Security has led to a general decline in violence, and has also produced an even greater decline in violence against union members. While murders in the country overall decreased by nearly 40 percent between 2001 and 2007, murders of union members were reduced by over 80 percent.
- A protection program for vulnerable populations, including union members, was set up in 1997 and the budget for this program has been tripled since 2002 reaching US\$42 million for 2008.

- **Increasing Prosecutions:**

- Legal reforms have been implemented to completely transform the judicial system. A new accusatory system is now replacing the old inquisitory system, and the results in terms of speed and efficiency are already being seen.
- The budget for the Office of the Prosecutor General, as well as that of the judicial branch overall, has been increased by 70 percent since President Uribe took office.
- At the end of October 2006, the Office of the Prosecutor General created a special subunit within the Unit of Human Rights to specifically investigate and prosecute 1,262 criminal cases of violence against trade union members, and subsequently agreed to focus on 187 priority cases as determined by the unions themselves. The subunit began actual operations in February 2007, and as of February 2008 the subunit reports some 702 cases have open investigations.

- **Increased Funding in the Campaign against Impunity:**

In an effort to further buttress the rule of law, in January 2008 President Uribe issued a special decree allocating extraordinary funding to the Prosecutor General's office of almost US\$50 million over the next two years. This significant investment of resources has allowed the creation of 2,165 new posts, specifically to include 418 more prosecutors, 545 investigators and 1,202 other operational staff.

- **Social Dialogue:**

Regular meetings and consultation mechanisms between the leadership of the trade union confederations, employer associations and the President, Vice President and Minister of Social Protection of Colombia were established. The Government also recently issued Decree 427 which allows for greater participation by the ILO and other international organizations, including international union representatives, in the work of the National Commission on Labor and Wage Policies.





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- **Tripartite Agreement:**

Actions have been taken to implement the accord signed in June 2006 at the annual meeting of the International Labor Organization between the three pillars of Colombian labor relations (unions, employers and government) known as the “Tripartite Agreement on Freedom of Association and Democracy.” The Agreement establishes an important agenda to further improve the labor environment in Colombia and strengthened cooperation between the Government of Colombia and the ILO.

- **ILO Office in Colombia:**

The Tripartite Agreement provides the mandate for the work of a new ILO Office in Colombia, which initially includes four cooperation programs with funding of US\$4 million committed by the Government of Colombia.

- **Worker Rights in Law:**

Colombia has a strong legal framework for the protection of worker rights, as exemplified by the ratification of all eight fundamental rights conventions of the ILO. Under the Constitution these ratified conventions are incorporated into Colombian law. Colombia has also continued to make modifications to strengthen the legal framework and resolve remaining ILO observations. Recently two new legislative measures, Bill 190 and Bill 144, were introduced to strengthen labor protections in Colombia. Under Bill 190, consistent with recommendations in prior ILO observations, the authority to declare a strike illegal would be removed from the Ministry of Social Protection and instead vested in the judicial branch. Further, the bill would permit binding arbitration 60 days after a strike at the request of both parties. Under Bill 144, the exemption of associated work cooperatives from certain social security payroll taxes would be eliminated, removing a current financial incentive to establish such cooperatives.





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Introduction

Since 2002, Colombia has experienced an unprecedented period of economic expansion and social stability, and has started to walk down the road to peace. Through a series of bold reforms and initiatives, the government has **worked to bring security to the people of Colombia**. These efforts have led to the demobilization of over 45,000 former combatants, the **recovery of territorial control from terrorist groups**, a major **reduction in the level of violence** in the country, impressive rates of **growth in the Colombian economy**, the strengthening of **democratic institutions** and an increasing **investment in social welfare programs**.

In the areas of **labor rights** and **protection for union members**, Colombia has made significant progress. The Government of Colombia has:

- Strengthened the nation's **judicial framework**;
- **Improved the legal rights** for trade unions;
- Formalized a **consultation** process between the **labor union confederations and the President** of Colombia;
- **Reduced violence against union members and worker advocates**;
- Increased funding for the government's **protection program for union members and other at risk groups**; and
- **Increased resources to prosecute acts of violence against union members**.

Since 2006, the Government of Colombia has also fundamentally **strengthened its relationship with the International Labor Organization**, and has created a cooperative partnership that is exemplified by the signing of the 2006 *Tripartite Agreement on Freedom of Association and Democracy* at the ILO's Annual Meeting in Geneva and the opening of an ILO Office in Colombia to provide cooperation under the 2006 Agreement.

This new relationship with the ILO resulted in Colombia not being considered as a priority case of concern before the ILO's Annual Conference in 2007 for the first time in some two decades.

Despite the progress, the Government of Colombia remains well aware that **more must be done**. Hence, it has aggressively pursued a **two-prong strategy to increase security for trade union members – protection and prosecution**.

In 1997 the Government of Colombia established a **Protection Program**, an initiative dedicated to ensuring the safety of key segments of Colombian society. **One of the largest single groups of private citizens protected by this program is union members at risk**. Today, of the 9,400 persons protected in the program, more than 1,900 are trade unionists.

In addition, the government is putting significant resources toward punishing those who commit acts of violence against union members and to improving the criminal justice system overall.

In 2004, the Congress passed legislation to reform the criminal justice system from its inquisitorial closed-door system to a more transparent and expeditious accusatorial system with oral procedures and open trials. This new system has been phased-in since 2005 and will be





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fully operational in 2008. The effort, which is supported by the U.S. Department of Justice, has reduced criminal case backlogs, dramatically reduced the time required to resolve criminal cases and increased convictions.

All of these efforts are demonstrative of **progress toward Colombia fulfilling its commitment to end an era of criminal impunity** and restore the confidence of the Colombian people in the rule of law.





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Worker Rights

The rights of workers in Colombia are protected by a robust legal framework, which includes constitutional and statutory protections that reflect the core labor standards defined under the International Labor Organization's (ILO) Declaration on Fundamental Principles and Rights at Work. Colombia has ratified 60 ILO Conventions, including all eight fundamental labor rights conventions. Among these rights are:

- **Freedom of Association and the Effective Right to Collective Bargaining**
- **Prohibition of Forced Labor**
- **Effective Abolition of Child Labor**
- **Non-Discrimination in Employment**

Constitutional protections permit workers to form unions without interference and provide protections from dismissal for workers that establish unions (fuero sindical). Various rulings and decisions of the Constitutional Court have validated the constitutional rights of workers to associate, bargain collectively and strike.

Labor Reforms to meet ILO Standards

In the past, the ILO has noted several provisions of Colombian labor law and practice that raised issues of consistency with some of the jurisprudence of the ILO conventions. Statutory reforms passed in 2000 eliminated most of these issues, and many additional legislative, regulatory and judicial opinions during the Uribe Administration have strengthened the legal framework and further addressed the ILO's concerns. These changes include:

- In 2003, the Colombian Constitutional Court annulled several provisions limiting industrial unions' rights to collective bargaining.
- In 2006, a new Code for Infants and Adolescents was adopted, which addressed ILO concerns regarding protections against the worst forms of child labor, the regulation of apprenticeships, and child labor in hazardous activities.
- In 2005 and 2006, new Presidential Decrees and regulations were adopted that addressed concerns regarding Workers' Cooperatives and Temporary Workers.
- Legislation passed in 2007 will significantly expedite labor justice by adopting new oral procedures for labor disputes. Efforts are on-going to effectively implement the new oral procedure law by providing the resources necessary for: (1) training judges and personnel; (2) computer and case management technology; and (3) court and administrative infrastructure.

The right to strike is guaranteed under the Constitution of Colombia. President Uribe has now sent a new bill (Bill 190) to the Congress asking for its expedited consideration in an extraordinary session that began on February 6, 2008, which would address two pending ILO issues by: (1) moving the authority to declare the legality of strikes to the judicial branch; and (2) permitting arbitration 60 days after a strike at the request of both parties.





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The Constitution does permit limits on the right to strike in essential services, which has been defined through statute and constitutional court jurisprudence. The government is currently working on legislation to provide legal guidelines for the definition of essential services that will be submitted to the Congress for passage when it returns for its regular session in August 2008.

Improving Union Registration Procedures

Currently, there are close to **one million unionized workers** in Colombia, and **over 7,650 unions registered** with the Ministry of Social Protection. New government resolutions have expedited the labor union registration process.

To further enhance the legal protections and provide greater confidence that administrative processes would not be used to inappropriately frustrate the registration of legitimate unions meeting the legal requirements, the Minister of Social Protection issued a regulation in May 2007 which reduced the period for administrative consideration of a union registration submission from 15 to only five days. Any problems with the submission can be identified, remedied, and resubmitted during a two month period. A failure to deny the registration within five days means it is automatically granted.

During 2007, 73 new unions were registered.





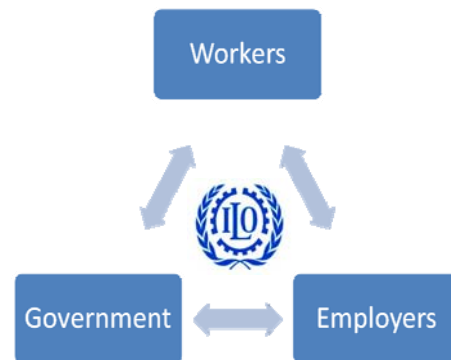
An Active Dialogue with Labor

The Government of Colombia has continued to build upon its collaboration with the ILO and expand its national labor consultation mechanisms. These efforts are an important component in moving from an industrial relations climate of mistrust and confrontation to a new climate of security and mutual respect.

The Tripartite Agreement and the ILO Office in Colombia

In a tripartite effort to create democratic security, promote economic growth, and improve labor relations, the ILO and the Colombian government, employers, and labor confederations signed a historic accord at the ILO in June 2006.

The new “**Tripartite Agreement on Freedom of Association and Democracy**,” provides for the establishment of a **Representative Office of the ILO in Colombia**. On October 18, 2006 the government, workers and employers defined the mandate of the ILO office in Bogotá. The office was established on November 23, 2006.



The mandate of the ILO Office is: “Technical cooperation aimed at promoting decent work and the defense of the fundamental rights of workers, their trade union leaders and their organizations, specifically as regards their physical integrity, trade union freedoms, freedom of association and of speech and collective bargaining, as well as free enterprise for employers.” International Labour Office GB.297/TC/5/2, Geneva, 297th Session, November 2006

Mr. Marcelo Castro Fox was appointed to head the permanent representation of the ILO in Bogotá, and took up his post on 15 January 2007. He also participates in the meetings of the National Commission on Labor and Wage Policies.

The Government of Colombia contributed approximately US\$4 million over 4 years to fund the work of the ILO Office and the implementation of the tripartite agreement. Four projects are currently underway that were agreed on a tripartite basis and are under the direction of the ILO Office in Bogota:





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1. Strengthening of social dialogue and the enforcement of basic rights at work in Colombia.
2. Technical skills training for young people from disadvantaged or vulnerable populations.
3. Job creation programs for poor women.
4. Training to develop and strengthen skills to promote local economic development.

The ILO office in Bogotá selected three senior consultants and additional staff for the implementation of these projects. There is a monthly tripartite committee meeting to assess progress on these important programs.





National Labor Consultation Mechanisms

The Government of Colombia has a number of important **dialogue mechanisms** with unions and employers. In these meetings, trade union leaders raise their concerns to senior government officials and contribute to the policy discussions on worker rights and the safety of labor leaders. Notably, President Uribe meets regularly with the labor confederations and the employer representatives to discuss programs and initiatives. The ILO representative in Colombia participates as an observer in many of these national consultation mechanism meetings.

The relevant national dialogue mechanisms with labor include:

- **National Commission on Labor and Wage Policies.** The role of the Commission has been expanded as it has taken on the function of following up on the 2006 Tripartite Agreement. The Commission met six times in 2007 and is meeting monthly in 2008.
- **Departmental Sub-Commissions on Labor and Wage Policy.** All 32 Colombian departments (states) now have parallel dialogue mechanisms related to the National Commission.
- **Consensus Building Roundtables.** The Vice President and several ministers participate in roundtables. These were first initiated in 2003 and continued with seven roundtables held in 2007.
- **Inter-institutional Commission for the Human Rights of Workers.** Consults on the union protection program and the criminal prosecution of cases of violence against union members and cases of restrictions on freedom of association.
- **Commission for Dealing with Labor Conflicts.** Re-launched as part of the 2006 Tripartite Agreement follow-up and now meets bi-weekly, and reviews ILO recommendations.





Protecting Union Members

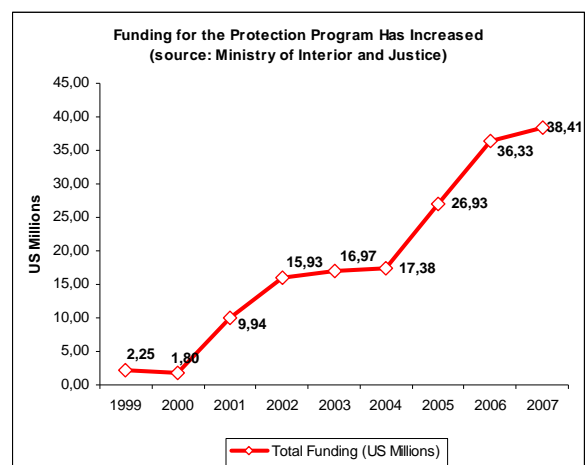
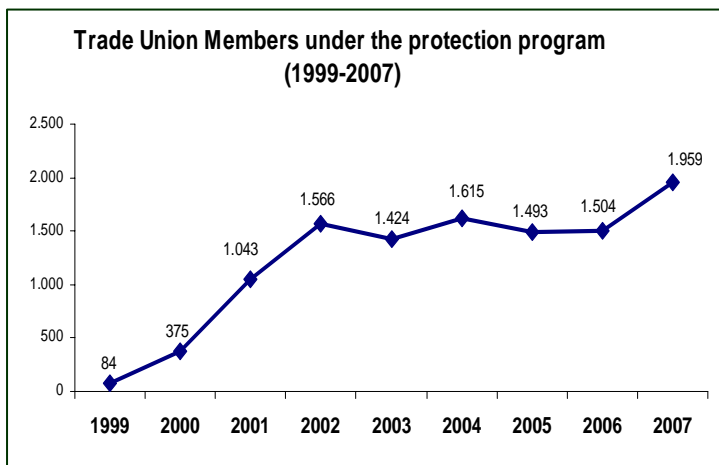
Colombia has become a much safer place for labor union members due to the significant decrease in overall violence and continued government efforts to provide specialized protection for union members.

The union protection program launched in the late 1990s is a cooperative effort of various Colombian law enforcement agencies and provides protection for labor union members, their families and other vulnerable groups such as politicians, journalists and other civil leaders.

“We are thankful to the [Government personnel], who have been providing the security service to our threatened members throughout the country”

William Millan Monsalve
Joint General Secretary, General Workers Confederation

Since the program started, the number of trade union members covered annually increased from 84 to more than 1,900. Union members are one of the largest single groups covered under the program. The total budget of the program has grown by some 300 percent since 2002, to almost U\$42 million for 2008.



In addition to those trade union members enrolled in the protection program, the government has relocated for their safety some 1,246 teachers since 2002 – whether affiliated to unions or not – who have faced threats.

The increased use of the protection program over time demonstrates the confidence of trade union members in the integrity of the government’s effort has risen. Since 2002, not a single trade union member enrolled in the program has been killed.

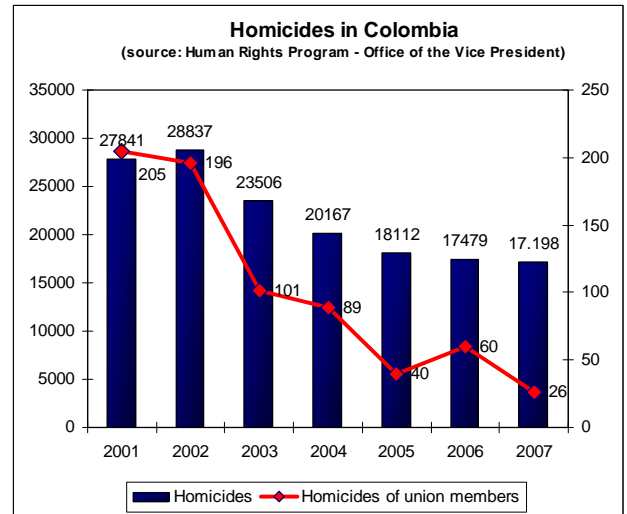
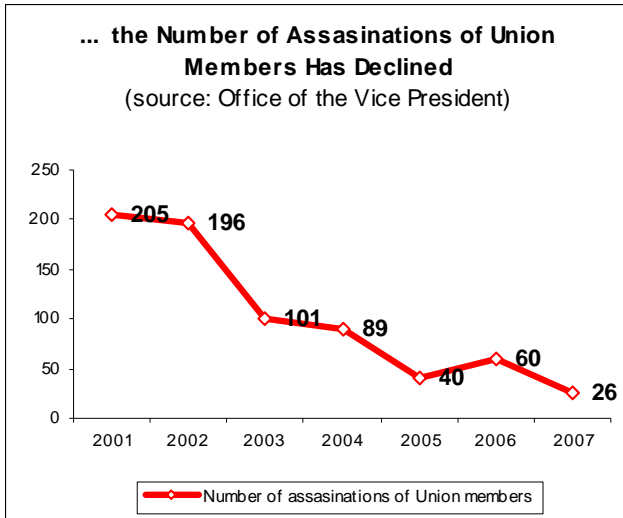
This success also reflects the determined efforts of the government in its on-going campaign to better establish the authority of the state and reduce violence in Colombia – whether committed by paramilitaries, FARC, ELN, other criminal groups, or by rogue military or police authorities.





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The result of this sustained effort by the government is showing up in the data. From a high of almost 200 murders of union members in 2002, the total number fell in 2007 to 26 – still 26 murders are too many, but a reduction of 87 percent since 2002. This represents an even greater reduction than the overall decline in the number of Colombia’s murders during this period of some 40 percent, from almost 29,000 to just over 17,000.



The Case of Wilson Borja:

During his tenure as president of FENALTRASE (the union of all government workers), Borja was the target of an assassination attempt on December 15, 2000. His life was saved thanks to the quick and effective reaction of his two bodyguards, both of whom were seriously wounded during the attack. Today, Wilson Borja is a member of Congress in the House of Representatives. The Congressman is one of the most vocal opposition members to the sitting Colombian government. He is still protected by 14 bodyguards.





Prosecuting Acts of Violence Against Union Members

Important reforms to the criminal justice system, and a new emphasis on prosecuting crimes against trade union members is proving effective in ending the culture of impunity that has afflicted Colombia in recent years.

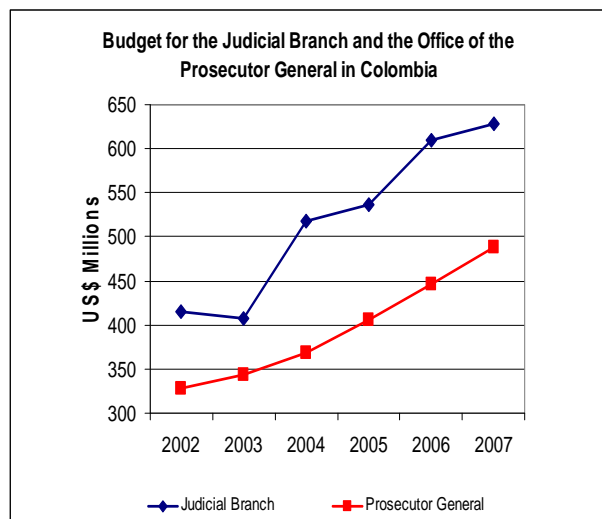
These changes include the legislative reform of the criminal justice system in 2004 that moved it from an inquisitorial closed-door system to an open accusatorial system with oral procedures and open trials. This new system began in 2005 and will be fully operational in 2008. The effort, which is supported by the U. S. Department of Justice, has reduced criminal case backlogs, dramatically decreased the time required to resolve criminal cases, and increased convictions.

A second major change is the focus given by the government to stop the past pattern of impunity for crimes against Colombia's labor movement. In October 2006, a special subunit within the Human Rights Unit of the Office of the Prosecutor General was established with this purpose. The mandate of this subunit was developed through consultations with unions under the framework of the 2006 Tripartite Agreement.

Increased Resources for the Judicial Sector

In order for any criminal justice system to work effectively, it must have the appropriate resources. The government has been backing up this commitment with funding. The Office of the Prosecutor General of Colombia – which is autonomous from the Executive Branch and does not sit in the Cabinet of the President – has received full budgetary support from the current government of Colombia.

Overall, the resources for both the judicial branch and the Office of the Prosecutor General have increased every year since 2002. The budget has grown from US\$ 346 million in 2002 to US\$ 598 for 2008 – an increase of over 70 percent.



A provision in the Law that established the 2006-2010 National Development Plan provides the President with the authority to reorganize and strengthen the Office of the Prosecutor General through executive decrees. The National Planning Department and the Office of the Prosecutor General completed a restructuring proposal addressing three priority areas: the Justice and Peace Law, compliance with international treaties, including human rights treaties, and the protection of victims and witnesses.





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In order to implement these additional priorities, in January 2008 the President signed a decree with further funding of almost \$50 million over the next two years to support 2,165 new positions in the Office of the Prosecutor General, an increase of total personnel of 12 percent, which will include 418 prosecutors, 545 judicial police investigators and 1,202 other operational staff.

Labor Subunit in the Office of the Prosecutor General

Since 2006, a Labor Subunit was created in the Office of the Prosecutor General. This Office is fully operational since February 2007, and it underscores the commitment of the Government to establish an effective and efficient justice system, where impunity is no longer an issue.

Trade unions have been partners in developing the work of the Subunit. The Office of the Prosecutor General worked with Colombia's three largest labor confederations to jointly identify 187 priority cases of violence against labor union members out of a total referral to this subunit of 1,262 pending cases (most of these cases are those subject to review under the ILO's Committee on Freedom of Association Case 1787).

The operations of the subunit, charged with prosecuting the 187 priority labor cases (and all of the 1262 cases), include 13 public prosecutors, 78 judicial police investigators, and 24 additional lawyers. Moreover, resources from the additional funding committed under the President's 2008 decree will expand the Subunit by adding additional prosecutors as well as the required support professionals.

ILO Committee on Freedom of Association, Report Number 340

[The ILO Committee] "*recognizes the efforts made by the government to improve the protection of union leaders, affiliates, and union organizations and to make progress in the investigation of cases. The Committee agrees on the importance of the three-way dialogue to move ahead on these efforts*"

In addition, three specialized judges were appointed in 2007 to hear the cases developed by this Subunit.

Under the additional budgetary resources committed to the Office of the Prosecutor General, funding for the Subunit has been secured for the next four years, in addition to the funding for the three special judges.

The results achieved under the Subunit in 2007, **have been significant**, with 38 total convictions for the murder of trade union members last year. This result compares impressively with a total of 45 convictions in the prior five years – and only one from 1991 to 2001.





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Since the Sub-Unit began operation in February 2007, it has achieved the following results as of February 20, 2008:

- 702 cases have open investigations to establish the facts and the suspects.
- Suspects have been identified in 239 cases, with 24 cases ready to be referred to court for trial.
- 88 suspects have been arrested and placed in preventive detention, and 40 cases have resulted in the conviction of a total of 64 criminal defendants.

Of the 187 priority cases identified with Colombia's trade union confederations in October 2007, almost all of them homicides, as of February 20, 2008 investigations have been completed in 34 cases. This represents significant judicial action on 18 percent of the priority cases in less than one year. There are already convictions in 14 of these cases against 27 individuals. Additionally, some six cases have been referred to court for trial and two more are pending some additional legal proceedings before being formally referred to the courts.

Since 2001, 156 persons in total have been convicted under 88 sentences for crimes against union members, with 110 of those currently in detention. Of these 156 individuals it has been established that 63 were members of the paramilitaries, 17 from guerilla groups, and 13 from the public security forces. In 40 percent of the cases no specific affiliation of the criminal has been determined.

