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## Colombia: Falling Further Behind in the Fight Against the Impunity of Anti-Union Violence

### 2009 Annual Impunity Report

December 22, 2010

This report was prepared by David Feller Pegg, a consultant and analyst based in Bogotá, Colombia. Special thanks to the ongoing work of the Central Unitaria de Trabajadores (United Workers' Central-CUT), the Colombian Commission of Jurists (CCJ), the Escuela Nacional Sindical (ENS) and the Lawyer's Collective CAJAR for their contributions to the report. This report was made possible by a grant from the 21<sup>st</sup> Century ILGWU Heritage Fund.

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## EXECUTIVE SUMMARY

For years, Colombia has been considered the most dangerous country in the world to be a trade unionist. From January 1, 1986, to December 31, 2009, 2,729 trade unionists were murdered, with 47 trade unionists murdered in 2009. In light of this grave situation, in 2006 the International Labor Organization (ILO) and the Colombian labor movement negotiated an agreement with the Colombian government to create specialized courts and a unit of specialized investigators and prosecutors to address cases of anti-union violence.

In 2008 and 2009, USLEAP produced reports analyzing the homicide rulings during the first two years of the subunits' operation in 2007 and 2008, respectively. This year's report reviews and analyzes the available rulings in homicide cases of trade unionists issued from January 1 through December 31, 2009. It also discusses certain aspects of these rulings, including an analysis of the convictions, the challenge to prosecute both material and intellectual authors, the alleged motives behind these crimes, and the continued need for a systematic approach in the investigation and prosecution of violence against trade unionists.

### Key Findings:

- In 2009, the Colombian government achieved convictions in cases of 59 murdered trade unionists, with 77 individuals convicted for these murders, according to 71 rulings made from January 1, 2009 to December 31, 2009. This compares to 2008 figures of convictions in the cases of 49 murdered trade unionists, with 46 individuals convicted for these murders, and 2007 figures of convictions in the cases of 29 murdered trade unionists.
- In 2009, the backlog of unresolved cases of murdered trade unionists increased, with new convictions outpaced by new murders. Of the 59 murdered trade unionist convictions achieved in 2009, 41 represented new convictions while 18 were for victims for whom some convictions had previously been achieved. Given that 47 trade unionists were murdered in 2009, the backlog of totally unresolved cases actually increased in 2009.
- Seventeen individuals were convicted in absentia in cases involving 14 victims. Seven of these cases were part of the 41 new convictions, leaving only 34 of the 59 cases of murdered trade unionists as achieving first time convictions and resulting in imprisonment.
- Of the 77 individuals convicted for murder in 2009, 69 were paramilitaries, 3 members of the armed forces, 3 from guerilla groups (1 from the FARC and 2 from the ELN), and 2 not affiliated with any armed group.

- An increasing percentage of convictions was derived from the Justice and Peace process. In 2009, the Justice and Peace process accounted directly or indirectly for 63 of the 77 individuals convicted for murder, with only 14 individuals convicted without contributions from the Justice and Peace process (down from the 22 convictions achieved by the specialized units in 2008).
- In only three of the 59 conviction cases of murdered trade unionists were convictions achieved for both the material and intellectual authors. Of the 77 individuals convicted, 32 were considered material authors and 45 intellectual authors.
- With the advent of the Justice and Peace process, there have been a growing number of convictions for intellectual authors. In 2009, 42 of the 45 intellectual authors convicted were due directly or indirectly to the Justice and Peace process. Outside of the Justice and Peace process, material authors continued to dominate, with 11 out of 14 convictions resulting in the prosecution of material authors.
- There have been few convictions for murders committed in recent years, possibly one of the factors undermining the deterrent value of recent progress against impunity. In 2009, only four convictions were achieved for the 236 murders committed during the previous four years, 2005-2008.
- A significant limitation is that the individuals convicted as the intellectual authors and therefore those ultimately responsible do not extend beyond the level of paramilitary commanders. The vast majority of convictions have not uncovered the real instigator of the crimes, particularly those who benefited from the murders in economic and government sectors. Incomplete justice in each of these cases conceals the role of these acts of violence as part of an overall anti-union strategy, limiting progress.

**Key Recommendation:**

- As leading Colombian human rights organizations and the trade union movement have argued, and as USLEAP concluded in its 2008 report, in order to make real progress in the fight against impunity and the systematic violence committed against trade unionists in Colombia, the Colombian government must implement a comprehensive investigative and legal strategy, which includes a socio-political analysis of the regional context, a full analysis of the motives, the identification of possible instigators, and a thorough investigation of all the facts.

## I. INTRODUCTION

For many years, Colombia has been considered the most dangerous country in the world to be a trade unionist. From January 1, 1986, to December 31, 2009, 2,729 trade unionists were murdered in Colombia, with 47 trade unionists murdered in 2009,<sup>1</sup> representing nearly half of 101 trade unionists murdered in the world in 2009, according to the International Trade Union Confederation.<sup>2</sup> Another 18 trade unionists survived attempts against their lives in Colombia in 2009, signifying a 125% increase compared to 2008 when eight trade unionists survived attempts made against their lives. Other acts of violence in 2009 included 409 death threats, 129 forced displacements, 54 acts of harassment, 34 arbitrary detentions, 7 acts of torture, 3 forced disappearances of individuals, and 4 illegal searches of residences or offices, as reported in an October 2010 study by the Escuela Nacional Sindical (ENS) and the Colombian Commission of Jurists (CCJ).<sup>3</sup>

Violence against trade unionists has had significant impact on the unionized work force in Colombia. For instance, trade union membership in Colombia decreased 6% from 2002 to 2010. As of December 2009, only 4.2% of the Colombian working population belonged to a trade union,<sup>4</sup> down from 9.3% in 1984. Additionally, less than 2% of the unionized workers had a collective bargaining agreement.<sup>5</sup> Lastly, the Colombian government rejected the requests of 236 organizations to be recognized as trade unions from 2002 to 2009.<sup>6</sup> Nonetheless, Colombian trade unions have not remained inactive. In 2009, 103 labor demonstrations and protests were carried out, while in 2008 there were 93 actions.<sup>7</sup>

In light of the ongoing human rights violations committed against trade unionism in Colombia, in 2006 the International Labor Organization (ILO) and the Colombian labor movement negotiated an agreement with the Colombian government to create two special subunits, one judicial and one

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<sup>1</sup> "Informe nacional de coyuntura económica, laboral y sindical en 2009." National Union School (ENS), Colombia, April 28, 2010.

<sup>2</sup> "2010 Annual Survey of Violations of Trade Union Rights." International Trade Union Confederation (ITUC), June 9, 2010, <http://survey.ituc-csi.org/+Whole-World+.html?lang=en>.

<sup>3</sup> "Que os duelan las sangres ignoradas." National Union School (ENS) and Colombian Commission of Jurists (CCJ), October 2010, <http://ens.org.co/publicacion.htm?x=20155929>.

The National Union School (Escuela Nacional Sindical – ENS) is the principal Colombian NGO monitoring labor and human rights violations committed against the Colombian trade union movement. The Colombian Commission of Jurists (Comisión Colombiana de Juristas) is an NGO dedicated to bringing human rights cases before Colombian courts and the Inter-American human rights system and publishing research on the human rights situation in Colombia. Both of these organizations have been actively involved in monitoring ongoing violence against trade unionists and impunity in these cases, including significant contributions to the debate on human and labor rights within the framework of negotiations for the US-Colombia Free Trade Agreement. For more information on these organizations, please consult their web pages: [www.ens.org.co](http://www.ens.org.co) and [www.coljuristas.org](http://www.coljuristas.org).

<sup>4</sup> In 2002, 863,338 workers belonged to a trade union, while in 2010 810,114 workers were unionized. Ibid. 2

<sup>5</sup> "Panorama de los Obstáculos y de las Propuestas para el Ejercicio de los Derechos Laborales y Sindicales en Colombia." Central Workers' Union (CUT), April 2010.

<sup>6</sup> Ibid. 2

<sup>7</sup> In 2009, these actions included 28 strikes, 24 demonstrations, 27 marches, 20 takeovers or blockades, and 2 protests. Ibid. 2

investigative and prosecutorial, to address cases of anti-union violence. Prior to this agreement the impunity rate in cases of violence against trade unionists was virtually 100%. According to a report recently published by the Colombian Commission of Jurists (CCJ) and the National Union School (ENS), individuals have now been convicted in 4% of the cases of murdered trade unionists since the implementation of these specialized subunits.<sup>8</sup>

While this represents progress compared to the impunity before these courts started operating, the analysis of these convictions, as reflected in this and earlier USLEAP reports, reveals that even this modest progress is much less than it appears at first glance. For example, anti-union violence is rarely carried out by one individual alone and is more often part of a larger plot. The conviction of one or two parties does not necessarily mean a case has been resolved with both the material and intellectual authors brought to justice; more often than not it is only an initial step toward revealing the full truth in that crime. Most pending convictions are also subject to appeal and many people are prosecuted in absentia, with the convicted remaining at large. Consequently, this report will not reference a “rate of impunity,” usually cited at 95% or higher, because this suggests that there is a small percentage of cases where impunity has been fully addressed and justice achieved.

In 2008 and 2009, USLEAP produced reports analyzing the rulings during the first two years of the subunits’ operation, which demonstrated both marginal progress in the overall clarification of these homicides as well as significant obstacles and setbacks.<sup>9</sup> This year’s report examines the available rulings in homicide cases of trade unionists issued by the judicial subunit in 2009. It also discusses certain aspects of these rulings including an analysis of the convictions, the issue of material and intellectual authors, the alleged motives behind these crimes, and the continued need for a systematic approach in the investigation and prosecution of these crimes.

## II. **ADVANCES and SETBACKS**

Analysis of the rulings issued in 2009 show that some criticisms raised and recommendations made in previous USLEAP reports have been addressed, while also demonstrating significant setbacks. First, the Justice and Peace proceedings have helped to increase the number of rulings issued in 2009. It is also a positive development that the Prosecutor’s Office has followed up on more leads that come out of the confessions, an important criticism raised in the 2008 report.

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<sup>8</sup> Ibid. 4

<sup>9</sup> “*Why Are Trade Unionists Murdered in Colombia? An Analysis of the 2007 Rulings by Specialized Labor Courts in Colombia.*” USLEAP, December 2008; “*Systematic Violence Requires Strategic Justice: Ongoing Impunity in Assassinations of Trade Unionists in Colombia.*” USLEAP, Annual Impunity Report, December 2009, <http://usleap.org/usleap-campaigns/colombiamurderandimpunity>.

However, new cases and cases investigated outside of the Justice and Peace process actually decreased since 2008.

While there were more convictions in 2009 than in 2008 or 2007, there remain significant weaknesses to these convictions, including the determination of motive and the identification of other responsible parties, which will be discussed later in the text. In any case, taking into account the continued level of violence committed against trade unionists, the progress made to date in the cases of murdered trade unionists has clearly not been sufficient to serve as a deterrent and to that degree has been ineffective.

Unfortunately, the 2009 rulings also evidence a renewed discrepancy among judges in their identification and naming of motives in the rulings, which had not been present in the 2008 rulings. Despite the recommendations made by diverse sectors, the government continued to show no public commitment to investigating these cases through a comprehensive legal strategy that would reveal the systematic and generalized nature of the crimes. Likewise, the government failed to publicly support trade unions and human rights defenders, especially those who have worked to end impunity in cases of violence against unionists; rather they continued to face an adverse environment encouraged by the Colombian government. The clearest example of this is the role played by the Administrative Department of Security (DAS),<sup>10</sup> which will be presented in more detail later in this report.

Another advance includes steps taken to address the recommendation that U.S. and Colombian judicial systems create effective mechanisms to ensure the continuation of legal processes in Colombia for paramilitaries commanders extradited to the U.S. In this respect, the U.S. Department of Justice announced plans to move these commanders to more central locations to make it easier for Colombian officials to conduct investigations.<sup>11</sup> However, in order to ensure the continuation of legal processes in Colombia, Colombian prosecutors and investigators, as well as human rights organizations, the victims and their legal representatives, should be guaranteed full access to extradited ex-paramilitaries. The U.S. government should also provide incentives for extradited commanders to fully reveal their human rights crimes and connections with the Colombian government and security force officials to ensure that their plea bargain agreements do not prevent further disclosures on these crimes.

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<sup>10</sup> The Administrative Department of Security (DAS) is Colombia's principal intelligence agency and has criminal investigation powers. The DAS is also responsible for the protection of senior public officials and persons under threat, for example trade unionists, leaders from indigenous and Afro-Colombian communities, human rights defenders, journalists, and members of the political opposition, among others.

<sup>11</sup> Email exchange between USLEAP and Elizabeth M. Hoffman (U.S. Department of State), August 11, 2010.

### III. ANALYSIS of 2009 RULINGS

The principal objective of this report is to review and analyze the available documentation of rulings in cases of homicides of trade unionists issued from January 1 through December 31, 2009. In total, USLEAP had access to 71 rulings, which yielded murder convictions of 77 individuals in the cases of 59 murdered trade unionists.<sup>12</sup>

However, the precise number of rulings issued in 2009 is unclear. According to the Colombian government's Presidential Human Rights and International Humanitarian Law Program, 83 individuals were convicted for violence against trade unionists in 2009.<sup>13</sup> The Colombian government has not provided a complete list of the victims murdered or the individuals convicted in these cases, which means the information could not be cross-referenced with the USLEAP database.<sup>14</sup> However, USLEAP is confident, after consulting with ENS and CCJ, that this report had access to the vast majority of valid 2009 rulings with respect to the murders of trade unionists.

USLEAP's analysis of the 71 rulings issued in 2009 shows that they yielded 67 convictions and 3 acquittals of 4 individuals, with one case closed due to the death of the defendant. The 67 rulings resulted in the conviction of 77 individuals (several rulings convicted more than one person). Lastly, the convictions in these 67 rulings concerned the murder of 59 victims.<sup>15</sup>

At one level, these figures represent progress in the fight against impunity, with the number of 2009 convictions exceeding those achieved in 2007 and 2008, when 29 and 70 ruling were issued, respectively. At first glance, it would also appear that the Colombian justice system even made some slight progress in 2009 in reducing the backlog of the nearly 2,700 cases pending, considering that 47

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<sup>12</sup> Please consult Annex 1 for a breakdown of the 2009 rulings issued by the ILO-negotiated specialized courts in Colombia. In Colombia, once issued judicial rulings become available to the public. USLEAP, with help from its partners, acquired copies of these rulings, which are the principal basis to this report. For a full list of the rulings please contact USLEAP.

<sup>13</sup> "Human Rights Situation for Trade Unionists, *Sentencias por año de los hechos.*" Presidential Program on Human Rights and International Humanitarian Law, <http://www.derechoshumanos.gov.co/Sindicalismo/Paginas/impunidad-sentenciasporanno.aspx>. (Last time reviewed: 10/25/2010)

<sup>14</sup> According to CCJ and ENS, the government has only released systematized information on criminal investigations up to October 2009. (See: Ibid. 4)

The Colombian government has also made available a document simply listing all convictions in cases of murdered trade unionists issued from 2000 to July 2009, which includes convictions in 2009 for 7 homicides for which rulings were not available to USLEAP, ENS or CCJ. (See: "*Sentencias proferidas por el homicidio de sindicalistas 2000-marzo de 2009.*" Presidential Human Rights and International Humanitarian Law Program, [http://www.derechoshumanos.gov.co/sindicalismo/estadisticas/sentenciasproferidas\\_090911.pdf](http://www.derechoshumanos.gov.co/sindicalismo/estadisticas/sentenciasproferidas_090911.pdf); though the document is dated March 2009, it includes information up to July 2009). Although two of the murders in this list clearly concerned trade unionists, there is no corroborating record of any convictions in their cases to date. Moreover, according to ENS and CCJ databases, the victims in the other five cases do not appear to be murdered trade unionists. This discrepancy in figures is a reflection of a more generalized problem. In fact, according to CCJ and ENS more than one third of the total victims listed by the government as murdered trade unionists could not be verified as such in the databases maintained by these two organizations. (See: Ibid. 4)

<sup>15</sup> Some rulings convicted more than one person, several rulings concern the same murder victim, and several individuals have been convicted in more than one case, especially if the individual has participated in the Justice and Peace Process or if testimony by others was used to convict him or her.

trade unionists were reportedly murdered in Colombia in 2009 and convictions were achieved in the murder of 59 victims.<sup>16</sup>

But even these modest figures are deceptive. Upon closer analysis, USLEAP discovered that many of these cases already had convictions from previous years and thus do not represent progress in the prosecution of new cases. In 2009, 18 of the 59 victims' cases had already resulted in some level of convictions in 2007 or 2008. The cases involving the 41 remaining victims did not have any prior convictions.

Furthermore, 17 individuals were convicted in absentia in cases concerning 14 out of the 59 victims, meaning no one has been punished for these crimes. Of these 14 cases, 7 had no prior conviction. In short, in 2009 individuals were only convicted and imprisoned in new cases involving 34 victims.<sup>17</sup>

Taking into account that 47 trade unionists were murdered in Colombia in 2009, the backlog of totally unresolved cases actually increased in 2009, which means there has been no quantitative progress made in the fight against impunity.

#### **a. Convictions by Year of Murder**

Grouped by the year of the murder, 51 of the convictions in these rulings concerned victims murdered prior to the Uribe government and only 26 victims were murdered after President Uribe took office on August 7, 2002. Even though the number of murders of trade unionists successively decreased during the Uribe administration (from 191 murders when he took office in 2002 to 49 murders in 2008), the corresponding number of convictions in 2009 for murders committed during these years has decreased at an even greater rate. As a matter of fact, out of a total of 236 homicides committed from 2005 to 2008, individuals were only convicted in four victims' cases in rulings issued in 2009. Thus, while the murder rate of trade unionist decreased nearly 75% from 2002 to 2008, cases of murders committed from 2005 to 2008 only accounted for approximately 5% of the convictions in 2009. This trend is a continuation of what was found in the 2008 rulings, when individuals were convicted in eight victims' cases from the 2005 to 2008 period.<sup>18</sup>

It is concerning that very few convictions have been achieved in the most recent cases of murdered trade unionists, since it should be easier to gather material evidence and testimony that identify the responsible parties. The judicial system is losing precious time in these cases. Moreover,

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<sup>16</sup> According to the National Union School, 26 rank-and-file members and 21 union leaders were murdered in 2009. Ibid. 2

<sup>17</sup> Please consult Annex 2 on the number of new cases and the number of individuals convicted in absentia in 2009.

<sup>18</sup> Please consult Annex 6 for exact distribution of convictions by year of murder.

the lack of justice in recent cases may be one reason why the limited movement on impunity has seemingly failed to deter new violence against trade unionists.

#### **b. Justice and Peace Process**

As was noted in the last report, in 2008 the Justice and Peace process began to funnel cases to the specialized courts as demobilized paramilitaries admitted their guilt in anti-union crimes in exchange for reduced prison sentences. In 2009, these cases continued to be sent to these specialized courts, which led to the convictions of 35 individuals in 2009, representing nearly half of the individuals convicted that year. Additionally, testimony by others participating in the Justice and Peace process was essential in the convictions of another 28 defendants.<sup>19</sup> The Justice and Peace process therefore accounted for 63 of the 77 individuals convicted in 2009. Conversely, only 14 defendants were convicted outside of the Justice and Peace process or without using testimony by others participating in this process. This represents a drop of about a third from the 22 convictions in 2008 and the 29 in 2007, raising serious questions regarding the rate of progress on cases that do not fall under the Justice and Peace process.<sup>20</sup>

The infusion of these Justice and Peace cases increased the total number of individuals convicted in 2009 in homicides of trade unionists, and was particularly instrumental in identifying intellectual authors, those responsible for ordering the crime, which was an important and welcome development. However, these positive developments have not stemmed from a strengthened government commitment to actively decrease impunity in cases of murdered trade unionists but rather are the product of a deeply flawed process in which investigations are increasingly subject to the willingness of demobilized paramilitaries to confess to the crimes. Cases have become increasingly dependent on the demobilized paramilitaries' version of the truth rather than an active role by the Prosecutor's Office in the investigations. This has had a grave impact on implicating other parties involved and establishing the motives behind these crimes, two issues discussed later in this report.

#### **c. Plea Bargain Agreements**

Of the 77 convictions of individuals in 2009, 46 resulted from the defendant entering into a plea bargain agreement (60% of the convictions), including cases sent from the Justice and Peace proceedings and cases investigated outside of the Justice and Peace process. Of the 31 convictions

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<sup>19</sup> In most cases, paramilitary members provided testimony that either incriminated their superiors or subordinates allegedly participating in the crime.

<sup>20</sup> Please consult Annex 3 on convictions resulting from the Justice and Peace process and those resulting from specialized ILO unit investigations.

achieved without the collaboration of the defendant, 17 concerned individuals convicted in absentia. In 2009, only 14 cases actively investigated by the Prosecutor's Office led to the conviction of someone in prison, representing 18% of the convictions.

A growing concern is that plea bargain agreements have been employed as a way for the perpetrators of the crimes to conceal rather than reveal the truth, a principal objective for many of the victims. According to the José Alvear Restrepo Lawyers' Collective (CCAJAR),<sup>21</sup> defendants have frequently pled guilty to the charges, promising they would reveal the full extent of their knowledge of the crimes within the Justice and Peace process. However, the process has not functioned effectively, showing signs of collapsing due to the system being overloaded.<sup>22</sup> Since the Colombian judicial system has not established adequate mechanisms to follow up on their testimony, the defendants receive reduced prison sentences without having to reveal the truth, so justice has not been obtained. This issue will be further addressed in the case of the murdered Drummond trade unionists Valmore Locarno Rodríguez and Víctor Hugo Orcasita Amaya, the president and vice-president of the National Mining and Energy Industry Workers' Union (SINTRAMIENERGETICA).

#### **d. Classification of Crime**

Another issue of concern in the 2009 rulings is the classification of the crimes for which individuals have been convicted. The majority of rulings convicted individuals for "*homicide*" or "*homicide of a protected person*" instead of the more serious offense of "*aggravated homicide*." The conviction of individuals for homicide of a protected person has been used as a way to demonstrate recognition of a victim's status as an unarmed civilian murdered in the internal armed conflict. However, in addition to setting lower prison sentences, it also demonstrates how judges have refused to recognize the systematic nature of the crime or the importance of the victim's trade union leadership, as recognized in aggravated homicide.<sup>23</sup> For instance, one aggravating

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<sup>21</sup> The José Alvear Restrepo Lawyers' Collective (CCAJAR) is a Colombian NGO that promotes human rights and fights impunity through legal work before Colombian courts and the Inter-American human rights system. In many of the cases described in this report the victims or their family members rely on the legal work provided by CCAJAR. For more information on this organization, please consult its web page: <[www.colectivodeabogados.org](http://www.colectivodeabogados.org)>.

<sup>22</sup> For instance, after a recent Constitutional Court ruling, the already overtaxed Colombian justice system could be required to initiate nearly 50 thousand new cases against demobilized combatants. (See: "*Ex 'paras' pagarían penas mínimas tras fallo de la Corte Constitucional*." November 26, 2010, <http://elespectador.com/impreso/articuloimpreso-236910-ex-paras-pagarian-penas-minimas-tras-fallo-de-corte-constitucional>)

<sup>23</sup> "ARTICLE 103 - Homicide – Any individual who kills another individual shall liable to between thirteen (13) and twenty-five (25) years of imprisonment.

"ARTICLE 104 – Aggravating circumstances.- The punishment shall be between twenty-five (25) and forty (40) years of prison, if the offense described in the foregoing Article is committed: [...] 2. To prepare, facilitate, or perpetrate, another punishable offense; to conceal it, secure its proceeds therefrom or impunity for oneself or for the partners in the crime. [...] 4. For a price, promise of remuneration, profit, or any other heinous or futile motive. [...] 6. With extreme cruelty. 7. By placing the victim in a situation of defenselessness or disadvantage and taking advantage of that situation. 8. For terrorist purposes or in pursuit of terrorist activities. [...] 10. If it is perpetrated against an individual who has been a public servant, journalist, justice of peace, or trade union, political or religious leader, by virtue of the their office or position.

circumstance to homicide is if the victim was a trade union leader. In 2009, 13 individuals were convicted in cases of 11 murdered trade union leaders. Regrettably, 6 of these individuals were only convicted for homicide or homicide of a protected person.

Another component of aggravating circumstance to homicide is if the defendant carried out the murder “*for terrorist purposes or in pursuit of terrorist activities.*”<sup>24</sup> Of the 44 individuals convicted for homicide or homicide of a protected person, 37 had been members of the United Self-Defense Forces of Colombia (AUC), which the U.S. State Department designated as a foreign terrorist organization on September 10, 2001.<sup>25</sup> Overall, the crimes of homicide and homicide of a protected person account for 44 of the convictions, while the crime of aggravated homicide accounts for 33 of the convictions. In short, the judge chose to convict an individual for the crime of murdering a trade unionist in 57% of the cases without expressly recognizing the specific context or the victim’s union affiliation as an aggravating circumstance to the crime.

#### **e. Appeals to the Convictions**

All of the rulings issued in 2009 on the murder of trade unionists are still subject to appeal, which represents both an opportunity for progress and setbacks. On the one hand, there is the chance to advance justice by revealing unresolved aspects of the case (e.g. identifying and prosecuting both the material and intellectual authors) and uncovering more of the truth and circumstances surrounding the crime. On the other hand, the defendants in the case may achieve reversals in past convictions or other decisions. Two cases are illustrative.

**The Cajamarca Case: A Chance for Remedies.** In the first week of November 2003, trade unionists José Orlando Céspedes, Germán Bernal Baquero, Marco Antonio Rodríguez Moreno, and Ricardo Espejo Galindo of the Tolima Agricultural Workers’ Union (SINTRAGRITOL) were murdered in Cajamarca. Military members Juan Carlos Rodríguez Agudelo, Wilson Casallas Suescun, and Albeiro Perez Duque, were convicted for these murders on November 26, 2009. The ruling exposed several weaknesses. First, all three of the military members were convicted for the crime of homicide of a protected person instead of aggravated homicide even though the ruling basically determined that the crimes were carried out by both military and paramilitary forces. Second, the judge accepted as uncorroborated evidence military intelligence reports and testimony claiming that the victims were

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*“ARTICLE 135 – Homicide of a protected person. Any individual that, on the occasion of and during armed conflict, causes the death of a person protected, in pursuance of International Humanitarian Law Conventions ratified by Colombia [...]. [...] 1. Members of the civilian population; 2. Persons who are not participating in the hostilities and civilians held by the other party to the conflict [...]”* (See: “Law 599 of July 24, 2000.” Colombian Criminal Code (In Spanish), Congress of Colombia, <http://www.derechos.org/nizkor/colombia/doc/penal.html>)

<sup>24</sup> Ibid. 24

<sup>25</sup> “Country Reports on Terrorism 2009.” U.S. Department of State, August 5, 2010, <http://www.state.gov/s/ct/rls/crt/2009/140900.htm>.

guerrilla collaborators and affirmed that Ricardo Espejo Galindo was a member of the FARC guerrilla group, specifically referring to him as a “*combatant*” killed outside of combat.<sup>26</sup> The José Alvear Restrepo Lawyers’ Collective, which represents the family members of the victims in the case, has therefore appealed for Ricardo Espejo to be recognized as a civilian victim and for the military members to be held responsible for directly participating in the crimes.<sup>27</sup>

**The Arauca Case: A Setback.** Unfortunately, the appeals process can also result in significant setbacks.<sup>28</sup> Three union leaders, Jorge Prieto, Leonel Goyeneche, and Hector Alirio Martínez, were killed on August 5, 2004, by members of Colombia’s 18th Brigade, which was receiving counterinsurgency training from the U.S. Special Forces to protect an oil pipeline that was partially owned by U.S.-based Occidental Petroleum. At the time of the murders, Leonel Goyeneche was the treasurer of the CUT regional chapter, Jorge Prieto the former president of the ANTHOC regional chapter, and Alirio Martínez the former president of the Departmental Association of Peasant Farmers (ADUC).<sup>29</sup> The soldiers reportedly stripped the union leaders down to their underwear before killing them. Later, guns were placed in the victims’ hands to create the illusion they were killed in combat. This became the most high-profile Colombian trade union murder case at the time and was often cited as an example of the active involvement of the Colombian military in violence against trade unionists. The government of Colombia was under pressure from several Democrats in Congress to prosecute and conclude this case prior to consideration for a Free Trade Agreement with the United States.

In August 2007, four Colombian soldiers were convicted of the murders. The convictions were heralded by both the U.S. and Colombian governments as a major breakthrough on impunity, and were indeed one of the few convictions achieved in 2007. However, critics pointed out that it was highly unlikely that an operation of this nature could have been carried out without the active support of the base commanders as the intellectual authors of the crime.

Several years later, the case against their superiors —namely Colonel Luís Francisco Medina Corredor, Captain Hiznardo Alberto Zambrano Bravo, and Captain Luís Eduardo Castillo Arbeláez—

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<sup>26</sup> “*Insofar as the combatants Ricardo Espejo Galindo and aka Mauricio, it should be taken into account they were not carrying out an attack [...].*” (See: Ruling No. 730013107001-2007-0235, 10<sup>th</sup> Specialized Criminal Circuit Court, Judge delivering the opinion: Óscar Germán Herrera Ardila, Bogotá, Colombia, Page 129, November 26, 2009)

<sup>27</sup> According to the appeal filed by CCAJAR, the participation of paramilitary forces in these murders lacks credibility, despite several paramilitaries having claimed participation in these acts. For instance, troops under the Rodríguez Agudelo’s command have been implicated in other murders carried out under the same circumstances, the area in question was under total military control and did not have an active paramilitary presence, several of the victims already appeared in unreliable military intelligence reports, and the testimony provided by several paramilitaries lacks credibility.

<sup>28</sup> “*Impunity Rate Abysmal for Colombian Trade Union Murders; Only Three Convictions in First Half of 2007.*” USLEAP, October 19, 2007, <http://www.usleap.org/impunity-rate-abysmal-colombian-trade-union-murders-only-three-convictions-first-half-2007>.

<sup>29</sup> “*Informe de la Comisión de Verificación de la ejecución de los líderes araucanos Héctor Alirio Martínez, Leonel Goyeneche y Jorge Prieto.*” September 9, 2004, <http://www.derechos.org/nizkor/colombia/doc/infoverif.html>.

has not had the same success. Until 2009, the only advance in the case had been a decision by the Inspector General's Office to remove these battalion commanders from public position for 20 years.<sup>30</sup> Regrettably, on October 16, 2009, the Inspector General's Office overturned this previous decision to punish them.<sup>31</sup> On April 27, 2010, the Prosecutor General's Office followed suit and closed its investigation against the battalion commanders.<sup>32</sup> Presently, they are only being investigated for the crime of aiding and abetting, which has a maximum prison sentence of one to four years.

Even in this high profile case, only the material authors, the individuals who carried out the murders, are behind bars, while the alleged intellectual authors, those who planned the crimes, have been released and presently face no charges that correspond to the gravity of the acts committed.

#### **f. Material and Intellectual Authors**

Even when one, or more, individuals have been convicted in the homicide of a trade unionist, it does not necessarily mean that a case has been resolved. The vast majority of cases have not resulted in the conviction of all material and intellectual authors (the direct and indirect perpetrators), thereby bringing to justice all those responsible for the murder.

As evidenced in past USLEAP reports, anti-union violence is rarely carried out by one individual alone and is much more often part of a larger plot. Thus, the conviction of one or two parties in a case should be only a first step toward revealing the full truth in that crime, which should also include determining the structures and interests behind these crimes. The Colombian trade union movement argues that incomplete justice in each of these cases conceals the role of these acts of violence as part of an overall anti-union strategy. According to the Central Workers' Union (CUT),<sup>33</sup> *"the structural problem of the Colombian justice system with respect to these investigations is that, since it does not have a criminal investigation policy that adequately comprehends the problem, it has not resulted in establishing the truth and, therefore, in being able to know what has happened to*

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<sup>30</sup> The Inspector General's Office (*Procuraduría General de la Nación*) is in charge of investigating and punishing public officials involved in disciplinary violations. Additionally, it has *"the mission of fighting against corruption; defending, guaranteeing and protecting human rights; and safeguarding the rights and interests of citizens and public assets."* (See: *The New Procurator General and his first 70 days of Impunity.* CCAJAR, March 29, 2009, <http://www.colectivodeabogados.org/The-New-Procurator-General-and-his>)

<sup>31</sup> *"En segunda instancia, PGN define caso de muerte de sindicalistas en Saravena (Arauca)."* Inspector General's Office, October 16, 2009, [http://www.procuraduria.gov.co/html/noticias\\_2009/noticias\\_591.htm](http://www.procuraduria.gov.co/html/noticias_2009/noticias_591.htm).

<sup>32</sup> *"Fiscalía acogió concepto de la PGN en investigación a oficiales del Ejército."* Inspector General's Office, April 27, 2010, [http://www.procuraduria.gov.co/html/noticias\\_2010/noticias\\_310.htm](http://www.procuraduria.gov.co/html/noticias_2010/noticias_310.htm).

<sup>33</sup> The Central Workers' Union (Central Unitaria de Trabajadores – CUT) was formed in 1986 and is Colombia's largest trade union confederation.

*the labor movement in Colombia and who has benefited. To the contrary, it calls into question the application of justice and does not prevent the recurrence of the same crimes in the future.”<sup>34</sup>*

As noted previously in this report, 18 of the 2009 cases had already resulted in convictions in 2007 or 2008, which demonstrates a certain cumulative progress. Insofar as the role of the convicted individual in the crime, 32 material authors and 45 intellectual authors were convicted in the 77 individual convictions achieved in 2009. However, only 3 cases in 2009 achieved the conviction of both material and intellectual authors. As noted in USLEAP’s 2008 report, cases sent from the Justice and Peace proceedings tend to convict the alleged intellectual authors but not the material authors, while cases from outside of this process continue to convict the material authors without bringing the intellectual authors to justice.<sup>35</sup>

Another significant limitation is that the individuals convicted as the intellectual authors only reach to the level of the paramilitary commanders. The vast majority of the cases have still not begun to determine the real instigators of these crimes, that is, the alleged interests behind these crimes and those who would have benefited from them. In fact, only one case in 2009, that of Valmore Locarno Rodríguez and Víctor Hugo Orcasita Amaya, identifies the possible instigators and economic interests behind the crime.<sup>36</sup> Yet even this case, in which low-ranking and mid-level paramilitary leaders have been convicted, reveals the difficulties of clarifying the full truth and securing convictions against the alleged instigators of the crime.

**The Drummond Case.** On 12 March 2001, Valmore Locarno Rodríguez and Víctor Hugo Orcasita Amaya, president and vice-president of the National Mining and Energy Industry Workers’ Union (SINTRAMIENERGETICA), who were employed by the Drummond Company in Colombia, were forced off the bus on which they were traveling by a group of paramilitaries. Valmore Locarno was shot in the head several times and killed immediately. Víctor Hugo Orcasita Amaya was taken in a vehicle and his body was found several hours in another location. The murders occurred during labor negotiations regarding food service contracts with Drummond, a U.S. company based in Birmingham, Alabama.

In the last two years, the case has made significant progress. In 2009, Jairo de Jesús Charris Castro, aka Miguel or Viejo Miguel, and Alcides Manuel Mattos Tavares, aka Samario, were convicted as material authors for these murders. In 2010, Óscar José Ospino Pacheco, aka Tolemaida, Óscar David Pérez Bertel, aka Yuca, and José Aristides Peinado Martínez, aka Peinado or

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<sup>34</sup> Ibid. 6

<sup>35</sup> See Annex 4 for exact distribution of material and intellectual authors and participation in Justice and Peace process.

<sup>36</sup> The following presentation only concerns the criminal case being carried in Colombia. For information on the civil case before U.S. federal court, please consult: <http://www.iradvocates.org/drummondcase.html>.

El Guache, were also convicted as material and intellectual authors. Additionally, Rodrigo Pupo Tovar, aka Jorge 40, is presently facing trial for the same crime. All of the previously mentioned individuals were paramilitaries who belonged to the United Self-Defense Forces of Colombia (AUC).

However, in the 2009 ruling against Charris Castro, one of the defendants, the judge, in an effort to determine if there was complicity from the company, also officially requested the investigation of Jaime Blanco Maya (who provided the food service for the workers), former Colonel Luís Carlos Rodríguez (Drummond security chief), James Atkins (former CIA agent and Drummond head of security in Colombia), Garry Drummond (Chief Executive Officer of the Drummond Company), Augusto Jiménez (president of the Drummond subsidiary in Colombia), and Alfredo Araújo (Drummond manager of community relations in Colombia).<sup>37</sup> In later testimony, the other 2009 convicted defendant, Mattos Tavares, indeed alleged that there was a role carried out by company officials as well as higher-up State agents in the murders, but stated that he could not provide more details due to the lack of protection for his family.<sup>38</sup> Since then, the only substantive decision against the previously mentioned individuals has been the arrest of Jaime Blanco Maya on September 7, 2010.<sup>39</sup>

Although incomplete, the progress made in the case should be commended. However, it is also important to understand that the steps towards complete justice were principally due to the defendants' willingness to speak and not as a result of an in-depth investigation by the Prosecutor's Office, or even the interest of the judge ruling in the case. For instance, during the public hearing carried out in the case on July 10, 2010, the presiding judge did not allow CCAJAR lawyer Dora Lucy Arias, who represents the family members of the victims in the case, to provide a context to the murders that includes crimes committed against other members of this trade union.<sup>40</sup> Additionally, in 2010, when paramilitary commander Oscar José Ospino Pacheco, aka Tolemaida, pled guilty to these same murders, the judge did not use her powers to urge him to reveal the full extent of his

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<sup>37</sup> "Since the criminal activity of Jaime Blanco Maya was repeatedly mentioned throughout the proceedings, it is officially requested that the Prosecutor's Office investigate the relevant acts, if at this moment the corresponding investigations are not under investigation. Furthermore, the possible criminal participation of colonel Luis Carlos Rodriguez and Drummond officials Jean Jakim [sic], Garry Drummond, Agosto [sic] Jimenez and Alfredo Araujo, specifically mentioned in the testimony by Mr. Jairo de Jesús Charris." (See: Ruling No. 1100131070011-2009-00029, 11<sup>th</sup> Specialized Criminal Circuit Court, Judge delivering the opinion: Teresa Robles Munar, Bogotá, Colombia, August 4, 2009)

The ruling refers to Jean Jakim, which USLEAP assumes is an incorrect spelling. In the civil case against Drummond before U.S. Federal Court, the individual in question is stated as James Atkins. (See: "Jane Doe and Peter Doe, et al. v. Drummond Company, Inc., et al." U.S. Federal Court, Northern District of Alabama, May 28, 2009, <http://iradvocates.org/Drummond%20Railcase.pdf>)

<sup>38</sup> "Samario! reiteró que funcionarios de Drummond participaron en asesinato de dos sindicalistas." VerdadAbierta.com, November 11, 2010, [http://www.verdadabierta.com/index.php?option=com\\_content&id=2850](http://www.verdadabierta.com/index.php?option=com_content&id=2850).

<sup>39</sup> "Captura por Crimen de Sindicalistas de la Drummond." Prosecutor General's Office, September 7, 2010, <http://fgn.fiscalia.gov.co:8080/Fiscalia/contenido/controlador/controlador>

<sup>40</sup> This occurred during the public hearing against Jairo de Jesus Charris Castro, aka Miguel or Viejo Miguel, at the 11<sup>th</sup> Specialized Criminal Circuit Court on July 10, 2009.

knowledge of the crimes, but rather allowed him to commit to providing the relevant testimony within the Justice and Peace process. And once again the judge did not allow the family members or their legal representation to question the defendant or provide a context on the systematic nature of the crimes.<sup>41</sup>

The weaknesses of the investigation and the difficulties in convicting the instigators of the murders was recently highlighted in the testimony recently provided by Oscar José Ospino Pacheco, aka Tolemaida, and Óscar David Pérez Bertel, aka Yuca, who had been convicted earlier. On November 11, 2010, during the trial against paramilitary commander Rodrigo Pupo Tovar, aka Jorge 40, the previously mentioned paramilitary commanders provided testimony that contradicted essential aspects of what they themselves had previously accepted in their plea bargain settlements as well as the ruling issued against Charris Castro. Specifically, Ospino Pacheco and Pérez Bertel claimed that State agents and company officials did not participate in the murder of the trade unionists; rather the crime was carried out under orders of Pupo Tovar and at the behest of the food service provider. They also claimed that the motive was not due to their trade union activity, as found in the rulings against Charris Castro and Mattos Tavares, but because the paramilitary group wanted to eliminate a “*guerrilla cell.*” Lastly, they alleged that both of the trade unionists were murdered immediately after they were taken from the bus.

This version of events contradicts previous rulings, their previous plea bargain agreements, dozens of witness statements, and established forensic evidence, which was a central component to the appeal filed by CCAJAR to also achieve convictions for the forced disappearance and torture of Víctor Hugo Orcasita.

During his testimony, Pérez Bertel also described how he had recently received a letter from his former commander Ospino Pacheco. In the letter, he was told to tell the truth about the trade unionists “*because ‘Samarío’ has been lying.*”<sup>42</sup> As a result, CCAJAR requested that the Court officially request the Prosecutor’s Office to investigate Ospino Pacheco and Pérez Bertel for the crime of false testimony. According to CCAJAR lawyer Dora Lucy Arias, “*we believe the victimizers are attempting to distort the truth in the case and re-victimize the victims.*”<sup>43</sup>

In short, even though a case may achieve multiple convictions, it does not mean justice has been served. The above case offers an example of how convictions may be obtained against low-ranking

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<sup>41</sup> This occurred during the plea-bargaining hearing against Óscar José Ospino Pacheco, aka Tolemaida, at the 11<sup>th</sup> Specialized Criminal Circuit Court on February 17, 2010. The judge also did not use her powers to urge José Aristides Peinado Martínez, aka Peinado or El Guache, to reveal the extent of his knowledge of the murders during the hearing on June 8, 2010.

<sup>42</sup> “*Versiones enfrentadas sobre crimen de sindicalistas de Drummond.*” VerdadAbierta.com, November 11, 2010, [http://www.verdadabierta.com/index.php?option=com\\_content&id=2852](http://www.verdadabierta.com/index.php?option=com_content&id=2852).

<sup>43</sup> Ibid. 43

and mid-level paramilitary members, but achieving the convictions of the alleged instigators of the crime is much more difficult. In the words of Dora Lucy Arias: *“Because a conviction is not synonymous to justice or truth. The victimizers continue to design strategies to avoid giving an account to the victims’ family members on the motives and causes underlying these types of crimes.”*<sup>44</sup>

**g. Involvement of State Officials in the Crimes**

As in previous years, the rulings in this year’s caseload generally do not identify the involvement of state officials in the commission of the crimes, despite the fact that testimony by paramilitaries participating in the Justice and Peace process has overwhelmingly claimed that there was close collaboration between state security forces and paramilitary groups.<sup>45</sup> In the case of the Cajamarca massacre, three military members were convicted as indirect perpetrators in the murder of four trade unionists. Another ruling identified the alleged complicity and active support of the Colombian Army in the criminal activities carried out by the paramilitaries and two rulings identified the direct participation of military officers in the acts. In particular, former paramilitary commander Luís Arlex Arango Cárdenas, aka Chatarro, who was convicted for the murder of Americo Rivas Benitez, claimed an army officer had ordered the victim to be murdered due to his alleged ties to guerrilla groups. In a second example, the case of Zully Esther Codina Pérez, the ruling highlighted the possible participation of the DAS in the crime. The importance of these rulings will be addressed below.

**The Case of Jorge Darío Hoyos Franco.** A third example of the difficulties in determining the role played by public officials in these crimes is the case of the murder of Jorge Darío Hoyos Franco, highlighted in previous USLEAP reports. Mr. Hoyos Franco was a union leader who was murdered on March 3, 2001.<sup>46</sup> Despite the insistence of the Prosecutor’s Office to focus the initial investigation as a crime of passion, two paramilitary hit men and one police officer were convicted for the murder in rulings determining that the motive was the result of the victim’s labor, social and political activity. As noted in last year’s USLEAP report, the police officer, Carlos Alberto Monroy Rodriguez, who was convicted in absentia, had already been dead for two years at the time of his conviction in 2007. The

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<sup>44</sup> Ibid. 39. During the public hearing on December 6, 2010, family and trade union members demonstrated their rejection of these plea bargain agreements, arguing that these rulings *“only served to encourage impunity and inflate statistics.”*

<sup>45</sup> According to the follow-up on the Justice and Peace process carried out by the José Alvear Restrepo Lawyers’ Collective.

<sup>46</sup> Jorge Darío Hoyos Franco Hoyos was the former Latin American representative of the International Federation of Plantation and Agricultural Workers, which later became part of the IUF, and former Education Director in Latin America for the International Miners’ Federation, a predecessor to the current ICEM. At the time of his death, he served as an advisor and organizer for the national teacher’s union, FECODE; the national miners’ union, SINTRACARBON; the bank workers’ union, UNEB; and the telecommunications workers’ union, SITTELECOM. Between 1980 and three weeks prior to his murder, Mr. Hoyos received many death threats, as did his family, for his union activity.

progress made to date in this case is primarily due to the persistence of Mr. Hoyos' daughter, Yessika Hoyos Morales, and CCAJAR, which represents the Hoyos family.

The Hoyos case is a high profile one.<sup>47</sup> Nevertheless, there have been no significant advances in the investigation for over the last three years, even though CCAJAR has continued to fight to identify and prosecute the intellectual authors or instigators of this crime. For instance, CCAJAR requested for evidence to be examined and has insisted on implicating other public officials. The legal system, however, has not taken any action. According to CCAJAR, the prosecutor has not refused to implicate the alleged responsible parties, but rather has made no pronouncement on the matter and has failed to examine the requested information.<sup>48</sup> For example, CCAJAR requested a sworn statement from one of the imprisoned paramilitary members on his knowledge of other responsible parties in the crime, who had previously expressed knowing of other individuals involved. However, the Prosecutor's Office did not request this testimony for nearly a year. When the statement was finally ready to be taken, the paramilitary member had already been released from prison due to sentencing reduction guidelines. In other words, the Prosecutor's Office only took action when it was presumably known that the evidence could no longer be gathered.

After nearly ten years fighting against impunity, the Hoyos family remains waiting for the legal system to reveal the whole truth surrounding Mr. Hoyos Franco's death, characteristic of cases in which public officials are implicated in the crime.

#### **h. Motive for the Crime**

Often the testimony provided by the defendants has promoted further anti-union violence by accusing murdered unionists of belonging to guerrilla groups. By justifying past violence against unionists, this testimony continues to spread the idea that unions are guerrilla organizations and therefore puts other unionists at greater risk. This testimony, on the other hand, also reveals that systematic anti-union violence is part of the paramilitary strategy, confirming many non-governmental organizations and unions' ongoing denunciations of systematic persecution.<sup>49</sup>

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<sup>47</sup> In February 2009, Ms. Yessika Hoyos provided testimony on the case of her father's murder at a hearing of the Committee on Education and Labor of the U.S. House of Representatives on the ongoing violence against trade unionists and impunity in these cases. She was joined by ENS Director Luciano Sanín Vásquez, who presented a report jointly prepared with the Colombian Commission of Jurists (CCJ), and Judge Jose Nirio Sanchez. On September 17, 2009, the AFL-CIO presented the 2008 George Meany-Lane Kirkland Human Rights Award to Ms. Hoyos for her work with the movement, Sons and Daughters for Memory and Against Impunity, for her commitment to clarify her father's murder, and for her work as a human rights defender with the José Alvear Restrepo Lawyers' Collective.

<sup>48</sup> Specifically, CCAJAR has requested the identification of several persons, especially members of State security forces, but the prosecutor has only taken action with paramilitary members.

<sup>49</sup> "Informe sobre la situación de derechos humanos de las y los sindicalistas en Colombia." CUT, Pages 32 and 33, September 2009.

As in previous years, most of the individuals convicted in 2009 rulings were former members of paramilitary groups. Of the 77 individuals convicted in 2009 for the murder of trade unionists, 69 were members of the AUC or a related group, three were members of guerrilla groups, three were members of the Colombian National Army, and two individuals belonged to no identified armed group.<sup>50</sup> With respect to the determination of motive, it is a positive development that only three cases in 2009 determined the motive of the crime to be personal, e.g. a crime of passion, previously a significant concern identified in the USLEAP report in 2007.

The 2009 rulings, though, still do not develop the concept of other possible motives, which as a result has helped conceal certain alleged intellectual authors or instigators of these crimes. Of the former paramilitary members convicted in these murders, 53 of them, representing 76% of the convictions of paramilitary members, claimed that their motive was based on the victims' alleged ties with guerrilla groups. As such, the rulings frequently state that paramilitary groups simply had the purpose of killing all individuals believed to have ties with guerrilla groups.<sup>51</sup> However, the rulings do not explain how the paramilitaries obtained this information or who else may have been involved with encouraging the paramilitary structures to carry out these crimes. As mentioned previously, testimony by paramilitaries participating in the Justice and Peace process has generally claimed that State security forces provided the information alleging the victims' ties with guerrilla groups. Yet the only paramilitary to claim that an army officer had ordered the victim to be murdered due to his or her ties to guerrilla groups was Luís Arlex Arango Cárdenas, aka Chatarro, who was convicted for the murder of Americo Rivas Benitez. The widespread failure to name or convict state actors is especially significant because it reinforces the idea that the only intellectual authors of the crimes were top-level paramilitary commanders, thus denying the role of other interested parties, specifically from economic and government sectors.<sup>52</sup> As seen with the classification of the crime, this demonstrates how the judges have refused to recognize the full scope and systematic nature of the crimes committed.

As a matter of fact, in only 15 of the 77 convictions did the judge determine that the murder was at least in part due to the victim's trade union activity. Eleven of those convictions also determined

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<sup>50</sup> Please consult Annex 4 on motives described in rulings in 2009.

<sup>51</sup> "[T]his crime was committed selectively, a product of the violence and persecution carried out by the self-defense forces, an illegal movement, which had as one of its objectives to kill all who were considered collaborators, sympathizers, or financial backers of subversive groups or trade union leaders." (See 2009 rulings against Everardo Bolaños Galindo, aka John; Gabriel Jaime Esquivia Acosta, aka Carepa; Diego José Martínez Goyeneche, aka Daniel; Andres Fernando Perdomo Zapata)

"[O]ne of the characteristics of this illegal movement was to kill all who were considered collaborators, sympathizers, or financial backers of subversive groups or trade union leaders." (See 2009 rulings against Juan Francisco Prada Marquéz, aka Juancho Prada; Elkin Casarrubia Posada, aka Mario or El Cura; Alcides de Jesús Durango, aka Rene; Jhon Jairo Bonilla Quinchia; and Armando Rafael Mejía Guerra aka Pupi or Hernán.)

<sup>52</sup> The case of the DAS presented later in this report reveals the alleged systematic participation of government officials in the murder of trade unionists in Colombia.

that the AUC members believed the victim had ties with guerrilla groups, and only 4 convictions determined that the victim's trade union activity was the sole motive for the murder.<sup>53</sup> Additionally, 2 convictions of AUC members determined that the murder was due to the victim's opposition to the organization's political and economic interests and 1 conviction was reportedly due to the victim's failure to obey AUC orders. Only 6 rulings provided the labor, social or political context within which the crime was committed. The motive of the former AUC members is unknown in 6 convictions.

Lastly, the rulings issued in 2009 evidence a discrepancy among judges in their identification and naming of motives, which was not present in the 2008 rulings (though this discrepancy was seen in the 2007 rulings). Of the 15 convictions that determined the murder was due to the victim's trade union activity, 11 were issued with Elsa Riveros de Jiménez as the presiding judge and 4 with Teresa Robles de Munar.<sup>54</sup> Additionally, in the conviction of 2 paramilitary members, Judge Óscar Germán Herrera Ardila determined that the victim was murdered due to his opposition to the political and economic interests of the AUC. No other judge issued a ruling determining this motive.<sup>55</sup>

In terms of individuals convicted who belonged to other armed groups, the 3 convicted members of the Colombian national army all claimed that the victims had ties with guerrilla groups. Correspondingly, the 3 convicted members of guerrilla groups claimed the victims had ties with the army or the AUC.

#### IV. SYSTEMATIC and COMPREHENSIVE APPROACH

As leading Colombian human rights NGOs and the Colombian labor movement have argued, including in submissions to the U.S. government, in order to make substantial progress in the fight against impunity in the murders of trade unionists, the Colombian state needs to establish a comprehensive investigative and legal strategy that principally considers the context and root causes

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<sup>53</sup> According to the 2007 USLEAP report, "*there is no evidence that connection to a guerrilla organization is a prerequisite for appearing on this type of hit list, commonly used by the paramilitaries, nor is public sympathy for the guerrilla cause. Rather, most individuals are added to the list as a result of community leadership, membership in a left political party or organization, or membership in a union.*" (See: Ibid. 10)

<sup>54</sup> Judge Elsa Riveros de Jiménez has continued to recognize the victim's trade union activity as a motive for the crime. On August 23, 2010, in the ruling against Víctor Alfonso Rojas Valencia aka Jawi and Víctor Hugo Hernández Pérez for the murder of Hugo Alfonso Iguarán Cortes, member of the Córdoba regional chapter of the university professors' union (ASPU), Judge Riveros even recognized the systematic murder of trade unionists as a crime against humanity: "*In summary, the aggravated homicide with terrorist purposes of Hugo Alfonso Iguarán Cortes [...] has the characteristic of being a systematic and generalized conduct, which had the motive of eliminating an individual from the civilian population [...] due to his left-wing ideology [...] and should be considered a crime against humanity.*" (See: Ruling No. 110013107010-2010-00004, 10<sup>th</sup> Specialized Criminal Circuit Court, Judge delivering the opinion: Elsa Riveros de Jiménez, Bogotá, Colombia, August 23, 2010, <http://www.derechos.org/nizkor/colombia/doc/sindical2.html>)

<sup>55</sup> In total, 32 convictions were issued in 2009 with Elsa Riveros de Jiménez as the presiding judge; 22 with Teresa Robles de Munar; seven with Óscar Germán Herrera Ardila; six with Gloria Guzmán Duque; three with María Judith Durán Calderón; and the judge was unknown in seven other convictions.

behind the crimes. This approach would need to analyze the social and political context and investigate the potential intellectual authors, those who could have masterminded the crimes, and then place the individual cases within this larger framework.<sup>56</sup>

In this respect, the government should establish an investigative policy that identifies anti-union violence as a specific type of violence and recognizes the impact of impunity on victims' rights. The policy should recognize that anti-union violence is a part of a larger labor conflict that takes place within a context of political, institutional, social and economic exclusion and often responds to specific industrial disputes. A systematic and comprehensive approach should include all cases of anti-union violence, but focus efforts by grouping cases by region and union affiliation. With respect to strategies and approaches, these investigations should include a socio-political analysis of the regional context,<sup>57</sup> a full analysis of the motives,<sup>58</sup> the identification of possible instigators,<sup>59</sup> and a thorough investigation of the facts, especially the crimes of forced disappearance, torture, and sexual violence.

#### **a. Case Study: Health Care Workers' Unions**

The case of violence against health care workers' trade unions provides an illustration of the need (and opportunity) for the Colombian state to begin to implement a comprehensive investigative and legal strategy that analyzes the socio-political context and identifies those who could have had an interest in or benefited from these crimes.

In such an investigation, the justice system would take into account that over the last ten years many state-owned companies were privatized in Colombia, including the health care network, which

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<sup>56</sup> For a more complete description of the following proposal, please consult: Malagón Díaz, Lina P., Gallón Giraldo, Gustavo, and Sanín Vásquez, José Luciano. "Proposals to Overcome the impunity for crimes against trade unionists: What, How, and How should the Office of the General Attorney of Colombia investigate the crimes against trade unionists in Colombia?" CCJ and ENS, Document no. USTR-2009-0021-0148.1, 2009, <http://www.regulations.gov/search/Regs/home.html#documentDetail?R=0900006480a22a0f>; and "Panorama de los Obstáculos y de las Propuestas para el Ejercicio de los Derechos Laborales y Sindicales en Colombia." Central Workers' Union (CUT), April 2010.

<sup>57</sup> The socio-political analysis of the regional context should comprise its past context of violence and the current social, economic and political situation, including the presence and operation of all armed groups. Furthermore, this investigative methodology should consider the existence of other crimes against members of the same union, prior crimes against the victim, the work of the union, and the victim's role in his or her union. The Inter-American Court of Human Rights (IACHR) supported this concept of investigation in the case of the La Rochela Massacre: "The Court deems it relevant to point out that in all cases submitted to this body, it has required that the context be taken into consideration because the political and historical context is a determinant element in the establishment of the legal consequences in a case." (See: "Case of the La Rochela Massacre." IACHR, Merits, Reparations, and Costs, Series C No. 163, paragraph 76, Judgment of May 11, 2007)

<sup>58</sup> The motives behind the crime should be determined through the analysis of the regional socio-political context and the specific situation of the victim and his or her trade union. As such, the analysis of the motives should include the victim's union background, the activities he or she carried out, and those who may have had an economic or political interest in the crime being committed.

<sup>59</sup> The identification of the instigators should, as the UN has argued, comprise anyone who "did not take all the necessary measures within their power to prevent or punish the crime." (See: "Set of Principles for the protection and promotion of human rights through the fight against impunity." United Nations Economic and Social Council, E/CN.4/2005/102/Add. 1, February 8, 2005, <http://www.derechos.org/nizkor/impu/principles.html>)

was strongly opposed by these workers' trade unions. According to the ENS and the Colombian Platform for Human Rights, Democracy and Development, in the case of the health care industry *"the re-structuring of the public hospital network completely modified the work and contract conditions of thousands of health care workers and weakened their principal trade unions, such as SINDESS and ANTHOC. Some of the local unions disappeared and the collective work contracts at many public hospitals were weakened or disappeared definitively."*<sup>60</sup> Furthermore, this type of investigation would notice that there was also a sharp increase in murders of unionized health care workers precisely when this privatization policy began. According to ANTHOC's human rights database, of the 58 members of the National Health and Social Security Workers' Union (ANTHOC) murdered in Colombia since 1986, 51 have been murdered since 1999. The number of death threats, attempted murders, and forced disappearances, among other violations, also increased dramatically during this time period.

In terms of rulings issued in 2009, individuals were convicted in 7 of the cases of murdered trade unionists from health sector unions.<sup>61</sup> Additionally, 3 of these cases concerned victims who were murdered on the Caribbean Coast (Barranquilla and Santa Marta). However, there was no attempt to investigate any possible relation between these cases; even though they were all purportedly carried out by same paramilitary structure, the AUC Northern Block under the command of Rodrigo Pupo Tovar, aka Jorge 40.<sup>62</sup>

Perhaps more importantly, although the ruling in the case of the murder of health care trade unionist Zully Esther Codina Pérez states that the immediate orders came from Pupo Tovar, the victim was included in a list of trade unionists that then DAS director Jorge Noguera Cotes gave to the paramilitaries.

**The Case against Jorge Noguera.** The case against former DAS director Jorge Noguera Cotes is of utmost importance in the fight against impunity in the murders of trade unionists, since it may

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<sup>60</sup> "Informe nacional de trabajo decente 2009." National Union School (ENS) and Colombian Platform for Human Rights, Democracy and Development, October 2010, [http://www.ens.org/aa/img\\_upload/45bdec76fa6b8848acf029430d10bb5a/INFORME\\_DE\\_TRABAJO\\_DECENTE\\_2010\\_1\\_.pdf](http://www.ens.org/aa/img_upload/45bdec76fa6b8848acf029430d10bb5a/INFORME_DE_TRABAJO_DECENTE_2010_1_.pdf).

<sup>61</sup> Six of the victims belonged to the National Health and Social Security Workers' Union (ANTHOC) and one to the National Health and Social Security Union (SINDESS).

<sup>62</sup> - On February 9, 2009, Henry Antonio Díaz Gamarra, aka Flaco Henry, was convicted as the material author for the murder of Luis José Torres Pérez of the National Health and Social Security Workers' Union (ANTHOC). On November 27, 2007, Edgar Ignacio Fierro Flórez, aka Don Antonio, 2007, was convicted as the instigator of this same crime.

- On April 30, 2009, Edgar Ignacio Fierro Flórez, aka Don Antonio, was convicted for the murder of Carlos Cristobal Barrera Jimenez of the National Health and Social Security Workers' Union (ANTHOC). Former army captain Edgar Ignacio Fierro Flórez, who was the commander of the José Pablo Díaz Front of the AUC, which principally operated in the department of Atlántico, reported directly to paramilitary commander Rodrigo Pupo Tovar, aka Jorge 40.

- On February 18, 2009, Willinton Mora Buenaber, aka Willy, was convicted for the murder of Zully Esther Codina Pérez of the National Health and Social Security Union (SINDESS). The defendant recognized that the crime was carried out by the AUC Northern Block under the command of Rodrigo Pupo Tovar, aka Jorge 40.

demonstrate that the most senior levels of government have been involved in the systematic and generalized persecution of trade unionists. In the first week of May 2009, Jorge Aurelio Noguera Cotes, who was the director of the DAS from 2002 to 2005, was called to trial for the homicides of the trade unionists Alfredo Correa D'Andreis,<sup>63</sup> Zully Esther Codina Pérez, and Adán Pacheco,<sup>64</sup> and the politician Fernando Piscioti Van Strahen.<sup>65</sup> Specifically, Noguera Cotes was accused of providing AUC paramilitary commander Rodrigo Tovar Pupo, aka Jorge 40, with lists of names of trade unionists that were then given to Edgar Ignacio Fierro Flórez, aka Don Antonio, many of whom were later murdered.<sup>66</sup>

According to CCAJAR, which represents the victims' family members in the case, these trade unionists were "*victims of counter-insurgency policies based on the notion of the 'internal enemy' and 'political war' against social organizations and trade unions, which were implemented through the organized power structure over which Jorge Noguera Cotes had direct control.*"<sup>67</sup> To date, the case against Noguera Cotes has revealed the possible participation of dozens of senior and middle-level officials within the DAS in the crimes committed against trade unionists or other individuals believed to oppose Colombian government policy.<sup>68</sup>

The Administrative Department of Security (DAS) has several functions. On the one hand, it is the principal intelligence agency in Colombia and has criminal investigation powers. On the other hand, the DAS is responsible for the protection of senior public servants and persons under threat (for example trade unionists, leaders from indigenous and Afro-Colombian communities, human rights defenders, journalists, and members of the political opposition, among others). In other

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<sup>63</sup> It should be noted that the DAS criminally investigated and detained Alfredo Correa D'Andreis under charges of rebellion on June 17, 2004. One month later, Mr. Correa D'Andreis was released after his defense lawyer demonstrated the testimony against him was baseless. Two months after his release, he was murdered by paramilitaries in Barranquilla (Atlántico). According to Fierro Flórez, the AUC based its actions on a DAS intelligence report drafted by then detective, and later deputy director of Magdalena, Javier Valle Anaya. (See: "*Alias 'Don Antonio' implica a funcionario del DAS.*" *Semana* magazine, August 28, 2008, [http://www.semana.com/wf\\_ImprimirArticulo.aspx?IdArt=114910](http://www.semana.com/wf_ImprimirArticulo.aspx?IdArt=114910); "*¿Un crimen de Estado?*" *Semana* magazine, April 12, 2006, <http://www.semana.com/noticias-on-line/crimen-estado/93772.aspx>)

<sup>64</sup> During the preparatory hearing on September 10, 2009, the Supreme Court of Justice decided that the murder of Pacheco should be carried out as a separate investigation. (See: "*Corte Suprema de Justicia deja en firme cinco cargos contra Jorge Noguera.*" CCAJAR, September 10, 2009, <http://www.colectivodeabogados.org/Corte-Suprema-de-Justicia-deja-en>)

<sup>65</sup> Jorge Noguera Cotes also faces charges for aggravated conspiracy to commit a crime; improper use of classified or secret information; destruction, suppression or concealment of public document; abuse of authority by both arbitrary and unjust act; and misappropriation and bribery. (See: "*Called to Trial.*" José Alvear Restrepo Lawyers' Collective, Bogotá, May 13, 2009, <http://www.colectivodeabogados.org/Called-to-Trial>; and "*Lista parcial de víctimas relacionada en el llamado 'computador de Jorge 40.'*" Equipo Nizkor, March 12, 2006, <http://www.derechos.org/nizkor/corru/doc/computador.html>)

<sup>66</sup> During a hearing in the trial against Jorge Noguera, Fierro Flórez also stated he paid the DAS approximately USD \$40,000 for the curriculum vitae of 12 targeted trade unionists. He also recognized that he had a close relationship with Javier Valle Anaya, then DAS deputy director in Magdalena, who even facilitated his movements in the region on several occasions. (See: "*Se reanuda el juicio contra Noguera en la Corte Suprema.*" CCAJAR, February 15, 2010, <http://www.colectivodeabogados.org/El-proximo-lunes-15-de-febrero-se>)

<sup>67</sup> *Ibid.* "*Called to Trial.*" 66

<sup>68</sup> "*Colombia: Illegal Activities Perpetrated by the DAS.*" International Federation for Human Rights (FIDH), May 2010, <http://www.fidh.org/IMG/pdf/ColombiaAng542a.pdf>.

words, the very institution in charge of protecting these persons has possibly become implicated in carrying out illegal intelligence operations against hundreds of trade unionists, many of whom were later murdered or the victims of other crimes, including death threats, harassment, and forced disappearance. According to CCAJAR, these intelligence activities may be understood as the initial phase of a “dirty war” before other actions were to be taken, such as criminal investigations, death threats, or even murder. For example, some of information used in DAS intelligence reports on different labor organizations was obtained through the Colombian government protection program for trade unionists. Over the last eight years, the illegal activities carried out by the DAS against trade unions have included illegal communications, interceptions and surveillance, theft of sensitive information, and threats and harassment, among other acts.<sup>69</sup>

**The DAS Lists, Violence against Unionized Workers, and 2009 Convictions.** With respect to the ruling issued in 2009, several of the victims in this case load appeared in the DAS lists given to paramilitaries, namely the trade unionists César Augusto Fonseca Morales, José Rafael Fonseca Cassiani, José Ramón Fonseca Cassiani, Alfredo Correa D’Andreis, and Zully Esther Codina Pérez, all of whom were from the Colombian Caribbean Coast.<sup>70</sup> However, the only ruling that mentions these lists was the case of Zully Esther Codina Pérez. Likewise, in the cases of the murdered health care trade unionists Carlos Cristobal Barrera Jimenez and Luís José Torres Pérez, which resulted in the conviction of Edgar Ignacio Fierro Flórez, there is no mention of these lists or any other type of participation by the DAS or another State agency, even though evidence in other cases has demonstrated that the DAS collaborated extensively in his criminal endeavors.

Another concern in these cases against unionized health care workers is the lack of investigation into who may have had an economic or political interest in the murders. For instance, two of the cases —that of Zully Esther Codina Pérez and Carlos Cristobal Barrera Jimenez— recognize that the victim was murdered due to his or her trade union activity and provide a context of the prior threats faced by the victim as a result of the social and labor conflict. These cases, however, still do not investigate possible economic or political interests in the crimes, despite several evident leads. In addition to the profits that could be made in the privatization of these institutions, especially the provision of subsidized health care, this sector has also been used as patronage for electoral purposes and a source of intelligence against targets. Several investigations carried out against

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<sup>69</sup> Ibid. 4; “According to sworn statement by former DAS director of counterintelligence Jorge Alberto Lagos before the Supreme Court of Justice, during the Jorge Noguera Cotes administration, the DAS made written death threats against trade union leaders.” (See: “Sufragios a sindicalistas se originaban en el DAS, denunció Jorge Lagos.” El Espectador newspaper, February 25, 2010, <http://www.elespectador.com/articulo187793-sufragios-sindicalistas-se-originaban-el-das-denuncio-jorge-lagos>)

<sup>70</sup> Ibid. 4

members of Congress due to their ties with paramilitary groups have already begun to reveal how the health sector has served to finance the illegal activities of politicians and illegal armed groups.<sup>71</sup>

Some important progress has been made in the cases of murdered trade unionists from the health care industry. For example, two of the cases recognize that the victim was murdered due to his or her trade union activity and describe prior violations committed against the victim as well as the social and labor conflict. Furthermore, most of the cases have already convicted or at least identified both material and intellectual authors of the crimes. Lastly, in one case senior-level government officials have been implicated in the crime, thus breaking from the tendency to only convict paramilitary commanders as the intellectual authors.

Nonetheless, considerable challenges remain in order to fully clarify the extensive violence against members of health care unions over the past decade. The few cases with convictions have only been investigated as individual cases without fully developing the full scope of the intentions, responsibilities and effects of these murders as systematic crimes. The Prosecutor's Office should carry out a socio-political analysis of the regional context and investigate these health care worker cases by region and union affiliation. Likewise, the Prosecutor's Office should carry out a full analysis of the motives and not overly depend on the defendant's version of the events, instead identifying all possible intellectual authors or instigators of the crimes. Investigations should begin to shed light on the role played by public officials and those who would have had an economic or political interest in the commission of these crimes.

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<sup>71</sup> In the case of former senator Álvaro García Romero, who was convicted for his ties to paramilitary groups, misappropriation of funds, the murder of trade unionist Georgina Narváez Wilches and the Macayepo Massacre, testimony alleged that the senator gave paramilitary groups control over health subsidies worth millions of dollars. (See: Ruling against Álvaro García Romero. Supreme Court of Justice, Case No. 32805, February 23, 2010, <http://www.verdadabierta.com/parapolitica/sucre/2229-condenan-a-40-anos-a-alvaro-el-gordo-garcia>)

In the case of former senator Juan Manuel López Cabrales, who was convicted for his ties to paramilitary groups, testimony alleged that the senator gave paramilitary groups control over the secretary of health for the department of Córdoba. (See: Ruling against Juan Manuel López Cabrales. Supreme Court of Justice, Case No. 26942, November 25, 2008, [http://www.usergioarboleda.edu.co/derecho\\_penal/26942\(25-11-08\).doc](http://www.usergioarboleda.edu.co/derecho_penal/26942(25-11-08).doc))

In the case against former senator Dieb Nicolás Maloof Cuse, an intercepted telephone conversation has revealed that one of the senators' advisors offered health superintendent José Renán Trujillo a bribe worth approximately \$1.5 million in order to not audit the health care provider controlled by the senator's political group. (See: "*Las grabaciones de los parapolíticos.*" *Semana* magazine, October 6, 2007, [http://www.semana.com/wf\\_InfoArticulo.aspx?idArt=106725](http://www.semana.com/wf_InfoArticulo.aspx?idArt=106725))

In the case against former senator Luis Alberto Gil Castaño and former representative Alfonso Riaño Castillo, who face charges for their alleged ties with paramilitary groups and the coercion of voters, the Prosecutor's Office has ordered the investigation of several health care providers and these politician's political party for the crime of money laundering. (See: "*Fiscalía acusa a los excongresistas Gil Castillo y Riaño Castillo.*" Prosecutor General's Office, July 21, 2009, <http://fiscalia.gov.co>)

## V. CONCLUSIONS

USLEAP's analysis of the convictions for homicides of trade unionists achieved in 2009 by the Colombian government found some modest progress, with more convictions achieved in 2009 than in 2008 or 2007. In three cases, both material and intellectual authors were convicted, an important step towards resolving a case in its entirety. The Peace and Justice process has contributed significantly to an increased pace of convictions and the Prosecutor's Office has followed up on more leads as a result of hearing the confessions. The Colombian justice system has achieved more success in securing convictions for the murder of trade unionists than other countries with a significant rate of violence such as Guatemala, where there have been virtually no such convictions in the past five years.

Yet the overall picture in Colombia remains grim and discouraging, especially given pronouncements of political will, the resources dedicated to the specialized courts, investigations, and prosecutions, and international concern. Despite the courageous work carried out by Colombian trade unions and human rights organizations, anti-union violence in Colombia continues to lead the world and, despite three years of work, the justice system continues to fall further behind in the effort to address impunity.

In 2009, the number of new murders (47) outpaced the number of new convictions (41), increasing the backlog of unresolved homicide cases. Given that 7 out of the 41 convictions prosecuted people in absentia, in 2009 only 34 individuals were convicted for murder for the first time and imprisoned.

In the unlikely event that murders of trade unionists stopped immediately, at its current pace it would take the Colombian justice system 30 years to address even partially the nearly 3,000 cases.<sup>72</sup> Meanwhile, the justice system is making virtually no progress on bringing to justice perpetrators of other forms of violence directed at trade unionists in Colombia.

Even when murder convictions have been reached, most cases remain unresolved and incomplete, with only a handful resulting in the convictions of both the material and intellectual authors of the crime. Most convictions have failed to provide the full truth and punish those who orchestrated the violence.

A significant limitation of current convictions is that the individuals convicted as the intellectual authors and therefore those ultimately responsible do not extend beyond the level of paramilitary commanders. The vast majority of convicted cases have not uncovered the real instigator of the

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<sup>72</sup> Ibid. 6

crimes, particularly those who benefited from the murders in the economic and government sectors. Anti-union violence is rarely carried out by one individual alone and is more often a part of a larger plot. Thus, the conviction of one or two parties in a case is only a first step toward achieving justice and revealing the full truth behind the crime, which should also include determining the structures and interests behind these crimes. Incomplete justice in each of these cases conceals the role of these acts of violence as part of an overall anti-union strategy.

One of the most important measures of progress regarding efforts to combat impunity is whether the state's efforts are sufficiently effective that they serve as a deterrent to future violence. Given the continued level of violence committed against trade unionists in Colombia, the progress made to date in the cases of murdered trade unionists has clearly not served as a deterrent, and in that respect has been ineffective.

As leading Colombian human rights organizations and the trade union movement have argued, and as USLEAP concluded in its 2008 report, in order to make real progress in the fight against impunity and the systematic violence committed against trade unionists in Colombia, the Colombian government must implement a comprehensive investigative and legal strategy, which includes a socio-political analysis of the regional context, a full analysis of the motives, the identification of possible instigators, and a thorough investigation of all the facts.

## **VI. RECOMMENDATIONS**

USLEAP makes the following recommendations:

- The Colombian government should establish a comprehensive investigative and legal policy that identifies anti-union violence as a specific type of violence and recognizes the impact of impunity on victims' rights;
- To support this policy, the Colombian government should dedicate increased human resources with adequate political and financial support to investigate the enormous backload of cases of murdered trade unionists;
- The Colombian government should publicly support and work with Colombian trade unions and human and labor rights organizations, especially those who have worked to end impunity in cases of violence against unionists;
- The Colombian government should guarantee the safety of the family members and trade unions of the murdered trade unionists, as well as the witnesses in these cases;
- The Prosecutor's Office should investigate all cases of anti-union violence, but focus efforts by

grouping cases by region, industry and union affiliation;

- The Prosecutor's Office's investigations should incorporate a socio-political analysis of the regional context, including its history of violence, the presence and operation of all armed groups, and the current social, economic and political situation. It should also include a union-specific analysis that documents other crimes against members of the same union, prior crimes against the victim, the work of the union, and the victim's role in his or her union;
- The Prosecutor's Office should carry out a full analysis of the motives that does not overly depend on the perpetrator's version of the truth but rather is based on a socio-political analysis and the victim's union background, the activities he or she carried out, and those who may have had an economic or political interest in the crime being committed;
- The Prosecutor's Office should prosecute all responsible parties, especially those with economic or political interest in the crime and those who would have benefited from them.
- The Prosecutor's Office should carry out a thorough investigation of the facts, not only with respect to the crime of murder, but also the commission of other violent crimes, including forced disappearance, torture, and sexual violence;
- In these cases, the presiding judges should use their powers to urge the defendants entering into plea bargain agreements to reveal the full extent of their knowledge of the crimes before receiving reduced prison sentences or other legal benefits;
- These judges should convict the perpetrators of these murders for aggravated homicide, as opposed to homicide of a protected person, as a means to recognize the generalized and systematic nature of the crimes committed;
- The Prosecutor General's Office should create and implement effective coordination mechanisms between the Justice and Peace subunit and the specialized subunit on violence against trade unionists;
- Colombian prosecutors and investigators as well as the victims and their legal representatives from Colombian human rights organizations should be guaranteed full access to paramilitaries held in U.S. prisons; and
- The U.S. government should provide incentives for extradited commanders to fully reveal their human rights crimes and connections with the Colombian government and security force officials and ensure that their plea bargain agreements do not prevent further disclosures on these crimes.

## Annexes Pertaining to 2009 Court Rulings on Cases of Murders of Trade Unionists in Colombia

### Annex 1: Summary of Rulings by the ILO-negotiated Specialized Courts in Colombia

<b>Number of total rulings analyzed for 2009</b>	<b>Number of murder victims in this case load</b>	<b>Number of murder convictions</b>	<b>Number of individuals acquitted or case closed</b>
71 <sup>73</sup>	59	77	4 individuals acquitted and one case closed
<b>Number of total rulings analyzed for 2008</b>	<b>Number of murder victims in this case load</b>	<b>Number of murder convictions</b>	<b>Number of individuals found guilty of murder</b>
67	49	53	46

### Annex 2: Summary of convictions in new cases and number of individuals convicted in absentia in 2009

<b>Number of murder victims in this case load</b>	<b>Number of murder victims in this case load in which individuals had already been convicted in 2007 or 2008</b>	<b>Number of murder victims in this case load in which individuals had not been convicted in 2007 or 2008</b>	<b>Number of individuals convicted in absentia who have not been detained in 2009</b>	<b>Number of murder victims in this case load in which individuals were convicted and imprisoned for the first time in 2009</b>
59	18	41	17 (in cases concerning 14 victims) <sup>74</sup>	34

<sup>73</sup> USLEAP did not have access to five of the 71 rulings (convicting seven individuals for the murder of five different persons); though information on these cases was compiled from various sources, including the Colombian government and press reports.

<sup>74</sup> Ten of whom were convicted in cases in which individuals had already been convicted in 2007 or 2008; seven of whom were convicted in cases in which individuals had not been convicted in 2007 or 2008.

**Annex 3: Comparison between convictions resulting from the Justice and Peace process and those resulting from specialized unit investigations in 2009**

	<b>Number of convicted individuals</b>	<b>Guilty Plea</b>	<b>Number of convicted individuals whose convictions resulted from the Justice and Peace process</b>	<b>Number of convicted individuals not part of the Justice and Peace process</b>
<b>Total</b>	77	46 yes, 31 no	63	14
<b>Paramilitaries (including the United Self-Defense Forces of Colombia, AUC, and one case of an individual related to former AUC members)</b>	69	45 yes, 24 no	35 defendants participating in the Justice and Peace process, 25 defendants had testimony by others participating in the Justice and Peace process	9
<b>Colombian National Army</b>	3	3 No	3 (testimony by others participating in the Justice and Peace process)	0
<b>FARC (Revolutionary Armed Forces of Colombia), guerrilla group</b>	1	1 No	0	1
<b>ELN (National Liberation Army), guerrilla group</b>	2	2 No	0	2
<b>No armed group</b>	2	1 yes, 1 no	0	2

**Annex 4: Comparison of motives described in 2009 rulings**

<b>Motive</b>	<b>Number of people convicted</b>	<b>Defendant alleges victim has ties to an armed actor</b>	<b>Due to victim's trade union activity</b>	<b>Due to victim's opposition to AUC or to victim failing to obey AUC orders</b>	<b>Unknown</b>	<b>Personal or not due to victim's trade union activity</b>
<b>Members of the United Self-Defense Forces of Colombia (AUC) or related group</b>	69	53	15 (only four rulings determine this to be the sole motive)	3	6	3
<b>Colombian National Army</b>	3	3				
<b>FARC (Revolutionary Armed Forces of Colombia), guerrilla group</b>	1	1				
<b>ELN (National Liberation Army), guerrilla group</b>	2	2				
<b>No armed group</b>	2				2	

**Annex 5: Comparison between convictions of material and intellectual authors and participation in Justice and Peace process in 2009**

	<b>Number of convicted individuals</b>	<b>Number of individuals convicted who are participating in the Justice and Peace process</b>	<b>Number of individuals convicted with testimony by others participating in the Justice and Peace process</b>	<b>Number of individuals convicted outside of the Justice and Peace process and without using testimony by others participating in this process</b>
<b>Total</b>	77	35	28	14
<b>Material authors</b>	32	6	15	11
<b>Intellectual authors</b>	45	29	13	3

**Annex 6: Convictions Broken Down by Year of Murder**

<b>Year of murder</b>	<b>1996</b>	<b>1997</b>	<b>1998</b>	<b>1999</b>	<b>2000</b>	<b>2001</b>	<b>2002</b>	<b>2003</b>	<b>2004</b>	<b>2005</b>	<b>2006</b>	<b>2007</b>	<b>2008</b>
<b>Number of convictions in 2009</b>	1	1	0	2	6	17	26 (24 pre-Uribe, 2 after)	13	7	1	2	0	1
<b>Year of murder</b>	<b>1988</b>	<b>1997</b>	<b>1998</b>	<b>1999</b>	<b>2000</b>	<b>2001</b>	<b>2002</b>	<b>2003</b>	<b>2004</b>	<b>2005</b>	<b>2006</b>	<b>2007</b>	<b>2008</b>
<b>Number of convictions in 2008</b>	1	0	1	0	7	8	7 (3 pre-Uribe, 4 after)	12	9	1	4	0	3
<b>Total number of murders per year<sup>75</sup></b>	274	170	97	82	134	194	191	101	94	72	76	39	49

<sup>75</sup> "Informe nacional de coyuntura económica, laboral y sindical en 2009." National Labor School (ENS), Colombia, April 28, 2010.