

# **Why Are Union Members Murdered in Colombia?**

**An analysis of 2007 rulings by  
the Specialized Labor Courts in Colombia**



US Labor Education in the Americas Project  
Proyecto de Solidaridad Laboral en las Americas  
*Fighting for Worker Justice in the Global Economy*

## Executive Summary

Due to Colombia's distinction as the most dangerous place in the world to exercise union activity, in 2006 the International Labor Organization (ILO) and the Colombian labor movement negotiated an agreement with the Colombian government to create a special subunit to deal with all cases of anti-union violence, including but not limited to homicides, attempted homicides and kidnappings. This special subunit, which includes three judges in addition to a varying number of investigators and prosecutors, began operating in January 2007.

This report reviews the available documentation of the subunit's first full year of operation, from January 1 through December 31<sup>st</sup>, 2007. It also draws on a just-released November 2008 report from the highly-respected Colombian Commission of Jurists (CCJ) analyzing the Attorney General's summaries of all cases heard by the three specialized judges between January 2007 and November 2008. In summary, this report finds that:

- The process of assigning motives in cases of assassination of union members is deeply flawed and inaccurate.
  - In many of the cases, assigned motives do not reflect the motives of those who initiated the killings, the intellectual authors
  - Anti-union violence in Colombia is routinely classified and hidden under other categories of violence, including characterizing the violence as a byproduct of the internal armed conflict or a personal dispute
- Perpetrators of violence against union members in Colombia continue to enjoy a high level of impunity for their crimes. According to USLEAP data, 96.5% of union homicides have gone completely unpunished.

## Introduction

Due to Colombia's distinction as the most dangerous place in the world to exercise union activity, in 2006 the International Labor Organization (ILO) and the Colombian labor movement negotiated an agreement with the Colombian government to create a special subunit to deal with all cases of anti-union violence, including but not limited to homicides, attempted homicides and kidnappings. This special subunit, which includes three judges in addition to a varying number of investigators and prosecutors, began operating in January 2007.

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Our analysis of this information shows substantial inaccuracies in public documentation of cases, and undermines Colombian government claims that most trade unionists in Colombia are not killed for trade union activity.

The following report is based on an examination of the court documents for 22 cases heard by the three special labor judges in 2007. (While there were 29 distinct cases for 2007, viewing each victim or group of victims as a single case, the Colombian government did not provide the court documents in 7 cases.)

We would like to acknowledge the Colombian Commission of Jurists (CCJ) for its important contribution to this report.

## How Are Motives Determined?

The Colombian Attorney General's office periodically releases reports summarizing the progress of the special labor subunit. These reports include basic information about the number of sentences given, the number of cases in each judicial phase, and a chart delineating motives for crimes in which a conviction has been achieved.

The "motives chart" contains 20 different categories for motives, ranging from union activity to robbery to being a guerilla. The following chart, constructed by the Colombian Commission of Jurists (CCJ)<sup>1</sup>, consolidates the information provided in the periodic reports from the Colombian Attorney General's office between October 2007 and July 2008: <sup>2</sup>

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<sup>1</sup> "Impunity in Case of Anti-Union Violence: November 2008." Colombian Commission of Jurists, Bogota, Colombia, p 4-5. Translated and original document available upon request. *[just trying to portray the report as "official" as possible.*

<sup>2</sup> This list includes motives for the 116 sentences given during the entirety of the special subunit's existence to date, not just for the period of this report. These 116 sentences relate to 91 homicide cases. The Colombian government has not provided the judicial sentences for the vast majority of these cases, making it impossible to confirm the accuracy of the Attorney General's motive assignment. Information gathered from the cases reviewed for this report suggests that these motives often do not align with those determined by the sentencing judge.

MOTIVE	Reports from the Attorney General's Office					
	October 2007	November 2007	December 2007	January 2008	March 2008	July 2008 <sup>3</sup>
Union activity	7	8	8	14	15	21
Personal/Sentimental	9	10	10	10	10	8
Membership in FARC/ELN subversion	4	5	3 ELN 1 Farc	12	26	32
Robbery	12	11	14	14	15	14
Economic gains/kidnapping	2	3	3	6	5	7
Exchange of fire with INPEC, in order to avoid escape	1	1	1	-	-	-
FARC Attack	2	2	2	2	2	-
Hired assassin by paramilitaries	1	1	1	-	-	-
Social Cleansing	1	1	1	1	-	1
Political Activity	1	2	2	-	-	1
AUC Assistant	1	1	1	2	2	2
For being a prosecutor	2	2	2	-	-	-
Extra-judicial execution	1	1	1	1	-	-
Not established	12	11	11	16	15	14
Professional role or activity	-	-	-	4	7	8
Collaboration with the authorities	-	-	-	-	1	4
Accident	-	-	-	-	-	1
Terrorist attack	-	-	-	-	-	1
Victims seem to have been robbers of livestock	-	-	-	-	-	1
The victim did not allow the convicted persons into a store	-	-	-	-	-	1
<b>Total number of sentences in each report</b>	<b>56</b>	<b>59</b>	<b>61</b>	<b>82</b>	<b>98</b>	<b>116</b>

The chart raises important questions for the fight against impunity. If a case is classified under a motive that does not specifically pertain to union activity, that

<sup>3</sup> The chart from the July report from the Attorney General's office is no longer entitled "motives" rather "intentionality of the author", making reference to the fact that the chart doesn't list reasons for the acts of violence, rather it lists the reasons that the victimizer acted as such.

case is effectively removed from the broader phenomenon of targeted assassination of union members. While the process is potentially problematic, such distinctions are important for an accurate assessment of the level of anti-union violence.

## **Inaccuracies of Determination and Procedural Problems**

Unfortunately, the process of assigning motives and the categories defined by the Attorney General's office are not conducive to creating clarity, and in fact generate a false picture of anti-union violence for a number of reasons.

**A motive is assigned by the Attorney General's office prior to the case being heard, and often prior to any investigation. Typically, the motive is based simply on the initial claims of the material authors of the crime.** In our review of cases, this has had two key ramifications:

First, material authors of the crime have an interest in portraying their crimes as legitimate acts of war between armed actors. If, for example, the person who pulled the trigger initially claims that the victim was a guerrilla sympathizer, the Attorney General's office will write "Supposed ideologue of the guerrilla." This is the standard claim of members of the Autodefensas Unidas de Colombia paramilitary organization, who attempt to portray all their murders as legitimate acts of war, regardless of the real motive for why a particular individual was targeted for murder.

Second, one of the three judges is assigned to deal exclusively with cases in which the motive was not union activity, and accordingly does not attempt to determine motive. If the motive was incorrectly assigned in any of the cases heard by this judge (40% of 2007 cases reviewed), this would not be discovered over the course of hearing the case. This issue is discussed in greater detail later in the report.

**The motive categories used to classify the cases are poorly constructed and misleading.** Some of these categories refer to the way the crime occurred, while others address the intentions of the perpetrator. The categories of "hired assassin by paramilitaries," "social cleansing," "extrajudicial execution," "professional role or activity," and "not established," among others, are all motive categories that are not inconsistent with a victim being murdered for union activity.

Other motive categories, which do deal with the motivations of the killer, not only may be incorrectly assigned due to methodological problems, but reflect a high level of politicization of the process.

The following case studies illustrate the way in which the Colombian political context has influenced the assignment of motives and how incorrect identification of motives has perpetuated impunity.

Two of the most prominent motivations that have been repeatedly cited by the Colombian government to members of Congress are that most trade unionists are murdered because of “crimes of passion” or because they are “guerilla sympathizers” (included in the above chart as “Membership in FARC/ELN subversion<sup>4</sup>”).

### **The Motive of “Crimes of Passion” Case Study: Jorge Dario Hoyos Franco**

One highly referenced but rarely demonstrated claim is that many union members are murdered in “crimes of passion,” such as familial or romantic disputes that come to violence. Of the 22 cases in 2007 available for review (note that the Attorney General’s reports give a much higher number but do not provide the text of the cases to support this claim), the Colombian Attorney General’s office claimed that the motive was “personal” in only one case, that of Jorge Dario Hoyos Franco.

Mr. Hoyos was a union leader with a long history of labor movement involvement in Colombia. He was a founding member of SINTRAINAGRO, had worked with the International Federation of Mineworkers for many years, and at the time of his death continued to serve as the national spokesperson for the mineworker union and as an adviser to FECODE, a teachers’ union. Between 1980 and the weeks prior to his murder, Mr. Hoyos received many death threats, as did his family, for his union activity.

Two assassins murdered Mr. Hoyos on March 4, 2001. It quickly became apparent that they had been hired to commit the crime, which was traced back to a recently retired official of the National Police, Carlos Alberto Monroy Rodriguez. When the material authors of the crime were initially interviewed, they made multiple claims about their motives, but the one that the Attorney General’s office chose to list was that Mr. Monroy had hired them to murder Mr. Hoyos because he had been involved in an amorous affair with Mr. Monroy’s girlfriend.

This explanation was proven false at the outset of the investigation. After reviewing the evidence, the judge in this case writes:

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<sup>4</sup> This category has had several names in the Attorney General’s documentation, but is most frequently written as “sympathizer” or “ideologue” of the guerrilla in case-by-case reports released by the office.

*This demonstrates that the motive for HOYOS FRANCO'S homicide was not an amorous affair, as was the focus of the beginning of this investigation. Rather, as the defendant pointed out, during that time period the aforementioned illegally-armed group made a list of union, civic, popular, and community leaders who were named as military objectives due to their beliefs. This kind of activity was carried out for many years by the deceased and that is exactly why he was killed.<sup>5</sup>*

The judge's sentence clearly demonstrates that the deceased was killed for his union activity and the material authors fabricated the motive listed by the Attorney General's office early in the investigation. This was later supported by the testimony of the alleged girlfriend, who stated that she did not know the deceased. Despite the court ruling, the Attorney General's office failed to change the motive listed in order to align with the ruling of the judge until August 2008, following U.S. Congressional inquiries about the case.

Yessika Hoyos, Mr. Hoyos' daughter who was 16 at the time of the murder, has spoken openly about the damage this has done to her family. She reports that at one point in the process the hired assassins claimed that the motive was her father's supposed guerrilla activity, but that one of them later recanted, "asking for our forgiveness and telling us that he had seen that my dad was not a guerrilla."<sup>6</sup> The Attorney General's office, however, never apologized to the family for its misrepresentation of the case, in spite of the damage done to the family's reputation in the community by the alleged motive.

Findings Regarding the Motive as Crimes of Passion: As the only documented "crime of passion" case, the Hoyos case shows that the Colombian government has not supported their claims that this is a common reason that trade unionists are killed. In the subunit's first year of functioning, there was not a single case provided by the Colombian government in which the judge ruled that a trade unionist was killed for these reasons. This analysis of 2007 cases suggests that if it happens, it is extremely rare.

### **The Motive of Being A Guerrilla Sympathizer: Case Study #1: Luciano Enrique Romero Molina**

In almost a quarter of the 22 cases reviewed by USLEAP, the motive assigned by the Attorney General was that the deceased was a "guerrilla" or "guerrilla sympathizer." According to the CCJ report, 32 of 116 sentences listed as of July 2008 were categorized in this way.

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<sup>5</sup> Judge Jose Nirio Sanchez, sentence for Carlos Alberto Monroy Rodriguez, August 14, 2007

<sup>6</sup> Email exchange between Yessika Hoyos and Charity Ryerson, June 28, 2008

Luciano Enrique Romero Molina, the victim in one of these cases, was well-known both for his union activism and his work with political prisoners. He was a leader in the Sinaltrainal union, and had worked for 20 years at a Nestle plant in Valledupar, until he was fired for involvement in a supposed work stoppage. He had filed a lawsuit against Nestle, which was still pending at the time of his death, demanding that he be reinstated. Mr. Romero was scheduled to testify against Nestle before the Permanent People's Tribunal in Switzerland in November 2005.



Luciano Enrique Romero Molina

On the night of September 10, 2005, Mr. Romero disappeared. His body was found the following day, showing that he had been bound, tortured, and stabbed 40 times. He was 47 years old, and had four children and a partner, Ledys Mendoza.

According to documentation from the Attorney General's office:

*The victim became a union member in order to be an informant of the guerrilla and this is what caused his homicide. Luciano Romero was **supposedly an informant of the ELN.** The paramilitaries made themselves pass for guerrillas for observation and then they killed him. If indeed it is true that he was a unionist, it is also true that he was an informant of the 6<sup>th</sup> Front of the ELN. According to testimonies gathered as part of the process, he was very close to Commandant TULLIO and he was known by the alias "PEPE." [emphasis in original]*

The ruling judge in the case, however, is very careful to demonstrate that the

*"The citizen LUCIANO ENRIQUE ROMERO was not a combatant. Whenever he is referenced in the testimonies that have been presented, testimonies that have been corroborated in all aspects, it is clear that he was a civilian who held an ideology of union struggle and protection of human rights, positions that are fundamentally against one of the actors of our country's armed conflict." -Judge Jose Nirio Sanchez*

motive was not what was indicated by the Attorney General's office. In the process of hearing the case, the judge determined that the assassins had fabricated the above story, here repeated by the Attorney General, in order to justify the murder as an act of war between two armed groups rather than a targeted political assassination. The alias "PEPE," was already in use by a man named Jairo Antonio Bustillo Quiroz, and the suggestion that Mr. Romero had only

joined a union in order to inform on their activities was proven false by his long history of union and political activism.

The ruling judge, Judge Jose Nirio Sanchez, writes:

*Given this situation, the supposed guerrilla military affiliation of the deceased was not proven, though his ideology of defending human and labor rights was frequently noted...It can be inferred that the deceased, LUCIANO ENRIQUE ROMERO MOLINA, had no military status nor could he be characterized as a combatant, nor does he appear to be registered as such. This information was corroborated by the intelligence efforts of detectives Padilla Renhals and Garcia Algarin.<sup>7</sup>*

Judge Sanchez concludes the case by calling for further investigation, specifically to assess the possible role of the Nestle company in the assassination. The Attorney General's office has refused to respond to repeated inquiries about the status of this investigation and there is no indication that the investigation has begun. In spite of the judge's determination that Mr. Romero was not a combatant, and that the motive was incorrectly assigned, the official motive listed continues to be his supposed guerrilla activity.

## **Case Study #2: Luis Alberto Marquez Garcia**

Another case in which the Attorney General's determination of motive as a guerilla sympathizer conflicts with that of the sentencing judge is that of the 2003 murder of Luis Alberto Marquez Garcia, along with his bodyguard, in Natagaima, Tolima.

Mr. Marquez was a member of the Sindicato de Trabajadores Agrícolas de Tolima (Sintragritol), an activist in the Unión Patriótica political party, former council member, and indigenous leader. In 2001, the AUC paramilitary organization announced its presence in the region. Mr. Marquez began to receive death threats and his name appeared on a list of alleged guerrilla sympathizers. As a result, the Colombian government assigned him a bodyguard, Nelson Castiblanco Franco.

As in the case of Luciano Enrique Romero, Mr. Marquez had been included on a list of "military targets" being circulated by paramilitaries in the region. Those who appear on the lists are frequently labeled as "guerrilla sympathizers."

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<sup>7</sup> Judge Jose Nirio Sanchez, sentence for Jose Antonio Ustariz Acuña, alias "Paco, and Jhonatan David Contrera Puello, alias "José" or "Niño." P 53

At 1:30 in the afternoon on July 15, 2003, three men burst through the door of Mr. Marquez's house, firing the shots that killed Mr. Marquez and his bodyguard, and seriously wounded Mr. Marquez's 5 year old daughter, Diana.

In her ruling on the case, Judge Elsa Riveros de Jimenez writes that after the AUC paramilitary organization came into this region of the country, Mr. Marquez was "included on the lists that declared him a military target." This, she writes, was a result of his activities as a political and union leader. This case illustrates an important issue: if a trade union member is included on a hit list due to his or her union activity, and was subsequently murdered due to inclusion on said list, the motive of the crime was the trade union activity of the deceased. Denial of this implies a fundamental misunderstanding of (or possibly agreement with) the paramilitary strategy, which seeks to characterize all defenders of human rights, including trade union members, as supporters of the guerrilla due to their political or union activity rather than any connection whatsoever to the guerrilla movement.

Findings Regarding Motive as Guerrilla Sympathizer: In all cases reviewed, 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.

In cases where the victim was killed for appearing on one of these lists, the Attorney General's Office accepts and records the motive as a alleged connection to a guerrilla organization, rather than the victim's political or union activity which caused him or her to appear on a hit list. In doing so, the Colombian government portrays targeted assassinations of trade unionists as significantly less common than they are, supports claims by paramilitaries that union membership implies guerrilla sympathies, and wrongly suggests that most murders of trade union members are a result of generalized violence in the context of a civil war.

## The Persistence of Impunity: Continuing Trends

In addition to USLEAP's own analysis of the 22 available cases by the three judges, the Colombian Comisión of Jurists (CCJ) released in November 2008 a report examining all of the sentences that had been issued as of August 2008.

The CCJ identifies five areas of concern<sup>8</sup>:

- 1. The sentences have primarily been based on findings related to the material authors and their intentions. In the majority of the cases, the chain of responsibility of the authors has not been established.*
- 2. In the majority of the sentences, no reference has been made to the victim's personal context, union organization, or region in which the anti-union violence occurred.*
- 3. The investigations are carried out case by case with no implementation of a systematic investigative strategy, for cases, as is true for anti-union violence, that are clearly systematic, deliberate and selective.*
- 4. The investigations omit some of the crimes that have been committed and not all of the crimes are sanctioned. For example, in multiple sentences, torture and forced disappearance have been not sanctioned and only the homicide is sentenced. This is another way in which there is impunity for the actions of violence against unionists.*
- 5. There is an unappealable sentence in only five of the cases, which means that of the 116 sentences, in 112 of the cases the possibility exists that the convicted party will appeal and the decision will be changed to an acquittal.*

These concerns not only expose critical deficiencies in the “fight against impunity,” they also suggest important ways that these judicial processes can be improved.

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<sup>8</sup> “*Impunity in Case of Anti-Union Violence: November 2008.*” Colombian Commission of Jurists. p 3-4. Translated document available upon request.

## Discrepancy between Judges

During 2007, the three judges assigned to deal with the special ILO cases were Jose Nirio Sanchez, Maria Judith Duran Calderon, and Elsa Riveros de Jimenez. These judges were responsible for a specific list of cases of trade union violence, including non-murder cases. The cases they were assigned included a list of 187 “priority cases,” in addition to almost two thousand other cases.<sup>9</sup>

Of particular concern are the cases of Judge Maria Judith Duran Calderon who was assigned only to deal with cases of homicides of trade unionists that were not related to the union activity of the victim. She was assigned nine of the 22 cases analyzed by this report. Judge Duran makes no attempt to establish a motive, accepting the original motive as assigned by the Attorney General’s office.

At the outset of every case, Judge Duran writes:

*It is important to clarify that the jurisdiction of this Court corresponds to processes in which the victims are union members but the motive for the punishable conduct was not such condition, while if the motive is his or her office, the jurisdiction is that of the Specialized Courts [this refers to the other two judges].*

Surprisingly, in three of Judge Duran’s nine cases, the motive listed by the Attorney General is “undetermined.” Considering that a determination that the case is not related to targeted anti-union violence is a prerequisite for moving the case into this court’s jurisdiction, it is not clear why a case in which the motive had not been established would be sent to Judge Duran’s court.

If Judge Duran were to discover that a victim in a case she was hearing was, in fact, murdered for anti-union activity, that case would be moved from her jurisdiction into that of one of the other two special labor judges. The motive assigned by the Attorney General’s office, whether it is “not established” or “supposed guerrilla supporter,” is assumed to be correct. Considering the serious methodological deficiencies of motive assignment prior to hearings, this assumption almost ensures that cases will be falsely categorized.

Of the three judges, Judge Jose Nirio Sanchez stands out as the most committed to accurate determination of motive, including assessment of the broader political and social context of each case. According to the CCJ criteria, only three

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<sup>9</sup> A full analysis of the progress on these cases is included in the CCJ report.

of the cases heard by the judges in 2007 could be considered “exemplary,” in the sense that they included convictions of intellectual authors as well as material authors and considered the participation of institutional actors including the state and the employers of the victim. Judge Sanchez heard all three of these cases. In what appears to have been a politically motivated dismissal, however, Judge Sanchez was removed from the special labor courts in January 2008. Representative George Miller sent a letter to the Colombian government to protest his dismissal, but has not received a satisfactory response.

## **Conclusion**

For the Colombian government to make real progress on impunity in trade union violence cases, it must give an accurate and depoliticized assessment of the level of violence against all human rights defenders in Colombia, including union members. When the actions of the government against impunity mischaracterize this violence, impunity is upheld.

Trade unionists in Colombia continue to be killed at unparalleled levels for defending their rights as workers. Until the Colombian government formally recognizes this reality and impunity is defeated, the struggle for labor rights will continue to threaten the lives of Colombian workers.

For more information:

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