

**BOLIVIA, COLOMBIA, ECUADOR, AND PERU:
LABOR RIGHTS AND CHILD LABOR REPORTS**

PURSUANT TO THE TRADE ACT OF 2002, SECTION 2102(c)(8)-(9)

SUBMITTED BY:

**AMERICAN FEDERATION OF LABOR AND CONGRESS OF INDUSTRIAL
ORGANIZATIONS (AFL-CIO)**

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I. INTRODUCTION

These comments are in response to the “Request for Information Concerning Labor Rights in Bolivia, Colombia, Ecuador, and Peru and their Laws Governing Exploitative Child Labor” published at 69 Fed. Reg. 35063 (June 23, 2004). This Request for Information was issued pursuant to Section 2102(c)(8) and (9) of the Trade Act of 2002, Pub. L. 107-210, which requires the President, with respect to any proposed trade agreement, to submit to Congress a “meaningful labor rights report” and a “report describing the extent to which the country or countries that are parties to the agreement have in effect laws governing exploitative child labor.”

This submission incorporates by reference the AFL-CIO’s September 2002 comments regarding country eligibility for trade benefits under the Andean Trade Promotion and Drug Eradication Act (ATPDEA) based on compliance with internationally recognized workers’ rights; the AFL-CIO’s petition to suspend Ecuador’s eligibility for preferences under ATPDEA for violations of workers’ rights, submitted in September 2003; the AFL-CIO’s comments on the proposed U.S. – Andean Free Trade Agreement (Andean FTA) submitted in March 2004; and comments on the draft U.S. proposal for the labor rights chapter of the Andean FTA submitted by the AFL-CIO to the United States Trade Representative (USTR) in May 2004.

II. PROTECTIONS FOR WORKERS’ RIGHTS IN THE ANDEAN REGION

Workers in the Andean region who attempt to exercise their fundamental rights at work face hostile employers, indifferent governments, and dysfunctional legal systems. Workers who seek to form unions are harassed, intimidated, and fired, and the employers guilty of these violations are rarely if ever punished. Even more troubling in the large number of union activists who are physically attacked, threatened with death, kidnapped, “disappeared,” and murdered in the Andean region – the region is the most deadly place in the world to be a trade unionist. Those who seek to terrify and punish trade unionists with violence threaten not only the workers themselves but also their families. Prosecution and punishment for these egregious crimes is the rare exception rather than the rule, thus creating a frightening climate of uncontrolled violence and brutality for workers who seek respect for their basic rights on the job.

Even those workers who do not face physical threats for trying to organize unions and bargain with their employers must overcome daunting economic and legal insecurity when struggling to exercise their fundamental rights. The International Labor Organization (ILO), the U.S. State Department, the International Confederation of Free Trade Unions (ICFTU) and independent human rights groups have all documented the numerous ways in which Andean labor laws and practice fall far short of international standards. And, as the Andean countries seek to “flexibilize” their labor laws in a desperate attempt to attract investment and boost competitiveness, more and more workers are stranded outside the legal system without even the most basic protections for their rights at work.

These workers labor at the mercy of their employers, with little or no protection from the state. Employers crush union organizing drives and disregard collective bargaining agreements not only with impunity, but sometimes with implicit aid and approval from governments. Governments in the Andean region rig the legal system against workers, de-register or refuse to register valid unions, aid employers who seek to claw back protections in collective bargaining agreements, and break apart legitimate strikes – with force if necessary.

The result of the Andean governments' complicity in these vicious employer campaigns has been declining union density, crumbling or inoperative collective bargaining structures, persistently high rates of child labor, hazardous and repressive working conditions, and poverty-level wages. Rates of informality, unemployment and poverty in the Andean region are unacceptably high. Unless respect for workers' rights improves and governments and employers in the region work to build more equitable, secure and inclusive labor markets, these troubling indicators are likely to decline even further in the future.

A. Labor Laws in the Andean Region Fail To Protect Internationally Recognized Workers' Rights

In the face of persistent criticism of Andean labor laws from the ILO, the U.S. State department, and international trade union and human rights organizations, and in spite of repeated offers of technical assistance from the ILO, governments in the Andean region continue to maintain their labor laws far below international standards. Andean labor laws fail to protect freedom of association and workers' rights to organize and bargain collectively, giving hostile employers an impossibly unfair advantage in busting union organizing drives, intimidating workers, and refusing to bargain collectively with workers. As a result, union density in the region is miniscule: Of the 30 percent of workers in the formal economy in Bolivia, only a quarter are union members; just four percent of the entire workforce is unionized in Colombia; five percent of workers are union members in Ecuador; and five percent of the formal sector is unionized in Peru.¹

As members of the ILO, each of Andean country has committed to “respect, promote and realize” the core labor standards enumerated in the 1998 ILO Declaration on Fundamental Principles and Rights at Work.² In addition, each of these countries has ratified ILO Convention No. 87 on freedom of association and the right to organize and

¹ U.S. Department of State, *Country Reports on Human Rights Practices – 2003: Bolivia, Country Reports on Human Rights Practices – 2003: Colombia, Country Reports on Human Rights Practices – 2003: Ecuador, and Country Reports on Human Rights Practices – 2003: Peru*, Washington D.C., February 25, 2004.

² According to the ILO Declaration on Fundamental Principles and Rights at Work, “all Members, even if they have not ratified the Conventions in question, have an obligation arising from the very fact of membership in the Organization to respect, to promote and to realize, in good faith and in accordance with the Constitution, the principles concerning the fundamental rights which are the subject of those Conventions.” Therefore, even countries that have not ratified ILO Convention No. 87 concerning freedom of association and the right to organize and ILO Convention No. 98 concerning the right to organize and bargain collectively are bound by this obligation. International Labour Conference, ILO Declaration on Fundamental Principles and Rights at Work, 86th Session, Geneva, June 18, 1998.

Convention No. 98 on the right to organize and bargain collectively. Andean governments are also bound by regional instruments to respect core labor rights. All of these governments have ratified the American Convention on Human Rights and accepted the jurisdiction of the Inter-American Court of Human Rights. Article 16 of the American Convention guarantees freedom of association, with specific reference to trade unions.

Yet the national legal systems of the Andean countries, without exception, fail to meet the norms established by these international instruments. Rather than enact comprehensive reforms to fix these problems, governments in the region have actually aggravated the situation by passing labor law reforms that create new loopholes in worker protections and give employers even more flexibility to violate workers' rights. The following is an overview of some of the most serious and systemic deficiencies in labor laws in the Andean region.

1. Inadequate Protections against Anti-Union Discrimination

ILO Convention No. 98 requires governments to provide adequate protections against acts of anti-union discrimination.³ The ILO Committee of Experts, in explaining government obligations under Convention No. 98, has stated that, "The existence of general legal provisions prohibiting acts of anti-union discrimination is not enough if they are not accompanied by effective and rapid procedures to ensure their application in practice." The ILO goes on to state that the test for whether or not the legal procedures meet the requirements of Convention No. 98 is that the procedures, "prevent or effectively redress anti-union discrimination, and allow union representatives to be reinstated in their posts and continue to hold their trade union office according to their constituents' wishes." The ILO has also emphasized the importance of reinstatement requirements: "Legislation which allows the employer in practice to terminate the employment of a worker on condition that he pay the compensation provided for by law in any case of unjustified dismissal, when the real motive is the worker's union membership or activity, is inadequate under the terms of Article 1 of the Convention."⁴

Andean labor laws fail to meet this test. They do not provide "effective and rapid" procedures for prosecuting acts of anti-union discrimination, and the remedies available in the laws are so weak that they fail to "prevent or effectively redress" anti-union discrimination. As a result, employers suspend and dismiss union organizers with impunity throughout the Andean region. This is an effective and widely used method of weakening or eliminating unions, and it sends a signal to other workers that exercising one's right to form and join trade unions can have devastating consequences.

³ Article 1, para 1 of Convention No. 98 states that "Workers shall enjoy adequate protection against acts of anti-union discrimination in respect of their employment." Article 3 of Convention No. 98 goes on to state that, "Machinery appropriate to national conditions shall be established, where necessary, for the purpose of ensuring respect for the right to organize ..." as defined in the rest of the Convention.

⁴ International Labour Conference, 1994, *Freedom of association and collective bargaining: Protection against acts of anti-union discrimination, Report of the Committee of Experts on the Application of Conventions and Recommendations*, 81st Session, Geneva, 1994, Report III (Part 4B), para. 214 - 224. [hereinafter *Committee of Experts Report*].

- In Bolivia, the fine for an employer found guilty of discriminating against a worker for union activities is so small that it does not effectively deter the practice. The ILO has urged Bolivia to update the fine for anti-union discrimination established back in 1944 from 1,000 to 5,000 Bolivianos (from about US\$126 to US\$629), but the government has refused to do so.⁵ In addition, the ICFTU reports that the judicial process for redressing anti-union discrimination is too slow to provide effective relief – with procedures routinely dragging on for more than a year.⁶ As a result, an employer can harass, intimidate and fire union activists and sympathizers, and, even if the employer is prosecuted and fined, pay only a small price far down the road to keep its establishment union-free.
- In Ecuador, there is no prohibition on anti-union discrimination at the time of recruitment or hiring. This allows employers to refuse to renew temporary contracts for union activists, or to blacklist union leaders from future positions, with no legal consequences. The ILO has explicitly asked Ecuador to provide protection against anti-union discrimination at the time of recruitment, to no avail.⁷
- Even where Ecuadorian law does prohibit anti-union discrimination, the penalties are so minor that they impose no significant, dissuasive costs on employers. The U.S. State Department reports that Ecuadorian law does not require employers to reinstate workers fired for union organizing, in direct contravention of ILO standards. Instead, the only possible remedy is a small fine, which itself was capped at even lower levels (as little as \$400 for some workers) by recent labor law reforms. The State Department found Ecuador’s laws on anti-union discrimination “were inadequate and failed to deter employers from retaliating against workers for organizing.”⁸
- In Peru, it is legal to fire a worker that is no longer needed economically, and firms use this as an excuse to dismiss workers involved in union organizing. For workers fired for union activities to win reinstatement and the assessment of fines, they must endure an extremely slow enforcement process that can take years. By the time the process is complete, the union organizing drive in question is long dead. The ILO criticized this process, urging the Peruvian government to change its labor law to provide for procedures in such cases which are, “more expeditious and in closer keeping with the rules of law, and free from any political or other interference”⁹ Though major labor law reforms were passed in 2002, the

⁵ ILO Committee of Experts on the Application of Conventions and Recommendations [hereinafter ILO CEACR], *Individual Observation concerning Convention No. 98, Bolivia*, 2004.

⁶ International Confederation of Free Trade Unions, *Annual Survey of Violations of Trade Union Rights* [hereinafter *ICFTU Annual Survey*], *Bolivia*, 2004.

⁷ ILO CEACR, *Individual Observation concerning Convention No. 98, Ecuador*, 2004.

⁸ U.S. Department of State, *Country Reports on Human Rights Practices – 2003: Ecuador*, Washington D.C., February 25, 2004.

⁹ ILO CEACR, *Individual Observation concerning Convention No. 98, Peru*, 2002.

State Department reports that its anti-union discrimination provision has “not been enforced rigidly.”¹⁰

2. Denial of Rights for Temporary and Contract Employees

Labor laws in most Andean countries fail to protect the rights of temporary and contract workers to form and join unions and to bargain with their employers. As Andean countries have reformed their labor laws to give firms more flexibility to hire workers on short-term contracts, through sub-contracts, or through other non-traditional arrangements, they have failed to extend protections for freedom of association and the right to organize and bargain collectively to these new categories of workers. These reforms thus provide huge new legal loopholes that enable employers to violate workers’ fundamental rights. These loopholes have been exploited throughout the region and across industries to dismantle existing unions, crush union organizing drives, and destroy collective bargaining arrangements.

- In Bolivia, workers hired under civil contracts do not have the same rights and protections as workers hired under a traditional labor contract. Temporary workers and day contract laborers who are not full-time employees also have no right to organize or bargain collectively. Employers increasingly use these contract arrangements. Employers replace regular employment contracts with these non-traditional arrangements to evade union organizing and resist collective bargaining. While temporary workers are supposed to become permanent under the law after two contract renewals, this rarely happens in practice; employers continually renew temporary contracts to undermine permanent employment and to avoid hiring workers who can exercise their full rights under the law.
- The ICFTU reports that new provisions in Colombia’s labor law allow for the hiring of workers under deregulated arrangements such as subcontracts and “work partnership cooperatives.” Workers employed under these arrangements do not enjoy the full labor law protections available to regular employees and are denied their rights to organize and bargain collectively.¹¹
- In Ecuador, employers hire workers through shell companies, temporary agencies and subcontractors to avoid unionization. Numerical thresholds for union formation and administrative restrictions on the formation of industrial unions effectively deny these workers hired through third-party contracts any right to join or form trade unions. These workers enjoy no protection from anti-union discrimination, and there is no legal requirement that the ultimate employer of such a group of workers recognize or bargain with them.¹² Employers also exploit temporary workers – who are not protected by the labor code – by

¹⁰ U.S. Department of State, *Country Reports on Human Rights Practices – 2003: Peru*, Washington D.C., February 25, 2004.

¹¹ ICFTU *Annual Survey, Colombia*, 2004.

¹² Human Rights Watch, “Commentary on Proposed Free Trade Negotiations Between the United States and Ecuador,” March 2004.

renewing these temporary contracts indefinitely to avoid hiring permanent workers with rights under Ecuadorian labor laws. These contracts are particularly prevalent in export sectors such as agriculture and maquiladoras. The State Department reports that there are no unions in Ecuador's maquilas.¹³

- In Peru, temporary and permanent employees are not allowed to belong to the same union, denying workers the ability to associate freely with one another and bargain as one with their employer.¹⁴ In Peru, as in Bolivia, workers hired under sub-contracting arrangements are often barred from organizing by the numerical threshold for union formation and they have no right to be recognized by their ultimate employer, greatly diminishing their ability to organize and bargain collectively. In addition, as temporary labor, these contracted workers do not enjoy the same protections as full time workers and can be fired at any time. Under Peruvian law, employers in export processing zones enjoy even more flexibility to hire temporary labor.

3. High Thresholds for Union Registration, Restrictions on Industrial Unions and Denial of Union Rights in Specific Sectors

Andean labor laws contain a number of restrictions on the right to organize in small enterprises and above the enterprise level. In practice, employers in the region use subcontractors or other third-party contract arrangements to split workers into smaller units that fall below the numerical threshold for union formation and that cannot join together to form an industrial union or to bargain with their ultimate employer. Requiring a minimum percentage or number of workers to establish a union can violate Article 2 of Convention No. 87 if the minimum amount is set at an unreasonable level.¹⁵ Prohibitive requirements for the formation of enterprise level unions can also run afoul of workers' rights standards by, for example, requiring the establishment of a de facto trade union monopoly in the industry.¹⁶

- In Bolivia, fifty percent or more of the workers in an entire industry are required to form an industrial union, a requirement that has been criticized by the ILO. Only one union is allowed per enterprise. In addition, workers can only unionize

¹³ U.S. Department of State, *Country Reports on Human Rights Practices – 2003: Ecuador*, Washington D.C., February 25, 2004.

¹⁴ U.S. Department of State, *Country Reports on Human Rights Practices – 2003: Peru*, Washington D.C., February 25, 2004.

¹⁵ The ILO Committee of Experts states, "problems arise when legislation stipulates that an organization may be set up only if it has a certain number of members in the same occupation or enterprise, or when it requires a high minimum proportion (sometimes even more than 50 per cent) of workers which, in the latter case, in practice precludes the establishment of more than one trade union in each occupation or enterprise." *Committee of Experts Report*, para. 82.

¹⁶ The ILO Committee of Experts states, "Convention No. 87 implies that pluralism should remain possible in all cases. Therefore, the law should not institutionalize a factual monopoly; even in a situation where at some point all workers have preferred to unify the trade union movement, they should still remain free to choose to set up unions outside the established structures should they so wish." *Committee of Experts Report*, para. 87.

in workplaces with 20 or more employees, which denies at least 70 percent of Bolivian workers the right to organize, according to the State Department.¹⁷

- In Ecuador, the minimum number of workers required to form a union is 30, excluding the large majority of workers employed by small enterprises from the right to organize. This requirement has been criticized by the ILO.¹⁸ In addition, while Ecuadorian law does not explicitly prohibit the formation of industrial unions, the Ministry of Labor has interpreted the law to contain just such a prohibition, denying recognition of an industrial union in the cut flower industry.¹⁹ Together, these onerous restrictions effectively deny most Ecuadorian workers their fundamental labor rights, and enable employers to legally avoid unionization through third-party contacting arrangements.
- In Peru, a union must represent at least 20 workers in order to bargain collectively on their behalf.²⁰ Employers increasingly use sub-contracting arrangements to ensure that workers cannot meet this legal threshold.

Finally, Andean labor laws exclude workers in a number of specific sectors, thus denying large swaths of workers freedom of association and the right to organize and bargain collectively in violation of ILO norms. In Bolivia, agricultural workers are excluded from the labor code;²¹ in Colombia, apprentices cannot be covered by collective bargaining agreements;²² and in Ecuador, unions are banned in the civil shipping industry.²³

4. Onerous Registration Requirements and Improper Restrictions on Union Leadership and Union Activities

Some governments in the Andean region establish onerous registration requirements to prevent workers from exercising their right to freedom of association. This violates Article 2 of ILO core Convention No. 87 on freedom of association and the right to organize, which guarantees the right of workers and employers to establish organizations of their own choosing “without previous authorization” from the public authorities. Article 7 of the Convention goes on to state that, “The acquisition of legal personality by workers’ and employers’ organizations ... shall not be made subject to conditions of such a character as to restrict the application of [Article 2].”²⁴ In addition, a number of

¹⁷ ILO CEACR, *Individual Observation concerning Convention No. 87, Bolivia*, 2004; and U.S. Department of State, *Country Reports on Human Rights Practices – 2003: Bolivia*, Washington D.C., February 25, 2004.

¹⁸ ILO CEACR, *Individual Observation concerning Convention No. 87, Ecuador*, 2004.

¹⁹ Human Rights Watch, “Commentary on Proposed Free Trade Negotiations Between the United States and Ecuador,” March 2004.

²⁰ U.S. Department of State, *Country Reports on Human Rights Practices – 2003: Peru*, Washington D.C., February 25, 2004.

²¹ ILO CEACR, *Individual Observation concerning Convention No. 87, Bolivia*, 2004.

²² ICFTU *Annual Survey, Colombia*, 2004.

²³ ILO CEACR, *Individual Observation concerning Convention No. 87, Ecuador*, 2004.

²⁴ The ILO Committee of Experts explained this obligation further: “Problems of compatibility with the Convention ... arise where the registration procedure is long and complicated or when registration

Andean countries require members of union leadership to be citizens or to be employed in the represented industry, in violation of guarantees for the right to organize in Convention No. 87.²⁵ Together, these requirements can make it very difficult for legitimate unions to receive legal recognition and elect their own preferred leadership.

- In Bolivia, trade union officials must be Bolivian nationals and must be permanent employees in the occupation represented by their union, in violation of ILO Convention No. 87.²⁶ In addition, prior authorization requirements have been abused to block the legal recognition of trade unions.
- In Colombia, trade union officers must be engaged in the occupation represented by their union.²⁷ In addition, trade union registration procedures can take years, allowing employers to liquidate unions before they earn legal recognition.²⁸
- In Ecuador, only nationals may occupy trade union office.²⁹ In addition, government officials exploit technicalities in the union registration process to deny recognition to otherwise legitimate unions.
- In Peru, the labor law still prohibits unions from engaging in political activities, a fundamental violation of freedom of association.³⁰

5. Laws Permitting Interference in Trade Union Activities

Andean labor laws too often lack explicit provisions prohibiting employers from dominating or interfering in union activities. Some countries also allow government officials to interfere with union activities. Article 2 of ILO Convention No. 98 states that unions shall enjoy adequate protection against employer interference, and specifies that “acts which are designed to promote the establishment of workers’ organizations under the domination of employers ... shall ... constitute acts of interference” that workers

regulations are applied in a manner inconsistent with their purpose and the competent administrative authorities make excessive use of their discretionary powers and are encouraged to do so by the vagueness of the relevant legislation. These factors may be a serious obstacle to the establishment of organizations and may amount to a denial of the right of workers and employers to establish organizations without previous authorization.” *Committee of Experts Report*, para. 75.

²⁵ The ILO Committee of Experts explains that, “Provisions which require all candidates for trade union office to belong to the respective occupation, enterprise or production unit or to be actually employed in this occupation ... are contrary to the guarantees set forth in Convention No. 87.” On nationality, the ILO Committee of Experts states, “Since provisions on nationality which are too strict could deprive some workers of the right to elect their representatives in full freedom, for example migrant workers in sectors in which they account for a significant share of the workforce, the Committee considers that legislation should allow foreign workers to take up trade union office, at least after a reasonable period of residence in the host country.” *Committee of Experts Report*, paras. 117 – 118.

²⁶ ILO CEACR, *Individual Observation concerning Convention No. 87, Bolivia*, 2004.

²⁷ ILO CEACR, *Individual Observation concerning Convention No. 87, Colombia*, 2004.

²⁸ U.S. Department of State, *Country Reports on Human Rights Practices – 2003: Colombia*, Washington D.C., February 25, 2004.

²⁹ ILO CEACR, *Individual Observation concerning Convention No. 87, Ecuador*, 2004.

³⁰ U.S. Department of State, *Country Reports on Human Rights Practices – 2003: Peru*, Washington D.C., February 25, 2004.

must be protected from. In practice, employers exploit these legal loopholes to dominate and intimidate workers and their organizations, undermining legitimate trade unions.

- In Bolivia, the law allows government officials to attend and monitor internal union debates, and provides for the administrative dissolution of trade unions before judicial review. The ILO has criticized both provisions.³¹ In addition, the Ministry of Labor has arbitrarily assumed the function of “recognizing” union leaders, when the process should only be governed by internal union procedures. Finally, Bolivian law fails to protect workers from employer interference.³²
- In Colombia, government officials can be present at trade union meetings where strike votes are taken – allowing for potentially serious interference in protected trade union activities.³³
- The ICFTU reports that, in the vast majority of Ecuadorian private companies with unions, “management seeks to reduce the unions’ influence by setting up ‘solidarismo’ (solidarity) style associations” that are dominated by employers. Legal loopholes in the registration of unions and formation of works’ councils allow employers to set up their own works’ councils to squelch nascent union organizing.³⁴ Such practices run contrary to a long line of ILO precedent condemning the establishment of employer-dominated workers’ organizations as a means of undermining legitimate trade unions.³⁵

³¹ ILO CEACR, *Individual Observation concerning Convention No. 87, Bolivia*, 2004.

³² U.S. Department of State, *Country Reports on Human Rights Practices – 2003: Bolivia*, Washington D.C., February 25, 2004.

³³ U.S. Department of State, *Country Reports on Human Rights Practices – 2003: Colombia*, Washington D.C., February 25, 2004.

³⁴ ICFTU *Annual Survey, Ecuador*, 2004.

³⁵ The ILO Committee of Experts commented on Central American solidarity associations at length: “The Committee would like to draw attention to the special problem of the solidarist associations which have been set up in some Central American countries. Solidarist associations are associations of workers which are set up dependent on a financial contribution from the relevant employer and which are financed in accordance with the principles of mutual benefit societies by both workers and employers for economic and social purposes of material welfare (savings, credit, investment, housing and educational programs, etc.) and of unity and cooperation between workers and employers; their deliberative bodies must be made up of workers, though an employers’ representative may be included who may speak but not vote. In recent years, the Committee on Freedom of Association has on a number of occasions received allegations concerning interference by solidarist associations in the industrial relations sphere of the trade unions, unequal treatment accorded to trade unions and solidarist associations in legislation and practice, as well as control of the latter by employers; all these measures often result in employer interference in trade union activities and favoritism towards solidarist associations. The fact that these associations are partly financed by employers, although their members include workers as well as senior staff and personnel having the employer’s confidence, and that they are often set up at the employers’ initiative, means that they cannot be independent organizations, and thus often raises problems as regards the application of Article 2 of the Convention. The governments concerned should adopt legislative or other measures to guarantee that solidarist associations do not exercise trade union activities, in particular collective bargaining by means of ‘direct settlements’ between employers and groups of non-unionized workers. Furthermore, these governments should take measures to eliminate any inequality of treatment between solidarist associations and trade unions, and to ensure that employers abstain from bargaining with this type of association.” *Committee of Experts Report*, para. 233.

- In Peru, there is no legal protection against employer interference in the activities of unions, according to the State Department.³⁶

6. Inadequate Collective Bargaining Machinery

Article 4 of ILO Convention No. 98 requires governments to take measures to promote the “full development and utilization” of machinery for collective bargaining between unions and their employers. Yet labor law in the Andean countries fails to provide adequate machinery for collective bargaining between employers and representative trade unions. Collective bargaining structures have been under attack in the region in recent years, aided by deficiencies in the labor law that allow employers to weaken and circumvent collective agreements. Thus, even when workers are able to overcome huge obstacles to union organizing, they are too often unable to translate this victory into enduring improvements in their working conditions through collective negotiation.

- In Bolivia, collective bargaining is “limited,” according to the State Department, and the ILO has urged the Bolivian government to take measures to encourage the development and use of collective bargaining.³⁷
- In Colombia, collective bargaining has been under assault. Employer hostility and violent intimidation of trade unionists, abetted by inadequate labor laws and government indifference, are quickly eroding the tradition of collective bargaining in Colombia. The ILO reports that, in practice, the government and the judiciary give “preference to collective accords with non-unionized workers, disregarding collective agreements and existing trade unions,” a serious violation of ILO Convention No. 98.³⁸ Colombian law permits this situation by exempting “pactos colectivos,” which circumvent existing trade unions, from collective bargaining.³⁹ In addition, the law empowers arbitration courts to review collective bargaining agreements at an employer’s request and reduce the protections such agreements provide for workers. As a result of these legal restrictions, and employers’ systematic campaign of violence and intimidation against unions engaged in collective bargaining, the number of collective contracts signed in Colombia in 2003 was only 284 – a drop of more than 41 percent from just two years before.⁴⁰
- In Ecuador, collective bargaining agreements cover only about a quarter of all unionized workers, according the State Department, largely due to employer’s

³⁶ U.S. Department of State, *Country Reports on Human Rights Practices – 2003: Peru*, Washington D.C., February 25, 2004.

³⁷ U.S. Department of State, *Country Reports on Human Rights Practices – 2003: Bolivia*, Washington D.C., February 25, 2004; and ILO CEACR, *Individual Observation concerning Convention No. 98, Bolivia*, 2004.

³⁸ ILO CEACR, *Individual Observation concerning Convention No. 98, Colombia*, 2004.

³⁹ U.S. Department of State, *Country Reports on Human Rights Practices – 2003: Colombia*, Washington D.C., February 25, 2004.

⁴⁰ ICFTU *Annual Survey, Colombia*, 2004.

systematic exploitation of third-party contracts to deny employees their right to bargain collectively.⁴¹

- In Peru, employers simply refuse to negotiate with recognized trade unions and reject all efforts to negotiate at the industrial level. Though the right to bargain collectively is, in theory, mostly protected by recent labor law reforms, the Ministry of Labor fails to enforce the law, making violations the rule rather than the exception. A remaining weakness in the labor law is its provision allowing employers to temporarily suspend the protections in collective bargaining agreements, which employees must then challenge if they want to maintain their rights.⁴²

7. Curbs on the Rights of Public Employees

Though the rights of public employees to join unions and to bargain with their employers are subject to some qualified restrictions under ILO Convention Nos. 87 and 98, Andean laws go far beyond these rules to impermissibly restrict the rights of public sector workers. All workers, including public employees, have a right to “join organizations for their own choosing” under Article 2 of Convention No. 87. Armed forces and the police are excluded from this right in Article 9 of the Convention. The ILO Committee of Experts states that, “The Committee has always considered that the exclusion of public servants from this fundamental right [to organize] is contrary to the Convention.”⁴³ In addition, the scope of public sector workers excluded from the right to organize and bargain collectively is narrowly construed to cover only those workers “directly employed in the administration of the state.”⁴⁴

Yet Andean labor laws prohibit broad swaths of public employees from exercising their right to join unions and bargain with their employers. In Bolivia, public servants are denied the right to organize and bargain collectively, in direct violation of ILO Convention Nos. 87 and 98.⁴⁵ In Colombia, public employees have no right to bargain collectively.⁴⁶ In Ecuador, the majority of public servants are denied the right to organize and bargain collectively by law, and education sector staff are denied the right

⁴¹ U.S. Department of State, *Country Reports on Human Rights Practices – 2003: Ecuador*, Washington D.C., February 25, 2004.

⁴² U.S. Department of State, *Country Reports on Human Rights Practices – 2003: Peru*, Washington D.C., February 25, 2004.

⁴³ *Committee of Experts Report*, para. 48.

⁴⁴ The ILO Committee of Experts explains: “The Committee could not allow the exclusion from the terms of the Convention of large categories of workers employed by the State merely on the grounds that they are formally placed on the same footing as public officials engaged in the administration of the State. The distinction must therefore be drawn between, on the one hand, public servants who by their functions are directly employed in the administration of the State ... who may be excluded from the scope of the Convention and, on the other hand, all other persons employed by the government, by public enterprises or by autonomous public institutions, who should benefit from the guarantees provided for in the Convention.” *Committee of Experts Report*, para. 200.

⁴⁵ ILO CEACR, *Individual Observation concerning Convention No. 87, Bolivia*, 2004; and ILO CEACR, *Individual Observation concerning Convention No. 98, Bolivia*, 2004.

⁴⁶ ILO CEACR, *Individual Observation concerning Convention No. 98, Colombia*, 2004.

to organize and bargain collectively at the municipal level.⁴⁷ And there are serious restrictions on public employees' right to strike in all three countries that go far beyond the permissible limits on the right to strike in "essential services" in the public sector.

These wide-ranging restrictions on the rights of public sector workers in the Andean region reflect a more deep-seated lack of respect for workers' rights among governments in the region. This hostility permeates their treatment of workers in both the public and private sector, and seriously compromises their ability to protect the fundamental rights of all workers. In addition, the systematic weakening of public sector unions – the traditional backbone of the labor movement in the region – seriously undermines the health and vitality of trade unions throughout the economy in Andean countries.

8. Restrictions on the Right to Strike in the Private Sector

The right to strike, though not explicitly laid out in ILO Convention No. 87 on freedom of association and the right to organize, has consistently been considered by the ILO to be an intrinsic part of these core rights. Strikes are understood to be part of a trade union's "activities and ... programs" under Article 3 of Convention No. 87. The ILO has also based the right to strike on Article 8, paragraph 2 of Convention No. 87, which states that a country's laws shall not impair workers' right to freedom of association. Onerous procedural requirements for calling a strike can thus violate workers' right to organize by making it difficult or impossible to carry out a legal strike.⁴⁸ Colombia, Ecuador and Peru also limit the rights of federations and confederations to engage in strike activities. Confederations and federations are given the same right to conduct their activities and formulate programs in Article 6 of Convention No. 87.⁴⁹

⁴⁷ ILO CEACR, *Individual Observation concerning Convention No. 87, Ecuador*, 2004; ILO CEACR, *Individual Observation concerning Convention No. 98, Ecuador*, 2004; and U.S. Department of State, *Country Reports on Human Rights Practices – 2003: Ecuador*, Washington D.C., February 25, 2004.

⁴⁸ The ILO Committee of Experts has explained that the grounds upon which a strike can be called should not be limited too narrowly: "organizations responsible for defending workers' socio-economic and occupational interests should, in principle, be able to use strike action to support their position in the search for solutions to problems posed by major social and economic policy trends which have a direct impact on their members and on workers in general, in particular as regards employment, social protection and the standard of living." *Committee of Experts Report*, para. 165. The ILO Committee of Experts also discusses strike votes required by law: "the ballot method, the quorum and the majority required should not be such that the exercise of the right to strike becomes very difficult, or even impossible in practice." And goes on to specify, "If a member State deems it appropriate to establish in its legislation provisions which require a vote by workers before a strike can be held, it should ensure that account is taken only of the votes cast, and that the required quorum and majority are fixed at a reasonable level." *Committee of Experts Report*, para. 170. Mediation and arbitration requirements can also impermissibly restrict the right to strike: "Such machinery [requiring exhaustion of mediation and arbitration procedures before a strike can be called] must, however, have the sole purpose of facilitating bargaining: it should not be so complex or slow that a lawful strike becomes impossible in practice or loses its effectiveness." *Committee of Experts Report*, para. 171.

⁴⁹ The ILO has also affirmed that federations and confederations must be permitted to engage in collective bargaining and strike activities. The ILO Committee of Experts states, "Provisions of this kind are such as to seriously hinder the development of industrial relations, in particular for small trade unions which are not always able to defend the interests of their members effectively because they are unable to recruit from

Together, these limits on the right to strike tilt the balance of power in the workplace even more drastically away from workers and in favor of employers and make it exceedingly difficult to protest unfair labor practices, hold out for a fair contract, or enforce contracts that exist. Finally, employers and governments hide behind the law to lash out, sometimes violently, at workers who exercise their right to strike despite these onerous legal restrictions.

- In Bolivia, 75 percent of all workers must vote to approve a strike, in violation of ILO norms. General and sympathy strikes are illegal, as are strikes in the banking sector, and compulsory arbitration can be imposed by the executive to end a strike. Illegal strikes can lead to penal sanctions, including forced labor. Workers must exhaust a drawn-out legal process to strike, and nearly all strikes are thus carried out illegally. The ICFTU reports that the Bolivian government has cracked down on strikes with force.⁵⁰
- In Colombia, the Minister of Labor can refer a strike to compulsory arbitration if it lasts beyond 60 days.⁵¹ The State Department reports that trade unionists who participate in a legal strike can be fired six months after the strike ends.⁵² As in Bolivia, strikes in Colombia have been met with force and violence in recent years.
- There are numerous restrictions on the right to strike in Ecuador, including a mandatory “cooling off” period before engaging in a strike, a prohibition on solidarity strikes, and the right of the Labor Ministry (rather than an independent body) to determine what minimum services are required in the event of a strike. In Ecuador, workers can be sent to prison for engaging in an illegal strike or work stoppage.⁵³

B. Andean Governments Fail to Enforce Labor Laws Effectively

In addition to the clear deficiencies in Andean labor laws, administration of the legal protections that do exist is severely inadequate. Lack of resources is a problem, but so is a serious lack of political will. Corruption, delays, arbitrary decrees and administrative actions, are all common in the region, and they all tend to favor the interests of employers over the rights of workers. Judicial processes move very slowly if it all, and even when judgments are awarded in favor of workers they can be exceedingly difficult to enforce.

their small membership a sufficient number of well trained officers.” *Committee of Experts Report*, para. 195.

⁵⁰ ILO CEACR, *Individual Observation concerning Convention No. 87, Bolivia*, 2004; and ICFTU *Annual Survey, Bolivia*, 2004.

⁵¹ ILO CEACR, *Individual Observation concerning Convention No. 87, Colombia*, 2004.

⁵² U.S. Department of State, *Country Reports on Human Rights Practices – 2003: Colombia*, Washington D.C., February 25, 2004.

⁵³ ILO CEACR, *Individual Observation concerning Convention No. 87, Ecuador*, 2004; and U.S. Department of State, *Country Reports on Human Rights Practices – 2003: Ecuador*, Washington D.C., February 25, 2004.

Perhaps the most egregious example of Andean government's refusal to effectively enforce workers' rights is the case of anti-union violence in Colombia. In 2003, 90 trade unionists were murdered in Colombia, 295 received death threats, and many more were forced to move, kidnapped, "disappeared," arbitrarily arrested or harassed. Since 1986, more than 1,500 trade unionists have been assassinated in Colombia, yet in 95 percent of these cases the violence has gone completely unpunished. Despite repeated outcry from the international labor movement, other governments and international institutions like the ILO, impunity for those who murder and threaten trade unionists continues in Colombia.

C. Importance of International Mechanisms to Protect Workers' Rights

Andean countries have made a number of promises to improve labor rights in order to gain eligibility for enhanced trade benefits under the ATPDEA. Unfortunately, too many of these promises have been only partially fulfilled, leaving workers in the region vulnerable to exploitation and abuse. The U.S. government should not consider locking in additional trade benefits for the region until existing promises are fully met, and a clear plan for remedying remaining deficiencies in the regions' labor laws and administration is reached. Any grant of additional market access must be made conditional on successful implementation of this plan.

The following steps deserve particular attention in developing a framework for improving respect for workers' rights and linking it to trade benefits:

Bolivia:

- Reform the labor code to comply with the recommendations of the 1997 ILO Direct Contacts Mission.
- Promptly and effectively respond to complaints of anti-union discrimination, specifically the use of sub-contracting arrangements to undermine union organization and collective bargaining.
- Prosecute outstanding cases of murders and other attacks against trade unionists where the responsible parties have not been brought to justice.
- Seek ILO assistance and take effective action to combat child labor.
- Engage in effective consultation with trade unions regarding minimum wage-setting.

Colombia:

- Immediately sever all ties between the military and paramilitaries, beginning with the specific cases identified in the reports of human rights organizations.
- Enhance protection programs for union leaders by providing adequate funding, improving inter-institutional coordination, developing clear criteria and procedures for risk evaluation and provision of protective measures, protecting confidentiality of records, improving transparency of decision-making, and ending delays in the delivery of needed protection services.

- Investigate, arrest, prosecute, convict, and punish the persons responsible for the killings of more than 1,500 trade unionists since 1986. The Human Rights Unit of the Attorney General's office must be given a clear mandate, autonomy, and resources to prosecute violations of trade unionists' human rights including assassinations, attacks, kidnappings, and threats.
- Support an ILO Commission of Inquiry.
- Enforce Constitutional provisions implementing ILO Conventions 151 and 154 and preventing employers, including the state, from using subcontracting, collective pacts, and cooperatives to undermine freedom of association and collective bargaining.
- Promote collective bargaining, including bargaining at the industry level, with ILO technical assistance.
- Effectively enforce national laws restricting child labor, with ILO technical assistance.
- Strengthen the capacity of the Labor Ministry⁵⁴ to inspect workplaces, enforce labor laws, and promote tripartite resolution of conflicts.

Ecuador:

- Conduct a comprehensive criminal investigation of the violence against striking banana workers on the Los Alamos plantations that occurred on May 16, 2002. Those responsible must be prosecuted without delay. A complete investigation should also examine whether the perpetrators were hired and by whom, and if proven, those parties should also be prosecuted and brought to justice. The Ministry should ensure that the final rulings issued by the reconciliation and arbitration panels convened to address the workers' demands in the Los Alamos case are fully and immediately implemented, with timely clarifications if requested.
- Explicitly prohibit employer interference in workers' organizations, and, in particular, from acts designed to promote the establishment of workers' organizations under the domination of employers.
- Prohibit employers from refusing to hire trade union activists and supporters, and establish adequate and meaningful penalties to deter employers from engaging in anti-union hiring discrimination as well as anti-union dismissals. The law should require reinstatement of any worker who is fired for engaging in union activity as well as payment of lost wages.
- Allow subcontracted workers to form unions and to bargain with their ultimate employer, rather than just with the subcontractor. Ecuadorian law must ensure that an employer who has the ability to control the terms and conditions of employment is not able to avoid union organization and collective bargaining simply by employing its workers through subcontracting arrangements.
- As recommended by the ILO, the current legal threshold of thirty workers to form a union is prohibitively high, and should be lowered.
- Strictly enforce the requirement that a temporary contract negotiated to meet an "increase in demand for production or services" not exceed 180 days, and the

⁵⁴ The Government of Colombia has eliminated its Labor Ministry and transferred its functions to the Ministry of Social Protection.

burden of proof should be placed on the employer to demonstrate a “meaningful” increase. Likewise, the Ministry should enforce the requirement that all project contracts for the performance of regular workplace activities last for a minimum of one year.

- Vigorously enforce both the letter and the spirit of the law that prohibits hiring replacement workers when a minimum of 20 percent of striking agricultural workers returns to perform essential services, including in the Los Alamos case.
- Enforce the provisions of Ecuadorian law that extend the protection of collective bargaining agreements to all workers in a workplace, regardless of their status as temporary or permanent employees.
- Ensure that each province has its own labor inspector for children—a total of at least twenty-two inspectors, with sufficient training and resources to guarantee effective implementation of child labor laws.
- Establish effective programs to combat child labor, with technical assistance from IPEC and in consultation with the trade union movement.

Peru:

- Immediately approve the draft labor law reform that substantively addresses the deficiencies in current law pointed out by the ILO. This law, once approved, must be systematically and effectively enforced to address the current use of various forms of subcontracting to undermine workers’ freedom of association and collective bargaining.
- Enforce the decision of the Constitutional Tribunal in the Telefónica case.
- Recognize and enforce the right of unions to negotiate on an industry-wide basis, as recently occurred in the construction industry.
- Review all pending and future privatization initiatives to ensure that workers’ rights of association and collective bargaining are fully respected and that trade unions are given all available information and substantively consulted at each step of the process.
- Continue to seek the ILO help to promote collective bargaining and combat child labor.

III. Violations of Workers’ Rights in the Andean Region

A. Bolivia

In Bolivia, small companies of less than 20 workers comprise 90% of all the operating companies. Since the labor law prohibits the formation of unions with less than 20 members, the vast majority of workers are denied the right to organize and bargain altogether. Larger companies are increasingly hiring workers on temporary contracts, and day contracts, severely limiting the unionization of salaried workers in medium and large companies.

The state has facilitated the flexibilization of labor conditions in both the private and public sectors, contributing to the violation of international workers’ rights norms. For example, the Ministry of Labor promotes accords between employers and workers that

circumvent unions and/or clearly decrease conditions and protections for workers, such as arbitrary agreements between unions and employers that eliminate acquired rights, promote forms of unprotected work, or create work arrangements that are not covered by benefits guarantees. The Ministry also authorizes overtime and holiday work without overtime pay.

There are also serious problems with the application of the law. The Ministry of Labor has arbitrarily assumed to faculty of “recognizing” elected union leaders, when by law this is solely an internal process governed by the union’s internal statutes. There is no audit or control over compliance with labor law by the Ministry of Labor. It simply does not have the resources or political will to function. Instead of applying the law, the Ministry usually convenes a conciliation process encouraging a negotiated settlement. This is the typical action even in cases where the employer is in flagrant violation of the law.

In addition, the labor court system takes between five and seven years to decide cases so basic as payment of salaries, payment of legally mandated severance, and illegal firings. This encourages workers to negotiate solutions, which produce results inferior to those stipulated by law.

The law does not contemplate a legal strike immediately following grave violations committed by employers. It is increasingly more common that employers owe salaries for several months and that they fire numerous workers without cause. In order to strike legally, the unions must exhaust a long process that includes the presentation of a complaint or demands list, a process of negotiation with the employer that has no set time limit (a labor inspector can extend the process almost indefinitely), and finally an arbitration process. The decision by the arbitrator cannot be appealed. Only then can a union declare a legal strike, which then becomes a useless measure since it is in protest of an arbitrated decision that cannot be changed. Hence, practically all strikes are illegal, leaving the striking workers completely unprotected.

There have also been dramatic cases of violations of labor rights. Permanent violations of labor law occur in the majority of the companies and public sector, with or without unions. Compliance with the law is the exception. Common violations include:

- The firing and re-contracting workers under worse conditions and lower pay;
- The substitution of labor contracts with civil contracts for workers with regular duties in the workplace;
- The continual renewal of temporary contracts, including by municipal and local governments, despite the fact that the law requires a temporary worker renewed two times to convert automatically to a permanent labor contract;
- The sub-contracting of whole divisions of companies, thereby eliminating social security and legally mandated benefits; and
- The elimination of overtime pay and non-payment of salaries for months on end.

One of the major obstacles to the exercise of workers’ rights in Bolivia is the government’s lack of political will to apply the law. Corruption and complicity with

employers contribute to the climate of impunity and legal uncertainty for workers. The result has been the spread of precarious working conditions: in the private sector, six of every ten workers work under sub-legal conditions. Of all salaried workers, only 36% enjoy benefits of social security, with a much lower percentage in the private sector.

B. Colombia

1. USO Oil Workers Case

The Colombian government's antagonistic role in the recent USO oil workers' strike demonstrates how the Uribe administration continues to deny fundamental labor rights in violation of Colombian and international law. The collective bargaining process between USO and Ecopetrol was plagued for more than a year by the following actions taken by the Colombian government: intransigence in negotiations by Ecopetrol; persecution of the USO executive council member, Hernando Hernandez (accused of rebellion and imprisoned for a year before charges were dropped); formation of an arbitration tribunal rife with legal pitfalls; and summary imposition of the state-run company's demands. Meanwhile, the union demonstrated considerable flexibility in its negotiating position of mid-2003. When the workers declared a strike in the face of Ecopetrol's refusal to recognize their leaders and their decisions, the Ministry of Social Protection declared the strike illegal, firing 248 workers.

The declaration by the Ministry of Social Protection that the USO strike is illegal violates ILO conventions and findings of Colombia's Constitutional Court. The latter has held that the executive branch cannot declare worker protests illegal when the state is the employer, because it violates guarantees of impartiality in the administration of justice. The ILO has repeatedly recommended that Colombia modify laws that allow administrative level decisions regarding the legality of strikes in state-owned entities since such decisions should be the jurisdiction of independent courts.

The firing of union members since the beginning of the strike, including executive committee member Hernando Hernandez and USO President Gabriel Alvis is an open violation of their constitutional and internationally recognized rights. Such overt disregard for legal rights and processes by the Colombian government has often converted these unionists into targets of the paramilitary since the union, its leaders, and their activities have been categorized as criminal rather than valid manifestations of workers' rights to organize and bargain collectively and strike.

The commission formed to negotiate the status of the 248 fired workers did not meet for several weeks; and no workers have been reinstated. Of the 248 workers fired, only 87 will receive their pensions. For its part, the Ministry of Social Protection issued decree 2160 on July 13, 2004, which advances efforts to dismiss union workers who have specific legal protections against such firings.

2. Ministry of Social Protection

The Ministry of Labor was recently fused with the Ministry of Health to form the Ministry of Social Protection. The Minister has stated clearly that it is not the Ministry's policy to get involved in labor disputes, arguing that employers and workers need to resolve them for themselves. As in the USO case, however, the Ministry does make a practice of declaring strikes illegal. Furthermore, the Ministry's role in industrial relations has been reduced by dismantling the department previously dedicated to promoting resolutions to conflicts through mediation and other means (including collective bargaining). As a result, in most labor conflicts the Ministry is simply absent. Rather than playing a clear institutional role, the Government of Colombia's practice has become arbitrary and inconsistent. For example, President Uribe did take a personal role in a recent conflict in the banana sector. But if the Ministry had been functioning as an institution, it would not have been necessary for the president of the country to personally promote a solution.

3. The Inter-Institutional Commission

The Inter-Institutions Commission for the Promotion and Protection of the Human Rights of Workers, chaired by the Vice-President, has made a public commitment to promote respect for the right to collective bargaining and the right to strike. It has stated that it will seek to harmonize Colombian legislation with ILO Conventions (specifically Conventions 87, 98, 151 and 154), push for their application in practice, and adopt measures to ratify new conventions.

Unfortunately, at the national level, the Inter-Institutional Commission has done nothing for over four months. Meetings have been proposed, but no dates have been set. The Commission, like the Ministry of Social Protection, depends on political will that varies with time and place. In the Valle de Cauca, Governor Angelino Garzón (a former national labor leader and Minister of Labor) has made it a priority that the commission function in that department.

4. Recent Events in the Sintraemcali Case

Carlos Alfonso Potes, Director of the EMCALI public services company, declared their recent protest actions by the SINTRAEMCALI union illegal, and fired sixty workers, including SINTRAEMCALI President Luis Hernandez and 5 other members of the union's leadership, on July 14, 2004. These firings took place as Potes has been denounced as corrupt, including by the Prosecutor General, who has suggested that Potes resign. Currently there are 250 corruption cases being brought regarding EMCALI, worth approximately US \$750 million. Yet President Uribe and the superintendent of public services, Eva Maria Uribe, continue to support Potes.

Management continues to blame the union's collective bargaining agreement for its financial troubles, while the union points to corruption on the part of management and local politicians as the true source of EMCALI's financial problems. Sintraemcali has consistently demonstrated that the publicly owned company is viable, but that is burdened with loans that benefit banks and corporations at the expense of Cali residents.

The union has provided alternative plans to improve efficiency, concede some of their own wages, and provide services to Cali's poorest communities. As in the privatization conflict in the water sector, violence against Sintraemcali has accompanied the public debate: workers and active members of the union have been assassinated; a hundred have been arbitrarily detained; five are in exile; and ten have been victims of assassination attempts. While the previous government signed an agreement agreeing not to privatize the company, President Uribe acted immediately to privatize the company rather than negotiate with the union.

These recent actions indicate that the Government of Colombia is currently moving in a direction that weakens rather than strengthens core labor rights. Particularly as the United States negotiates a free trade agreement with Colombia, pressure should be applied to make Colombia respect worker's rights and protect labor leaders as they participate in labor relations and civil society in general. Given the fact that Colombia arguably has the worst record and practices on protection of fundamental workers rights in the hemisphere – and given the demonstrated links among the paramilitary, the official military, and justice system that play a key role in these abuses and the impunity around them – the United States should ensure that rule of law and respect for human rights are strengthened, not weakened, in the process of negotiating a new trade agreement.

C. Ecuador

Recent government decrees in Ecuador are weakening, rather than strengthening, an already deficient legal system for the protection of workers' rights. A government decree of July 2003 bans the hiring of any public sector workers as formal employees of public entities. A separate decree states that all new hires must be made through subcontracting arrangements. These restrictions greatly limit the right of public sector workers to organize and bargain collectively with their ultimate employer, the state. A regulation issued in May 2004 by the Ministry of Labor in order to clarify the Civil Service and Administrative Careers Law, restricts workers' right to collectively bargain by requiring parties negotiating collective bargaining agreements in the public sector to procure a Ministry of Economy report certifying that there are sufficient financial resources to cover any negotiated increases.

The Labor Ministry denied the registration of the Regional Union of Flower Workers in November 2002, an industry-wide union, claiming that the Labor Code only allowed workers of one specific employer to unionize. With a new administration and labor minister, the flower workers again attempted to register their union in October 2003, but were denied based on the same reasons. As of 2003, only 300 workers out of about 50,000 were unionized in this industry.

In addition, the government refuses to register unions who submit applications with small technical mistakes such as irregularities in the format and presentation dates, making it unduly difficult for workers to exercise their right to organize. In July 2004, the Labor and Social Commission of the National Congress denied Quito based workers

employed by SICOBRA (a Chilean-owned financial institution) of their right to form a union by denying their registration because of small technicalities in the application process.

Though Ecuador agreed to issue “new procedures” for the police to protect strikers as part of its qualification for ATPDEA benefits, the promise has been unfulfilled. The Ministry of Labor supposedly wrote to the police recommending that they comply with the regulations already in the law, but there was no new decree or regulations issued, and no substantive legal reform. No changes in police action have been noted by trade unions on the ground, nor reported by the government.

D. Peru

In 2000, the ILO developed 16 recommendations to bring Peruvian labor law into minimum compliance with standards. The Peruvian government has complied with 12 of them. There are improvements in the law, but the application of the new laws is slow in coming. In addition to these piecemeal reforms, the general labor law needs to be passed in order to bring the full labor law into compliance. To date, the new general labor law has been under tripartite negotiations for two years with little movement to introduce or pass comprehensive reform.

Application of the law is also a problem in Peru. The law protects collective bargaining rights but in practice this right is constantly violated. Employers often refuse to negotiate, causing the conflict to go to arbitration. In addition, while the law establishes and the Supreme Court has upheld the right of workers to negotiate by industrial sector, the business sector has refused to comply and the Ministry of Labor has not enforced the law. Also, the new labor inspections law is not being applied due to lack of financing of the Ministry.

Workers fired for union organizing have to challenge their dismissals in court, a process that usually takes 2 to 3 years. In such cases it is common that the union is eliminated before fired workers can be reinstated. Employers are increasingly utilizing subcontracting and continuous renewal of temporary contracts to prevent unionization.