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## Colombia: reformas con sesgo antilaboral, derechos laborales en vía de extinción

Colômbia: reformas com viés antilaboral, direitos do trabalho na rota da extinção

Colombia: reforms with antilaboral bias, labor rights in extinction route

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### RESUMEN

Colombia se caracteriza por una política estructural antilaboral, el modelo económico adoptado históricamente ha desconocido y perseguido a las organizaciones de los trabajadores, no ha desarrollado una estructura laboral formal y se distingue por la marginal democracia en las decisiones que afectan el mundo del trabajo. Este modelo estructural se ha profundizado en los albores del siglo XXI, mientras en otros países del continente se tomaban medidas que frenaban el avance de la flexibilización de las normas laborales y se aumentaba la participación de las organizaciones de los trabajadores, Colombia continua en la senda de políticas antilaborales, dando como resultado que durante las primeras décadas del siglo XXI la participación del trabajo en los frutos del crecimiento económico fue precaria y marginal. Este modelo continuó siendo de carácter antilaboral no solo en la falta de participación en lo económico sino en la misma ordenación jurídica, ya que sumada a la estructural falencia de derechos laborales y a la reforma de los años 90's, los gobiernos del siglo XXI llevaron adelante una serie de reformas carácter flexible y precarizador. Puesto esto, el artículo quiere mostrar la desestructura del mercado laboral colombiano, reforzada con las dos reformas laborales de las últimas décadas, sumadas a las pequeñas reformas que han transformado el sistema de seguridad social, la estructura de la tributación caracterizada por ser antilaboral, para finalmente, debatir algunas propuestas que sirvan para mejorar las condiciones de la población trabajadora en medio de un proceso de negociación que ha terminado una histórica guerra y que permite mostrar la realidad de nuestro país.

**PALABRAS CLAVE:** Reforma Laboral. Colombia. Trabajo. Precariedad.

### RESUMO

A Colômbia é caracterizada por uma política antilaboral estrutural, historicamente o modelo econômico adotado ignorou e perseguiu organizações de trabalhadores, não desenvolveu uma estrutura formal de emprego e distingue-se pela democracia marginal nas decisões que afetam o mundo do trabalho. Este modelo estrutural se aprofundou no século XXI, enquanto em outros países do continente tomavam-se medidas que impediram o avanço das normas laborais flexíveis e se aumentava a participação das organizações de trabalhadores, a Colômbia continua no caminho de políticas antilaborais, tendo-se como resultado nas primeiras décadas do século XXI uma participação do trabalho nos frutos do crescimento econômico de forma precária e marginal. Este modelo permaneceu de caráter antilaboral não só na falta de participação na vida econômica, mas também no próprio ordenamento jurídico, uma vez que, somada à falência estrutural dos direitos trabalhistas e à reforma dos anos 90, os governos do século XXI levaram adiante uma série de reformas de caráter flexível e precarizante. Por isso, o artigo quer demonstrar a desestrutura do mercado de trabalho colombiano, reforçada pelas duas reformas trabalhistas das últimas décadas, juntamente com as pequenas reformas que transformaram o sistema de seguridade social, a estrutura da tributação caracterizada como sendo antilaboral, para, finalmente, debater algumas propostas que sirvam para

melhorar as condições da população trabalhadora em meio a um processo de negociação que pôs fim a uma guerra histórica e que permite mostrar a realidade do nosso país.

**PALAVRAS-CHAVE:** Reforma trabalhista. Colômbia. Trabalho. Precariedade.

**ABSTRACT**

Colombia is characterized by a structural anti-labor policy, historically the adopted economic model has ignored and persecuted workers' organizations, has not developed a formal employment structure and is distinguished by marginal democracy in decisions affecting the world of work. This structural model deepened in the 21st century, while in other countries of the continent measures were taken to impede the advance of flexible labor standards and increased the participation of workers' organizations, Colombia continues in the path of anti-labor policies, resulting in the early decades of the 21st century in a precarious and marginal share of labor in the fruits of economic growth. This model remained anti-labor in not only a lack of participation in economic life but also in the legal system itself, since, added to the structural failure of labor rights and the reform of the 1990s, the governments of the 21st century carried out a series of reforms with flexible and precarious nature. Therefore, the article wants to demonstrate the disruption of the Colombian labor market, reinforced by the two labor reforms of the last decades, together with the small reforms that transformed the social security system, the structure of taxation characterized as anti-labor, to discuss some proposals that serve to improve the conditions of the working population in a process of negotiation that put an end to a historical war and that allows to show the reality of our country.

**KEYWORDS:** Labor reform. Colombia. Job. Precariousness.

## INTRODUCTION FOR A HISTORICAL CONTEXT

Colombia, since its formation as a Republic, has been part of the countries defined as late capitalism (MELLO, 1998). These countries that enter capitalism late are characterized by being economies with a productive heterogeneity, structural problems of land ownership and capitalism insertion dependent on the external market.

The colonial production structure generated structural elements in the formation of the labor market in Colombia, as well as the role of land and the formation of an incipient business sector. The Colombian modernity has been developed in a mixture of light industrialization and large and productive landholdings, with income being one of the main drivers of the owners' income.

Ocampo (1984) defines that business behavior was based on production and speculation. Entrepreneurs would only start productive processes if the external prices of these products were high. With the objective of appropriating extraordinary profits due to the scarcity effect, "there

was no interest in reinvesting profits in the development of productive capacity, but in making easy profits under conditions in which, virtually, any type of production would be profitable” (OCAMPO, 1984 in RODRÍGUEZ Y ARÉVALO, 1994).

The productive colonial structure was only possible with compulsory, servile or slave labor and varied according to the type of product and the conjunction between native communities, Iberian colonizers and African slaves. In most cases, these production characteristics generated a tendency to monoculture, normally defined according to the cycle of world prices, the needs of the metropolis and the non-competition with its products. In addition to this, the type of production that defined the colonial agrarian systems were mostly tropical crops, large areas and with a large amount of available labor. That did not press the generation of technological improvements that increases productivity, which did not allow a second agrarian revolution in the continent (CARDOSO Y BRIGNOLI, 1984).

This system of relations configured in the colony, which could not be completely eliminated with the independence and conformation of the Republic, generated a conservative, anti-labor and retrograde structural element in labor relations in Colombia.

The American historian Frank Safford characterizes the Colombian society of the nineteenth century, (which also marked the twentieth century) as a society in which the aristocratic values of its upper class predominated – and within these was the contempt for manual labor. Nevertheless, another trend coexisted with a presence in the ruling class, who also observed that traditional values and patterns of behavior were one of the obstacles to economic development, stating that the socio-economic structure of the country is one of the factors that contributed most to frustrate the desire to create a technical elite (SAFFORD, 1976).

The distribution of governments between the two traditional parties and the conservative and rentier mentality of the entrepreneurs did not allow the development of an advanced industrialization process as did Brazil or Argentina. Yet, the model of import substitution or industrialization led by the State developed economic, social and labor infrastructure in Colombia.

The industrial sector reached intermediate levels, accompanied by a strong coffee and sugar production, added to the mining and oil sector.

Regarding industrial relations, this era marked the structuring of a more developed labor market with the consolidation of industry and state companies that defined the main sectors that generated employment. The Substantive Labor Code in Colombia (CST) is created with Act 141 of 1961, adopting a labor regulatory system with recognition of current labor rights.

During the 1980s, Colombia experienced the dismantling of the import replacement model and the change of economic model towards one with dominance of exports and commercial and financial openness, a process that is very similar to that of Latin American neighbors. However, the consequences of this dismantling of the model defined two particular characteristics of the Colombian process; the first was the development of a strong illegal economy linked to drug trafficking and, the second one, the low level of external indebtedness that allowed Colombia to avoid the crisis of the debt, which affected several countries of the continent.

Thus, by the end of the 1980s, the beginning of the 1990s, Colombia lost industrial participation in the economy, and established itself in the way of the specialization of the production of primary products, with low added value and a labor market every time more unstructured and precarious. In coexistence with a strong presence of illegal activity that maintained the historical economic, political and social structure of Colombian rentier elites.

This was accompanied by the escalation of political violence between the State and the insurgent actors, who represented the rural resistance forgotten by the elites that have held power since the Republic onset. The war touched all spheres of society, and the anti-labor bias was not only formally represented, but it also acted illegally through increased union violence. The 80s and 90s were marked by murders of union leaders, displacement and little institutional recognition of workers' organizations. Few were the breakthroughs in labor and trade union

rights. Instead, the change of model towards flexibility made the already negative panorama of the labor world in Colombia worse.

Colombia enters Neoliberalism in the late 1980s with a "gradual opening" and early 1990s with the accelerated implementation of the Decalogue of the Washington Consensus. However, this breakthrough in economic matters was accompanied by a peace process, resulting in a constitutional reform.

The reforms are developed in the middle of a peace process with a few armed groups, which resulted in the elaboration of a new Constitution in 1991. In the *Magna Carta*, Colombia is defined as a Social State of Law, which means that it is consigned that the State has the obligation to provide social services; likewise, a series of legal procedures were granted to individuals, providing them with greater action to defend their fundamental rights, together with this the creation of the Constitutional Court which is responsible for ensuring the compliance with the Constitution.

However, much of the responsibilities that the State had to fight poverty and ensure social welfare were forgotten when the economic opening process led by the government of Cesar Gaviria (1990-1994) began. In this government, the reform package was accelerated, and among its most important achievements are Act 50 from 1990, the Labor Reform, and Act 100 from 1993, which reforms the healthcare and social security system, together with the tax, exchange and foreign trade reforms, all approved in a short time and that consolidated the Colombian opening process.

Despite the peace process signed with the 1991 Constitution, as previously stated, violence against social organizations, in general, and trade unions in particular, was especially brutal in the 1980s and 1990s. The murders, persecutions and hijacking of leaders and their organizations reached more cold-blooded levels than what was being done in many countries during their dictatorships. In this sense, the reforms in this country were deeper and the weakness of the union structures could not cope with this process.

In the beginning of the 2000s, we had a panorama with a low development of industrial integration, in the context of the structural stagnation of the industry, given by its articulation to world trade and its concentration in intensive activities regarding natural resources, leading to a productive restructuring that bases its competitiveness on subcontracting and reducing labor costs based on labor flexibility (PINEDA, 2015).

## **1 STRUCTURAL REFORMS IN THE 90s AND DEEPENING IN THE 21<sup>st</sup> CENTURY**

The transformation in the 1990s in socio-labor matters had as its central axis Act 50 of Labor Reform and Act 100 of Social Security. These two reforms have been perfected during the following decades, in order to strengthen the accumulation process with loss of labor rights and the specifically financed accumulation, characteristic of contemporary capitalism.

## **2 LABOR REFORMS TOWARDS FLEXIBILIZATION**

The economic strategy in Colombia during the first two decades of the 21<sup>st</sup> century, especially with the Uribe (2002-2010), Santos (2010-2018) and continuing Duque (2018-today) governments is based on the mining and agribusiness sector. The commitment of these three governments has been to deepen the measures of economic opening and pull up foreign investment for mining and oil projects. Thus, the economic policy has had a single and coherent continuation strategy of neoliberal insertion and subordinated to contemporary capitalism.

The Colombian political, social and economic context in the late 1990s and early 2000s provided the basis for the rise of a right-wing, liberal economic and conservative political government. The failure of the peace process with the insurgency carried out with the government of Andrés Pastrana (1998-2002) in addition to the effects of the 1999 crisis led Álvaro

Uribe Vélez to the presidency, who came up with a frontal war and security talk aimed at the big capitals, nominated by the campaign named “Democratic security and investor confidence”.

Colombia continues the path of a “development model with anti-labor bias” (Pineda, 2015), resulting in the participation of labor in the fruits of economic growth being precarious and marginal during the first decade of the 21<sup>st</sup> century. This model continued to be anti-labor in nature, not only in the lack of participation in economic matters but also in legal matters, since in addition to the structural lack of labor rights and the reform of the 1990s, the Uribe government carried out a process of flexible and precarious reform.

As stated above, the line of flexible labor reforms and the dismantling of rights has been clearly observed since the 1990s. Act 50 of 1990 modifies the Substantive Labor Code (CST) and gives legal framework to the labor flexibility process. The objective was to “modernize” the labor jurisdiction to face globalization. This act introduces the flexibility of employment contracts, implementing fixed-term contracts, temporary employment and diversifies the types of subcontracting. Likewise, it creates the integral wage, defines more clearly the concept of collective dismissal and eliminates the reimbursement action, among other measures.

One aspect to highlight the Act 50 is the modification of the *Cesantías* system<sup>1</sup> eliminating retroactivity and establishing administration through Funds (private or public) by opening up the financial sector to encourage the demand for securities in the stock market. This, together with the creation of Private Social Security Funds (with Act 100 from 1993), is an essential part of the change of model towards insertion in the financing process, which is a characteristic of this period marked by capital accumulation.

As expressed by Fajardo and Guataquí (2000), the Labor Reform is presented as a key part of the opening process, and therefore, as an axis to increase the country's competitiveness. In

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<sup>1</sup>The so-called "Cesantías" are a mandatory labor income that employers must pay as a monthly salary per year and must be deposited in a public or private Fund. This money can only be used for housing, education or as income for the unemployed while they get a job again.

that sense, the problem was focused on high labor costs and rigidities in legislation that did not allow attracting foreign capital to invest in the country.

The vision of work as a cost permeates reforms aimed at solving the inherited crisis of the 90s and the high structural levels of unemployment, informality and precariousness. In this way, the first decade of the 21<sup>st</sup> century witnessed the strengthening of the process of flexibility in the labor world. The reforms that were carried out in the 2000s were of continuous deregulation and reduction of labor rights.

During the two presidential periods of Álvaro Uribe Vélez (2002-2010), labor policies were carried out in accordance with the neoliberal objective; however, economic growth did not affect higher levels of employment or improvements in the quality of work. The axis in labor matters was Act 789 from 2002, known as the "Labor Reform", whose content had a clear tendency to deepen flexibility, focusing on "labor costs" as a market problem.

Act 789 from 2002 addressed the labor issue from several fronts. One was the creation of an assistance programs system named "limited coverage and temporary nature"; a second front, making labor relations more flexible, and a third one, reducing labor costs for companies with night and Sunday operations (increase in working hours, decrease in overtime) were created, together with the decrease in the dismissal costs of former workers (GAVIRIA , 2004).

One of the signs of the weak presence of a policy aimed at labor protection was the merger of the Ministry of Labor and Social Security with the Ministry of Health through Act 790 from 2002, creating the Ministry of Social Protection. This merger sought to consolidate the private sector as a provider of essential services, strengthening the path already imposed by Act 100 from 1993 that created the Integral Social Security System in Colombia, beginning the entry of Private Social Security Funds (FPP) and Healthcare Providing Companies (EPS), for this reason, decreased the provision of these services by the public sector.

The few policies to support employment generation were aimed at increasing the mechanism of Learning Contracts managed by Sena and at focused and short-term policies by the

Presidency; in general, there was no integrated package at the time of policies that favored the creation of quality jobs, and these were far from transforming the structural conditions of the labor market, with a high degree of informality and precariousness (SANCHEZ, 2011).

The policy aimed at promoting employment via demand was perhaps the most used during the Uribe government as a labor "policy", the objective is to reduce labor costs to encourage employers to increase hiring. This policy can be linked to both the labor reform of 2002, as a series of temporary programs, as the exemption of payment of parafiscals<sup>2</sup> on the part of the companies, refined by means of the Tax Reform of the Santos government (2010-2018) which "replaces" them with a single tax, with the objective of encouraging companies to create formal employment, something that has not taken place.

Regarding the Minimum Wage (MW) after the unification at the national level of the minimum wage determination policy in 1984 and the change in the definition of the adjustment, based on the expected inflation in the mid-1990s (CORTÉS, 2010), the determination of the minimum wage is made by forming a negotiating table between the Government, the representatives of the employers and the representatives of the workers (the Trade Union Centrals). If the negotiation is not successful, the Government defines the wages by means of a decree. During the 2000-2017 period, tripartite wage negotiations would normally fail, thus forcing the MW to be defined by Decree, in general, wages were set closer to the proposal of the business associations than to that of the unions.

In general terms, the increase in wages in the first decade of the 21<sup>st</sup> century has not exceeded inherited levels of precariousness,

[...] the minimum wage, the wage of workers and manufacturing employees, during the period 1975-2005, have grown in real terms at

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<sup>2</sup>Parafiscals are mandatory contributions that correspond to employers for the benefit of its workers. They were part of the policies of the meager Colombian welfare state and are intended for family compensation funds, to the Colombian Family Welfare Institute –ICBF– and to the national learning service –SENA.

0.25%, 1.45% and 2.38% respectively. The depression of wages deepens especially in the period of 1990-2002 and accompanied by unemployment rates above 16% (...) As we analyze the results before and after the opening, it is found that in the period of 1975-1990, the annual productivity was 1.37%, while in the 1990-2005 period of opening of the Colombian economy, labor productivity was 0.47% and the minimum wage in real terms was 0.24% and 0.12% respectively (RODRÍGUEZ, C; et al ., 2008).

Thus, the new century has not brought any major changes in terms of labor flexibility policies. Instead, the measures taken deepened them, even the policy of support for capital was even clearer under the “Democratic security and investor confidence” program that strengthened the tax exemptions and the necessary support to ensure private investment, strengthening the policy of reducing labor costs and subsidizing capital. This is corroborated by many researchers in Colombia, even from different ideological positions.

The programs that integrated Álvaro Uribe's government labor policy did not change the conditions of employment or the structure of the labor market, nor was it possible to generate as much employment as was proposed at the onset of the mandate. (SÁNCHEZ, 2011, p. 212)

In sum, the [labor] reform did not adversely affect the quality of employment but it has not been effective either to boost demand for formal employment and to enhance the effects of economic recovery. (GAVIRIA, 2004, p. 28)

The continuity of the labor policy occurred with the Santos government (2010 - 2018), added to the strategy of specialization of mining-energy production, which the development program referred to as the “mining locomotive”, making reference to the fact this sector would be one of the drives of the economic growth.

The argumentation against labor continues to be "labor as a cost." In that sense, the Santos government advances two policies that finally contradict each other, one that aims to reduce labor costs by decreasing parafiscal costs on the payroll, and another one a "labor formalization" strategy. These two strategies were defined through Act 1429 of 2010, on formalization and generation of employment, and 1607 of 2012, on tax reform (PINEDA, 2015).

### **3 BALANCE FOR THE 21<sup>ST</sup> CENTURY<sup>3</sup>**

After a contextual explanation that shows the structural problems in the labor world since the formation of the Republic of Colombia, a quick tour through the reforms of the 90s and of the 21<sup>st</sup> century was made, which leaves us with a panorama that requires a balance on the variables and indicators of the Colombian labor world.

Below is a brief balance of the main variables of the labor world in Colombia, presented to show the structural precariousness that was not resolved, and in some cases, it was deepened. It is expected to give an overview of the tasks still pending and some that are observed more closely today (such as gender gaps) that require a comprehensive labor policy with bias towards work, that is, a reform that observes work as a human right, as an essential part of the development of individuals and societies, and not as a "cost." Hence, the final reflections will be used where some proposals are shown.

### **4 LABOR WORLD: UNSOLVED STRUCTURAL PROBLEMS**

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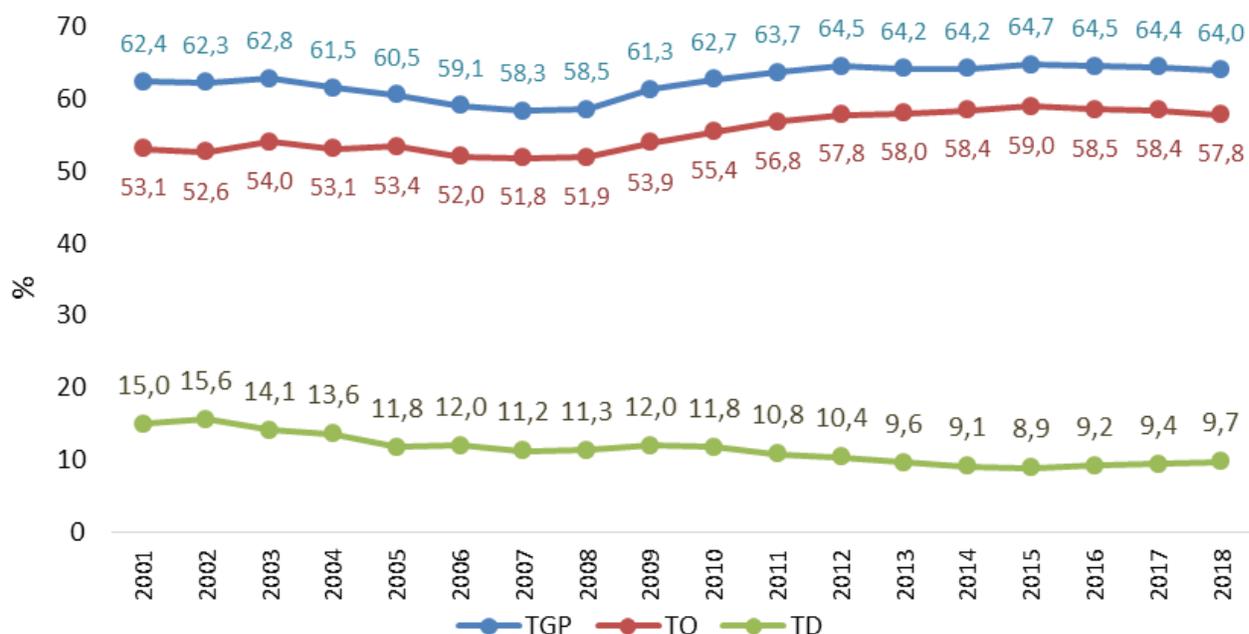
<sup>3</sup> This section has elaborated sections taking data and analysis of the 2018 joint report from the National Trade Union School (LABOR INFORMATION AGENCY, 2018).

The major structural problems presented in the Colombian economy are a pending debt. Instead of sorting them out, the governments of the last decades have either worsened transformed them without real improvements. Income inequalities, gender gaps, high levels of informality, the precariousness of formal jobs, among others, refer to a labor world with large tasks and few labor policies.

In the 21st century, the variables of the labor world have not substantially varied. As shown in Figure 1, although there has been an increase in the employment rate and the decrease in unemployment (although the 2019 figures are showing increased unemployment at rates of more than two figures), the variations are not substantial and drag the structural problems of a renting economy with an anti-labor bias.

### **Graph 1**

#### **Colombian labor market 2001-2018**



TGP (GPI) – Global Participation Index

TO (OI) – Occupation Index

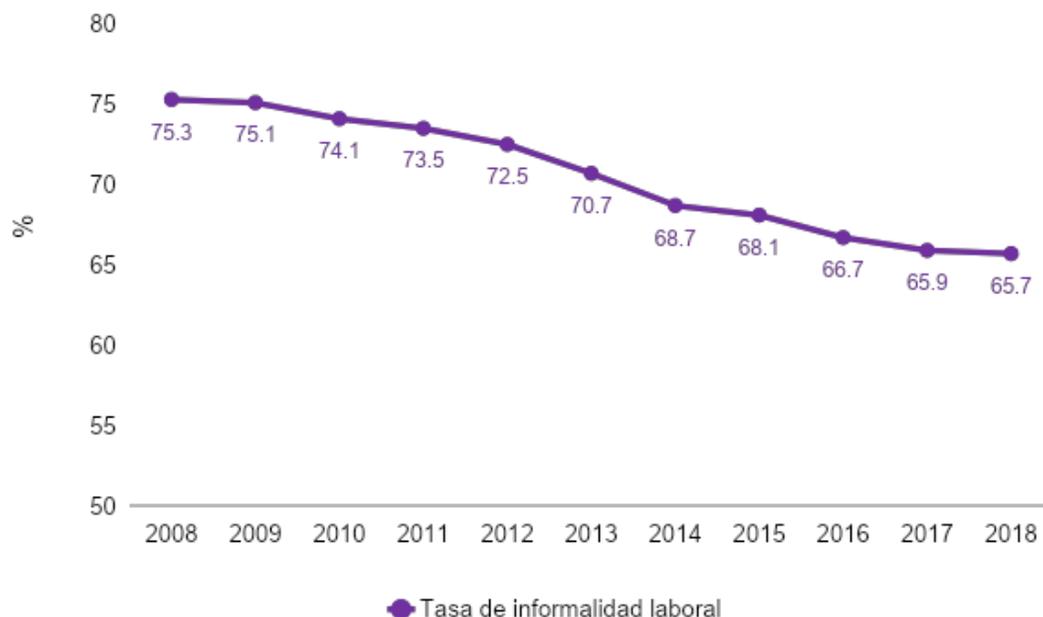
TD (UI) – Unemployment Index

Source: DANE. Large Integrated Household Survey

Labor informality in Colombia is one of the highest in the continent and, as it is known, its measurement is complex since there is no complete and commonly accepted methodology. For this reason, in this work, we are measuring informality through the indicator “access to health, pensions and occupational risks”. Taking this measurement into account (see Chart 2), informality has fallen in the 2008-2018 period<sup>4</sup>. However, it is important to clarify that it is still significantly high, considering that 65.7% of the population that still has no access to basic social security.

## Graph 2

<sup>4</sup> This period of time is only taken because there are problems with the compatibility of the series due to changes in methodology.

**Informality Index (by access to healthcare, pension and occupational hazards)**

Source: Own calculations with information from the Labor Information Source of Colombia (Filco) of the Ministry of Labor.

One reason that can explain this result was the measures taken by the Santos government where service workers are forced to join social security to be hired, but, these jobs are for short periods of time, and there is no formal labor contract. In that sense, being naturally irregular jobs, they do not really have this coverage nor would they respond to a real concept of formality. A figure that reinforces this argument is the coverage of the social security system.

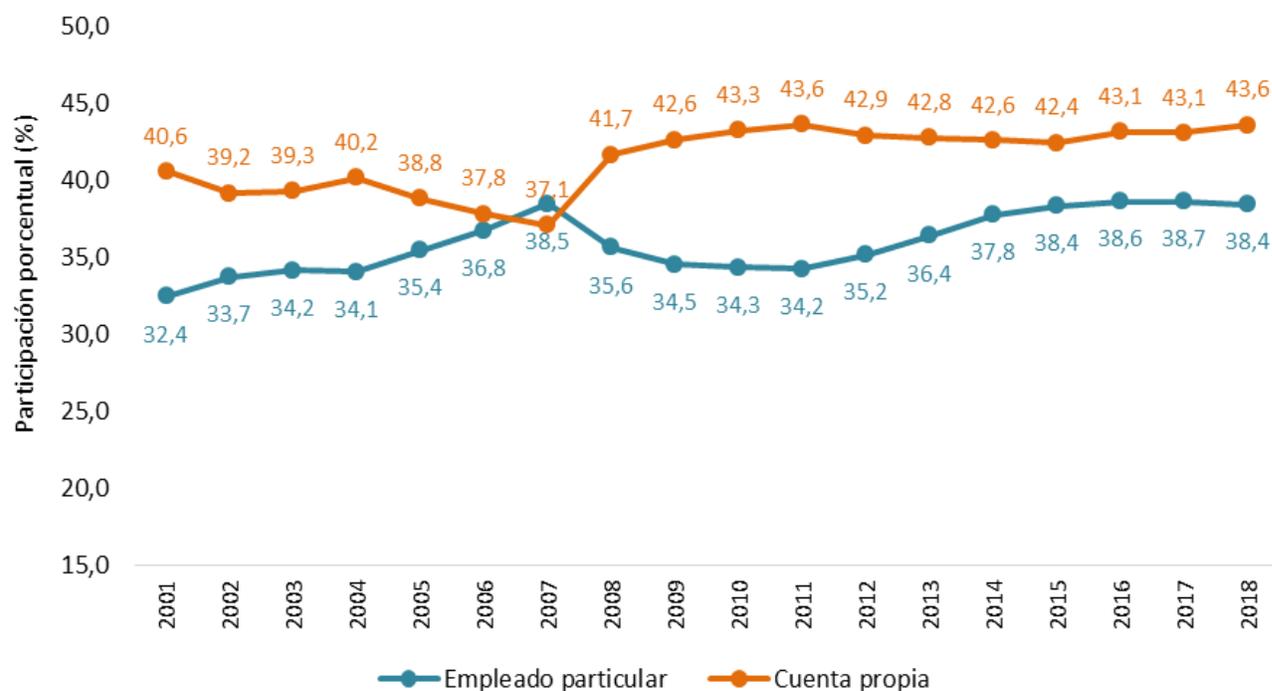
According to data from the Ministry of Finance and Public Credit, the quotient between taxpayers and the employed population had an upward rise from 31%, at the beginning of 2017, to 36% in June of the same year. This would mean that 1.08 of every 3 employed Colombians contributed to the social security system at the last date. Yet, the figures may change if we review other sources of information. The National Trade Union School (ENS, 2017) – noted in its latest

study on the employment situation that "... out of 10 employees, 5 participate in a situation in which only 3 are taxpayers and only 1 manages to retire." And, in the same article, it stands out that only 32 out of every 100 adults benefit from social security. (PANIAGUA, 2019)

Another indicator that shows the easing trend of reforms is the relationship between private workers and autonomous workers, as Figure 3 shows, the ratio between private and self-employed has always been negative. Until before the 2008 crisis, the trend was to be reversed, however, the crisis and its non-recovery has reinforced the trend and today, the autonomous workers are the greatest occupation that Colombians have, as shown in Table 1.

**Graph 3**

**Private and autonomous workers**



Source: Own calculations with information from DANE. Large Integrated Household Survey.

**Table 1**

Population employed by gender and occupational position									
National Total - Data for the first quarter of each year									
Concept	Jan-Mar 2017			Jan-Mar 2018			Jan-Mar 2019		
	Total	W	M	Total	W	M	Total	W	M
Total National Employed Workers	21754.7	41.2	58.8	21831.1	41.0	59.0	21945.0	41.1	58.9
Private Employed Workers	8509.7	41.4	58.6	8556.5	41.3	58.7	8692.1	41.0	59.0
State Employed Worker	791.6	47.3	52.7	784.1	48.2	51.8	874.8	46.7	53.3
Domestic employee	679.0	96.9	3.1	620.2	94.6	5.4	692.6	95.3	4.7
Autonomous Worker	9448.8	38.4	61.6	9469.8	38.0	62.0	9388.9	38.9	61.1
Boss or employer	836.7	23.4	76.6	907.9	28.2	71.8	799.4	25.7	74.3
Unpaid family worker*	827.4	64.8	35.2	863.8	63.7	36.3	780.8	62.8	37.2
Laborer or pawn	647.1	6.0	94.0	612.9	6.6	93.4	703.0	5.0	95.0
Other	14.3	75.9	24.1	15.9	79.2	20.8	13.4	56.0	44.0

Source: DANE - Large Integrated Household Survey

Note: Results in thousands. As a result of rounding in thousands, totals may differ slightly.

W: women, M: men.

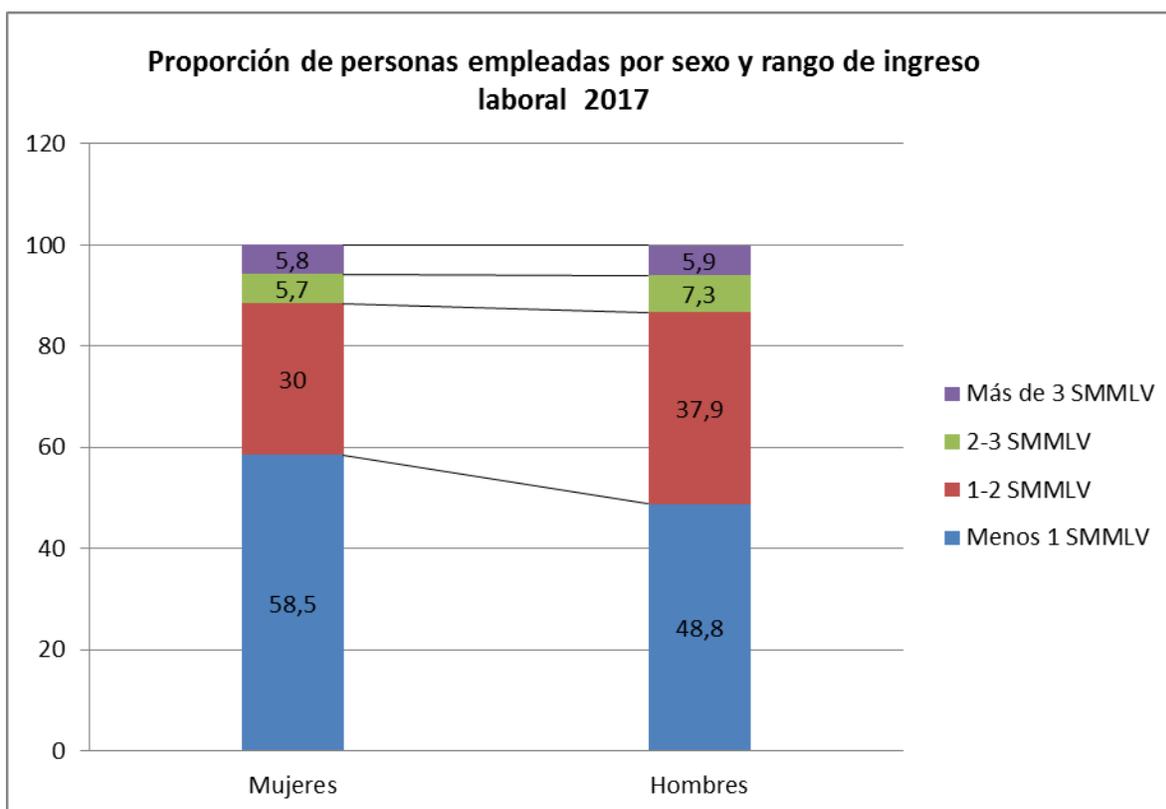
\* Includes unpaid family workers in companies or businesses in other homes as of August 2006.

In terms of labor income, added to the above in relation to the minimum wage, the precarious structure of income in Colombia is one of its main characteristics. As shown in Figure 4, for 2017 the income structure is extremely precarious and even more so when analyzed with a gender approach. We know that almost half of the men employed earned up to a minimum wage<sup>5</sup> while almost 60% of the women had such income. If we see the graph we notice that practically between 85% and 90% of the Colombian population earns up to two minimum wages, a value that does not reach the value of the Minimum Living Wage, that is, they do not even have access to the basics to survive.

#### Graph 4

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<sup>5</sup> For 2017, the minimum wage was \$ 737,717, more or less equivalent to US\$ 250.00. Given that the value of the Minimum Living Wage would have to be \$ 1,600,000, approximately US\$ 550.00.



*Ratio of people employed by gender and liberal income range 2017*

*More than 3 SMMLV*

*Less than 1 SMMLV*

*Mujeres = Women*

*Hombres = Men*

LVMMW (SMMLV) - Legal Valid Minimum Monthly Wage

Prepared by Garcia and Morán (2018, page 73). Source: Dane, Large Integrated Household Survey

## **5 OUTSOURCING OR CONTRACTS DISGUISED OF WORK**

Within the great transformations of work in contemporary capitalism, business practices have been extended, both in the public and private sectors, of hiring strategies that hide formal labor relations through outsourcing processes, which make hiring more flexible, evade responsibilities with respect to acquired rights and manage to prevent unionization. Colombian legislation, as stated above, allows, on one hand, to legalize these practices, and, on the other, to have a sufficiently weak control system that adapts to the needs of companies that reduce labor costs.

In that sense, different strategies have been presented to outsource labor relations, until 2012 the main outsourcing figure was the Associated Labor Cooperatives (ALC), which in 2012 were estimated at 2,857 cooperatives that linked 386,138 workers, who provided their services to third parties. By 2016, they had fallen to 724 ALCs outsourcing 90,230 people. Breaking with the essence of the ALCs as collective work strategies, in Colombia they were used to transform direct contracts into contracts through these companies, workers who were dismissed from the companies, were again hired by this mediation, without rights and under precarious conditions, the most common sectors in the use of these practices were personal cleaning and security services.

Nonetheless, thanks to the struggles of Colombian unions with the support of United States unions, this illegal form of contracting was unmasked, which explains the drop in the number of contracts. In spite of this, the ALCs were partly replaced, as an outsourced form of contracting by the Temporary Services Companies (TSCs) that were close to disappearing due to the rise of the ALCs and grew from 2012 offering companies the hand of work of 595,590 people; and in 2016 they grouped 480,366 workers.

In addition to the TSCs, the decline of the ALCs caused some to become paper “unions” that were used to sign Trade Union Contracts with public and private companies, especially in the health sector, to provide the companies with personal, unfulfilled fully labor laws and opacity due to lack of reliable records. However, according to data from the ENS (2018) it was possible to

collect the information that in 2012, 708 union contracts were signed, and in 2016 they accumulated to approximately 1,026.

In addition to this scenario, flexibility and outsourcing are reflected in the massive use of the figures of Simplified Shares Societies – SAS- and Service Provision Contracts that do not become part of labor contracts and, therefore, are not covered by current labor standards.

One aspect that is worth highlighting is that the Santos government somewhat differed from previous governments due to its interest in becoming part of the Organization for Economic Cooperation and Development (OECD) and bilateral agreements with the United States within the signing of the Free Trade Agreement between the two countries. In that sense, under pressure from unions in the United States and other countries, regulations were enacted with the interest of eliminating or controlling outsourcing. Thereby, since 2011, under of Act 1429 of 2010 and Decree 2025 of 2011, a proposal was made to change fines for new jobs, creating the Labor Formalization Agreements – AFL. Unfortunately, it has been an innocuous or a low impact figure, since between 2012 and 2017, 260 AFLs were signed, benefiting only 42,713 workers from all over the country, almost all with fixed-term contracts of up to one year, for work or contract provision of services

One of the structural problems of the Colombian economy is low unionization, this phenomenon has been reinforced since the 80s with a macabre combination between anti-union reforms and union violence. Thus, we have an unionization rate of 4.6% in 2017 (in absolute values corresponds 1,028,764 unionized). In addition to this, the unions are undergoing a great fragmentation according to figures from the ENS Situation Report. While in 2016 there were 5,449 unions, in 2017 the figure amounted to 5,523, where 80% of these have fewer than 100 members. Besides, a process of union unification has not been achieved either through national industry unions, or with the strengthening of centralized Trade Union Centrals.

By economic sectors, it is found that affiliates are concentrated in the services sector (51.8%), in the manufacturing industry (11.7%), commerce (9.4%), agriculture, livestock, hunting,

forestry and fishing (9.0%), transport, storage and communications (8.4%). It is interesting to highlight that the main economic sectors that contribute to the national GDP are those with the lowest unionization rate, namely mining and quarrying with 10.2% and financial intermediation with 8.0%.

On the other hand, the differences between the public and private sectors are abysmal, while the first observes a 42% unionization (although low for this sector), the second barely has a rate of 2.6%.

The ENS report exposes a supremely serious fact in relation to labor rights. Not only is the the coverage of collective bargaining very low (7.4% of the population occupied by 2015) but this rate includes “illegal” figures that hide the legal contracts, namely the union contracts and the collective agreements, that is to say that it is possible that no actual profits were achieved for the covered workers. The other workers covered by these negotiations are part of the legal figures through legitimate union bargaining, such as the collective bargaining agreement (CBA) and Labor Agreements (in the public sector).

This low legal coverage is explained by the low unionization of the private sector and because the partial or limited recognition of that right to the unions of public administration employees was from 2013, when Act 411 from 1997 was regulated with Decree 1092 from 2012 and later with Decree 160 from 2014, whose right was achieved after large mobilizations and struggles by the public sector.

Another aspect, particularly in Colombia, is the anti-union violence that exists in the country since the formation of the first unions, from the banana massacre in 1928 (denounced by Gabriel García Márquez in *One Hundred Years of Solitude*) until the continuous murders and persecutions of trade unionists, unions and social structures that work in the labor field. The works carried out by human rights NGOs and other authors show how the two governments of Álvaro Uribe Vélez revealed a clear persecution of social movements and in particular trade

unions, as well as a low level of possibilities for participation in labor policies and at the negotiating tables.

The rights for free association are diminished not only by judicial means but also by the Dirty War and the selective murders of trade unionists. Between 2002 and 2007, 491 worker initiatives aimed at creating a union were rejected. Likewise, it is the only country in Latin America where the government has the power to dissolve a union through judicial channels. (VIDAL, 2012, p. 1)

In the 2018 report, the ENS shows that from January 1, 1973 until April 10, 2018, at least 14,638 violations of life, freedom and integrity committed against trade unionists were recorded, among which 3,149 murders, 399 attacks, 238 hijacks, 7,167 death threats, 105 torture acts, 668 harassment acts and 1,897 forced displacements were documented. Of the trade unionists who lost their lives, 2,823 were men, 326 were women and 912 were union leaders.

According to the National Union School (NUS), of the total murders of trade unionists in the world, in the last decade, 63% took place in Colombia, which in concrete figures means the killing of 1081 trade unionists. To have a better perspective of the true magnitude of these figures, it should be taken into account that the second in the list of the countries with the highest number of trade unionists killed is Brazil, with 7.01% of the total. (VIDAL, 2012, p. 17)

## **FINAL CONSIDERATIONS**

The new millennium brought a series of changes in policy trends for Colombia. The reforms of the 1990s radically changed labor relations, reducing the already precarious state action not only in economic but legal matters, restricting labor rights and carrying out a policy of cost reduction and, therefore, of salary retraction.

At the beginning of the 2000s a Labor Reform was conceived, aimed at deepening the flexibility, continuing with the policy towards supply, with subsidies, exemptions and support for capital on one hand, and deregulation and reduction of labor rights by the other. Under the presidential program referred to as "Democratic Security and Investor Confidence", the economic policy was oriented to the objective of giving the necessary conditions for the development of private investment and especially foreign capital. One of the government's flagship engines was investment in the mining-energy sector, a sector that allows monopolistic profits to be obtained with little employment generation, whose policy was kept by the Santos government as of 2010.

Lastly, the possibilities of labor policy dialogue during the two Uribe and Santos governments were practically null. This is what one can see based on the failures of the tripartite negotiations for determining the minimum wage added to the rise of the persecution of trade union organizations and social movements.

Faced with this panorama in the labor segment, a labor agenda has been proposed to set the dialogue between labor actors, laying the necessary bases to transform the anti-union and anti-labor structures that characterize not only the legislation in Colombia but also the actions of government institutions and business. In that sense, some points are proposed in order for some steps to be taken towards that objective.

In the long-term, there clearly is a need to generate a comprehensive labor reform with bias in favor of work understood as the essence of the human being and the pillar of any productive nation. Hence, a long way of participation and recognition of the actors involved in the dispute is required, as this is the horizon that is proposed. While we walk towards that spot, intermediate steps are required to build a space of trust and respect. In the medium and short-term, the following items are proposed: implementing the agreements, standards, laws that respect the rights of workers, as well as implementing the decent work agenda of which Colombia has been a signatory, but as shown, has not had it as its reality. This agenda should include the rural sector, which has been a key player in the work, but that has not had the necessary

recognition. The latter is essential within the Peace Agreement signed with the FARC in 2017, which ensures the non-repetition of a war performed for more than 50 years in Colombia.

Targeted policies need to be strengthened to eliminate the gender, race and social status gaps, getting rid of child labor and opening opportunities for young people who are leaving the labor and study world due to the absence of alternatives. All this requires the improvements of inspection, surveillance and control systems.

Regarding labor income, it must be ensured that the minimum income at least covers the Minimum Living Wage to ensure that workers and their families may reach the basics. Likewise, measures that close wage gaps and improve the conditions of the most precarious workers must be implemented.

Recognizing, strengthening and protecting the collective organizations of workers is required in order to transform the vision of the anti-union struggle, so that unions may be seen as key actors in the productive, labor, administrative and economic processes of the productive and development units of the country.

These notes are left as part of a necessary debate in the midst of a complex context in the history of Colombia. We hope that the space will be opened and reforms will be carried out, to make the labor world fairer and more stable for all workers.

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