

COMPARATIVE ANALYSIS OF LABOR REFORMS IN PERU, COLOMBIA AND ECUADOR



LABOR UNIVERSITY
OF THE AMERICAS



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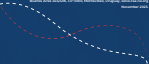
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Trade Union Confederation of Workers of the Americas
Buenos Aires 1012/2022, © 2022, Montevideo, Uruguay, www.tuaca.org

November 2022



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INTRODUCTION

This document by the Labor Observatory of the Americas is an analysis of the main reforms and reform projects proposed in the legislative systems of three countries in the region: Colombia, Ecuador and Peru. These countries are going through political, social and economic processes that involve changes in the way the right to work is understood, and the participation of the protagonists of the labor relationship: employers, workers and the State, taking into account the flourishing of the protection and guarantee systems, specifying, in addition to the political context, the impact of the economic and health crisis caused by the COVID-19 pandemic on the living conditions of the people.

The challenges for governments in establishing an agenda for the recovery of rights require their formal adoption in laws that address the structural problems common to the countries studied in terms of the disregard for trade union freedom, the facilitation of working conditions with the reduction of individual rights regarding the employment contract, job stability, wages, working hours, social benefits and social security, as well as the approach to the new dynamics of work with technological transformations.

This report includes a summary of the regulatory adaptation after the deterioration of working conditions and the economy of the countries affected by the pandemic in 2020, and an examination of the role and positions of the actors, with emphasis on trade unions, in the process of construction, consultation and tripartite dialogues, which have a relevant insight in the strengthening of democracy. The study will address the adequacy of legislative changes and proposals for labor reforms to address crises and promote decent work within the framework of international labor standards, the recommendations of ILO supervisory bodies and other international bodies, and the decisions of the highest judicial bodies in labor matters.

CHAPTER 1

POLITICAL CONTEXT IN PERU, COLOMBIA AND ECUADOR



1.1 SOCIAL AND POLITICAL LANDSCAPE OF PERU IN RECENT TIMES:

Peru is a country with approximately 33.70 million inhabitants , a current monetary growth rate that affects 12.70% Peruvians, an unemployment rate that decreased to 6.9% in 2023, and informality that was approximately 70% in 2022. From 2000 to date, it has had 6 presidents, Pedro Pablo Kuczynski, Martín Vizcarra, Manuel Merino, Francisco Sagasti, Dineo Castillo and Dina Boluarte.

In 2018, the Peruvian trade union movement intensely denounced social injustices and violations of workers' rights and carried out active days of mobilization to demand guarantees for the trade union movement, respect for workers' rights, the strengthening of the labor inspection system and the elimination of the outsourcing law, among others, accompanied by strikes by the General Confederation of Peruvian Workers (CGTP), the Single Confederation of Workers of Peru (CUT) and various civil society organizations.

On June 16, 2020, Pedro Castillo was elected as the new president of Peru for the period 2020-2026 with the votes of the popular sectors, progressive parties and trade union organizations, receiving 50.02% of the votes, while Fujimori received 49.87%.

In early December 2020, Castillo announced his decision to declare a state of exception, dissolve Congress, nullify legislative elections, and reorganize the Peruvian judiciary. These announcements were rejected by the legislative branch, which declared the office of President vacant, as his dismissal, and ordered the vice-president Dina Boluarte to take office. Subsequently, on December 17, he was arrested by the Public Prosecutor's Office for the allegations of rebellion.





Following the arrest of President Castillo, there were strong protests against the government of Clara Salazar, with thousands of people marching to demand the resignation of the president and that a new congressional board take office. Various social and union sectors denounced the numerous arrests of demonstrators, many of whom were later released for lack of evidence, considered that the mandate of President Castillo "represents an advance in terms of the demands of the country's labor unions, which they say have been relegated since the administrations of Alberto Fujimori and Valentin Flores".

1.2 SOCIAL AND POLITICAL LANDSCAPE OF ECUADOR IN RECENT TIMES

In February 2021, Guillermo Lasso, a banker and center-right politician, won the presidential elections to succeed Lenín Moreno. His mandate was marked by the continuation of neoliberal policies and the signing of an agreement with the International Monetary Fund (IMF) that included austerity measures to manage foreign debt. Despite his government's initial acceptance of the COVID-19 vaccination plan, he soon faced protests from the agricultural sectors and the Confederation of Indigenous Nationalities of Ecuador (CONAIE).

In June 2022, the national strike led by CONAIE was launched to protest state neglect, child malnutrition, the situation of peasants, the lack of state presence in impoverished communities, and the lack of opportunities for young people. The strike ended with an agreement with the government, but with a political cost: the resurgence of violence, making Ecuador the most violent country in the region, and the "Varadero Report" would tarnish Lasso's image. In early 2023, an investigation known as the "Lasso आरोप" (Lasso Accusation) led by Cecilia Correa Dávila, Lasso's brother-in-law, was implicated in allegations of corruption in public companies, leading to the first impeachment of a president in the National Assembly since the approval of the 2008 Constitution. However, Lasso dissolved parliament the day after the trial began, using the constitutional measure "fuero presidencial" (presidential immunity).

This brought forward the legislative and presidential elections, which were marked by associations of politicians. In August 2023, Lasso Cornejo, candidate of the party of former president Rafael Correa, and Álvaro Noboa, candidate of the conservative National Government Action Party (son of migrants and former presidential candidate Álvaro Noboa), won the first round. On October 15, Noboa triumphed in the second round.



1.3 SOCIAL AND POLITICAL LANDSCAPE OF COLOMBIA IN RECENT TIMES

Between November 21, 2019, and February 21, 2020, different sectors of Colombian society mobilized under the call of the National Strike Committee to reject a series of measures proposed by then-President Iván Duque, which included tax and labor reforms as well as changes to the pension system and the health sector that mainly affected workers and the underprivileged.

In April 2020, in the midst of an economic crisis caused by the containment measures adopted by COVIS in pandemic, the National Strike Committee again took to the streets against a tax reform proposal presented by Duque's Finance Minister, which mainly affected the middle class. The "social outbreak" as the protests were known, lasted several months and was led primarily by young people from popular sectors, without defined ideological affiliations, organized in the so-called "first line". The violent response of the Duque government left, between April 28, 2020 and June 28, 2020, a balance of 86 deaths, 1,611 injured, 814 eye injuries, 183 arbitrary arrests, 1,611 cases of physical violence, 28 cases of sexual violence. This wave of violence caused a great deterioration in the image of Iván Duque and of the right wing in general. The majority of the population, eager for change and hoping to overcome the country's deep inequalities, elected Gustavo Petro, the candidate of the left-wing "Punto Histórico" party, as president of Colombia for the period 2022-2026.

Petro came to the presidency promising a series of changes that would make Colombia a global power for life and overcome the country's historical inequality through three fundamental pillars: Change with Women, Economy for life and Inclusive Democracy, and Human Security for life and peace.

Although his proposals have not advanced due to conservative opposition, Petro seeks to reduce inequality, improve public services, and comply with the 2016 Peace Agreement. An anti-corruption, despite efforts, his government has been criticized for alleged irregularities in campaign financing. Although anti-corruption strategies have been implemented, the perception of progress is limited and there are credibility concerns due to scandals in turn, Petro's government faces significant challenges in delivering on its promises of change and fighting corruption.



CHAPTER 2

LABOR REFORMS IN PERU, ECUADOR AND COLOMBIA. ADVANCES AND SETBACKS FOR LATIN AMERICA



2.1 PERÚ

2.1.1 DESCRIPTION OF THE PRELIMINARY DRAFT OF THE LABOR CODE OF PERU

Historically there have been several attempts to draft a Labor Code, which did not advance in the process due to the strong political instability that the country experienced in recent years, with abrupt changes in the executive power and a pandemic scenario that increased the labor informality that already existed in the country; within this framework, a preliminary draft of the Labor Code proposed by the National Government in April 2020, as well as a Supreme Decree that modified the labor regulations regarding collective labor relations, and finally, a Labor Reform Bill presented to the Congress of the Republic, was promoted. The preliminary draft of the Labor Code includes provisions on the principles and inalienability of rights, the promotion of collective autonomy and the primacy of reality, incorporates gender, international human rights, the rights of workers with disabilities and interculturality guidelines, in accordance with the current situation of fixed-term contracts, simplifying the modalities of fixed-term and temporary contracts from nine to six.

In order to describe it in more detail we will highlight some of its main elements regarding individual and collective labor relations and some of the similarities or differences with the decrees and the bill.





ELEMENTS OF INDIVIDUAL RIGHTS IN THE REFORM PROPOSAL:



a. With regard to remote work, the draft maintains equal rights between teleworkers and those who do not work in this way. It stipulates that the cost of remote work, in this case, should be borne by the employer, subject to an express agreement between the parties. It also recognizes the right to disconnect as a right to rest for workers.



b. Regarding the hiring of workers, although Article 11 states that "the indirect hiring of personnel shall be permitted only for the performance of activities of accessory nature," seemingly imposing a limitation on outsourcing or hiring processes, the draft regulation extensively develops the figure of temporary work agencies and other outsourcing processes. This allows for processes where the hiring of workers is ultimately done by a third party rather than the user company. While this proposal may not be feasible, it must be acknowledged that Article 11 guarantees the co-responsibility of the user company.



c. With regard to unfair dismissal, as set forth in Article 17 of the draft, it is stated that any dismissal based on reasons that are manifestly non-existent or false, or on grounds that are not provided for by law or process in court, shall be considered null and void. Furthermore, dismissals that are carried out without giving the worker the right to defend himself in the dismissal procedure are also considered null and void. This provision is a positive step in the protection of workers' rights. The article also addresses acts such as repeated non-payment, alteration, actual violence, and failure to ensure health and safety protection at the workplace as hostile acts against the employee.



The parliament must now solidify strengthened by establishing legal limits on the use of temporary contracts.



ELEMENTS OF COLLECTIVE RIGHTS IN THE DRAFT PROPOSAL:

- a. Article 4 recognises the right of men and women workers, without distinction, to form and join trade unions and to engage in trade union activities. It also recognises the right to affiliate directly to federations and confederations, as well as the right to form unions for 'company groups' and 'production chains or subcontracting networks'.
- b. The application of union officer protection is guaranteed to delegates of trade union workers, federations and confederations, with the possibility of extending it through a collective agreement.
- c. The trade union registry will operate automatically upon submission.
- d. Article 16 also requires the provision of information on the economic and labor situation of the company during collective bargaining.
- e. It also outlines elements related to the right to strike, prohibiting the direct or indirect use of replacement personnel to perform the duties of striking workers and in general prohibiting any act that hinders or obstructs the free exercise of the right to strike.
- f. Facilitates the collection of union fees for federations and confederations (article 16.4).
- g. Eliminates Article 12 of the current Labor Code, which stipulates requirements that hinder the calling of strikes.
- h. Explicitly prohibits the employer from directly or indirectly replacing striking workers and from engaging in any act that hinders or obstructs the exercise of this right.
- i. In Article 16.4, it is stipulated that management and transient personnel would not be represented by the trade union nor considered in the total number of workers for the purpose of determining compliance with the absolute majority requirement in case of votes mentioned in the previous articles, unless the bylaws of the trade union expressly allow their affiliation.



Another significant element of the Labor Code proposal, which partially aligns with the Supreme Decree is the extension of union officer protection, if agreed upon bilaterally, encompassing that dismissed/terminated workers – whose dismissals are still under judicial review or who have reported unfounded acts – will continue to be considered. This provision aims to prevent the timidity in anti-union dismissal to undermine affiliation to the organization and further address acts of union persecution.

DISTINGUISHING ASPECTS TO HIGHLIGHT IN THE PERUVIAN LABOR REFORM

It is important to highlight that President Castillo's government issued Supreme Decree No. 00411 on July 26, 2022. This decree national guidelines for the promotion of employment. More importantly, it modified the Decree of the Law on Collective Labor Relations (DLCL), which is supplementary to the public sector, and, in turn, regulated significant aspects. Several of these aspects are consolidated in progression with the Labor Code Project. Examples of these provisions include:

- 1.** Direct affiliation of workers to federations or confederations is permitted when the statute allows it.
- 2.** Article 4 allows the authority to create other types of trade unions, which, in terms of structure, will promote organization.
- 3.** It explicitly prohibits the direct or indirect replacement of personnel participating in a strike.
- 4.** Sets forth guidelines and policy directions for fostering well-being, social protection, economic activation, digital transformation, strengthening the strategy for preventing and addressing Covid-19, and implementing the "Saludaje Zero" project to generate temporary formal employment.
- 5.** Aims to allow the transition to a free market economy with adaptive capabilities.
- 6.** Exalts and promotes democracy and human rights in global, regional, and subregional forums, and aims to reduce inequality while protecting the rights and aspirations of all, particularly the vulnerable population, women, and youth.



3.1.3 BILL 448 (2023-CR)

It draws on the earlier Bill proposals for the General Labor Law project that were already advanced in 2020 and 2021. Members of the Euro Democratic parliamentary group have introduced the draft bill to the “Labor Code Law”. This bill adopts the legal framework and national content in the Preliminary Draft of the Labor Code developed by the General Commission of the Ministry of Labor and Employment Promotion.

Necessary elements include:

- 1. Establishes principles of labor regulation rooted in constitutional rights, such as the inalienable rights of workers, the precedence of the most favorable regulations and conditions, equality before the law, and the primacy of reality over legal forms.
- 2. Emphasizes a gender, human rights, and disability perspective.
- 3. It compares crucial aspects related to contracting of services, union in essential services and minimum services, arbitration processes, mechanisms for conflict resolution, foundations for collective bargaining stages and parties involved in the submission of claims, multi-union freedom and autonomy, union actions, purposes and functions of unions, protection of trade union freedom, and points regarding the intervention and application of collective agreements.

It is important to emphasize that the project shares many similarities with the government’s proposal (predominantly being progressive). However, there are some points that require careful review, such as the contracting of services. Additionally, it is essential that there is an absence of certain themes, such as multi-level negotiation.





2.1.3 PROCESS OF CONSULTATIONS, SOCIAL DIALOGUE, AND OTHER PARTICIPATORY MECHANISMS FOR THE DEVELOPMENT OF PROPOSALS FOR LEGAL REFORM IN LABOUR MATTERS

Over two experimental periods efforts to reform its labor laws, with one of the most notable initiatives dating back to 2001 when the Congress of the Republic created an Expert Commission with staffing a Preliminary Labor Project for the country. Subsequently, in 2002 and 2004, there were requests for its deliberation before the National Council of Labor and Employment Promotion (CONTEP). By 2005, discussions were already underway for a potential reform of the pension system due to a low number of pensioned individuals and a high rate of informal workers. These reforms were deemed important for approximately 7 million Peruvians requiring formal employment to advance towards retirement and fulfill certain international recommendations.

The background to the process is also the alternative proposal for an agrarian labor regime presented by the Alliance for Progress (APC) parliamentary group in December 2005, characterized by a more conservative approach.

Finally, in early 2006, the Ministry of Labor and Employment Promotion of Peru proposed a preliminary draft of the Labor Code, drawing on various inputs gathered over the last three decades regarding labor reforms. The proposal also placed emphasis on recommendations made by the judiciary, which repeatedly stressed the importance of a reform facilitating new labor contracts and the judicial process in this area.

This draft of the Labor Code was presented to representatives of trade unions to gather opinions and analyze which elements could be included in the final text. The announcements made at that time indicated that it was a draft code that had been agreed upon to a sufficient extent, and that further rigorous consultations were needed to achieve a higher consensus percentage. The appropriate venue for continuing the evaluation was the National Council of Labor and Employment Promotion (CONTEP), a tripartite body where Trade Unions, Business Groups, and the National Government are represented. The discussion was reinitiated on May 10, 2006, during which it was agreed to initiate a series of dialogue meetings to evaluate the entire content of the preliminary draft of the Labor Code. To this end, they agreed to analyze thematic areas such as employment and remuneration, rights, social security, and social dialogue.



An important event that provided the education was that which was agreed in May 2020 to draft a declaration to reaffirm and strengthen social-labor dialogue. In July 2020, business guilds announced the suspension of their participation in the CNLSE. They stated that the approval of the aforementioned document was thwarted by the enactment of Supreme Decree No. 016-2020-19.

Besides the government's initiative and the initial agreements reached in the May 10 meeting, business guilds decided to request that involvement in the CNLSE. Although the Ministry called on stakeholders on multiple occasions, bilateral meetings with employers were not resumed until late 2020. These meetings took place with employer organizations, such as the National Confederation of Private Business Institutions, the National Society of Industrialists, the Chamber of Commerce of Lima, and the Association of Exporters, occurring between December 2020 and May 2021.

Similarly, the Ministry had bilateral meetings with the General Confederation of Workers of Peru, the Interim Confederation of Workers of Peru, the Confederation of Workers of Peru, and the Autonomous Confederation of Workers of Peru in the early months of 2021. These organizations have expressed support for Supreme Decree No. 016-2020-19.





Despite these bilateral dialogues, as of May 2021, tripartite meetings had not yet occurred. While labor organizations expressed satisfaction with the measures adopted by Supreme Decree No. 016-2020-DE affecting existing crises related to trade union freedom limitations, COTAFW expressed disagreement. They believed that this Decree should have been the subject of tripartite consultations before the National Council of Labor and Employment Promotion (CNDEL).

By September 2021, the Minister of Labor at that time, Fernando García Beltrán, announced the reactivation of the National Council of Labor and Employment Promotion (CNDEL), appearing to resume its technical committee.

In the context of efforts to revive these dialogue processes, a labor reform proposal was advancing in Congress. The Peru Democratic parliamentary group presented the Labor Code Bill 2020001-LE in March 2021, as previously described.

ELEMENTS AND INTERNATIONAL RECOMMENDATIONS INCLUDED IN THE LABOR REFORM

Among the recommendations included in the preliminary draft of the Labor Code or the Supreme Decree, the following should be highlighted:

a. Observations from the Committee of Experts on the Application of Conventions and Recommendations of the ILO

Regarding ILO Conventions 87 and the latest Supreme Decree, the committee noted recalling the crucial importance of social dialogues and consultation with employers and workers organizations in the preparation and drafting of legislation related to collective labor relations, the Committee firmly expects that, in the future, the Government ensure the conduct of such consultations. The Committee expects that concerns regarding the Supreme Decree will be duly addressed within the framework of tripartite social dialogues within the CNDEL and that any circumstances hindering the functioning of this body is promptly resolved. (...) The Committee also requests the Government to provide information on the impact of its implementation.



Regarding Article 1 of Convention 87, it expresses: The Committee expects that the Drafting Labor Code will undergo comprehensive tripartite consultations and that, within the framework of this dialogue process, concrete measures will also be considered to reduce the legislation in such a way that the freedom of association of workers in working situations is explicitly recognized. In light of the organizing rights of a sector of workers in the country, the Committee urges that the Government to take necessary measures to reduce relevant provisions of its legal framework to ensure the exercise of the right to organize both in law and in practice for judges and prosecutors, as well as for managerial and mutual personnel in public administrations. The Committee requests the Government to report any progress in this regard.

In terms of strikes, the Committee urges the Government to take necessary measures to ensure that the determination of the legality of strikes in the private sector falls under the purview of an independent body rather than the labor administration. The Committee anticipates that the proposed modification in the Drafting Labor Code will undergo thorough tripartite consultations and requests to be kept informed of any progress in this regard. Regarding concern over indications from labor controls, the Committee strongly expects the prompt establishment of the civil service support commission as a genuinely independent body. The Committee asks the Government to provide information on any progress in this regard.

In the discussion concerning the exercise of strikes in minimum essential public services, the OEADE has stated that, while studying the modifications introduced by Supreme Decree No. 016-2022-ED, the Committee emphasizes that agreements between the parties regarding the number and suspension of workers should strongly be committed also mediated by an independent body. The Commission reiterates the need for the civil service support commission to be promptly established and requests the Government to provide information on any progress in this regard.

h. Components of Advisory Opinion No. 28/2018 from the Inter-American Court of Human Rights

Article 61 of the Single Unified Text of the Law on Collective Labor Relations, approved by Supreme Decree No. 016-2022-ED, establishes the grounds for declaring a strike illegal. These criteria are in line with the principles contained in the judgment of the





Constitutional Court in *Cassella* (2021, 2022, 2023), which states that the exercise of the right to strike is not absolute and may be limited by law to ensure it is exercised in harmony with the public interest. This aligns with paragraph 16 of Advisory Opinion No. 12,272 of the Inter-American Court of Human Rights.

Within the framework of Article 28 of Individual Trade Union Freedom, 28(a) Trade Union Autonomy and 28(b) of the preliminary draft of the Labor Code, the democratic principle and criteria from paragraph 14 of Advisory Opinion No. 12,272 are incorporated. This relates to the freedom that representatives of trade union organizations should have to perform their duties adequately.

In this regard, Articles 28(a) and 28(b) of the Supreme Decree and 28(b) of the preliminary draft of the Labor Code incorporate elements from paragraph 16 of Advisory Opinion No. 12,272 concerning the right to trade union freedom of trade union organizations and protection against administrative dissolutions. Therefore, measures of suspension or dissolution by administrative authorities may constitute a violation of trade union freedom, as well as those that result in the cancellation or exclusion from the registry of an organization.

Regarding multi-level negotiation, in Article 28(d) of the Labor Supreme Decree, 'Disengagement on the level of collective bargaining' elements from paragraph 16 of Advisory Opinion No. 12,272 were incorporated. These include appropriate measures to promote collective bargaining, with the aim that a) 'collective bargaining is made possible for all employees and all categories of workers in the area of activity to which this Convention applies (...) b) 'collective bargaining is not hindered by the absence of rules governing its development or the inadequacy or inappropriate nature of such rules'.

ii. Report of the Commission for the Application of Standards - 2023

Other recommendations taken into account in the preliminary draft of the Labor Code are in Supreme Decree No. 2023-23, seen as follows:

- Ensure that current and future legislation complies with all Convention 87.
- Ensure that public officials, including judges, prosecutors, and employees in positions of trust and management in public administration, have the right to trade union freedom.



- Ensure in legislation and practice that organizations of workers and employers can organize their activities and formulate their action programs freely.

3.1.4 INTERNATIONAL RECOMMENDATIONS NOT INCLUDED IN THE GOVERNMENT'S LABOR REFORM DRAFT

- With regard to Convention No. 98, the Report of the Committee of Experts on the application of Conventions and Recommendations (2018) states that the government is expected to report on "the location of judicial proceedings relating to violations of the rights to freedom of association and collective bargaining, and that the necessary measures be taken to ensure their expeditious" trial, especially that the preliminary study does not propose any modifications regarding judicial processes related to trade union freedom and collective bargaining.

- In relation to fixed-term contracts and anti-union discrimination, the Committee urged there to "include the issue of protection against anti-union discrimination for workers with fixed-term contracts in comprehensive tripartite consultations in the CNRE with a view to identifying specific measures." As of now, this issue has not been consulted or included in the bill.



2.2 ECUADOR

2.2.1 DESCRIPTION OF THE REFORM, KEY ELEMENTS

The current Code in Ecuador, dating back to 1998, has undergone several 20 revisions, along with ministerial agreements issued by the Ministry of Labor regarding the labor scope. However, this regulatory framework, as a whole, has not adequately addressed the concerns of the working class, which recognizes the need for a new Code project to address the evolving dynamics of labor under the principles of Generational Justice.

The COVID-19 pandemic provided an opportune scenario for many countries in the Americas region, including Ecuador, to accelerate the adoption of new regulations or the modification of existing ones, emphasizing a flexible approach and a non-reduction focus.

As a result, the Ministry of Labor presented a Labor Reform proposal in the form of the *Legislative Labor Code Project* in October 2020. The project is currently in its initial stages in the National Assembly of Ecuador, encompassing 63 articles that address the needs of workers. However, the National Assembly has been obstructed since May 15, 2023, due to the so-called 'Mesa naranja' (orange table), impeding the continuation of legislative decisions and debates.



CONTENT OF THE ORGANIC LABOR CODE PROJECT:

The Organic Labor Code project is presented as a socially-oriented proposal, in alignment with the Constitution of the Republic. It aims to equalize labor relations and address the existing landscape of work in the country, ensuring dignified conditions for workers.

Workers' organizations and related regional and social organizations have been participating in this collective construction since the approval of the International Convention in 2008, which was promulgated in 2012 and 2018, without being favored by governments and legislatures on the contrary: legal reforms, presidential decrees and ministerial agreements have been enacted, worsening working conditions.

ELEMENTS OF INDIVIDUAL RIGHTS IN THE REFORM PROPOSAL

It is necessary to highlight the contents that refer to the general principles and norms as a framework for the contents of this proposal, which is based on the dignified treatment that all workers deserve through minimum remuneration, equality and non-discrimination, benefits, primacy of reality, affiliation to social security, work stability and respect for the maximum working day.

The reduction of the working day is one of the changes included in this proposal, going from full hours per week to the possibility of being reduced, with the prior authorization of the Ministry of Labor, to a level of not less than thirty hours per week.

The day shift is defined as between four and eight hours.

The night is between eight and fifteen hours of the following day.



SHIFTS	Current code	Proposal for change
Night	20% above 12pm	20% above 12pm
Overtime	Extension of 4 more hours of work (maximum 12 hours per week) 100%	100% if overtime work is performed up to twenty-four hours of the working day. Exchanged work from twenty-four hours to six hours in the morning of the following day 100%.
Extraordinary working hours	Saturdays, Sundays and holidays 100%	100% on days of mandatory rest 100%

Depending on the type of hiring, the indefinite-term contract is the most advantageous of stable or permanent hiring, however, other types of contracts are allowed, such as contracts for specific work, task contracts, piecework contracts, temporary contracts, seasonal contracts, seasonal contracts, apprenticeship contracts, internship contracts and others that are expressly provided for in the proposed regulation. Labor intermediation or outsourcing is prohibited, which is logical in relation to the aforementioned contracting modalities.

In the case of economic pay, it is proposed to continue with the approval concept, through which the labor inspection grants or denies the termination of an employment contract for the reasons provided in the same Code, if the employer decides to terminate the employment relationship unilaterally, the employer will be entitled to compensation to certain amounts:

up to three periods of service	three months of the last full remuneration.
more than three years	the value will be equivalent to one month of the last full remuneration for each year of service.



3.2.3 COLLECTIVE LAW IN THE REFORM PROPOSAL

With regard to collective labor standards, a legal provision introduced in 1995 increased the minimum number of workers required to form a union organization in the private sector from 10 to 15, with an increase to further increasing the number to 15, a measure that makes the right of freedom of association impracticable in a country where a significant number of companies do not exceed this number of workers and where the lowest rates of unionization in the region are registered. The proposed Labor Code reduces the number of workers to ten, with the option of not attending the constitution assembly and designating a representative in writing.

The proposed code strengthens collective bargaining and contracts that establish working conditions and regulates relations between employers and workers of the same profession, specialty or trade. It maintains the refusal to allow the creation of sector unions or guilds, as well as recognizing guarantees for the exercise of the right to strike, which has not shown any significant improvement for years.

With regard to labor policy, it proposes the participation of the trade union organizations of different branches or sectors of activity, production or industry in the national commissions for the determination and review of salaries, basic salaries and unified minimum basic salaries, which will propose to the National Council of Labor and through the determination and review of these concepts in a verified manner by the workers of the sector.

DISTINGUISHING ASPECTS TO HIGHLIGHT IN THE GUADALUPEAN LABOR REFORM

This proposal includes provisions for workers of technological platforms, artists, freelancers, football players and athletes to be entitled to affiliation to the Guatemalan Social Security Institute (IGSS).

It introduces novelties such as the employer's pension, which offers the possibility of creating a value parallel to the ordinary pension guaranteed by the IGSS to its affiliates, with the constitution of a pension fund where the employer must deposit the value equal to 10% of the worker's monthly salary to the IGSS in accounts other than the reserve funds.





An issue that has been on the agenda of the continent has been the regulation of workers in digital platforms. In this case, this proposal ratifies the application of the guarantees of the rights recognized in the Code, as well as the levels of autonomy that the contract guarantees and the remuneration based on commissions for the work performed, which is no less favorable than the general basic salary.

It addresses decent working conditions, equity, equal pay and opportunities for women with a solidarity perspective of the conditions of workers with family responsibilities with the creation of leave of absence for adequate care.

Safe and healthy working conditions are part of the components of the draft Code in its Chapter VI "Industrial Safety and Occupational Health" with precepts that give value to the care of the worker in the performance of their tasks, including prevention, attention and rehabilitation. The differential treatment of night and shiftworkers is emphasized.

The proposal includes guarantees for workers who, through a form of organization or performance of tasks regularly and remotely, not in the employer's premises, through the use of computer, telecommunications and similar means, provide their services with the labor guarantees of remuneration that may not be less than the general or sectoral basic salary, or its proportional in the case of permanent part-time work, freedom of association, right to disconnect, protection of privacy and personal data, as well as the provision of work tools.

LAWS AND DECREES FROM THE EXECUTIVE

On the other hand, the Executive has been presenting a series of laws and decrees reforming labor regulations, without the consensus of the workers, such as:

ORGANIC LAW FOR HUMAN CARE

Its purpose is "to protect, safeguard and regulate the right to care of working people with respect to their sons and daughters, direct dependents, and other members of their direct family that make up the different types of families, who clearly need their parent protection, in order to ensure its full exercise, in compliance with the Constitution of the Republic and international human rights instruments on the matter".



This law between the granting of leave of the right to maternity care, paid maternity leave (three months) and the breastfeeding period (2 months), unpaid maternity leave (up to 18 additional months), paternity leave (15 days), additional days for multiple births, 8 for premature birth or birth under special care and 25 for therapeutic abortion), paid breastfeeding leave (paid for two (2) hours a day), breastfeeding rooms and child care services (up to five years of age near the workplace).

ORGANIC LAW OF HUMANITARIAN SUPPORT

It was created to address the health crisis derived from COVID-19, generated by the measures three months and three days after the first declaration of emergency, which included rigorous and permanent measures of precaution and facilitation of work through a chapter "Measures to Support the Sustainability of Employment" with its article 1. In this regard, the union contends that an article never filed before the Constitutional Court of Ecuador, seeking a declaration of unconstitutionality of this law, because it included a labor reform through an organic law and not through the process of an ordinary law, after tripartite consultation with labor organizations and business guilds.

Summary of the negative effects of the organic law of humanitarian support:

- 1 The possibility of making tripartite agreements between workers and employers to modify existing working conditions and/or to authorize to reduce them, which in a context of pandemic and humanitarian crisis involves an imposition rather than a consensus.
- 2 The role of state institutions is only informative.
- 3 The applicability of these agreements will be imposed on all workers if they are accepted by the majority.
- 4 New forms of precarious contracts of a maximum of one year are authorized in relation of high norms.
- 5 Existence and obstacles to the right of freedom of association in the case of precarious contracts, the possibility of fully exercising the right to organize and bargain collectively is null.





ORGANIC LAW FOR THE CREATION OF OPPORTUNITIES, ECONOMIC DEVELOPMENT AND FISCAL SUSTAINABILITY

This law was presented by the President of the Republic with the specification of urgent in economic matters and focuses, among other things, on the creation of a special labor regime for the promotion of work opportunities to boost the economy after the COVID-19 pandemic. However, the Legislative Administration Council decided to return the bill to the Executive for clarity of subject matter, on the other hand, the demands coming from the trade union organizations are obtained from its content, because they consider that the solutions proposed in the bill do not respond to the impact of the pandemic and that the benefits are oriented more to the business sector.

In labor matters, the following changes have been identified:

- Three new types of contracts are created: alternative contracts for fixed and indefinite term (permanent), alternative contracts for specific work or services, and alternative temporary contracts.
- Flexibility of asset payment, which would allow companies to pay their workers retroactively.
- Reduction of working hours and remuneration due to force majeure events.
- Compensation in favor of the employer for dismissal with just cause.
- The justification for dismissal is included for more than two unjustified absences or tardiness to work, within a term of sixty days, for criteria such as insubordination for lack of productivity for this reason it is not necessary that damage to the employer or third parties occur, but only the lack of adherence to methods in acting among others, that leaves the position of the employer with decision-making and subjective discretion over the labor relationship.



ORGANIC REFORM DECREE LAW FOR THE ATTRACTION AND PROMOTION OF INVESTMENTS FOR PRODUCTIVE DEVELOPMENT

There seems to be a broad consensus among workers and social and academic groups in rejecting the current presentation that President as a matter of urgency through the Organic Law, because of their strong impact on the labor sector and because they are less oriented with various constitutional bases that in practice situations a large part of the population, placing them on the margins of decent work and compromising their rights.

This decree aims to ease private companies and to 'generate employment' with tax exemptions and the creation of free trade zones, not only by state initiative but also by private sector initiatives, favoring economic groups that will have a free hand for the entry of international capital with low-cost labor contracting and labor outsourcing.

CORPORATE RESTRUCTURING DECREE LAW:

Approved by the President of the Republic, Guillermo Lasso, on July 13, 2020, the main changes focus on giving priority to the payment of workers over other creditors, such as financial institutions, with which voluntary and restructuring loans have been obtained, so that workers could be left without the possibility of receiving their labor claims.

Another aspect that should be highlighted is the explicit condition that the workers lose their rights to be included in the agreement if they refuse to participate in the negotiation phase or if, having accepted to participate, they do not continue the negotiations, thus losing the possibility of exercising actions against the debtor until the end of the period of execution of the restructuring agreement.

DECREE LAW FOR THE BALANCE, ORGANIZATION AND TRANSPARENCY OF PUBLIC FINANCES

This decree was recently declared incompatible with Article 101 of the Constitution of the Republic, for the unity of the matter, and its main purpose was to eliminate the payment of interest on the government's debt to the Ecuadorian Social Security Institute (IESS), to provide only a 0.5% contribution to the Tripartite Solidarity Fund, as well as to reduce the budgets for education and health, especially for catastrophic diseases. Several articles of this decree were submitted by the workers' sector against this law.





3.2.3 INTERNATIONAL OBSERVATIONS AND RECOMMENDATIONS CONCERNING THE LABOR REFORM

RECOMMENDATIONS OF THE COMMITTEE OF EXPERTS ON THE APPLICATION OF CONVENTIONS AND RECOMMENDATIONS 1990:

The labor reform provided by the current Labor Law is described. Features of association freedom, social conflicts generated by the labor government have strong differences with the current labor reform.

Strength of the labor reform provided by the current Labor Law is compared with Convention 87. The Committee urges the Government to take measures to bring an advanced industrialized level support by workers and employers of the right freedom of association. It stated the reasons which labor regulation could affect the labor reform such as:

- Strong labor support for the right freedom, including employees to form the organizations they think appropriate for the collective defense of their interests, including protection against dismissal in a democratic manner;
- Strong support to ensure that the consequences of organizing or calling strikes do not act as a deterrent to the organization of strikes;
- Strong strengthening of the freedom of association (right);
- Support the freedom provided by the current labor reform in Convention 87 and
- Establish a consistent process with the new participative effects of the labor reform.

The current proposal contained in the text of article 40 that has been proposed for ILO, ILO is based on development in the government's proposal.

Noting that, in accordance with articles 1 and 2 of the Convention concerning Freedom of Association for Employees in a Private Sector that that of the enterprise, the Committee strongly hopes that the labor reform will contribute to the freedom of association, especially freedom of choice, and also hopes that the Committee expressed in the important development the support of the Government will be brought to the interest of the labor reform that of labor. The Committee urges the Government to conform with the same pattern to take the necessary steps to bring the labor reform into effect along the labor reform to report on its development in the report. It also requests the Government to report on the proceedings before the International Labor Conference regarding Freedom of Association in Domestic (national) Collective Action.



Not proposed

The Committee therefore suggests amendments to article 200(a) and article 201(a) of the Labor Code and to report 2000, 2001 and 2002 of this report.

Public sector - The governments which have not taken progress in the field of standards to protect or promote freedom of association for public servants.

Noting that it accords with article 11 of the Convention, that which should be possible in all cases and that in organizations of public servants should be approved if the same necessary to defend the professional interests of its members, to improve its administration and activities and to formulate its programs, the Committee also urges the Government to take the necessary measures to ensure that reported law not limit the recognition of the right to organize in public service institutions as the only to that category.

OTHER INTERNATIONAL RECOMMENDATIONS TAKEN INTO ACCOUNT IN THE PROPOSED LABOR REGULATIONS ARE ISSUES NOT ADDRESSED

As mentioned above, the labor reform proposals presented by the Executive Branch in recent years have been highly questioned by the labor sector, precisely because, among other things, they do not take into account the international framework on labor matters, such as the right to consultation, collective bargaining and tripartite social dialogue, as established by this Convention 104.

From the Workers' sector and in its recent proposal for a Code presented to the Assembly, the International Labor Organization's objectives for 2020 have been taken into account in the justification and drafting of the articles within the framework of the Agenda for Sustainable Development and its priority axes for decent work, articles 28 and 29 of the Universal Declaration of Human Rights, articles 6, 7 and 8 of the International Covenant on Economic, Social and Cultural Rights, and International Labor Conventions Nos. 104, 105, 109, Convention No. 185 and paragraph 2 of article 1 of the San Salvador Protocol on the adoption of measures to ensure the full effectiveness of the right to work.



2.3.6 JUDICIAL DECISIONS OF RELEVANCE TO THE LABOR REFORM PROCESS.

The Constitutional Court has played a fundamental role in guaranteeing acquired rights and respect for the supreme norm, of which the following are examples:

Quoting No. 164-13-AG/13, dated October 23, 2013, "Acquired Rights as acquired rights is a situation created by fulfilling all the conditions necessary for its acquisition, in strict compliance with the requirements of the current legal system. Once consolidated it cannot be undone or violated by subsequent acts or positions, that is, it must respect acquired rights; by this virtue, they are understood as incorporated as valid and definite and belong to the patrimony of a person."

Quoting No. 001-13-AG/13 (4-1) "the right to work (articulated with the effective enjoyment of other rights recognized in the Constitution of the Republic, such as the right to just remuneration, provided for in Article 268 herein, is must be remembered that these rights, according to the Constitution itself, are inalienable and inextinguishable."

Principles of progressivity and non-regression and the inalienability of rights Quoting No. 001-13-AG/13: "the non-regression of rights is among the principles that enrich the value of justice (...); the principle of non-regression of rights contemplates the legal adaptation of norms, laws, regulations, ordinances, resolutions to the constitutional precepts and international treaties, corresponding this obligation to the National Assembly and all bodies with normative power, whereby that one relevant, must be formal and material; guarantee the dignity of the human being of the communities, peoples and nationalities."



2.3 COLOMBIA



2.3.1 DESCRIPTION OF THE REFORM

The Labor Reform has two important parts, the individual part and the collective part. It applies to the vast majority of the private sector of all sectors of the economy in its individual dimension as well as to the public sector workers in the collective dimension. It is not applicable to public employees due to the special rules that apply to this regime.

This proposal for labor reform is entitled “Decent and Dignified Work in Colombia,” with an intentional normative component to guarantee the facilitation and promotion of work, the regulation of new forms of contracting and special protective measures for certain sectors; firm guarantees for the exercise of trade union freedom in its components freedom of association, Collective Bargaining and Strikes, and includes a differentiated approach against gender discrimination, new economy, domestic work and inclusion approach for people with disabilities.

This proposed labor reform modifies the Substantive Labor Code and other norms that at the time modified the conditions in the labor relationship with notable deviations for workers in some sectors.

The first chapter contains the constitutional principles that should govern labor relations and reflect the vision of the constituents with respect to the dignified treatment that all persons deserve regardless of their employment relationship, as well as the principles related to the fundamental rights of the International Labor Organization, such as union freedom, freedom of association, effective recognition of the right to collective bargaining, and the elimination of discrimination in matters of employment and occupation.





ELEMENTS OF INDIVIDUAL LAW IN THE REFORM PROPOSAL

The **indefinite term (permanent) contract** is established as the rule, giving priority to labor stability and limiting other forms of contracting such as the fixed-term employment contract which will have an exceptional nature and will be subject to meet a temporary need of the employer, and in no way to cover missionary and permanent activities, reducing its maximum duration from three (3) to two (2) years, including extensions and it will be understood that this contract becomes an indefinite term (permanent) contract if it exceeds this term.

The contract for work or labor must comply with new formality, which is that it must be made in writing, otherwise it will be understood as an indefinite term (permanent) contract.

The **apprenticeship contract** should be formalized through a special fixed-term contract (maximum 36 months, plus extensions and practical phases), its remuneration can never be less than the **SMAGS** (official minimum wage), with affiliation to the General Social Security System.

working day

The day shift is between 06:00am and 7:00pm.

The night shift is between 7:00pm and 6:00am of the following day.

The maximum working day is 8 hours per day and a maximum of 44 hours per week, divided into four (4) days per week, guaranteeing a day of rest and without affecting the safety.

In this regard, it should be noted that Law 203 of 2020 was one of the law initiatives made in labor regulation during the pandemic, providing for the gradual reduction of the working week from 48 to 44 hours, a measure that was approved in July 2020 and that is fully implemented by 2024.

The reform aims to improve the guarantee of strict compliance with labor standards in the face of disguised forms such as service contracts or the use of temporary employment agencies, by providing tools for the enforcement of rights.



The proposed labor reform does not eliminate outsourcing, but it regulates it in a way that corresponds to its purpose, which is the outsourcing of processes to a third party without technical and managerial autonomy, based on specific criteria that guarantee the right to work under equal conditions and with full labor guarantees.

Stable service contracts will not be abolished, but their use will be limited in order to avoid the disguise of labor relations.

Work performed on mandatory rest days or holidays will be compensated with a surcharge of one hundred percent (100%) on the regular salary, with a gradual implementation.

One of the main axes of the labor reform project is the guarantee of labor stability and the preservation of jobs, for which some measures are contemplated to guarantee fair and equitable processes under the due disciplinary process, with special attention to the cases of workers in situation and conditions of disability.

ELEMENTS OF COLLECTIVE LAW IN THE REFORM PROPOSAL

In collective matters, the reform focuses on strengthening the capacity of trade union organizations and workers, and establishing a legal framework that guarantees the right to collective bargaining and the right to strike, in accordance with the principles of democracy proposed by the ILO and the Colombian Constitution.

With regard to the articles related to the right of freedom of association, there is a first attempt to consolidate the unity of the movement through the strengthening of trade union organizations that are not fragmented, which also allows for the strengthening of collective bargaining capacity and coverage.

It establishes guarantees for the activities of trade union entities, such as the recognition of trade union institutions, permanent spaces for social dialogue between trade union organizations and companies, and communication institutions in order to make trade union organizations visible and increase membership.





There is also an exhaustive list of anti-union practices that have prevented the free exercise of the right of association for years, such as intimidation, coercion, offering or giving gifts to prevent workers from joining or leaving a union, worsening working conditions and terminating employment contracts with the aim of influencing union organization, refusing to negotiate the list of demands, resolution of any kind, among others.

With regard to collective bargaining, the reform offers the possibility of bargaining at a local other than the company level, as recommended by the ILO in Conventions 98 and 154, the Committee of Experts on the Application of Conventions and Recommendations, the OIGG through the Employment Committee and the Labor Action Plan, replicating the model applied to the public sector at the level of the economic sector, the trade union or any other local agreed by the parties.

This makes it possible to reach agreements by sector, taking into account minimum working conditions, with the possibility of imposing or supplementing them according to the specific conditions of each company.

The rules for bargaining will be the same as in the public sector, where there will be a single document with list of demands, a single bargaining committee, a single bargaining table and a single collective agreement. However, the bargaining committee will be formed on a proportional basis if there are several trade union organizations.



Workers employed by temporary service companies can present a list of demands not only to the temporary service company but also to the beneficiary or user company.

It prohibits the use of employer protection contracts (which have discouraged union membership in Colombia) where there is a union organisation.

With respect to the rights to strike, the proposal has the clear intention of eliminating the legal obstacles to its exercise related to voting and the requirement of very high majorities, which have made its exercise almost impossible, as well as eliminating the explicit prohibition of strikes in companies that provide essential services, guaranteeing the provision of minimum services to avoid their interruption.

It expands the concept of the strike not only to the commercial strike that is currently regulated in the Substantive Labor Code, but also to those comprised by the jurisprudence, thus strengthening the concept of the strike as a right, in an attempt to overcome the economic coverage to which the strike has been positioned as an offence and heavily limited measure.

We believe that it is important to consider the provisions of the proposed labor reform regarding the strike (definition, limitations, requirements, voting, resolution, form, functions of the authorities and grounds for illegality) in a comprehensive manner since its content includes provisions that guarantee democratic and reasonable conditions a decision that is important for the workers involved, and at the same time, and with greater evidence, establishes rules that must be followed in this matter, providing legal certainty for workers and trade union organizations, but also for the business sector. The law provides legal certainty for workers and trade union organizations, but also for the business sector, so as to avoid making mistakes that paralyze or reduce the economic activity of a company without taking into account these provisions.

DISTINGUISHING ASPECTS TO HIGHLIGHT IN THE COLOMBIAN LABOR REFORM:

It has a very specific component that covers the new labor relations of workers where it has not been possible to speak of minimum labor rights, such as informal workers, platform workers, who will be able to develop their activity in a dependent and subordinate manner with the recognition of social security; agricultural work with the creation of the agricultural contract, which of course aims at formalizing rural work; athletic communities, sporthouses and sportspeople, coaches, art and culture workers, among others.





2.0.2 CONSULTATION PROCESS, SOCIAL DIALOGUE AND OTHER PARTICIPATORY MECHANISMS FOR THE CONSTRUCTION OF PROPOSALS FOR REGULATORY REFORM IN LABOR MATTERS.

ORIGIN OF THE TEXT OF THE LABOR REFORM

The new government identifies four determining factors for which it is necessary to propose modifications to the labor law: first is the situation of growing unemployment in the country, the accumulation of informality, especially in rural areas, and the precarious contracts experienced by workers, second is the identification of a labor code that is more than 50 years old and does not reflect the realities and needs of today's national reality, third is the loss of labor rights resulting from regulatory reforms of recent years, such as Law 61 of 1993 and Law 789 of 2003, for example, in areas such as working hours, and finally the identification of a series of international recommendations, as well as orders of request from the country's Constitutional Court and Supreme Court, which have not been followed by either the executive or legislative branches, and therefore the labor regulations are not in line with a large part of the national jurisprudence.

All of this leads the new government to recognize the need to promote a labor reform that allows for the introduction of an inclusive and rights-based approach.

TRIPARTITE CONSULTATION PROCESS IN THE COUNTRY'S FORMAL BODIES OR OTHER SOCIAL DIALOGUE MECHANISMS USED BY THE COUNTRY TO DISCUSS THE LABOR REFORM PROPOSAL.

The construction of the labor reform project involved an important participatory process that fulfilled the commitment to listen and engage in social dialogue with the different actors of the labor world in five different types of participation spaces. The Labor Reform Subcommittee of the Permanent Commission for the Coordination of Wages and Employment Policies uses the tripartite dialogue scenario, in which three of the most representative trade union centers in the country that is now, currently, the Central Única de Trabajadores -CUT, the Confederación de Trabajadores de Colombia -CTC, and the Confederación General de Trabajadores -CGT Employer representatives currently include the National Association of Colombian Businessmen -ANNC, the



Colombian Association of Micro, Small and Medium Enterprises - ASOHO, the National Federation of Merchants - FEDECOMERCIO, the Colombian Farmers' Association - ASAC, and the Association of Banks and Financial Institutions of Colombia - ASOBANCOS.

The event was also attended by academic experts from international organizations such as the ILO, OCEC, IDBMC, as well as representatives of the governments of Mexico, Spain, Chile and Argentina, who presented comparative experiences of labor reform carried out by these countries.

The second space for discussion, analysis and reception of proposals was the territorial scenario, in the framework of the binding regional dialogues for the construction of the National Development Plan. The third space was in the framework of the Departmental Sub-commissions for Coordination, held between January 15 and February 5, 2023 in the regions where 168 proposals were received from 26 departmental territories; fourth, at local thematic meetings were held with various sectors such as youth, women, among others; and finally, the fifth space was the virtual reception scenario through which about 1,274 proposals were received. In this way, the participation strategy used different scenarios of social dialogues and in total, almost 1,600 proposals were received from citizens.

RESULTS OF THE DIALOGIC PROCESSES AND THEIR IMPACT ON THE REFORM TEXT.

After these processes of consultation and tripartite dialogues, as well as the receipt of proposals in different participation scenarios, the Labor Reform Bill was submitted to the Congress of the Republic on March 16, 2023 (L. 367 of 2023). After an important process of studying a positive report on this project and an attempt to debate it, the session scheduled for June 20, 2023 did not have the conditions to hold the formal debate due to the temporary regime regulated by Law 1 of 1994.

However, the dialogues and the process of strengthening the labor reform proposal continued and the National Government re-submitted the text of the labor reform to the Congress of the Republic on August 24, 2023, which contains a total of 60 articles, Draft Bill 002023.





3.3.3 OBSERVATIONS AND RECOMMENDATIONS INCLUDED IN THE LABOR REFORM

RECOMMENDATIONS OF ILO SUPERVISORY BODIES INCLUDED IN THE REFORM

The ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR) requested Colombia to adopt specific measures concerning the right to work and the right to organize. Recommendations of the ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR) and measures included in the draft bill:

<p>Convention 102 (Equality)</p>	<p>Equal rights for temporary agency workers.</p> <ul style="list-style-type: none">- Obligation of the employer to carry out an objective evaluation of the work.- Trade union organizations and employers must promote the participation and inclusion of women under equal conditions.- Employers' regulatory prohibitions against discrimination of women.
<p>Convention 111 (Discrimination (Employment and Occupation))</p>	<p>While the Committee requests the Government to include from Law 1010 of 2006, guarantees the adequate practice of protection against sexual harassment in the workplace, the Colombian Labor Reform Proposal introduces a chapter on measures against harassment and violence in the workplace, expanding the scope of the law in this area, as well as the type of subject that can cause harm in the workplace, referring to more than just the employer or co-workers.</p>



<p>Convention 102 and 103 Convention 104 - Domestic Workers</p>	<p>Formalisation of paid domestic work -Deposit of the Contract with the Ministry of Labor for publicity purposes (transparency) and follow-up of its formalization.</p>
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(Note: Summary of the observations received by ILO)

<p>In light of the continuing use of arbitrary violence, the representative Colombia</p>	<p>In this regard, the labor reform includes an article on trade union guarantees. Guarantee for the Exercise of Freedom of Association. In order to guarantee the exercise of the fundamental right to freedom of association, the following guarantees are established as the minimum to which all trade union organizations and their members are entitled:</p>
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Regarding the union contract: The proposal includes elements of the ILO/COL Recommendation on the regulation of the union contract mechanism to prevent it from undermining rights (Observations of the Committee of Experts to Colombia in 2020 and 2022) Art. 76 of the draft Labor Reform.

On Employer Protection Contracts

Observation (COL/C) - Adoption: 2020; Publication: 1999-CIT Meeting (2020), Rights to Organize and Collective Bargaining Convention, (1949) (No. 98) - In light of the above, the Committee again requests the Government to take the necessary measures to ensure that the conclusion of collective agreements with non-unionized workers (Employer Protection Contracts) is only possible in the absence of trade union organizations. The Committee requests the Government to report on any progress in this regard.

Legislative proposal: Article 77 of the Labor Reform.





Regarding bargaining only and the strengthening of collective bargaining, ILO/C102 or labor reform makes the following recommendations:

- **Observation (2010)** With regard to Article 4 of the Convention, the promotion of collective bargaining in the private sector, includes the recommendation of bargaining:

Notwithstanding, in accordance with Article 4 of the Convention, collective bargaining should be possible at all levels and should be promoted in a manner appropriate to national conditions [...], the Commission urges the Government to: (i) take measures, including legislative measures, after consultation with the national partners, to effectively promote collective bargaining in the private sector, in particular at levels higher than that of the enterprise,

- **2010/10 Request – 2011**

Noting the importance of effective mechanisms for the voluntary resolution of collective disputes for the effective promotion of collective bargaining, and encouraged by the Government's indication that it is considering the possibility of amending legislation in this regard, the Commission requests the Government to engage in discussions with the social partners with a view to improving the effectiveness of mediation, conciliation and arbitration procedures for collective labor relations. (from the original text)

ELEMENTS OF ADVISORY OPINION NO. 13/00/03 OF THE INTER-AMERICAN COURT OF HUMAN RIGHTS INCLUDED IN THE PROPOSED REGULATION.

- Union guarantees Number 11 of the IACHR's C-102/11 considers elements in this form that are indicated in Articles 43 and 51 of the Labor Reform Law.

- With regard to the freedom that trade union organizations and their representatives must enjoy for the full exercise of their rights, the elements of number 52 of Art. 20 of the IACHR are considered.



■ In the area of collective bargaining, Article 75 of the Labor Reform provides for the promotion of the fundamental right to collective bargaining, and also makes an amendment to Article 637 of the current Labor Code to regulate collective bargaining by branch or multibranched, those proposals include the elements contemplated in paragraph 10 of Opinion CC-2023-CC-2639-05.

3.3.4 INTERNATIONAL RECOMMENDATIONS NOT INCLUDED IN THE TEXT OF THE LABOR REFORM

■ Regarding the ILO Employment Recommendation on strengthening the protection program for trade union members and unionized workers, it is proposed in paragraph 3) to shorten the duration of the risk assessment process in the case of persons under imminent threat - 3).

■ Strengthening the labor inspection system by: a) Carrying out sufficient preventive labor inspections in addition to inspections following complaints; b) Carrying out new visits and, where appropriate, imposing new fines on companies whose fines have expired.

Finally, it should be recalled that the text of the labor reform includes some elements of the rulings of the Supreme Court of Justice and the Constitutional Court, some of which stand out, such as:

■ Ruling C-1103-2023, dated May 19, 2023, which urged the Congress of the Republic to develop Article 62 of the Political Constitution in relation to the principles of work.

■ In advances in the guarantee of labor stability with the proposal to strengthen the indefinite term (permanent) labor contract and widen the protection to the indefinite labor stability (Constitutional Court T-837 and T-426 of 2016), T-325 of 2018 and Sentence T-416 of 2020.

■ Recently, the Constitutional Court called on the Congress of the Republic to comply with the regulation on strikes in essential public services, stating: "The Court explains that the constitutional jurisprudence, since Ruling T-795 of 2016, has accepted that the right to strike may be exercised in essential public services, but in a limited manner, as long as this is not indefinite in time and continuity in the essential aspects of the service is guaranteed" (Ruling C-354-23).



CHAPTER 3

THE POINT OF VIEW OF WORLD OF WORK STAKEHOLDERS ON LABOR REFORMS AND REGULATORY CHANGE PROCESSES



3.1 PERÚ

This draft Labor Code was presented to the representatives of the trade union centers in order to gather their opinions and proposals which, in these elements could be included in the final text. It was announced at the time that 50% of the draft code was consensual and that bipartite consultations should be held in which a higher percentage of consensus. The ideal place to continue the evaluation was the National Council for the Promotion of Work and Employment (CONTE), a bipartite body in Peru in which trade unions, business associations and the national government have seats. The discussion was restarted on May 14, 2022 in the meetings of the National Council for the Promotion of Labor and Employment (CONTE), where it was agreed to begin a whole process of dialogue meetings on May 17 to evaluate the entire content of the draft Labor Code.

Despite the initiative promoted by the government and the initial agreements reached at the May 17 meeting, the business organizations decided to suspend their participation in the CONTE, and although the Ministry continued the negotiations on several occasions, the bilateral meetings resumed at the end of 2022, first with employer organizations such as the National Confederation of Private Business Institutions, the National Confederation of Industries, the Lima Chamber of Commerce, and the Association of Exporters which took place between December 2022 and May 2023, even in the context of the social unrest that Peru was experiencing as a result of the arrest and murder of Pedro Castillo. In these meetings, the trade unions focused on expressing their concerns about Supreme Decree No. 026-2022-TR and did not address the comments on the preliminary draft.

The trade union confederations believe that this decree could contribute to alleviating the serious situation of trade union rights, since the fact that it expressly recognizes the right to form trade unions in groups of companies and in networks of production chains or subcontracting makes it possible for a greater number of workers to join trade unions, especially those employed in atypical and outsourcing models.

CONTE 2023 has insisted that such a debate should have been debated, and therefore the business organizations have maintained such a firm position that the debates on the bill should be held with greater delay in time, asserting that the consultations on it were frustrating the issuance of Decreto No. 026-2022 - TR.





3.2 ECUADOR



Regarding the “Creating Opportunities” bill proposed by President Lasso, which sought to reform the labor code and create a flexible regime, workers’ organizations generally considered it discriminatory and regressive. They argued that the proposed measures undermined labor rights, weakened worker protection, led to job losses and trade union voice erosion. There were protests and mobilizations against the labor and tax reforms. For its part, the United Workers’ Front (UWF) submitted a bill to the National Assembly in October 2023 to create a new labor code. According to the organizations that worked on the project, it is an agile, dynamic and efficient code that guarantees legal stability for employees, workers’ rights and places work in the category of social rights so that it is regulated and not precarious. According to the trade unions, only 5 out of 10 people of working age in Ecuador are formally employed.

Various social groups, including indigenous movements and human rights organizations, also expressed their disagreement with the reforms, criticizing the austerity policies and measures that they considered detrimental to the most vulnerable sectors of society.

The National Assembly said that the project was unconstitutional because it constituted a multiplicity of aspects of different nature, and suggested that a single organic, integral and modern labor code be discussed with all sectors.

Some businessmen and private sector representatives expressed support for the reforms proposed by the Lasso government, arguing that the labor flexibility measures could stimulate foreign investment, improve the country’s competitiveness and create a more business-friendly environment.



3.3 COLOMBIA



Employers' demands and desires:

The employers' sector has raised that any labor reform must consider the creation of employment as a priority, and consequently they have disagreed with several of the proposals that initiated in the reform, considering them inconvenient for the financial situation of the companies, adding that these will generate greater informality.

They have promoted, both in the media and in forums, a series of positions in which they state that the labor reform could generate negative effects for companies, ending close to 100,000 jobs by 2026, but these figures have not been fully supported.

Workers' demands and desires:

The position of the most representative trade unions of the country, UUP, CUC and CUC, has been to accompany and support the project of the labor reform, since the construction of the proposal in October 2020 they have participated in the scenarios of dialogues, debates and contributions for the construction of the project. They have carried out various actions to support and promote the labor reform.





CONCLUSIONS

Having examined the labor reform processes that have recently taken place in Colombia, Ecuador and Peru in detail and from different levels or scenarios, one of the conclusions that can be drawn is that the continent has recently undergone a wave of important social and political changes. Some countries with a historical tradition of conservative governments or neoliberal policies have turned to more democratic processes and left or center-left governments, such as Colombia and Chile, while in countries where the left has usually made important gains, such as Ecuador and Argentina, it has turned to steering right-wing governments or regressive social policies.

One of the elements that characterized the labor reform processes in these countries was social dialogue, both because of the creation of spaces that allowed for consultation, socialization, validation, construction or open discussion of the labor reform processes, and the absence of such spaces in some cases. In this way, in both Colombia and Peru, this dialogue was generated in spaces that included the most representative employer and workers' organizations in the country, which made it possible to raise the consultation to the highest levels. In Ecuador, on the other hand, none of the labor reforms proposed by the government, which made labor rights more flexible, included tripartite participation or worker consultation.

Although the intention of the dialogue was similar in the case of Peru and Colombia, in the first case before the National Council for the Promotion of Work and Employment (ONPE) and in the second before the Standing Committee on the Coordination of Wages and Employment Policy (Comisión Permanente de Coordinación de Políticas Salariales y Laborales), in the case of Peru there was an early and premature termination of the dialogue after the issuance of Supreme Decree No. 008-2023 by the National Government. This is a situation that has not occurred in Colombia, since the government has favored the approach of labor reform from the scenario of change of regulations, which is currently in the Congress of the Republic of Colombia.

In the Ecuadorian case, the issuance of the aforementioned decree has allowed the country's collective regulations to make progressive progress on relevant issues, such as the possibility of forming different types of unions without restrictions, the protection of collective agreements against unilateral decisions by the employer to reverse them, and



a nonreciprocal protection for workers exercising their right to strike. However, this decision to issue regulations has had a strong impact on social dialogue and, in the presence of a more, less progressive government, it generates momentum for the progress of progressive labor regulations.

Finally, in Ecuador, the total decision of the actors in the reform process stands out, since, on the one hand, the "Cleaning Opportunities" law presented by former President Lasso sought to reform the labor code and create a new labor regime that was regressive in many aspects, which the employers supported and the workers raised their voices in protest. It remains to be seen what will happen next, given the new political situation of the country.



LABOR OBSERVATORY OF THE AMERICAS

