

## **The Protection of Workers' Rights of Assembly and Association and their Classification in Colombian Criminal Law**

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### **Abstract**

*The monitoring of the fundamental rights of workers is an arduous task that falls within the competence of the Colombian State, however, when it comes to the violation of one or more of these rights, it is precisely the Criminal Law that is responsible for watching over and guaranteeing compliance with the law. In view of this fact, the general objective of this research is to characterize the protection of the rights of assembly and association in Colombia, based on Colombian criminal law; To this end, the norms that govern the aforementioned rights of workers in Colombia are identified and the scope of criminal law in the protection of these rights is determined. The methodology used focuses on descriptive documentary research and the technique used is literature review. The conclusions show that the right of assembly and association has gone through several stages and has evolved favourably, finding support mainly from liberal governments.*

**Keywords:** *Law, criminal, assembly and association.*

### **Introduction**

At present, there have been various scenarios led by some employees, both public and private, who demand respect for their rights. Fair wages, better treatment, better working conditions and even the right of association. The latter could be indifferent to some people, however, when analyzing the advantages generated by the right to labor association, it is very likely that people tend to take sides for or against.

Although most relations between employers and workers become cordial, there are occasions when they can become tense and there is a need to move from the field of Labor Law to Criminal Law (Cala, 2019), and <sup>4</sup>that is precisely the point of action of this article,

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<sup>4</sup> Cala, B. (2019). The Crime of Violation of the Rights of Assembly and Association. [Online]. Retrieved July 5, 2019, July 5, 2019, asuntoslegales.com, <https://www.asuntoslegales.com.co/consultorio/el-delito-de-violacion-de-los-derechos-de-reunion-y-asociacion-2820538>

the analysis of the violation of the Rights of Assembly and Association of workers. established in Article 200 of the Penal Code and amended by Article 26 of Law 1453 of 2011.

Likewise, the importance of this article lies in talking about trade union rights, which are fundamental for workers who are established at an international level and whose precepts in labour legislation have been permeated by the Colombian Constitutional Court since the 1991 Constitution (Segrera and Torres, 2005).<sup>5</sup> The information disseminated in the media, talk, print and television, among others, about the protests of the workers demanding their rights, are evidence of the existence of a very deep problem between the real exercise of the rights of association and assembly, and the function of guaranteeing the rights exercised by the Colombian State as a constitutional precept of the Social Rule of Law.

In Colombia, some moments have marked a history full of pain throughout five decades of internal civil conflict that began in the 1970s, where several social actors in the country, including activists, community leaders, environmentalists, trade unionists, members of Community Action Boards, political leaders of leftist parties, etc., confirmed with their lives and human integrity the existence of serious crimes. among them genocide, disappearance and forced displacement by armed actors belonging to other ideologically opposed forces, state agents, popularly elected public officials, businessmen or organized crime in illegal armed fronts, in terms of the beginnings of their legal framework, neither the State with all its institutions, nor the legislator in criminal regulations, nor did the Constitutional Court, in its study of constitutionality, lay sufficient grounds to guarantee this fundamental right.

That is why the meaning of this type of criminal offence was sought, which has been lost in the legislative debate among so many other provisions of this government initiative and which have only created with some exceptions, the second paragraph of article 200 of the Penal Code criminalizes the granting of greater perks in collective agreements to non-unionized workers than those agreed with unionized workers, considering that this represents a danger to freedom of work and association.

Thus, with this principle, it is possible to measure the danger represented by granting better conditions to non-unionized workers for labor rights, but with great emphasis on freedom of association, which constitutes the essence of the devaluation of this injustice, thus giving the true meaning to this type of criminal offense and so on.

However, it should be borne in mind that Criminal Law only protects a negative sense of freedom, framed by the principles of self-responsibility and self-protection of legal assets (Alas, 2015).<sup>6</sup> That is why, at a time when benefits are generally offered to all workers, without any discrimination on the basis of their trade union membership, and they are the ones who freely choose between one option or another, there can be no question of any limitation on the part of the company on freedom of association or of the workers. consequently, of danger to the legally protected good.

Therefore, it is assumed that the violation of the right of association from the criminal sphere can be analyzed from several types (Cala, 2019): first, it is a type of indeterminate active subject, that is, it is not required to have any special qualifications to be able to be the author of it. Therefore, as it is a type that essentially seeks to protect workers' rights, it is likely that most of the time the perpetrator of the crime will be the employer, but the perpetrator may well be someone else, for example, another worker or even a third party

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5 Segrera, Y. & Torres, V. (2005). Scope of the right of association in Colombia based on the rulings of the Colombian Constitutional Court based on the influence of international organizations on the matter. *Revista de Derecho, Universidad del Norte*, 23; 171-212.

6 Alas, D. (2015). Crime Victim Behavior: Self-Endangerment. *Law and Social Change*. [Online]. Retrieved from Universidad de La Rioja, August 23, 2019, <https://dialnet.unirioja.es> > download > article

outside the respective employment relationship. Although it may seem obvious to say so, the passive subject of the conduct is not qualified either: it can be one or more people, unionized or not, etc.

The foregoing shows that it is necessary to guarantee the rights of all workers indiscriminately, so that they do not feel the need to terminate their right to association for fear of suffering harassment or discrimination because they belong to a particular trade union group or association.

In addition to the above, the international regulations that protect the role of the worker are binding on the Colombian state and allow some legal weaknesses in this labor protection to be evaded. The Constitutional Court considered that Conventions 87, 98, 151 and 154 are part of the constitutionality block (Ostau de Lafont & Niño, 2010)<sup>7</sup> because they are conventions on human rights, containing non-self-executing clauses but given their special fundamental characteristic.

Therefore, these clauses cannot be considered unenforceable or non-enforceable, since the lack of regulation for not applying them cannot be an excuse for the State's responsibility. In the case of Colombia, this situation is based on the fact that, being part of the constitutionality block, human rights conventions become an integral part of the Constitution, so they prevail over domestic norms such as the CST (Ostau de Lafont & Niño, 2010).

### 1. Importance of Conceptualization

Knowledge of the concepts will make it possible to clarify the manner or form in which the protection and defense of workers' rights of assembly and association should be carried out, as well as their classification within Colombian criminal law. Hence, the importance of identifying the following:

#### 1.1 Right of assembly

Fundamental rights are born and die with the person and, as Ferrajoli (2009) states,<sup>8</sup> they are also "rights that are universally ascribed to everyone as persons, or as persons. en cuanto citizens or persons with the capacity to act..." (p. 117). In addition, it is clear that protest is recognized as a fundamental right, an inherent right of the human being, impossible to compromise or limit; inalienable, imprescriptible and non-transferable. However, how does this fundamental right materialize? Protest is not only materialized and guaranteed through the Political Constitution of 1991, but is also supported by resolutions issued by international organizations of which Colombia is a member.

And that, therefore, "it is obliged to comply with the obligations contained in the main international instruments on human rights, both in the Universal System (United Nations, UN) and in the Inter-American System (Organization of American States, OAS). The right to protest within the international legal framework is not exhaustive as such, but it is protected by the integrality of several rights that are individually related to each other, such as: the right to association or peaceful assembly, freedom of expression and strike. Article 20 of the Universal Declaration of Human Rights<sup>1</sup> identifies the importance of the rights to freedom of assembly and peaceful association to the extent that:

<sup>1</sup> Article 20 of the Universal Declaration of Human Rights (1948) states: "Everyone has the right to freedom of opinion and expression; this right includes the right not to be disturbed because of one's opinions, the right to protect and enforce the right to protest in Colombia.

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<sup>7</sup> Ostau de Lafont, F. & Niño, L. (2010). Application of ILO conventions on the right of association and collective bargaining in the decisions of labour judges in Colombia. *Prolegomena Magazine Rights and Values*, 13 (26); pp. 89-105.

<sup>8</sup> Ferrajoli, L. (2009). *The foundations of fundamental rights*. Madrid. Spain: Editorial Trotta, S.A.

They lead to the exercise of many other social, civil, economic, political and cultural rights, constituting essential elements of democracy, since through their exercise human beings can proclaim their opinions of a political, literary, artistic, cultural, religious, economic, social or any other aspect. This is also stated in Council Resolution 15/21 (United Nations, 2010).<sup>9</sup> Considering the effective interrelationship and interdependence with other rights, freedom of association and peaceful expression are an invaluable indicator that makes it possible to identify the extent to which States respect the enjoyment of many other human rights.

Likewise, article 21 of the International Covenant on Civil and Political Rights recognizes the right to peaceful assembly, and in turn, this article provides that "the rights to freedom of peaceful assembly and of association are not absolute". That is why the UN Human Rights Committee, which monitors the implementation of the ICCPR, decided that its next general comment would fall on this article of the Covenant. The above, leaving behind Resolution 15/21 proposed by the United Nations in 2010 and which at the time strongly supported this normative section, determining that these rights "may be subject to certain limitations prescribed by law that are necessary in a democratic society for reasons of national security or the integrity of the population, public order, the protection of public health or morals or the protection of the rights and freedoms of others" (para. 4).

In addition, the Inter-American Commission on Human Rights has also delved into the intimate relationship between the right to freedom of expression and assembly, stating that "(...) when taking stock of the right of movement, for example, and the right of assembly, it is important to bear in mind that the right to freedom of expression is not just another right but, in any case, one of the first and most important foundations of the entire democratic structure: the undermining of freedom of expression directly affects the main nerve of the democratic system" (IACHR, 2005; p. 93).<sup>10</sup>

Similarly, article 153 recognizes the right of assembly, but also sets a precedent on non-violence and the non-use of weapons in the execution of assembly. A major contribution was made by the International Convention on the Elimination of All Forms of Racial Discrimination for the year 1965, which in article 5 expresses the commitment of the states (which signed the convention) to respect, inter alia, the right to equality, especially avoiding racial discrimination, which impedes the enjoyment of other rights. as well as civilians, including freedom of peaceful assembly and association.

## 1.2 Trade union association

With regard to the legal concept of the right of trade union association, according to the Constitutional Court, there is a ruling in which it states the following:

"Underlying the right of trade union association is the basic idea of freedom of association, which amplifies this right, as an autonomous power to create trade union organizations, free from any restriction, interference or intervention by the State that would entail the imposition of obstacles to their constitution or functioning. This implies the power of the aforementioned organizations to self-form and self-regulate in accordance with the rules of internal organization freely agreed upon by their members, with the limitation imposed by paragraph 2 of article 39, according to which the internal structure and functioning of trade unions are subject to the legal order and democratic principles." (Judgment C-385, 2000).<sup>11</sup>

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<sup>9</sup> Organization of American States. (1948). American Declaration of the Rights and Duties of Man. [Online]. Retrieved from IACHR, September 9, 2019, <http://www.cidh.oas.org/Basicos/Spanish/Basicos1.htm>

<sup>10</sup> Organization of American States. (August 1, 2005). AEO. Retrieved August 1, 2022, from OAS: <https://www.oas.org/es/cidh/expresion/showarticle.asp?artID=25&IID=2>

<sup>11</sup> Constitutional, C. (April 5, 2000). Constitutional Court. Retrieved August 1, 2022, from Constitutional Court: <https://www.corteconstitucional.gov.co/relatoria/2000/C-385-00.htm#:~:text=%E2%80%9CLos%20trabajadores%20y%20los%20empleadores,los%20estatutos%20de%20las%20mismas%20%80%9D.>

### 1.3 Criminal law

With regard to criminal law, it is taken into account that, although most relations between employers and workers are cordial, they can sometimes be very tense and fall within the scope of criminal law. Therefore, among the criminal types that may occur in this scenario is the Violation of the Rights of Assembly and Association, which is established in Article 200 of the Penal Code and amended by Article 26 of Law 1453 of 2011; Likewise, the complexity of its wording and the difficulties that its interpretation offers in practice require an explanation of its scope.

Therefore, in order to understand the crime of violation of the rights of assembly, it is interpreted that it is an indeterminate type of active subject, that is, it is not necessary to have any special qualifications to be able to be the perpetrator of it. Which means that it is a type that essentially seeks to protect workers' rights, and that it is likely that most of the time the perpetrator of the crime is the employer, but perfectly well the perpetrator can be another person, for example, another worker or even a third party outside the respective employment relationship. Although It may seem obvious to say that the passive subject of the conduct is not qualified either: it can be one or more people, unionized or not, etc.

In the same way, the crime is one of alternative conduct, since it can be committed in several ways, and contemplates several normative elements. I explain those commission possibilities and the fundamental elements of each option such as preventing a meeting or the exercise of other labor rights. On the one hand, this behavior occurs when employees, unionized or not, are otherwise frustrated or not allowed to meet.

Moreover, the right of assembly is a constitutional right and therefore deserves full legal protection. The type qualifies the meetings, indicating that they must be lawful, that is, rallies cannot be held to agree on illegal or even criminal activities; Of course, within the framework of the law, appropriate measures can be taken, through institutional channels, to prevent such illegal gatherings. However, it will not only be criminal to prevent the legitimate exercise of the right of assembly, but also any other labour right, for example, to strike, to form a union, to take legitimate legal action, etc.

The above, taking reprisals on the grounds of a legitimate strike, assembly or association, in order for a strike or assembly to be free, those who participate in it must have the peace of mind that there will be no consequences for it. Therefore, if someone takes revenge or does something negative against those who gather or were on strike, they will incur this crime. If you look closely, the criminal offence incorporates any behaviour that occurs before, during or after the strike or assembly: preventing, disrupting, retaliating. None of these behaviors will be admissible under criminal law.

## 2. Methodology as systematic design

During the preparation of this article, it was necessary to recognize the type of research, which allowed planning and establishing the appropriate methodology and technique, taking into account that documentary research was the one that best suited it. Because this "is a research instrument or technique whose purpose is to obtain data and information from written or non-written documents that can be used within the purposes of a specific study" (Pulido, Ballén & Zúñiga, 2007, p. 59)<sup>12</sup>.

In the same way, according to the depth of this study, it was considered descriptive, since to the extent that this type of study allowed us to analyze what a phenomenon is like? and how does it manifest itself? and its components (Hernández, Fernández & Baptista, 2015).<sup>13</sup> Therefore, for this article, it was the case of the rights of association and assembly.

<sup>12</sup> Pulido, R., Ballén, M. y Zúñiga, F. (2007). *Hermeneutic approach to qualitative research*. (2nd Ed.). Bogotá: Universidad Cooperativa de Colombia.

<sup>13</sup> Hernandez, R., Fernandez, C., & Baptista, P. (2015). *Research methodology*. Mexico: McGraw Hill.

Likewise, in order to fully develop the objectives of the article, a statistical analysis was carried out through surveys with specific questions on the topic raised. These surveys were carried out among trade unions or associations in the city of Monteria, which are as follows:

1. Teachers from the Association of Teachers and Education Workers of Cordoba (ADEMACOR).
2. Electricaribe workers belonging to the Colombian Energy Union (SINTRALECOL).
3. Teachers and workers of the University of Córdoba who belong to the Union of University Workers and Employees of Colombia (SINTRAUNICOL).

From these three groups, 50 respondents were distributed as follows: 20 (ADEMACOR), 15 (SINTRALECOL) and 15 (SINTRAUNICOL).

3. Survey on the protection of workers' rights of assembly and association

Below you will find the questions and answers of the survey conducted to get the results of the article:

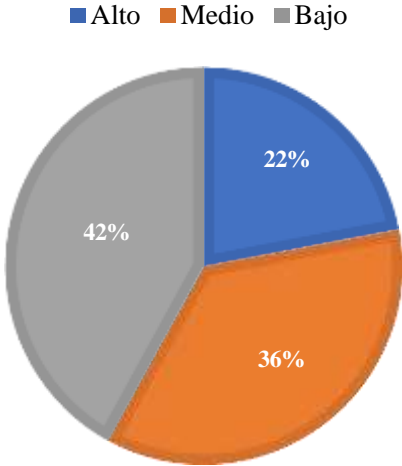
During the development of the study, it was possible to identify that the level of knowledge they had of the Colombian criminal regulations that protect the rights of association and assembly of unionized persons is low (42% (21 teachers), medium with 36% (18 teachers) and high with 22% (11 teachers). 1).

Table 1. Level of knowledge of Colombian criminal legislation that protects the rights of association and assembly of trade union members

OPTIONS	ANSWERS	%
Alto	11	22
Middle	18	36
Low	21	42
TOTAL	50	100

Source: Authors' own creation, 2022.

Figure 1. Level of knowledge about criminal law



Source: Authors, 2022.

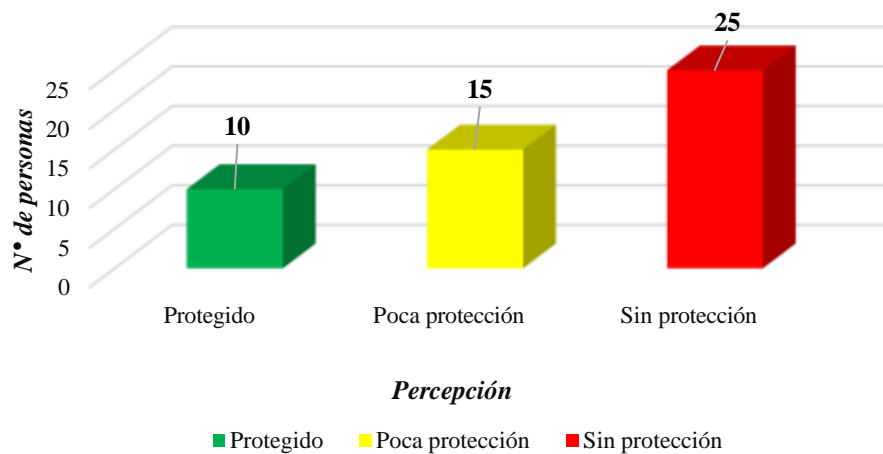
On the other hand, it was obtained as a result that the perception of the participants on the protection of the rights of assembly and collective association for unionized unions by the government, the State and the existing legislation. It is considered unprotected with a percentage of 50, taking into account that 25 of the participants do not feel sheltered, which may be due to government management that is not usually impartial at times, the lack of consistency in the laws and others (see Table 2 and Figure 2).

Table 2. Your perception of the protection of the rights of assembly and collective association for unionized unions

OPTIONS	ANSWERS	%
Protected	10	20
Poor protection	15	30
Unprotected	25	50
TOTAL	50	100

Source: Authors, 2022.

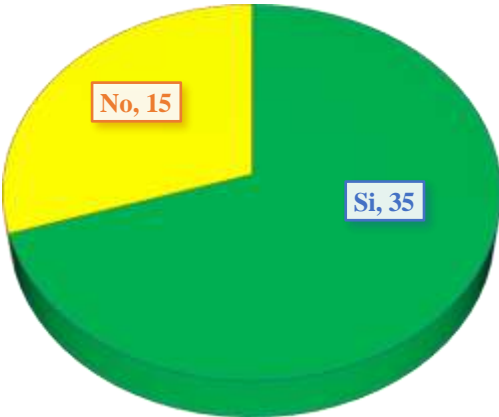
Figure 2. People's perceptions of the protection of the rights of assembly and collective association for unionized unions



Source: Authors, 2022.

Also, it was represented in Figure 3 and Table 3 how 35 of the people surveyed consider that, yes, there should be legal and legal protection mechanisms for groups of unionized workers, with greater effectiveness, guarantee and determination. Whereas, 15 believe it is not necessary, put is well formed.

Figure 3. Increased legal and legal protection mechanisms for unionized workers' groups



Source: Authors, 2022.

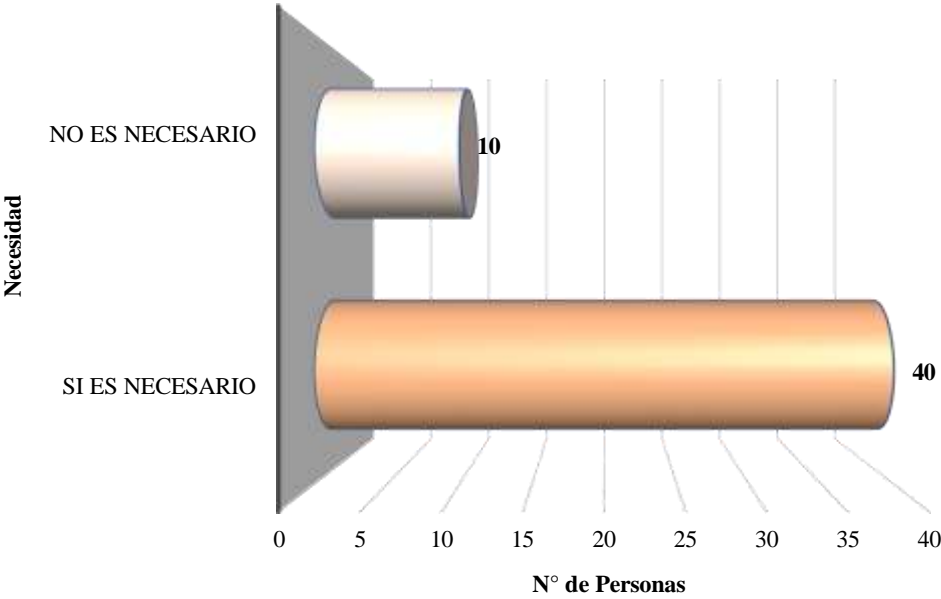
Table 3. Increased legal and legal protection mechanisms for groups of workers unionized

OPTIONS	ANSWERS	%
Yes	35	70
No	15	30
TOTAL	50	100

Source: Authors, 2022.

However, 80% of teachers and workers insist that, if necessary, there should be criminal offences for offences committed against trade union leaders, in order to improve their work environment and quality of life. However, 20% are satisfied and comfortable with what has already been established, so they believe that it is not necessary (see Figure 4 and Table 4).

Figure 4. In criminal matters, it is necessary to create criminal offences relating to offences committed against trade union leaders



Source: Authors, 2022.



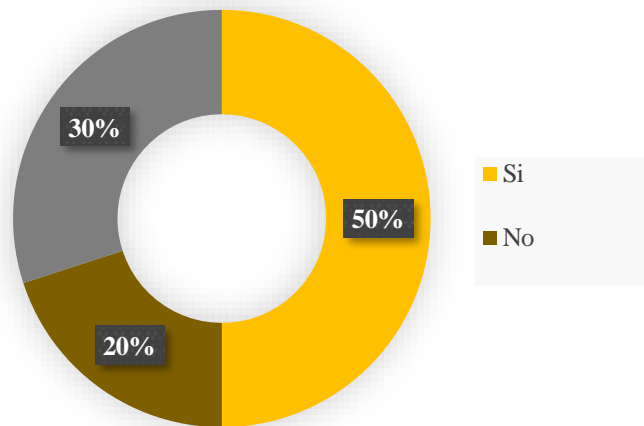
Table 4. In criminal matters, it is necessary to create criminal offences relating to the offences committed against trade union leaders

OPTIONS	ANSWERS	%
Si es necesario	40	80
No es necesario	10	20
TOTAL	50	100

Source: Authors, 2022.

And finally, looking at Figure 5 and Table 5, within each of the trade union groups, fundamental rights such as life, human integrity, the right of association or the right of assembly in Colombia have deteriorated by 50%, expressed by 25 teachers and workers, while the other percentage is divided by 30% who indicate that they do not, Harmony is maintained in terms of rights and the remaining 20% is unclear, so it indicates to consider this as probably.

Figure 5. Their trade union group has been deteriorating in terms of fundamental rights such as life, human integrity, the right of association or the right of assembly in Colombia



Source: Authors, 2022.

Table 5. Their trade union group has been deteriorating in those of fundamental rights such as life, integrity the right of association or the right of assembly in Colombia

OPTIONS	ANSWERS	%
Yes	25	50
No	10	20
Probably	15	30
TOTAL	50	100

Source: Authors, 2022.

## Conclusions

It was concluded with the realization of this article that, through the use of the survey, it was possible to collect data on the perception of teachers and workers belonging to the different groups of unions, in which the issue involving the protection of the rights of

assembly and association of workers is carried out. That analyzed from this research I conclude that it is necessary to implement efficient and specific criminal regulations for trade unions, on security issues and the possible violation of human rights.

Likewise, in the promotion and provision of existing norms for the knowledge of trade union members, because finally it is essential for the State to provide effective protection to trade unions, favoring and assisting them in the performance of their functions and meetings in an appropriate manner.

On the other hand, the development of this research yielded punctual and specific results in which the surveyed population (50) people provided information through five questions, giving a total of (250) answers, which also allowed us to conclude the following:

1. (56) The replies are in accordance with the existing rules and have not suffered any infringement of their fundamental rights.
2. (48) Answers are at the intermediate level, this applies to questions that have a third possibility of answering.
3. (146) The answers are related to the problem of this research, i.e. the need for legislation, the impaired fundamental rights and ignorance of the law.

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## **Annexes**

Below is the survey of teachers and union workers:

Annex 1. Survey on the protection of workers' rights of assembly and association

### **SURVEY OF THE CONSTITUTIONAL PROTECTION OF WORKERS' RIGHTS OF ASSEMBLY AND ASSOCIATION**

Names \_\_\_\_\_ and  
Surnames \_\_\_\_\_ Date \_\_\_\_\_

Trade \_\_\_\_\_ union \_\_\_\_\_ group \_\_\_\_\_ to \_\_\_\_\_ which  
pertenece \_\_\_\_\_

1. ¿ What level of knowledge do you have about the regulations that protect the rights of association of trade union members?

- A) ALTO B) MIDDLE C) LOW

2. ¿ What is your perception of the protection of the rights of assembly and collective association for unionized unions by the government, the State and existing legislation?

- A) PROTECTED B) POOR PROTECTION C) UNPROTECTED

3. ¿Do you think there should be more legal and legal protection mechanisms for groups of unionized workers?

- A) YES B) NO

4. ¿ In criminal matters, is it necessary to create criminal offences against trade union leaders?

- A) NO NEED B) IF NEEDED

5. ¿ Fundamental rights such as life, humane integrity, the right to association and the right to assembly have been undermined in your trade union group in Colombia?

- A) YES. B) NO C) PROBABLY

Source: Authors, 2022.