



Report on the First Three Years of Implementation of the Labor Action Plan -- LAP¹

“Three years of noncompliance with the Obama-Santos Labor Action Plan”

INTRODUCTION

Three years ago, on 7 April 2011, the governments of Colombia and the United States signed an agreement they called the “Labor Action Plan” or LAP, which was aimed at overcoming the obstacle that existed in the Congress of the United States to ratifying the Free Trade Agreement.

Said Agreement, lacking the legal and political instruments which would enforce effective and complete implementation, as we warned at the time, was taken by the Colombian government as a step toward unfreezing the FTA with the United States rather than as an institutional mechanism to promote real protection of the labor and union rights that Colombian workers have lacked for so long.

Three years since signing of the LAP and two years since the FTA came into force, the macroeconomic damage to Colombia has been extensive while many employers continue denying the rights of Colombian workers, just as the Colombian State persists in ignoring them. With such a discouraging landscape for Colombian workers, we reiterate our rejection of the US-Colombian FTA, and express our indignation for the deceptive manner in which the Colombian government sold the LAP, as a mechanism to protect the labor rights in the country without backing it up with a serious political intent, knowing that it wouldn't be carried out.

The “Labor Action Plan” committed the government to adopting 37 concrete measures aimed at resolving the problems arising from the weakness of public institutions charged with investigating and sanctioning the existence of nearly 7 million workers subject to working without the benefit of social security and without their labor rights being respected, due to: their working in illegal labor relationships; the widespread and illegal use of Associated Work Cooperatives (CTAs), lack of controls over Temporary Employment Agencies (ESTs), and other forms of outsourcing (SASs, Foundations, etc.); the use of collective pacts by the employers as a means of reducing union activity and effectiveness; massive violations against the right to organize that go unpunished and are not redressed; lack of legal regulation of essential public services; assassination of and threats against

¹ Produced by the Central Unitaria de Trabajadores (CUT), the Confederación de Trabajadores de Colombia (CTC), CEDETRABAJO, y National Union School (ENS)

union leaders; problems in getting access to protective measures; and the thousands of unpunished crimes committed against union members.

Of the 37 measures that the Colombian government has committed to adopting, seven have yet to be implemented,² and of the other 30 that were adopted, several can be described as partial and insufficient³. The government cannot claim to have satisfied the "Labor Action Plan" (LAP). Not only has it not adopted all the measures, but also the ones it has adopted have not produced changes in the labor situation. Many examples can be raised to demonstrate that the LAP has not succeeded in reversing the problems that it was intended to confront⁴, as we maintained in the progress report prepared for this date, and only a very few, exceptional and unsustainable examples can be held up to demonstrate any positive effects.

This is mainly due to the fact that the Colombian government has been more interested in ingratiating itself with the government and Congress of the United States than in reversing the situation of informal employment, outsourcing, employment precariousness, anti-union practices, anti-union violence, and impunity regarding crimes committed against union members. During these three years, the figures on the decent work deficit have not changed; indeed, in some respects they have worsened because the government has no desire to adopt true public labor policies that would dramatically transform the reality of the situation for labor and unions in our country.

The Colombian government, through the Ministry of Labor, has been presenting to the United States government and to European governments its supposed successes and progress obtained with the implementation of the LAP, which actually differ greatly from the reality that we Colombian workers and union organizations experience, as we will demonstrate in this wide-ranging report we produced even though we do not have full access to all the relevant information regarding implementation. If one visits the Ministry of Labor website, dedicated to providing information on the progress of this Plan, one notes that it is very out of date and that the information is not well organized and it is fully lacking an evaluation.

This lack of effects can be explained by the following factors:

- 1.** Approval of the FTA by the United States Congress, without verification of compliance with the LAP, significantly reduced pressure on the Colombian government, which decisively contributed to converting the LAP into a new frustration for Colombian workers.
- 2.** The proposals presented by the trade union confederations regarding supplementary policies and measures that would make the agreed-upon actions more effective were not paid attention to, or considered. In general, the Colombian government decided on all of the measures unilaterally, without discussion or agreement.

² i) Improvement of the mediation and conflict resolution system ii) implementation of a system to prevent the misuse of temporary service companies; iii) reports on these companies' labor performance; iv) campaign on illegal use of collective pacts; v) preventive labor inspection concerning illegal use of collective pacts; vi) compilation and dissemination of doctrine and jurisprudence for definition of essential services; vii) analysis of closed cases and agreements made for cases related to anti-union with investigation violence still pending; internal plan for the prosecution to push cases where there is evidence, and provisionally close "cold cases," while simultaneously boosting priority cases.

³ See report, "Evaluation of compliance with adopted measures of the Labor Action Plan"

⁴ See report on the first three years of the LAP, "LAP celebrates its 3rd Anniversary without benefits to workers"

3. The measures were adopted without modifying the existing legal or political framework, no public policies were formulated to overcome the illegality of many employment relationships, violations of the right to organize, protection of union members, and impunity, thus generating contradictions and gaps that allow for “everything to change so that everything can stay the same.”

4. There is not sufficient political commitment to or goodwill regarding the LAP on the part of the entirety of the state, at all its levels. On occasion the state reacts to instances of pressure from the government of the United States. The Ministry of Labor, the state entity charged with heading up the LAP appears distant, lazy, and ineffective in the face of the violations of labor rights that workers and their union organizations suffer on a daily basis.

5. Most employers have resisted the implementation of the measures that were adopted, and have found ways and channels to continue with practices that evade labor rights. All of this is possible because of the legal gaps, the lack of public policies, the pronounced institutional weakness of the state, and above all the apathy of the government.

Given that the Colombian government has demonstrated that it has never been really interested in complying with the LAP, today, three years since the signing of this Agreement, it is fundamentally important for the government to, first of all, fully comply with all of the 37 measures of the LAP. Additionally, as a show of serious intention to implement a broad policy for the protection of and guarantees for labor rights of Colombian workers, it is necessary for the United States government and the Colombian government to immediately undertake three commitments:

1. The extension, for four more years, of the period for monitoring progress in implementation of the LAP.

2. The creation of an independent commission that would be charged with the task of monitoring compliance with each of the 37 LAP measures. The commission would be composed of: representatives of the congress from each country, the Trade Union Confederation of the Americas (TUCA), trade union confederations of the United States and Colombia, and representatives of non-governmental organizations that work in the area of labor and union rights.

3. The presentation by the Colombian government of a full progress report on the implementation of the “Labor Action Plan” to be submitted for public discussion and for analysis by the Permanent Committee on Wage and Labor Policy Conciliation (CPCPSL).

There were many union organizations that undertook actions aimed at obtaining application of the measures that were adopted but for the most part have not been complied with, to the extent that judges, prosecutors and labor inspectors almost never provide the protection that the new legal framework offers.

Finally, due to the disastrous effects of the FTA with the United States, both in terms of the very abrupt drop in Colombian exports to that country and the negative impact on the industrial and agricultural sectors, all of which have caused a notable deterioration in the quality of employment for Colombians, we believe that the Free Trade Agreement deserves a serious review.

This report is organized into five thematic chapters, which present the opinions of the CUT and the CTC, as well as an analysis of the information obtained on the implementation of the LAP measures, and in the final part, some conclusions and proposals are raised:

I. INSTITUTIONAL STRENGTHENING

A provisional and still very weak system of institutions has been created; that was not the spirit of the Labor Action Plan

Measures committed to

The Colombian government committed to creating various measures, and in this sense it is one of the most costly items in the execution of the Labor Action Plan (LAP) and the one that has raised the most expectations: (i) the creation of the Ministry of Labor, (ii) increased numbers of and training for inspectors in the framework of the civil service system (selection process for administrative careers), (iii) creation of a citizens system for complaints, (iv) the improvement of the system for resolution of conflicts.

Opinions of the CUT and CTC trade union federations

Diógenes Orjuela (Executive Committee of the CUT, Department of International Relations):

“The Colombian government has not fulfilled the Action Plan, and what it has complied with it has done so only partially. The Ministry of Labor is an example of this. At the time, the CUT welcomed its creation, but experience has shown us that it is a Ministry that continues serving the employers much more. It is not an entity that safeguards the cause of labor rights and collective bargaining. Colombians still have to sneak around to form a union and any employer immediately fires workers who make one, while the reaction of the Ministry is slow, and it imposes such ridiculous fines that employers don’t care about that type of sanction. The Ministry does not confront the employer and say: here, workers have the right to have unions and collective bargaining, and whoever obstructs that will feel the weight of the law fall on them. There continues to be an anti-union stance on the part of employers, even the government itself, because in the state entities there are anti-union practices in terms of negotiations, in the office of the attorney general, of the public prosecutor, and in the Ministry of Labor itself there are obstacles to opening collective negotiations with the unions.

Trade union confederation leaders are often heard saying that social dialogue exists only on paper, but not in practice. We go to many instances of tripartite dialogue, but the results are very poor. To the government, social dialogue means going to the National Coordinating Committee and saying: we are going to present a plan on such and such and they give it to us to review, and then they issue it unilaterally, without considering the opinion of the union movement, without reaching a consensus. Or they send it directly to the Congress, bypassing the Coordinating Committee. There has not been a single plan that reached congress already agreed to with the union confederations. On some of these, the unions have given their opinion, and the government has made some adjustments, but in macro politics there is no coordination. We continue to attend on all those occasions, raising our position, because, in the end, it helps us to expose the farce. There are also

coordinating committees in all the departments, but they look like the gatherings of ladies to drink tea, where they talk about a million things but don't resolve any of them."

Miguel Morantes (Chairman of the CTC):

"The creation of the Ministry of Labor was a demand made by the union movement for many years. That has already been achieved, but it is a Ministry that has not fulfilled our expectations. It has not complied with the strengthening of labor inspection, which practically doesn't exist. Inspections are only done when there is a protest by workers or something like that, rather than the regular inspections that a labor inspector should carry out: payment of the minimum wage, avoiding illegal outsourcing, good occupational health practices, etc. Furthermore it is too slow. By the time the Ministry intervenes, there's no point, there aren't any workers left, there's no union anymore, there's nothing to demand. That's the problem we currently have. We send reports to the Ministry every day revealing and denouncing irregularities and even criminal activity on the part of employers: intermediaries, lack of workplace inspections, attacks against unions, persecution of labor leaders and those who join unions, refusal to bargain collectively, collective pacts, etc. And that takes us to labor inspections, but as I already mentioned, the inspections are ineffectual. The Ministry makes grand announcements, but very little of that is concretized.

Regarding the subject of social dialogue, the Ministry speaks of the creation of spaces for social dialogue, as if that were a great achievement. Indeed there are spaces for dialogue, but it's just that, dialogue, because nothing is resolved in those spaces. There is discussion but no coordination. One thing is to speak about a subject and another is to coordinate. In the great majority of regulations that have appeared lately, there is always some article, some issue that is damaging to workers and the union movement, which tends to be more detrimental than any benefits which might come of the law. That is to say that in the end it's preferable for the regulation not to exist. We maintain cordial relations with the sector of employers and they act respectfully towards us, but that doesn't mean that we are making progress on agreements. We have always been open to dialogue and to coordinate with the employers, but their attitude in general is to refuse any progress on our demands; they don't want to pay any extra money, on the contrary, they try to pay out as little as possible to obtain higher profits."

Assessment of the Measures

A. Creation of the Ministry of Labor and Increasing the Number of Inspectors

Three years from the signing of the LAP, there is a high level of disappointment within the Colombian labor movement due to the poor results achieved by this Accord, especially in comparison with the high level of Colombian and US resources invested. The measures are characterized by being regulations that are disseminated poorly and used little by labor inspectors, which means a diversion of efforts for issues other than compliance with LAP, non-compliance with regulations regarding the hiring of inspectors, and a lack of public reports with consistent and complete information.

The Ministry of Labor was created via Decree 4108 of the year 2011, and with Decrees 1228 and 4970, both from 2011, and Decree 1732 of the year 2012, the number of staff positions was adjusted so that eventually the Ministry of Labor would be able to hire the number of inspectors it committed to hiring. According to the Ministry, the number of

inspectors went from 424 in 2010 to 904 in 2013⁵. Nonetheless, there is a lot of inconsistency between reports from the office of the Ministry regarding the true number of working inspectors. In June of 2013, the Ministry of labor set a goal for 2013 of having 622 working inspectors⁶; in another report published in 2013 in an open hearing on accountability of the Ministry, with information through September of that year, there is mention of 171 new positions for inspectors, bringing the total to 624 positions for working inspectors⁷; finally, through the response to a formal request made in the name of ENS (number 17001), the Ministry indicated that as of February of 2014 there were 685 labor inspectors, of which 586 were provisionally appointed, that is to say without a career track or merit system, nor stability or independence, and without fulfilling the provisions of the International Labor Organization (ILO) Conventions 81 and 129, nor the same measures in LAP.

If 85.5% of the appointed inspectors are appointed provisionally, then the training that was done in the first three years of LAP will have been wasted resources. Additionally, 85.5% of the inspectors lack stability and are, as such, at great risk of being subjected to improper political or labor pressure, thus violating Colombian hiring standards and putting their autonomy and independence in question. The only administrative career posts that have been filled from the competitive selection process by the national civil service commission have been from processes that began before the LAP was signed.

The commitment of the Colombian government to design and implement a system for training working inspectors has only been halfway fulfilled. Although training has been provided to different staff members of the Ministry, through the ILO, this has not been universal for all labor inspectors.

The worrisome numerical disparity in the figures on inspectors makes us strongly question compliance with this point that is very important for the credibility of the Ministry. If there are currently only 685 working labor inspectors, the government has not fulfilled its political commitments under LAP. In this Agreement, the Santos government established the creation of 480 new inspectors (100 in 2011, 100 in 2012, and the remainder in 2013 and 2014⁸). This means that the hiring of 219 new inspectors is pending between April and December of 2014. Unfortunately, we can see that staffing at the Ministry has grown but not by designating officials exclusively dedicated to labor inspection, but rather all types of officials to fill slots in the Ministry, including officials designated for COLABORA, who receive information from plaintiffs but are not empowered to initiate investigations or impose sanctions.

This situation gets worse when public reports on the results from each inspector are not available; it is not clear how many inspectors are carrying out inspections, monitoring and vigilance. The sound functioning and efficacy of an inspection system does not solely depend on the group of standards that establish rights, but rather that the labor inspection system achieves real protection for workers, and we know of no reports on the special

⁵ “It was a great decision to create the Ministry of Labor”: President Santos,” 3 March 2014. <http://www.mintrabajo.gov.co/marzo-2014/3069-gfue-un-gran-acierto-haber-creado-el-ministerio-del-trabajog-presidente-santos.html>.

⁶ Ministry of Labor, *Activity Report 2012-2013 for the Honorable Congress of the Republic*, 2013

⁷ Report on open hearing on accountability of the Ministry of Labor, published in 2013, coverage and inspection, page 10

⁸ Source: <http://www.mintrabajo.gov.co/abril-2012/386-qcolombia-puede-decir-que-ha-cumplido-con-los-compromisos-del-plan-de-accion-laboral-del-tlc-con-eeuu-pero-muchos-estan-desinformadosq.html>, 13 April 2012

group of inspectors exclusively dedicated to labor intermediaries who monitor employment relationships in associated work cooperatives (100 inspectors).

The lack of public policy with clear results and goals, with public reports for social actors on the work of the inspectors, and collection of fines, inclusion of tripartite actors in the design and implementation of inspection strategies, improvement of the internal monitoring system regarding the behavior of inspectors and SENA officials charged with collection of fines, are measures that are required so as to have true effects in the labor inspection system.

The Colombian union movement is familiar with the information on the increase in visits and investigations by labor inspectors during 2012 and 2013, as well as the announcements regarding amount of fines pending⁹, but the situation with the violation of rights continues to be the general rule. The procedures for inspections and investigations have a logic that prioritizes quantity over quality, but obtaining few results; thus they've increased administrative inspections but there are few "in situ" inspections done where the reality of employment relationships can be seen; the number of cases received has increased but the procedure for investigation is still slow and ineffective, and the application of fines based on law 1429 that prohibits labor intermediation in temporary activities of the company is conspicuous by its absence.

Three years since the signing of the LAP, there are two structural problems that cause major impunity with regard to the protection of rights. First, the minimal effectiveness of the processes for collection of fines imposed for violation of labor standards. Secondly, the procedures for voluntary resolution, headed up by the Territorial Directors (improvement agreements¹⁰ and formalization agreements) are carried out without prioritizing protection or redress of labor rights, and they also do not establish sufficient guarantees or fines, nor direct participation of the workers and their union organizations at the moment of negotiating the lifting of a fine.

The increase in the amount of the penalties for using illegal intermediation practices (from 100 to 5000 times the current legal monthly minimum wage) meant that the punishments that the labor inspector's impose would finally have an effect on the employers' attitude. Since this change, through law 1610/13, the level of fines grew notably. During the first eight months of 2013, the Ministry imposed 785 fines on companies, for a total of 150 billion pesos.¹¹ Nonetheless, out of this record amount, to date there are more than 139 billion pesos in the category of "non-enforced" fines.¹² In other words, fines are not collected and they do not cause fear or persuade the companies. And thus, of all the penalties for illegal labor intermediation between January and October of 2013, the SENA has only finalized the case and finished the investigation for 17 of the 471 sanctions.¹³ This does not mean that the 2013 fines are collected more swiftly and fluidly, but rather that of the total number of SENA processes, there is only a possibility of collecting on a very few cases, and in turn, these may be suspended if the company adjudged guilty appeals the

⁹ In 2012 they paid 967 visits to CTAs, 36 to Pre-CTAs and 493 to EST. From these inspections 226 CTAs, 2 pre-CTAs and 36 ESTs were sanctioned. By 2013 between January and October, the number of sanctions increases compared to the previous year: a total of 314 sanctions for violations of labor law and another 471 sanctions for illegal intermediation. Source: Mintrabajo: Boletín de inspección, vigilancia y control No. 07, January 2013. p.p. 1-2

¹⁰ According to the Ministry of Labor, during 2013, 1003 improvement agreements were organized.

¹¹ Source: <http://www.mintrabajo.gov.co/medios-enero-2014/2766-mintrabajo-impuso-785-sanciones-por-mas-de-150000-millones-de-pesos.html>, 8 de enero.

¹² Ibid, op cit.,

¹³ Ibid, op cit., our own calculations

case before the judges. As a response to the right to petition (No. 8-214—006718¹⁴), the SENA declares that of the 6816 finalized and executed resolutions issued by the Ministry of Labor to be collected on, for the 2012 and 2013 periods, there are only 106 with enforcement dates. Even more outrageous is the fact that of these 6816 resolutions, there are only 219 that have orders for payment served.

SENA officials charged with processing enforced sanctions refused to respond to the request about the amount of decisions or resolutions that settle obligations or fees, based on the penalties sent by the Ministry of Labor, for any violation of the labor laws of the country. Based on the refusal, we can only suspect the worst: few fines reach the stage of being filed and it is possible that none, at least during the three years of the LAP, have been collected. The total ineffectiveness of the process for the collection of sanctions and fines that originate in investigations by the labor inspectors is obvious from the figures that by 2012 there were 940 actions prescribed and by 2013 another 540.¹⁵ It is urgently necessary for the government, in view of the total inefficacy of the SENA in advancing the sanction collection processes, to take the necessary measures to transfer this responsibility to the DIAN, the only state entity that has the institutional capacity to ensure that sanctions for violating labor law be imposed and, of course, paid by the employers that are guilty of the offense in the area of labor law.

If the sanctions turn out being a scolding with no pain involved, the institutional measure to promote a change in attitude and behavior on the part of companies that encourage illegal labor intermediation has been both informal and arbitrary. The minimal intentions of the Ministry to take punitive measures against employers that violate labor law were converted into something official and became the standard through Law 1610 from 2013 (articles 14-17). There, in article 16, it is established that Formalization Agreements can be signed during "...an administrative inquiry or investigation aimed at imposing a penalty..." Such Agreements have the power to suspend or archive an investigation, or the penalty previously considered. Acting under this premise, during 2012 and 2013, the labor inspectors and the Territorial Directorate of the Ministry promoted the signing of 36 Formalization Agreements, covering 12,030 workers.¹⁶

This policy of the Ministry has been celebrated in the media, despite the fact that in numerical terms, it doesn't even reach the tip of the iceberg (in Colombia, 68% of the economically active population is in informal and/or illegal employment relationships). It is estimated that by 2012, there were 2,890 CTAs, bringing together 386,000 "associates;"¹⁷ more than 160,000 Societies for Simplified Action (SASs) created since

¹⁴ This right of petition was sent to the office of the SENA on 17 February 2014.

¹⁵ Response to right of petition No. 8-214-006718

¹⁶ Just like with the majority of figures taken from the Ministry of Labor reports, there are several inconsistencies regarding the number of Agreements and the number of workers covered. For example, the Boletín de inspección, vigilancia y control N°07 from January 2013 (pp. 1-2) speaks of 14,302 workers covered by an Agreement, while another item published by the Ministry of Labor uses the number previously cited. See: <http://www.mintrabajo.gov.co/noviembre-2013/2555.html>, accessed on 10 February 2014

¹⁷ Coonfecop: "desempeño sector cooperativo colombiano 2012". PDF document. Pp. 123-124, at: http://marcos.colombiahosting.com.co/~confecoo/images/informes_anuales/Informe_2012.pdf. Accessed on 14 February 2014. It is necessary nonetheless to clarify that the data on the number of CTAs mentioned here corresponds to those complying with the requisites for operating under the law, with a large number of semi-illegal or openly clandestine CTAs existing on the fringes. This explains the reason that the Superintendence of Supportive Economy, as a marginal note, declares that between 2008 and 2013 that it has suppressed 9,000 CTAs, going from 12,335 in the first year to 3,469 in the last. The disparity is due to the fact that official data on the Supersolidaria does not exist and there are only various press clippings. See: Diario el Nuevo Día: "supersolidaria suprimió unas 9.000 cooperativas," at: <http://www.elnuevodia.com.co/nuevodia/actualidad/economica/205252-supersolidaria-suprimio-unas-9000-cooperativas>. Accessed on 10 February 2014

2008¹⁸; and nearly 600,000 workers linked to a Temporary Service Company (EST) by 2012;¹⁹ and that's without mentioning the 964 union contracts signed in 2013²⁰ that, based on preliminary estimates, cover more than 200,000 workers. This is how, even leaving aside the unknown figure for workers "flexibly" linked through an SAS, we reach the figure of more than 1,185,000 workers in highly unstable and precarious employment situations, and as a response, the Ministry of Labor congratulates itself for reaching agreement with companies that flaunt the labor laws to hire 12,000 workers, to avoid payment of penalties. That is just 1% of the very conservative estimate for the number of workers laboring for intermediary companies.

What is of even greater concern than the little coverage these Formalization Agreements provide to the outsourced working population is the lack of coordination with workers and union organizations during the process of coming to an agreement. Nearly all the agreements have been negotiated between officials from the Ministry and employers, without any participation by workers or even a semblance of such. The Ministry of Labor, following their habit of hiding information, has not published, nor shared with union organizations, a list of the worker "beneficiaries" of these accords, nor have they indicated in what way their jobs have been formalized. According to Minister Pardo, "formalization" just means having a labor contract, regardless of the period of time it covers or whether the contract binding the workers is with an outsourcing company rather than the principal companies that benefit from the work.²¹

This is the case at the port of Buenaventura, where the Ministry promotes a Formalization Agreement with several intermediary companies (Colombiana, Acción S.A. and Acciones y Servicios S.A.), all of which have practiced illegal intermediation for the benefit of the port operator, TECSA S.A., and its majority shareholder, Sociedad Portuaria Regional de Buenaventura (SPRB). While at the beginning of 2014, this agreement was still in the signing process²², there is talk of 900 worker "beneficiaries," a concept of questionable source, considering that these three companies, in reality appendages of TECSA S.A. and SPRB, have been employing the same workers to carry out core business activities with no labor stability or guarantees. Sadly, the case of the port of Buenaventura is not the only one that illustrates the bankruptcy of the Formalization Agreements that the Ministry of Labor has ensured have been spread across Colombia's media outlets. Other examples of the arbitrariness and lack of political will on the part of the Santos government to comply with the political commitments agreed to with LAP in terms of labor formalization and prohibiting illegal labor intermediaries are:

Avianca: the main company in the Colombian aviation sector. Despite the fact that this company has had substantial increases in the number of passengers it transports²³ and in

¹⁸ Periódico Portafolio: "Colombia ya cuenta con 160.000 SAS creadas", 5 July 2012, <http://www.portafolio.co/negocios/colombia-ya-cuenta-160000-sas-creadas>

¹⁹ Diario Portafolio: "temporales ponen en la picota al contrato sindical," at: <http://www.portafolio.co/economia/temporales-ponen-la-picota-al-contrato-sindical>, accessed on 14 February 2014. In the same news item, the president of ACOSSET states that he expected that the number of workers linked through this figure would grow in 2013 by at least 4%. In other words, by December of 2013 there could have been a total of 619,413 employees "on mission" in the country, which represents nearly 4% of the total working population of the country.

²⁰ Source: ENS collective bargaining database. Primary data received from the Ministry of Labor, through 14 March 2014

²¹ Source: <http://www.portafolio.co/finanzas-personales/multas-139000-millones-intermediacion-laboral>, 24 July 2013 (accessed on 17 January 2014).

²² Source: graphic of tables from the Ministry of Labor's Office of Inspection, Vigilance and Monitoring: Formalization Agreements pending acceptance (accessed on 20 January 2014).

²³ In 2013, Avianca transported 24,625,062 passengers, an increase of 6.6% compared to the number of passengers in 2012. In terms of their net profits, Avianca Holdings reported, for 2013, profits of 249 million dollars, compared to 100 million dollars earned in 2011. See: "Utilidades de Avianca Holdings volvieron a volar en 2013", in: *Portafolio*, 3 March 2014, <http://www.portafolio.co/negocios/utilidades-avianca-holdings-2013> (accessed on 8 March 2014).

its net profits in recent years, there are still violations of labor standards without any serious and effective punishment from the Ministry of Labor. As a way to evade the effective applications of labor laws for this iconic company of the country, the Ministry of Labor signed a Formalization Agreement with Avianca in 2012, with the agreement being approved in 2013.²⁴ In said agreement, 1184 of the 3473 employees who work through various CTAs (Servicoopava, Clave Integral, Coodesco, Gestionar) are presented as beneficiaries.²⁵ More than three thousand employees work in clear violation of article 7 of Act 1233 from 2008, which expressly prohibits labor intermediaries and sending employees to work in core business activities or as temporary labor. In other words, the behavior of the Ministry of Labor reflects the exceedingly arbitrary way in which it attempts to comply with its role as regulator of labor relations in the country. This agreement for formalization, which was negotiated and considered without any participation whatsoever of the Avianca unions,²⁶ or of the workers who are directly affected by the labor violations on the part of the employing company benefitting from their work, only covers 34.09% of the workers hired illegally and the remaining 2289 are left to keep working through the CTAs. At the same time, the fine of 1.133 billion pesos set by the Ministry of Labor against Avianca shall be suspended for a period of five years, while the supposed fulfillment of the Agreement is verified, which would effectively leave the fines uncollectable, since the Administrative Procedures Code and the Contentious Administrative Issues Code establish a three year limit to the sanctioning authority, and a statute of limitations of five years from the decision. The practical results of this Agreement, are thus that this large commercial company gets to negotiate the applicability of the law as it sees fit: “formalizing” less than 40% of its “illegally outsourced” staff, in exchange for not having to pay the formulated fine and instead of that punishment it gets widespread positive media coverage²⁷ for having abided by a formalization policy, without any mention of the obstacles and exclusions.

Palmas Oleaginosas Bucarelia S.A.: In the specific case of Bucarelia, in the palm area of the municipality of Puerto Wilches, a penalty was imposed upon the company due to the use of 7 CTAs providing services to Palmas Oleaginosas Bucarelia, S.A. This penalty involved 200 workers. However, this penalty was never enforced. Instead, a labor Formalization Agreement was entered into on July 3, 2013 with the Deputy Minister for Labor Relations, Jose Noe Rios, under which the formalization of only 45 workers is established, as well as the company's commitment of not contracting workers through CTAs or other entities in order to conduct the tasks that are related to core business activities. Showing complete insolence, the company did not directly hire those 45 workers, but created a SAS where they were hired; that is, they keep outsourcing their activities and defaulting on the Agreement, and recently the same Bucarelia SA became another SAS itself, which resulted in the following: (i) most of the workers were not directly hired; (ii) the penalty was not enforced; (iii) the company against which the initial penalty was imposed disappeared and the new company, Bucarelia SAS shall remain with the same owners and conducting the same activities; (iv) the Territorial Director who imposed the penalty shall resign; and (v) they shall mislead the public and the international community. Today, everything remains the same.

²⁴ This Agreement was entered into by Aerovías del Continente Americano-Avianca S.A and the Ministry of Labor’s Territorial Directorate o the Atlantic, on 14 January 2014.

²⁵ Avianca data, according to file 1064-399, dated 03/11/2010.

²⁶ Sintrava, Acav y Acdac, and Sintratac, respectively

²⁷ See, for example: <http://www.mintrabajo.gov.co/noviembre-2013/2555-mas-de-ocho-mil-trabajadores-se-han-beneficiado-en-2013-de-acuerdos-de-formalizacion-laboral.html> (accessed on 3 March 2014).

B. The citizens reporting system

The Ministry of Labor has enabled on its web site several links intended to deal with any report submitted by citizens; by the creation of a citizens service program named Colabora, the Ministry intends to address the cases brought before it, and as of this date it only exists in Bogota, where officials cannot receive complaints but, rather, only provide orientation or screen users for an appointment with inspectors or for conciliation.

The main Colabora page features the Ministry of Labor's²⁸ nation-wide telephone numbers; and after communication has been achieved through such lines, it is clear that they are not for receiving reports and complaints from citizens, but rather they provide citizens with directions to personally appear at the different territorial offices, after requesting general data from the reporting individual, such as name, ID number and other data which clearly guarantees no confidentiality of the report. In the event that a citizen needs to file a report, claim or administrative investigation request, he or she is invited to appear before the Ministry offices, which does not provide any guarantee of the worker's identity either.

As of early March 2014, there are no public reports regarding any results from the anonymous reporting system due to the fact that under the law, inspectors must conduct such investigations on their own account, with no monitoring by citizens, unions or higher officials.

C. Improvement of the conflict resolution and mediation system

Labor conciliation has not changed. According to the figures provided by the Ministry of Labor's Report to the Congress, the Ministry of Labor carried out 86,430 conciliation hearings in 2012, and 24,469 conciliation hearings through April 2013; this includes all the hearings, that is, those that achieve total agreement + partial agreement + no agreement.²⁹ Later in the same report, it is stated that from January to April 2013, 37,133 conciliations had taken place.³⁰

We insist again on the obfuscation of the Ministry's figures, as they are confusing. This conciliation system existed even before the Action Plan and has not been amended to implement the new standards; the inspectors at the conciliation site are not competent to punish rights violations or labor intermediation, but rather only conduct mediation and voluntary resolution meetings.

Permanent Committee on Wage and Labor Policy Conciliation: A lot of action to little effect. Act 278 passed in 1996 as an extension of Article 56 of the Constitution; it established the Permanent Committee on Wage and Labor Policy Conciliation (CPCPSL, in Spanish) to be the forum for conciliation among the three main actors of the Colombian labor environment: employers, workers and the government. Out of all the roles defined in the act, there have only been attempts to reach an accord on establishing the minimum wage. This has, however, not been very successful, as in the last 10 years there has only been agreement three times.

²⁸ Source: <http://www.mintrabajo.gov.co/colabora.html> (accessed on 2 March 2014)

²⁹ Labor Ministry Report to the Congress of the Republic, 2012-2013, conciliation hearings, page 122

³⁰ Labor Ministry Report to the Congress of the Republic, 2012-2013, conciliation hearings, Table 80, Conciliations 2013, page 123

Historically governments have excluded union organizations from the economic and labor policy discussions and have developed laws in dialogue with industrial organizations, ignoring workers and the three-party social dialogue scenario.

The Santos Administration has made a small turn and submitted some initiatives, such as the reforms on tax matters, pensions, health, collective redress, collective bargaining in the private sector but only with the purpose of informing and reference, as the proposals and points of view of workers are not acknowledged, according to the spokesmen of the trade union confederations.

The trade union confederations assert that CNCPSL [sic] has more meetings but it is still not effective enough; regarding sensitive topics such as formalization and the right to organize, there are only announcements.

Department sub-committees for Conciliation are nothing but discussion forums. According to the Ministry of Labor, the sub-committees are formed in 32 departments, out of which, according to the confederations, only five, Risaralda, Antioquia, Valle, Tolima and Atlantico work regularly. Antioquia's case is highlighted as it has built a common agenda with the early alert desk for promoting Decent Work, social dialog and conflict resolution. However, such regional stages act as discussion forums rather than as instruments for agreement.

The sub-committee agenda is not linked to the agenda of the Permanent Committee on Wage and Labor Policy Conciliation (CPCPSL), and there is even a critical posture against the latter in some regions. Trade union confederations in the regions believe commitment is lacking from some actors, such as City Halls and the government as the officials attending the sub-committees have the power to make decisions.

The functioning of CETCOIT is improving, but it needs reinforcing. According to the Ministry of Labor, the Special Committee for the Handling of Conflicts referred to the ILO (CETCOIT) has increased its efficiency in the labor conflict cases it has been involved with. In the last two years, out of the 70 cases addressed, in 41 agreement were reached, in 21 there was no agreement, and 8 are pending resolution.

Nevertheless, the trade union confederations consider that some agreements reached are not honored, and that the Ministry of Labor favors employers. In other cases, according to the reports, there has been retaliation against the trade unions by companies, such as the firing of 12 trade union leaders of the security corporation SINTRABRINKS after an agreement at CETCOIT, and the Ministry emits no decisions and does not enforce the regulations.

The confederations believe that CETCOIT President, Eduardo Cifuentes, is a freestanding individual, trusted by everyone, but his acting in good faith clashes with the employers' intransigence. The confederations assert that it has been due to his leadership that the agreements the government is so proud of have been achieved.

No CECOIT departmental entities have been established, notwithstanding the requests to such end. The only exception is the creation of the early alert desk by the Antioquia sub-committee, which has been effectively involved in some regional conflicts, but the

confederations think that ILO presence is missing in order to make it more official, and therefore, they do not waive the request to decentralize CETCOIT.

The confederations have stated that CETCOIT must improve in the follow-up of agreements, which should have more binding content in order to be enforced, and that the employers' behavior regarding unionized workers should be monitored.

II. LABOR FORMALIZATION AND PROHIBITION OF ILLEGAL LABOR INTERMEDIATION

Labor Formalization half-completed and with no social dialogue; prohibition of some illegal intermediation forms while other new forms arise

Measures Committed to

The Colombian Government has committed itself to: immediately enforce Article 63 of Act 1429 from the year 2010; regulate Article 63 of the same law; create mechanisms for the direct hiring of associated work cooperative workers; legally clarify the events in which a cooperative may presumably be considered in breach of labor regulations; strictly enforce the requirements for the cooperative to be self-managed and self-governed; permanently produce massive amounts of publicity on the rights of workers hired by a CTA; create a group of 100 inspectors for cooperatives and to define inspection priority sectors; implement a regime to prevent undue use of temporary employment agencies and to prepare a report on temporary employment agencies.

Opinions of CUT and CTC confederations

Diogenes Orjuela (National Executive Committee of CUT, International Affairs Department)

Cooperatives turned into SAS:

"The CTA issue was aberrant because it was a misrepresentation of a cooperative, which us workers want and have helped to consolidate. But employers made them into labor intermediation sources, which was not the intent. The government said: no more associated work cooperatives, no more intermediation. The first part occurred, but not the second, because the resulting mutation was much worse: the cooperatives became simplified corporations, or SAS (in Spanish). That is, the worker who was a partner in a cooperative exploiting such worker's labor became a corporate partner, and continued being exploited. That is intermediation, using a different name. At this point in time we don't know which is worse: what there was before, or what came afterwards. There was even one sector, the palm industry, which confronted the government asserting that they preferred to close plantations than to stop hiring through the cooperatives, and the government accepted that."

Fake unions:

"But there is something even worse than SAS, and that is the cooperatives mutating into trade unions, fake ones, using the trade union contract, a model launched more than five years ago by President Uribe, but which is a misrepresentation of unionism. Trade unions were created to organize workers in the world and to defend their rights, and not to conduct labor intermediation or hire workers. In conclusion, cooperatives disappeared but intermediation continues, because there is no direct hiring with SAS or with the trade union

contract. All this with the government's consent, which also cleverly used the trade union contract to assert that there is trade union growth, full applicability of the right to organize and collective bargaining, because it equates the trade union contract with bargaining, and for us it's clear that the trade union contract allows no bargaining with workers. It is evil for the unionized world."

Temporary services companies:

"The issue with temporary services companies is not whether they exist or not, because it cannot be denied that there are non-core business related services that may be outsourced, such as security. The issue is that a security company's temporary workers must be guaranteed unionization and collective bargaining rights. That is something nonexistent in Colombia. Here workers provided by the temporary employment companies are not unionized, they have no protection or stability, and they cannot negotiate their labor conditions with the company."

Labor formalization:

"The Government has its own ways and its own interpretation of what employment formalization is, without reaching an agreement with workers. It is odd: formalization plans are being created in companies where the trade union, if any, is not invited to take part in the design of the formalization plan. Back to the masquerade. Progress in formalization of Colombian ports may be declared the day the union (Union Portuaria) has 10,000 members and is capable of conducting collective bargaining to control the port workers' rights. That is formalization, that is the right to organize and that would be progress. The rest are figures to embellish the government's international image."

Miguel Morantes (President of CTC)

Cooperatives turned into SASs:

"We even considered that with regulations that eliminate, or at least limit, the Associated Work Cooperatives, labor outsourcing would end. But employers found ways to continue outsourcing. To replace CTAs they created SASs, a structure which allows them to legally conduct labor intermediation because they look like partnerships, that is, as if workers are partners of such corporations. But they are exploited just like they were in the cooperatives.

Fake trade unions:

"Many cooperatives, mainly those in the health care sector, became unions overnight. But not true unions, such as those striving to attain the workers' demands and defend workers rights, but rather those that exploit workers and violate their rights. They are unions lacking democracy; those who complain are immediately fired. And they also continue with the same structure as the cooperatives and their managers and owners are the same. They may legally intermediate through the so-called trade union contracts, with no consequences. The issue is not only the damage caused by the intermediation as such, due to workers' exploitation at an even higher degree than with the cooperatives, but the risk the union movement sees in having a majority of such fake unions proliferating all over the country. At the last ILO conference, the Minister of Labor stated that in the last year, 876 trade unions were created in Colombia, viewing this as progress. The following day I, as the workers' delegate, had the opportunity to take the floor in plenary and said that out of those 876 unions, 823 were fake and therefore, it was no progress for unions, but rather a great danger for union labor".

Temporary services companies:

"I understand that with the temporary companies there have been less issues, or less attention, maybe because they were created to supply workers when companies need workers temporarily, as the name states. What is clear is that there are still mission-related jobs with temporary contracts, which are continually renewed. That has not been controlled yet."

Analysis of the Measures

A. Associated Work Cooperatives

The Colombian Government committed to "put a leash on" the Associated Work Cooperatives (CTAs) and any other form of illegal labor intermediation, as the corner stone of its commitment with labor rights. Given that CTAs were, as of the signing of the Obama-Santos agreement, the most blunt and extreme form of labor outsourcing and instability of workers' conditions, the spotlights of public opinion pointed there first, and it is upon these that actions have been taken. As a result, from the year 2010 to date the number of registered CTAs in the country has undoubtedly been reduced, from 4,307 in 2010, to 2,890 at the end of 2012.³¹ Likewise, the number of "associates" in such CTAs dropped from 610,526 in 2010 to 386,138 in 2012,³² representing 1.5% of the total domestic employment for that year. In summary, there is no doubt that the government labor policy in the last period has meant a reduction in the number of CTAs and CTA "associates." The phenomenon, however, is still significant, mainly because the status of those CTAs kept in a situation of legality is not clear.³³

B. Other forms of illegal outsourcing

However, this relative reduction in the number of CTA and their "associates" does not mean that illegal labor intermediation has decreased, but rather that it has metastasized into new and "creative"³⁴ forms of labor outsourcing, such as SASs and union contracts³⁵, or been camouflaged under other existing legal models, such as ESTs and service provision contracts. Even with different legal natures, all such models have been used to keep and even increase illegal labor intermediation.

³¹ Coonfecop: "desempeño sector cooperativo colombiano 2012," PDF Document. Pages 123-124 At:

http://marcos.colombiahosting.com.co/~confecoo/images/informes_anuales/Informe_2012.pdf. Accessed on 14 February 2014. It is necessary nonetheless to clarify that the data on the number of CTAs mentioned here corresponds to those complying with the requisites for operating under the law, with a large number of semi-illegal or openly clandestine CTAs existing on the fringes. This explains the reason that the Superintendence of Supportive Economy, as a marginal note, declares that between 2008 and 2013 that it has suppressed 9,000 CTAs, going from 12,335 in the first year to 3,469 in the last. The disparity is due to the fact that official data on the Supersolidaria does not exist and there are only various press clippings. See: Diario el Nuevo Día: "supersolidaria suprimió unas 9.000 cooperativas," at: <http://www.elnuevodia.com.co/nuevodia/actualidad/economica/205252-supersolidaria-suprimio-unas-9000-cooperativas>. Consulted on February 10, 2014

³² Coonfecop (ibídem). Page 126

³³ In this regard, it is important to clarify that Decree 2025 of the year 2011 does not ban CTAs, but the use thereof for labor intermediation purposes. In order to make out the genuine CTA from the CTA acting as a covert outsourcing organization, the decree provides some criteria, such as: administrative and financial independence, ownership of means of production and tools and the absence of a link between the cooperative with the outsourcing entity, among others. If such criteria are met in the functioning CTA, the Ministry of Labor and the Superintendence of Solidarity Economy must be accountable for it.

³⁴ Such expression is used by the former Deputy Minister of Labor Matters, David Luna, in an interview with Dinero magazine. At: <http://m.dinero.com/edicion-impresa/pais/articulo/creatividad-laboral/148432>. Accessed on 10 February 2014

³⁵ Author's note: the union contract (contrato sindical in Spanish) should not be confused with a collective bargaining agreement.

The most alarming case is the trade union contract, as it is not only a matter of illegally outsourcing tasks that are part of a firm's core business activities, but it also means subversion against the principles and purposes of unions. At the end of the day, trade unionism is an institution aiming to organize and bring together workers in order to improve labor conditions, while the trade union contract is a form of labor work segmentation whereby one part (minority) acts as employer or labor boss of the other part (majority) of workers. Such contradiction in terms is neatly expressed by the former Colombian President Alvaro Uribe Velez, who included such models in his government program 2002-2006³⁶ and now again in his political program before the senate 2014-2018,³⁷ as he calls this model "entrepreneurial unionism"³⁸ and in one of his last speeches as President, in July 2010, he straightforwardly asserted its characteristic as labor outsourcing:

*"So, the last amendments to the trade union contract advanced by this Government on May 1 at Popayan, facilitate this model, which creates the conditions for companies not to fear the execution of outsourcing contracts with the workers' organizations themselves, and for workers to dare to switch from the traditional unionism of redress and demands, to a more participatory workers' organization, in such a way that corporations have more fraternal responsibilities with workers and the workers are more interested in the sustainability and competitiveness of corporations. I believe that by analyzing Colombia's regulatory framework, the matters of formalization, employment, and prosperity do not depend today on labor legislation."*³⁹

With the above outlook it is not an accident that the accelerated increase in labor outsourcing through trade union contracts goes together with the slow reduction of CTA-based intermediation and, as a result, while in 2010 there were just 50 cases of false union contracts, by 2011 there were 164, covering 37,064 workers in total, and by 2012 such the number increased to 703, covering roughly 158,878 workers,⁴⁰ out of which 699 (95.16% of the total) belong to the economic category of "social and health care services."⁴¹ By 2013, according to the Ministry of Labor, the number of such labor intermediation trade union contracts kept growing, with the execution of 964 in the year--94.3% thereof in the social and health care services sector--a figure showing the expansive dynamics of this "creative" form of illegal labor intermediation.⁴²

Regarding the SASs, this figure is regulated under commercial law and therefore, in principle, it is not subject to oversight by the Ministry of Labor or the Supersolidaria, which makes it considerably more difficult to follow up regarding labor matters. Likewise, by being an ultra-flexible commercial model (SASs require no notary process, require no specific corporate purpose, may be managed by one person, make tax evasion easier, may be created and dissolved at will in minimal time, etc.), they are a platform to be the facade

³⁶ See "Democratic Manifesto" - 100 items Alvaro Uribe Velez. Item 67, at: http://www.mineducacion.gov.co/1621/articles-85269_archivo_pdf.pdf. Page 9. Consulted on February 11, 2014

³⁷ See El Universal, "el plan de gobierno del Centro Democrático " At: <http://www.eluniversal.com.co/politica/el-plan-de-gobierno-del-centro-democratico-134848>

³⁸ Ibidem.

³⁹ "Speech of President Alvaro Uribe Velez during the closing ceremony of the V Colombian Forum of Micro and Small Business at Medellin". July 2010.

At: <http://web.presidencia.gov.co/sp/2010/julio/16/10162010.html>. Consulted on Wednesday, February 12, 2014 Bold and underlining by ENS.

⁴⁰ See Escuela Nacional Sindical: Sistema de Información Laboral y Sindical (SISLAB). Report 2012 Page 13. At: http://ens.org.co/apc-aa-files/40785cb6c10f663e3ec6ea7ea03aaa15/10_SISLAB_2012_2.pdf. Consulted on February 13, 2014

⁴¹ Ibid. Page 16

⁴² Source: ENS Database on Collective Bargaining. Primary data received through the Ministry of Labor on March 14, 2014.

of covert labor intermediation relationships, as "frankly" acknowledged by the Minister of Labor himself:

"CTAs have dropped from 4,500 to less than 3,000, and such relationships have been executed or disguised in other forms, to be frank, in trade union contracts (approved by the Labor Code) or as SASs (...)." ⁴³

The trade union contract thrived especially well in the health care sector, with the Antioquia department being one of the most prolific places for the promotion of this new labor intermediation model. It spread like wildfire there, in order to "settle" into the health sector in other cities around the country. Let us make a short list of the transmutations that occurred in this department: CTA Coensalud mutated into Darser union; CTA Sanar y Galenos became the Prosalud union; CTA de Neonatólogos para el Cuidado del Recién Nacido is now Neocare union; CTA Equipo Integral de Gestión became Ascolsa union; CTA Integral is today Sintracorp union; and CTA Cooderma mutated to Proensalud union, and so on. By 2012 there were 24 unions that, under the trade union contract model, employed more than 3000 health care professionals at Antioquia; most of them were created in 2011 to replace the extinct CTAs, having labor intermediation as their sole function.

Some IPSs and ESEs engaging workers with the intermediation of such "fake" unions at Antioquia are: Hospital San Rafael de Itagüí, IPS universitaria León XIII, Hospital San Juan de Dios de Abejorral, San Vicente de Paúl de Caldas, Policlínico Sur, ESE Envisalud, ESE Hospital Gabriel Peláez Montoya, Hospital San Rafael de Venecia, ESE Hospital San Antonio de Betania, ESE Hospital Salud Mental Integral S.A., Hospital San Vicente de Paúl, Hospital Santa Margarita, Hospital San Vicente de Paúl de Barbosa, Dirección de Sanidad Seccional de Antioquia, Metrosalud, Fundación Clínica Noel, Clínica Somer, Hospital General de Medellín, Hospital San Juan de Dios de Yarumal, IPS Universitaria, Comfenalco, Hospital Pablo Tobón Uribe, Fundación Clínica del Norte, Clínica Oftalmológica de Laureles, Hospital Marco Fidel Suárez de Bello, Coomeva (El Rosario office), Fracturas y Rayos X de Antioquia, among many others, because it is virtually all of them.⁴⁴ Such data show that beyond the magical realism of the employment relationships existing in Minister Pardo's mind, illegal labor intermediation is alive and kicking, trampling on the labor rights of the health care sector workers and damaging the image of the country's democratic, autonomous and independent unionism.

In the case of SAS, the many benefits and flexibilities that may be obtained on economic, fiscal, taxing and labor matters from their creation are what explain that in only five years, more than 160,000 such entities were founded, as asserted above, and it is impossible to determine how many of them operate as covert outsourcing entities. In the face of the SAS explosion and their questionable behavior on labor matters, it is a concern that labor inspectors have not made more visits to and investigations of such companies. According to Ministry data, by 2013, out of the 16.195 visits and investigations conducted at "companies," only 6.47% were conducted on SASs.⁴⁵

C. Temporary services companies:

⁴³ Portafolio journal: "Fines of \$139 billion due to labor intermediation". At: <http://www.portafolio.co/finanzas-personales/multas-139000-millones-intermediacion-laboral>. Consulted on February 14, 2014 Bold and underlining by ENS.

⁴⁴ Such information was provided by the Labor Information Agency of the Union National School: "Cooperatives transmuted in trade union contracts in order to continue outsourcing."

⁴⁵ Data from: Dirección General de Inspección, Vigilancia y Control y Gestión Territorial, Statistics Information 2013, provided to ENS on March 14, 2014.

On the matter of Temporary Services Companies (EST), they are the only concept legally enabled to exercise labor intermediation functions (however in very specific cases, such as sales production peaks or harvest season, replacement of individuals on vacation or on sick leave, etc.), but in many cases they have been the target of criticism and eventually, penalties by the Ministry of Labor, as they act as labor intermediation entities in a situation that is against the law. Even in a report from the Ministry, while in 2013 1,262 penalties against "corporations" were processed as a result of breaches to labor legislation, only 3% were for penalties to ESTs (38 penalties in total)⁴⁶.

As for the numbers, which are as evasive as in the other forms of labor intermediation, data provided by ACOSET (the organization of the country's ESTs) assert that, as of 2012 there were almost 600,000 workers hired through this intermediation mode, who executed, as a whole, a total of 1,295,000 contracts, which is the same as saying that each one of them executed 2.1 contracts per year on average.⁴⁷

Both figures, the total number of workers and the overall figure for contracts are evidence of the issues inherent to this intermediation method: on the one hand, the high number of individuals hired using this "labor flexibility" mode and, on the other hand, the lean stability offered by such contracting methods. Because labor formality is not equivalent to labor stability, and the 6 month-contract average reveals the very fine line separating the more than half a million workers "laboring in core-business activities" from unemployment, and there are difficulties for accessing certain wage and economic benefits enjoyed by those hired indefinitely and the possibility of negotiating a collective bargaining agreement. It is not in vain that several surveys have found that, on average, a temporary worker receives 19% less income per hour as compared to a direct worker with an indefinite-term contract.⁴⁸ The above, of course, when the temporary service company works as a legal intermediary, in compliance with their role, specified by Colombian law in matters of labor and benefits, which is not always the case. As a corollary: what goes out through the door, sneaks in through the window and labor intermediation still makes its way through the Colombian labor environment, in numbers even higher than those resulting in Act 1429 from the year 2010 and Decree 2025 from 2011.

III. PROTECTION AND GUARANTEE OF FREEDOM OF ASSOCIATION

Freedom of association, ignored obligations in the execution of the Labor Action Plan

Measures committed to

The Colombian Government committed itself to: reform the criminal code to protect against violations of the freedom of association; produce a compilation of the jurisprudence related to the exercise of the right to strike in essential public services; and penalize the illegal

⁴⁶ Additionally, only 2.76% of all calls to and investigations of "corporations" conducted in 2013 were to ESTs (448 in total). Ibid., op cit.,

⁴⁷ Diario Portafolio: "temporales ponen en la picota al contrato sindical," at: <http://www.portafolio.co/economia/temporales-ponen-la-picota-al-contrato-sindical>. Accessed on 14 February 2014. In the same news item, the president of ACOSET states that he expected that the number of workers linked through this figure would grow in 2013 by at least 4%. In other words, by December of 2013 there could have been a total of 619,413 employees "on mission" in the country, which represents nearly 4% of the total working population of the country.

⁴⁸ La Republica journal: "Temporary workers receive 19% less income per hour." At: http://www.larepublica.co/economia/temporales-reciben-19-menos-de-ingresos-por-hora_20985. Consulted on February 14, 2014

use of collective pacts, promote campaigns to discourage their illegal use, and carry out preventive inspections to overcome this situation.

Opinions of the CUT and CTC union confederations

Diógenes Orjuela (National Executive Committee of CUT, International Relations Department)

Unionization and collective bargaining

"Colombia can't be considered a country that is making progress on freedom of association. We still have 4% unionization and collective bargaining that, while increasing among state employees, is still very limited. It's not like in the rest of the world: countries with 20% trade union membership, yet collective bargaining reaches 90%. In Colombia it's the other way around: there are less workers covered by collective bargaining agreements than members of the trade unions. There is no bargaining by sector. Fecode and Sintrainagro are among the few organizations that have been able to break the no bargaining by sector rule. Besides that, the companies refuse to negotiate. Some trade unions haven't been able to submit a list of demands for 10 years because the company immediately submits a list of objections to ruin their achievements.

Collective pacts

They're being used against the right of association and the right of collective bargaining. How can you explain that in a company there is a trade union with 100 members, and it has 500 workers with a collective pact, which stands above the agreement? That's illegal; they do it so that the rest of the workers don't become members of the trade union. This can only be solved if the government takes a clear stand, it should order the companies that have a collective pact to bargain with the trade union and the agreement should include all the company's workers.

Article 200 of the Criminal Code

"It is a norm that can be considered positive, because it punishes the employer who hinders freedom of association activities. But this is why none of them is in jail. The government uses these norms skillfully as a way to tell the international community that here, violation of freedom of association is punished. What the government is not saying is that actually they are useless, they are another sham."

Miguel Morantes (President of the CTC)

Unionization and collective bargaining

"We had hoped that the Action Plan would help to improve labor relations in Colombia and that the right of freedom of association would be respected; that is, that workers wouldn't be persecuted anymore for becoming members of the trade unions and bargaining would be allowed. But that is not practically being accomplished; there hasn't been any progress in complying with ILO conventions 87 and 98. On the contrary, we have seen that employers have refined their procedures against the right of association; for example, they have filed lawsuits against trade unions, or their president or their secretary, and in other cases against all the workers who are members of the trade union. These are lawsuits that are completely preposterous. They threaten for anything and intimidate them, and then they propose: "resign from the union and we'll drop the lawsuit." And there have been no comments about this situation from the Ministry of Labor. Justice is another extremely

complicated subject. There are some doubts regarding the honesty of some judges when they withdraw trade union privileges."

Collective pacts

"There's no action against collective pacts. Companies are still using them with impunity to keep trade unions small. Besides, they are not pacts and they aren't collective, we haven't heard of a pact made in accordance to the law, that is, that workers get together, draw up a list of demands and designate negotiators. The company generally makes the first move, asks to see the workers one by one, and makes them sign the pact, thus they have no choice but to sign, otherwise they get fired. In fact, they use the trade union dues as publicity to convince workers that it's better to be part of the collective agreement, because they don't have to pay trade union dues."

Article 200 of the Criminal Code

"The reform to Article 200 of the Criminal Code generated great expectations among us when it was debated in the Congress of the Republic, we thought that those who broke labor law would really be punished. But it was very frustrating for us because the norm was completely slashed, mutilated, and the result is outrageous. The fact is that up to this day, in spite of all the violations that take place every week in our country, there is no employer accused or prosecuted for violating the right to collective association. It was irrelevant, absolutely useless."

Analysis of Measures

A. Reform and implementation of Article 200 of the Criminal Code

Amendments to article 200 of the criminal code with law No. 1453 from 2011 haven't generated any convictions; in fact, this past February there were only three open investigations for article 200. One of them is related to the complaint filed in July 2013 by the Ultraclaro & TIC trade union in Bogota. In the conciliation hearing (on March 10th 2014) the prosecutor in charge establishes in the conciliatory settlement, that the subject matter dealt with is "atypical," that is, it doesn't coincide with the text of article 200 of the criminal code and consequently, it is not a criminal matter but a labor dispute. In another case, the SNTT (National Union of Transport Branch and Service Workers of Colombia), Floridablanca regional board, filed a complaint in May 2013, and after a conciliation hearing on August 13th of the same year, in which no agreement was reached, there has been no further information regarding the investigation of the particular case from the office of the prosecutor. In other words, it seems the case is lost in the mists of time almost permanently. Meanwhile, the negative impact on freedom of association is becoming visible. We still don't know if any of the 218 reported cases are going to be solved. The Office of the General Prosecutor reported that between June 2011 and December 2013, in the System of Misional Information, there were 424 registered cases in process for violation of the right to a union meeting and affiliation (article 200). Of these, 182 are presently inactive, 224 are active and only 66 are in under investigation⁴⁹. We can affirm that 52.8% of the total of cases remain inactive. Furthermore, it is important to note that the General Prosecutor's Office assumes this crime as being a dispute, when in fact the reform of 2011 establishes a prison sentence as well as a fine. During the last 20 years there have only

⁴⁹ Information obtained via the petition (08454) sent by the National General Prosecutor's Office to the ENS in response to an official request formulated in February 2014.

been 5 sentences from the Supreme Court of Justice,⁵⁰ all of them before the amendment, which have been analyzed by discretionary appeals.

The consolidated statistical report submitted through file number 3320000-37755 from March 10th 2014 by the Ministry of Labor, reports on the referral of 199 cases by article 200 to the Office of the Prosecutor General in 2013, therefore it can be said that there is not effective communication between these two entities, while the Ministry establishes this, the Office of the Prosecutor General is not providing any information or making any comments in this regard.

This is due to a number of reasons, many of them being the responsibility of the Ministry of Labor and the Office of the Prosecutor General, to ignorance, absence of communication, not referring the cases, lack of follow up, work load and lack of interest from officials from both institutions, we must add that the adequacy of the criminal classification is rather abstract. As of today there are no protocols or joint efforts between inspectors and prosecutors for the implementation of this criminal classification, they don't share evidence, some inspectors just send information to prosecutors in order for them to verify if there are any violations of the criminal code.

Since none of the institutions seems to be interested, workers and trade union organizations are the ones affected as they seek justice and encounter administrative failures and carelessness from authorities to investigate this kind of allegation. It is important to mention that it is not until the prosecutors initiate the prosecution stage, that workers or trade unions participate in the process, and therefore, it seems that prosecutors who have no support from investigators and are not experts in labor law, prefer to close the file on the case rather than work on it or try to initiate trials.

B. Compilation of the jurisprudence related to the exercise of the right to strike in essential public services

The Colombian Government committed itself in chapter VI to undertake a compilation of the jurisprudence that shall demonstrate the protection that is in place for the exercise of the right to strike in essential public services. According to the Colombian government the obstacles to exercising the right to strike were overcome.

The ILO Commission of Experts has undertaken a full compilation of the services considered essential in Colombia that violate Convention 87 ratified by this country, and has requested legislative amendments and the Colombian government has not complied; today, services such as cell phone use, and all types of transport, among many others, are still considered essential public services and thus the exercise of right to strike is prohibited.

The jurisprudence compilation was not carried out completely, but probably the most important thing is that in many sentences the Constitutional Court has urged the government and the congress to regulate strikes within essential public services. Recently, the Colombian Constitutional Court issued sentence T-171 from 2011 in which it exhorted the Congress of the Republic to regulate the delivery of minimum services to exercise the right to strike.

⁵⁰Interview by Gabriel Jaime Salazar, professor at Universidad Autónoma Latinoamericana, Universidad de Medellín, former official at the office of the prosecutor general and files 209/ 88, 25695/2006, 11447/96, 13401/97, 31068/2009 of the Supreme Court of Justice.

Since the LAP was initiated there have been no specific guidelines to inform inspectors about the extension of protection that the Constitutional Court has issued on the exercise of the right to strike, it is not even mentioned in the compilation carried out by the Ministry of Labor in 2010, and there are no campaigns or publicity on the right to strike.

According to figures from Trade Union Dynamics of the ENS database, in 2010 there were 180 mobilizations by workers, in 2011 there were 228, in 2012 there were 2290 and in 2013, 362. That is, there has been a steady increase in the demonstrations by Colombian workers, since they don't get any results to complaints filed with inspectors or judges. Besides, these actions are not protected by law; only 112 of the 880 mobilizations are considered by law as strikes with legal protection; many of the other demonstrations, although peaceful, are not protected by the government. The rest are declared illegal and if they obstruct public roads can be considered criminal acts, further restricting the use of strikes.

This was evident when trade union activists from the USO (Worker's Trade Union of the petroleum sector), Mr. Hector Sánchez Gómez, Mr. Campo Elías Ortiz and Mr. José Delio Naranjo Gualteros, were detained by the order of a prosecutor for 75 days, charged with kidnapping, threats, violation of the right to work and obstruction of public roads. Later, they were released by the order of a supervisory judge in Bogota.⁵¹ Nonetheless, another USO member, the regional vice-president, Darío Cárdenas, remains detained on the same charges. Nowadays, criminal laws are used to persecute trade union leaders and not to protect trade union activities. This case is emblematic of the anti-union strategy. In the department of Meta, the country's largest oil producing region, and home to the largest private oil company in terms of production and profits, Pacific Rubiales, the USO is facing a large legal and political attack. Despite the fact that USO doesn't have any employees of Pacific Rubiales as members, currently, in the area where the Canadian oil company operates, that trade union faces approximately 32 criminal proceedings against their leaders, members, and activists, all of them due to their protest actions against Pacific Rubiales' refusal to accept trade union membership and collective bargaining in Campo Rubiales.⁵²

Instead of positive progress in terms of the design and implementation of this type of directive, the Colombian Government, over the last year, has shown worrisome signs regarding its commitments to endorse and respect the right to strike. A clear example of the lack of guarantees and legal protections offered to trade unionists who vote against going on strike, is the one in the polemical U.S. coal company, Drummond. In this company, by the end of July 2013, the majority trade union,⁵³ Sintraminenergética, mining and energy industry union, after strictly complying with Colombian laws, and given the impossibility of signing a collective bargaining agreement with the company's management, called a strike, after voting in their assembly. This way, workers and members of Sintraminenergética went on a strike that lasted 54 days, halting production activities at the two mines, located in Cesar, and the port of Ciénaga in Magdalena. Yet, in this particular case, in clearly illegal acts perpetrated by the company, a vote was held and they decided to end the strike and go to an arbitral tribunal, which was endorsed by

⁵¹ http://www.usofrenteobrero.org/index.php?option=com_content&view=article&id=7876:la-libertad-de-nuestros-companeros-detenidos-es-la-mejor-prueba-de-su-inocencia&catid=62:notas&Itemid=134

⁵² Information received through an interview with the USO National Vice President, Edwin Palma, on March 5th in Bogota.

⁵³ The two minority unions at Drummond are: Sintradrummond and Agretritenes.

the Ministry of Labor. This is a clear sign of an act of arbitrary interference from the Ministry of Labor on the autonomy of trade union organizations.

C. Control the anti-union usage of collective pacts

This is one of the LAP commitments that the Colombian Government has not fulfilled. The government has not undertaken campaigns, or conducted preventive inspections, nor has it accepted technical assistance from the ILO. Besides not being able to find public information on these activities, it is possible to add that with the actions from the Ministry of Labor, not even one of the illegal collective pacts has been dissolved during the three years of the LAP. On the contrary, the use of collective pacts has continued unhindered and they all have in common that they start when a trade union organization is constituted or when the latter attempts to initiate a collective bargaining process.

Companies use collective pacts for at least three purposes; first, as a preventive strategy against the potential emergence of trade unions; second, as a containment strategy to preclude further development or make trade unions disappear and; third, as a weakening or shock strategy so that majority trade unions lose their negotiation and strike capabilities.

According to figures from ENS⁵⁴ between 2011 and 2012 the use of collective pacts increased 23%, while only 1% of conventions were used, with a specific characteristic in common. From the 215 collective pacts signed in 2012, 58 of those were signed simultaneously with collective bargaining processes with trade union organizations; that is, the companies offer the same or better benefits to non-unionized workers who do not become members of the union, nor benefit from collective bargaining agreements. In other words, in 26.97% of cases the collective pacts were used as a response to the list of demands submitted by the trade union or as a containment strategy. Meanwhile, in 157 cases (73.03%), pacts were used as a preventive strategy.

There are multiple ways to use collective pacts as a mean to end or reduce trade unions and to hinder negotiation processes:⁵⁵ (i) grant better benefits with a collective pact (57% of cases); (ii) grant the same benefits as the collective bargaining agreement, tied to the employer demand for the worker not to be a member of the trade union organization (86%); (iii) grant benefits to non-unionized workers during the bargaining process to discourage membership in the trade union organization or to thwart the bargaining process; (iv) extension of collective pacts in corporate mergers and acquisitions (43%); (v) to establish collective pacts as the limit for the collective bargaining for trade unions (71%); or (vi) the creation of collective pacts with prolonged duration, as long as 10 years, to hinder trade union organization.

⁵⁴ SISCON database from the text: effects of collective pacts in the right to association and the freedom of association in Colombia 2014.

⁵⁵ All figures in this paragraph are the result of a sample of 10 collective pacts, taken from the 58 cases where coexistence was found; that is a representation rate of 17.24%.

Generally, legal requirements for collective pacts are not fulfilled (86% of cases do not comply with the requirements of the substantive labor code),⁵⁶ due to the fact that workers do not sign them freely and voluntarily, but rather are pressured by their employers.

A very important element that demonstrates how collective pacts are "collective bargaining" facades and that shows the lack of actual interest and genuine negotiations between non-unionized workers and employers, is the information provided by the Ministry of Labor in the document called *Report of activities to congress, 2012-2013*, where it is stated that for the period from July until December 2012, 102 collective pacts were signed and only 26 were announced. In the meantime, in the period from January until June 2013, 84 pacts were deposited and 15 were announced; in that regard, while during that period of time 93 pacts were deposited on average per six-month period, only an average of 21.6% were announced.

The use of collective pacts to encourage and/or restrain union membership didn't change dramatically during 2013. During that year 204 pacts were signed, a slight decline compared to 2012. However, the fact that 63 of those pacts were signed for "the first time" in a given company,⁵⁷ demonstrates the popularity they have gained as a corporate mechanism to marginalize trade unions. In addition, knowing that so many new companies have adopted this controversial concept of collective bargaining, regardless of the legal impediments, says a lot about the inefficiency and/or negligence of the Ministry of Labor and the Office of the General Prosecutor to reach an agreement and thus be able to make progress in the joint investigation activities and punish employers who use collective pacts where there is a trade union organization.

The usage of collective pacts guarantees the inability to hold strikes, or solve these disputes through arbitral tribunals; since this is an action manipulated by the employer there is no actual collective agreement. Recently other forms of pressure similar to collective pacts are being used, they are called voluntary benefit plans, which have the same effects, but there is no criminal law that can be used against them. When there is coexistence of collective pact of unionized workers and trade union collective bargaining agreements, in 71% of these companies there has been a reduction in the number of trade union members.

These violations are carried out in spite of the penalization of the illegal use of collective pacts. Processes of *criminal* investigations or those of the labor inspectors are extremely frustrating, since despite the actions taken by the trade union organizations, there is no knowledge of trials or administrative sanctions against inspectors.

D. Decrease in the signing of collective bargaining agreements – CCT

Collective Agreement by type of Agreement 2010 - 2013

⁵⁶ Ibid.

⁵⁷Information taken from: Directorate General of Inspection, Vigilance, and Control and Territorial Management, Statistical Information 2013, submitted to ENS on March 14th 2014.

Type of Agreement	2010		2011		2012		2013	
	Cases	%	Cases	%	Cases	%	Cases	%
Union contract	50	9,62	164	25,79	703	57,39	964	59,25
Collective bargaining agreement	246	47,31	304	47,80	307	25,06	459	28,21
Collective pact	224	43,08	168	26,42	215	17,55	204	12,54
Total	520	100	636	100	1.225	100	1.627	100,00

Source: Escuela Nacional Sindical, Trade Union and Labor information System (Sislab), Subsystem Dynamics of Collective Bargaining with information from the Ministry of Labor.

After an analysis of the behavior of collective agreements in the last 4 years, a concern is the abrupt growth, mentioned above, of union contracts and the persistence of collective pacts despite the fact that the LAP includes legal and political mechanisms aimed at eliminating illegal mediation in labor disputes (demonstrated, in part, by union contracts) and anti-union practices (demonstrated, in part, by the use of collective pacts where there is a trade union organization).

By the end of 2013, almost three years after the commencement of the LAP, collective bargaining agreements (CCT), the only way to perform bilateral negotiations between employers and trade union organizations over working systems and working contractual arrangements in a company, have notably decreased in every collective bargaining process in Colombia. In 2010, prior to the signing of the LAP, CCTs occurred in 47.31% of every signed agreement. By the end of 2013, the occurrence rate was at only 28.21% (see the table above). In other words, during the LAP's implementation process, the possibility of signing a CCT was limited while the scope for signing union contracts and leaving in place or signing new collective pacts has widened; this situation illustrates a regression in terms of union protection.

Collective bargaining agreements are still losing force in the private sector's collective bargaining, while the collective pact and the union contact that take place without freedom or autonomy and cover more than 70% of the workers who are included in a collective contract.

However, the most serious aspect of this situation is that employers refuse to discuss the lists of demands that trade unions draw up autonomously, in such a way that collective disputes are being taken to Arbitrational Tribunals, which are instances that excessively delay the solving of problems that affect workers. According to the Ministry of Labor⁵⁸, between January and September 2013 there were 103 requests for setting up tribunals were processed, 59 requests to designate a third arbitrator, 22 processes underway for the payment of honoraries to third arbitrators, and 184 administrative acts were processed in conformity with the requests for resolution according to responsibility. According to the Vice President of Legal and Social Aspects of the ANDI, Alberto Echavarría Saldarriaga, of the 230 Arbitrational Tribunals set up in 2013 only 16 achieved a resolution of the labor conflict⁵⁹.

⁵⁸ Ministry of Labor: Informe de Actividades 2012-2013 al honorable Congreso de la República, p.120.

⁵⁹ See: "Convenio 135 de la OIT debilitará sindicatos". El Colombiano, 1 April 2014,

http://www.elcolombiano.com/BancoConocimiento/C/convenio_135_de_la_oit_debilitara_sindicatos/convenio_135_de_la_oit_debilitara_sindicatos.aspx

The tendency of the labor disputes dealt with in tribunals is that they get diluted, not because an effective solution is given, but due to the long process related to solving a dispute in these instances, leaving workers without protection and trade unions unable to look after their members while the dispute comes to a halt. Additionally, in those cases in which the company agrees to negotiate the list, there is a prevailing, tense climate. During 2013, according to the Ministry, there were 101 arbitration tribunals or strike ballots conducted and from those, according to information from Trade Union Dynamics from ENS, only five ended up going on strike, showing an indication of the lack of guarantees to start a strike in Colombia. In comparison, for the same period there were 1843 confirmed cessations⁶⁰.

This information shows that in Colombia, formal paths to solving disputes and establishing relationships of social dialogue within a company are very inefficient. The great majority of Colombian workers have to express their discontent at the companies' behavior on labor matters through action channels and not through institutional channels, which provide few satisfactory responses to the country's working population.

Some of the most illustrative cases of the disastrous impacts that collective pacts have on trade union organizations are:

The collective pacts in BBVA: In this high-level international bank, the first collective pact appeared after the merger between BBVA and Granahorrar bank in 2006. Following the Granahorrar acquisition, where there already was a pact. BBVA modified it to put it on an equal footing with the clauses negotiated in the collective bargaining agreement signed between BBVA and the trade unions (ACEB and UNEB), as a way to discourage the trade union role and attain their position as representatives of over a third of all the people employed at the bank. According to trade union leaders of ACEB (Colombian Association of Banking Employees), prior to the signing of the pact, there was no publicity about the process, no election of non-union representatives, and no kind of negotiations. The pact was improved (in its contents) and transferred so that it would cover every non-union employee of the now bigger BBVA. ACEB has initiated legal proceedings to report the existence of the pact as well as its impact on the trade union organization. Yet, to this day there has not been an investigation from the Ministry of Labor and still less a criminal conviction against the company for using and expanding the pact illegally. As a consequence of the implementation of the pact, the trade union affiliation to ACEB has decreased from 1500 people before the pact started in 2006 to 700 today, taking away the majority position this trade union used to hold.

The collective pacts in Prosegur: Another company that has encouraged the illegal use of collective pacts without receiving any sanction or penalty from the Ministry of Labor or the Office of the General Prosecutor is Prosegur, a multinational company in the security sector. Facing a trade union creation process and an increase in the membership to that trade union, Sintravalores, the company lambasts the employees organization, imposing -without resorting to the established norms (article 70 of law No. 50 of 1990 and article 481 of the Substantive Labor Code) in terms of publishing the process of creating a pact, democratically electing the non-union employees representatives, and negotiating the

⁶⁰ Statistical Report 2013 Land Management and IVC and General Direction, Ministry of Labor, sent to ENS on March 14th 2014.

points of the pact-- a collective pact⁶¹ that was able to take away the majority position of the trade union, which suffered a drop in its membership -rate of more than 73% after the creation of the pact (going from 550 members to 132). Even though Sintravalores has taken legal action against the existence of the pact and its impact on the trade union organization, beyond an investigation by a labor inspector, there is no knowledge of a penalty or legal proceedings against the company. The only positive ruling has been through a *tutela* (a tutelage action of rights) that stated the need to protect the rights of the unionized workers within that company. Above this point, the great impact that collective pacts have had over trade union activity and their very existence has not been condemned in any instance.

Today in Colombia, the coexistence of a collective pact of non-union employees and a collective bargaining agreement is still legally possible, although the supervisory bodies of the ILO have reiterated on many occasions that collective pacts may only exist in the absence of trade union organizations⁶² to avoid anti-union discrimination. In turn, Resolution 2628 of the European Parliament (June 2012) has requested that the Colombian government eliminate collective pacts completely, under the understanding that they are explicitly used to reduce and marginalize trade union activity within a company. With the rise of pacts in Colombia and their truly negative impact on the trade union organizations, it is imperative to comply with this recommendation.

E. The manipulation of figures related to the creation of trade unions

The situation described above is quite different to the encouraging reports that, periodically, the Ministry of Labor presents to society, the media and the international community. This illusory transformation of reality is known in the literary world as the strategy to change something so that, basically, nothing changes.

The game the Ministry plays showing progress where there is none remains as of today. Not only does labor intermediation continue three years after signing the LAP, deeply affecting the labor rights of thousands of Colombian workers, but also, its impact on the trade union movement has been extremely disastrous. By praising the institutional measures of the Ministry in terms of generating employment, formalizing employment and opening opportunities for trade union growth, Minister Pardo masks reality in a deceiving way. On a recent visit to Norway, Pardo announced that during 2012 and 2013, 791 trade union organizations were created, which represented an increase of 48% compared to the two previous years.⁶³

Nevertheless, when one examines how these figures were arrived at, it is evident that Pardo combines: (i) autonomous and independent trade unions where decisions that set the course of the trade union are taken through democratic bodies (i.e. assemblies), with (ii) trade unions that are constituted with the main objective of operating as intermediary companies, signing union contracts, and (iii) other social organizations that are registered as trade unions even though they have no explicit labor purposes. After analyzing the Ministry data regarding the number of registered trade unions (created) in 2012 and up to June 19th 2013, we can say with certainty that 422 trade unions of the first kind, 159 of the second, and 16 of the third were created. In other words, 29.3% of the trade union

⁶¹ The first collective pact of the company was signed on December 3rd 2010; the second was signed on December 20th 2013.

⁶² Committee of Experts on the Application of Conventions and Recommendations, reports 2008, 2006, analysis of convention 98, among others

⁶³ Caracol Radio, "Labor Minister began visit to Iceland, Norway and Sweden," March 12, 2014

organizations created during this period do not comply, in real terms, with the original aims of a trade union: to protect the labor rights of its members.

F. Fines for violating union freedoms: a drop of water in the ocean

There is great worry in Colombia's union movement regarding the inconsistency of the General Prosecutor's Office when it investigates employer actions that go against union freedoms as well as the Ministry of Labor's lack of action in terms of remediating this preoccupation. In the section on fines for violating the labor law, in the Ministry's most recent statistical report, one can see that the Ministry applied 1,444 fines for diverse reasons, together which represent the sum of \$15.886.424.421 Colombian pesos. Of the total number of these fines only 27 correspond to union freedoms: violation of the CBA, collective pacts or arbitration rulings, refusal to negotiate, for attempting against the right to unionize; all of which, collectively, have generated fines totaling \$1.230.333.370 Colombian pesos. In other words, while in monetary terms these fines represent 7.7% of the total fines, this says little in terms of the number of inspections or fines in the broader total; indeed, 27 fines represent only 1.86% of all fines. Such peripheral actions lead us to conclude that themes associated with union freedoms are of little relevance to the Ministry of Labor, especially in terms of the importance they are paid within the activities related with inspection, vigilance and control.

IV. ANTI-UNION VIOLENCE, IMPUNITY AND UNION MEMBERS PROTECTION

The lack of results is reflected in the continuous anti-union violence, and the persistence of impunity.

Measures Committed to

The Colombian government has committed itself to: increase the number of officials that will work full-time on this matter, the resources to carry out their duties, and investigation training processes; analyze solved cases so that procedures are improved, issuance of internal directives to reorganize work teams and to share evidence; improve dialogue with organizations to agree upon the list of cases to be investigated, prioritize cases, and publish results; modify the legal regulation of threats and work in their investigation; and improve support for victims.

Opinions of the CUT and CTC union confederations

Diógenes Orjuela (National Executive Committee of CUT, International Relations Department)

"Whereas during 2011 and 2012 there was a decline in the number of trade unionist murders, in 2013 it increased again. In addition, throughout this period the number of threats and forced displacement of workers has risen. Impunity for crimes is still at the same high levels as before. There has been no change since the signing of the Labor Action Plan. The reforms made by the Office of the General Prosecutor on this matter have been of little use in moving forward with the investigation on the perpetrators and instigators of so many crimes having to do with trade unionists. Due to this situation, the trade union confederations have discussed and developed a collective reparation plan for the trade union movement, which we think should start with the government admitting, to

Colombians and to the international community, its responsibility in the murders of workers, in displacements, and the threats against them; it must recognize its responsibility in the lack of investigation and the impunity for crimes; but above all, it must recognize that Colombian democracy has not given the trade union movement the space it deserves and to which it is entitled."

Miguel Morantes (President of the CTC)

"For some time it has been said that impunity rates for crimes against trade unionists are over 95%. And that has not improved at all. There was an initiative from the Office of the General Prosecutor to designate 100 new judicial police officers, relevant experts, and there was a lot of publicity about this matter. I don't know if those police officers were really designated, but no results have been observed, the situation remains the same. Moreover, the government committed itself to strengthening protection programs for threatened trade unionists, but that is another point that is not being fulfilled. There are a lot of comrades that have been pronounced as having a high risk and threat level, and yet they still have no protection. They have to hire someone to protect them, sometimes the company supports them, but the Government is not offering help. I don't have the information at hand, but there are many security schemes that are being removed and very little that are being implemented. But the scheme that is being applied involves giving them a bulletproof vest and a cell phone, that's it. The other issue is that the private security firms hired for these schemes treat bodyguards badly from a labor point of view. Apart from not giving them any breaks, they are hired on a contract basis, that is, if the scheme is removed they lose their jobs. This is what I know, I am not aware of any other kind of contract. And they have no stability; they can be fired at any time. In fact, they involved one of the guards who worked in my security scheme in a hoax to fire him. He was told by the company that I had called to accuse him of serious misconduct that could even send him to jail, and that the only way to avoid this was to tender his resignation, and that they would hire him again later. He panicked and never asked me about these allegations. I never accused him; I had no reason to. He was a decent man who worked for me for 8 years, he even saved my life once in an attack."

Analysis of Measures

The government has taken the following measures: creation of positions characterized by a high turnover of investigators, issuance of internal reorganization directives during 2011, to provide training programs for judges and prosecutors, and create support centers for victims of all types. These measures are characterized by having few results, producing few changes, having little dissemination of the information, excluding civil society when they are implementing them, and not having any bearing on the substantial changes needed for the protection of the human rights of workers, victims, and witnesses.

A. Anti-union violence is not in the past

Anti-union violence is not in the past, and is not an issue that has been overcome. For almost 3 years of the LAP (between April 7th, 2011 and February 14th, 2014), violence against trade unionists continued to be a characteristic of trade union activity in Colombia. During this period 73 trade unionists have been murdered, there have been 31 murder attempts, 7 forced disappearances, and approximately 953 death threats, with no significant progress in the investigations, no trials ordered, and no convictions or captures made.

It should be noted that some violence indicators have increased for 2013: there were 26 unionized workers murdered, 13 murder attempts, 28 cases of harassment and 13 arbitrary detentions. Thus, there have been 4 more homicides and 6 more cases of murder attempts against trade unionists than in 2012. Today violence continues to lurk, and increasing penalties and designating inspectors does not seem to be persuasive enough to deter this practice.

Death threats continue to be a significant proof that within Colombian society those involved in trade union activities are persecuted and punished, without the Government being able to implement pledged measures or obtaining results. Within the LAP there is commitment to make progress in investigations and imposition of sentences, but this is another unfulfilled commitment. These threats still show a high level of impunity; only 6.23% of threats against trade unionists are being investigated. Moreover, ENS has recorded 6262 threats since 1977, and 188 in 2013 alone, with no convictions or trials, and on many occasions not even the slightest progress in the investigations; in many cases the only thing known for a fact is the designation of a prosecutor, without securing any evidence. In most of the cases all they did was receive the complaint.

Historically 487 trade unions have been victims of at least one act in violation of the life, freedom or integrity of one of their members, and 313 of them have experienced the murder of one or more of their members. Regarding recent cases, the lack of investigations related to crimes such as threats and disappearances indicate a serious failure in the LAP, and the loss of confidence from trade unionists and the victims of those crimes. Violence is not overcome with expensive protection schemes but with effective investigations, captures, justice and truth.

B. Impunity does not abate

According to information provided by the Office of the General Prosecutor, with regard to criminal cases against trade unionists, as of October 2013 there are 598 verdicts, which does not mean that all these cases have led to punishment, if we consider the following facts: 598 verdicts are not necessarily related to 598 trade unionist victims: there may be various sentences in one case;⁶⁴ because all of them are not convictions, that is, among these there are acquittals; in most cases they are not able to expose the whole group or find out the anti-union motives due to a lack of evidence, that is, they do not meet international standards and are not enough to achieve the realization of the right to truth.

With regard to cases under investigation, there are 1545 in total, related to offences between August 30th 1988 and February 23rd 2013. The efforts of National Unity for Human Rights, particularly of the team of prosecutors who investigate the cases of violence against union, are not dedicated solely to the investigation of cases of violence against trade unionists, which reduces their ability to overcome impunity in these cases.

Cases under investigation by stage⁶⁵

Process stage	Cases	Percentage
Preliminary	413	26,73

⁶⁴ Due to a rupture in the procedural unit.

⁶⁵ Information provided by the Office of the Prosecutor General in October 2013.

Process stage	Cases	Percentage
Inquiry	171	11,07
Instruction	228	14,76
Investigation	3	0,19
Trial	192	12,43
Unification	60	3,88
Remitted by jurisdiction	2	0,13
Acquittal	11	0,71
Suspended	1	0,06
Filed	6	0,39
Conviction	76	4,92
Dismissal	368	23,82
Preclusion	14	0,91
Overall total	1545	100

With regards to progress in the investigation reported by the group of prosecutors that investigate cases of antiunion violence in the National Unit for Human Rights and International Human Rights, it can be noted that from the cases that are currently open (1007), almost half of them (415) are just at the preliminary stage. Therefore it can be concluded that there is an 86.8% impunity rate related to homicides; the offense of threats, which represent the most widespread form of violence affecting trade unionists⁶⁶, in turn has the highest impunity rate of 99.9%. The offenses of forced disappearance, forced displacement and kidnapping have an impunity rate of 99.6%, 99.5% and 90.6%, respectively. In general terms, as for offences related to serious human rights violations associated to trade union cases there is a high impunity rate of 96.7% on average.⁶⁷

It is important to achieve convictions for recent cases, since perpetrators don't listen to the Colombian government's speeches about their efforts, and resources for protection schemes are not unlimited. Thus it is necessary that investigation policies are accompanied by a continuous dialogue between prosecutors, investigators, judges, civil society and victims, so that through the Office of the Prosecutor, public reports and monthly newsletters about the progress in trials and convictions are issued, and this way society can be more actively involved.

C. Protection measures are not a solution for violence

The commitments undertaken by the Colombian Government can be summed up as follows (i) resolution which extends the protection program; (ii) funding to support its implementation; (iii) emergency plan to attend requests that have been repressed; (iv) changes to the risk assessment committee and strengthening of the protection program; and (v) strengthening the protection program for teachers.

⁶⁶ENS has recorded, over the last 37 years, 13231 acts of violence against trade unionism, of which 6262 are threats. Only 4 of the latter have been sanctioned.

⁶⁷Since there is no detailed information on the victims and the kind of sentences up to March 2014, impunity rates were calculated with information from October 2013. A comparison was made between the number of sentences for each crime and the number of registered cases in the Human Rights Information System of the Escuela Nacional Sindical (ENS), on the basis that in every case where sentences were issued progress was made in regard to immunity and knowing that many cases are still open in procedural stages. Since 1977, ENS has recorded 13231 violations to life, liberty and integrity of trade unionists, of which 3034 are murders.

As of today there has been partial progress that is focused on reaction rather than prevention, in the operational rather than in the structural, and thus, the diagnosis is still critical. The current structure of the protection program has deficiencies in its formulation, effectiveness, and monitoring, and consequently it does not prevent, protect, and effectively guarantee the free exercise of trade union activity.

While the government reports that in 2013 approximately 47 million dollars were earmarked⁶⁸, there is no proof or public information related to the budgetary allocation, execution and evaluation.

In addition, it reports that on July 2011 it dealt with 97.0%⁶⁹ of cases that had been backlogged. Yet this is not reflected in significant changes related to the approach to protection. The risk assessment mechanism is still a slow process and it does not respond to the trade union activities dynamics, and for extended period of times they leave the trade unionists without protection mechanisms, since there are no preventive measures and they have to wait for the overall results of the assessment.

In regards to the measure that considered the reform and strengthening of the Regulatory and Risk Assessment Committee (CRER), to be replaced by the Risk Assessment and Measure Recommendation Committee (CERREM), the government attempted an objective risk assessment. For this purpose they created entities such as the preliminary assessment group that includes representatives from the Office of the General Prosecutor and the Office of the Ombudsman, and the Technical Body for Gathering and Analysis of Information (CTRAI).⁷⁰ However, trade union leaders report that this change has had no effect on strengthening the program and, on the contrary, it increased bureaucracy in the procedures to carry out the risk assessment.⁷¹

On November 2013, the UNP presented a report to the ILO emphasizing the following as progress in protection of trade unionists: i) the protection of 639 trade unionists; ii) performance of 565 risk level assessments for leaders and activists; iii) implementation of 61 strong protection schemes; iv) the results of the work with the confederations and the ILO through the National Coordination for Inter-institutional Strengthening and, v) the creation of the Service Management scheme in charge of dealing with and following up on cases.⁷²

Today the approach to protection is reactive rather than preventive: if there is a threat or an attack there is protection, even though homicide numbers remain steady, this has not generated preventive schemes for some trade unions and in some regions, other risk contexts inherent in the trade union activity are not considered, the inclusion of a methodology for the early alert system⁷³ is not considered, and as a result, the allocated

⁶⁸Ministry of the Interior. The UNP presented the ILO progress made on trade unionists' protection. At: <http://www.mininterior.gov.co/sala-de-prensa/noticias/unp-presento-la-oit-avances-en-proteccion-sindicalistas> published on November 14th 2013 [Consulted on February 10th 2014]

⁶⁹Colombian Labor Ministry, USA-Colombia Action Plan Results, April 2013. At: file:///C:/Users/Usuario/Downloads/avances_de_plan_de_accion_EEUU-Colombia_abril_de_2013.pdf (Consulted on February 17th 2014)

⁷⁰ Ibid, Page 7

⁷¹ Interviews with trade union leaders of the CGT (General Confederation of Labor) and the CTC (Worker's Confederation of Colombia), February 5th 2014.

⁷²Ministry of the Interior. The UNP (National Protection Unit) presented the ILO progress made on trade unionists protection. At: <http://www.mininterior.gov.co/sala-de-prensa/noticias/unp-presento-la-oit-avances-en-proteccion-sindicalistas> published on November 14th 2013 [Consulted on February 10th 2014]

⁷³ Universidad Externado de Colombia (2010). Evaluation of prevention and protection policies for trade union leaders and unionized workers of Colombia. Bogota: United Nations Development Program (UNDP).

measures do not guarantee the trade unionists' lives and the continuity of their trade union and social activities.

Over the past year protection schemes have been removed, reassessing risks with results showing reduced danger. Nonetheless, these assessments do not depend upon the capture of the perpetrator, or the issuance of a sentence, yet protection is removed without any police or judicial action in response to these threats. The UNP reports that as of October 2013, 565 risk level assessments had been performed and the results were 1 extreme, 202 extraordinary, 296 ordinary and 66 returns.⁷⁴

The removal of protection schemes, the risk assessments with ordinary results, and the complaints due to delays and erratic and unjustified administrative processes had been denounced by the trade union organizations before the LAP came into effect, and they are still denouncing them today.

In response to this worrying situation, it is necessary to consider three aspects. First, a protection scheme can't be removed if there is no conviction followed by the capture of the perpetrator and/or his/her illegal group. Second, recurrence of unjustified delays in efficiently processing protection requests, blocking the trade union activities for up to 30 days. Third, it is extremely necessary to take measures in order to generate preventive and immediate protection schemes during the risk assessment period.

In order to illustrate the arbitrary nature and ineffectiveness of the protection program for trade unionists at risk, we compiled some examples of the many cases of trade union organizations from different sectors and regions of the country.

Sintracarbon: Since July 2012 two leaders from the National Trade Union of Coal Industry Workers, Sintracarbón, received extensive threats against their families. In response, the UNP allocated two provisional guards. Later, at the beginning of 2013, in the midst of the labor conflict during the collective bargaining process between the majority union with the multinational company, Carbones del Cerrejón Limited, the number one coal mining company of the country, the trade union president received new threats against him and his family. Immediately, the trade union requested strengthening of the protection scheme, which until then had been sporadically provided and didn't have appropriate mechanisms to offer effective protection (for example, they provided a bulletproof vest that was not the proper size and thus was useless). After most of the members of the trade union voted to start a strike at the company, the UNP informed the president of the trade union that his protection scheme had been immediately removed. As a result, the president had to manage the labor conflict while he and his family were under a high-risk threat with no government protection. Since the government refused to create a new protection scheme for him, the trade union had to turn to the company to request security measures. Fortunately, the company responded positively to this request; the critical part of this example is that the Government refused to honor its commitments to increase and improve protection for trade union leaders at high risk of threat only because he fulfilled his trade union role.

⁷⁴Ministry of the Interior. The UNP presented the ILO progress made on trade unionists protection. At: <http://www.mininterior.gov.co/sala-de-prensa/noticias/unp-presento-la-oit-avances-en-proteccion-sindicalistas> published on November 14th 2013 [Consulted on February 10th 2014]

Sintraminenergética: In March 2013, while he was participating in a collective agreement, the president of the National Trade Union of Mining, Petrochemical, Biofuel, and Energy *Industry Workers*, Sintramienergetica, Zaragoza was threatened. He requested protection, and five months later the risk level assessment was performed. Even though he was at an extraordinary level, the protection measures they allocated for him were a bulletproof vest, a transport assistant, and a cell phone. The trade union leader submitted a requested to the UNP since he considered that these measures did not provide him the necessary protection to carry on his trade union activities, and he was told that if he didn't accept what he had been given, he was going to be removed from the program. Delays in the risk assessment and the implementation of measures that resulted ineffective and inopportune hindered his trade union activities. For some months he had to lead the trade union from his residence.

Sintracañavalc: The vice president of the national committee of the Worker's Confederation of Colombia, CTC, and president of the Trade Union of Workers, Growers and Processors of Sugar Cane of the Valle del Cauca (Sintracañavalc), who leads organizing and strengthening activities was threatened in 2011. After requesting protection measures, they approved a security scheme that was never allocated, and months later it was removed. Later, in April 2013 he was threatened again so protection measures were requested, and in August 2013 a security scheme was approved, but allocated five months later. Given these conditions, the leader never had appropriate and effective protection measures to carry on his trade union duties.

CTC: The experience of the president of the national committee of the CTC shows the arbitrariness in the allocation and removal of protection measures. A guard of the president of the national committee of the CTC is being harassed; his contracting company is demanding his resignation arguing that the president is requesting his removal. In the mean time they are pressuring the trade union leader to accept a new guard who he doesn't know and doesn't trust.

V. ILO TECHNICAL COOPERATION PROJECT

The Technical Cooperation Project of the International Labor Organization titled "Promoting Compliance with International Labor Standards in Colombia," which was financed by the Colombian and United States governments, was designed to further implement the recommendations of the ILO's 2011 High-Level Mission to Colombia and included a request that the Colombian government be permitted to request that the Organization be allowed "to play an important role in strengthening capacity and skills, as well as other activities necessary for implementing the conclusions of this Mission and effectively applying conventions 87 and 98."

The Labor Action Plan (LAP) represented an opportune moment for putting into action a project that would provide the Colombian government and the players in the employment relationships indicated in the key elements of the plan with technical cooperation, the first of which was "strengthening the institutional capacity of the Ministry of Labor, especially in regard to labor inspection, to effectively enforce Colombian labor laws and guarantee fundamental rights at work, particularly in relation to the right to organize and bargain collectively, in accordance with international labor standards." The second included "strengthening existing social dialog bodies and the social partners participating in such

dialog, particularly at the departmental and local levels." The third aim of the project was "to strengthen the institutional capacity of the Colombian government in order to improve measures for protecting trade union leaders, members, activists, and organizers and to combat the impunity of those engaging in acts of violence against them."

These three aims correspond to the important matters that the LAP is attempting to resolve in regard to labor formalization, institutional strengthening, and combating impunity beginning with training strategies; designing instruments that permit more-extensive inspection, vigilance, and control (IVC) work; and strengthening social partners in the labor field at the global level to achieve effective social dialog and obtain information.

In this regard, project activity focused on achieving aim 1 (institutional strengthening) has concentrated on establishing practical instructions in an attempt to aid the actions of labor inspectors to standardize processes and become more efficient. These instructions address the application of sanctions, administrative-labor procedure, and the identification of ambiguous and disguised employment relationships for determining conducts that infringe upon the right to organize, as well as contract mapping methodologies and the identification of permanent mission activities.

A massive undertaking was carried out to train inspectors and labor inspectors throughout the country. This process consisted of four training modules in administrative-labor procedure, labor formalization and labor intermediation, collective labor law and inspection skills, vigilance, and control at all territorial offices of the Ministry of Labor and for all inspectors and labor inspectors. In addition, intensive training was provided on ambiguous or disguised employment relationships, and labor formalization and labor dispute prevention strategies were established.

The promotion of social dialog is a key component of the Program for Promoting Labor Formalization Agreements in the five priority sectors defined in the LAP. This component has ambitious goals: to promote the establishment of labor formalization agreements in each sector and to define a work plan for intervening in, as well as strengthening, departmental subcommittees on wage and labor policies in their intervention and dispute-resolution capacities.

The program commenced in the palm sector, in the Magdalena Medio Santandereano region, with the participation of trade union organizations and employees. This program and the contract map methodology application and training sessions, in which more than 500 union leaders and employees participated, permitted them to propose a formalization framework agreement to the Ministry of Labor and to business owners. This agreement is currently under tripartite discussion.

With respect to the strengthening of social dialog bodies and the actions of trade unions and business organizations in them, regional and national workshops have been set up for business owners and employees in an attempt to encourage increased employer and employee participation in the Permanent Committee on Wage and Labor Policies, affiliates, and departmental subcommittees. A similar process is taking place with employees and employers participating in the regional labor observatories (ORMET) of the UNDP.

Another committee receiving project support is the Special Committee on the Handling of Conflicts (CETCOIT). In its first six years, this committee addressed 62 cases, of which two

were resolved. In 2013, 31 cases have been addressed, and 15 of these have been resolved.

With respect to the institutional strengthening of the Colombian government, in an effort to improve trade union leader, member, activist, and organizer protection and combat impunity, the Certificate in the Judicial Investigation of Cases of Violence Against Unionists (*Diplomado en Investigación Judicial sobre Casos de Violencia Contra Sindicalistas*) was created and implemented jointly with the School of Public Prosecutors (*Escuela de Fiscales*) in five cities, where 270 people took part in it.

Moreover, in association with the National Protection Unit (UNP), the Trade Union Leader Protection Route Program (*Programa de Difusión de la Ruta de Protección a Líderes Sindicales*) was applied at four regional meetings jointly with the Rodrigo Lara Bonilla Judiciary School, [sic] the training of judges and justices on how to incorporate international labor standards into their judicial work, especially in regard to conducts that infringe upon the right of freedom of association. In addition, four videos were produced and released by diverse media on the right to organize, decent work, and the right of freedom of association.

When providing a description of the actions that have taken place so far this year, it must also be stated that, firstly, this is a project in its initial stages and that many of its parts and activities are being implemented. Several achievements indicated by the interviewed people connected to the project correspond to the labor formalization agreements aspect, specifically to the proposal prepared in the palm sector established by union organizations beginning with training and the use of tools resulting from the project, and are being reviewed by social partners in labor. The IVC use assigned to manuals by labor inspectors and the tools resulting from the project, as well as the ensuing training process, have also been important.

It is now necessary for the impact of administrative sanctions and decisions issued by the Office of Inspection and Vigilance of the Ministry of Labor, as well as increased formalization based on agreements entered into in a coordinated manner, to be seen. Furthermore, criminal investigations regarding violations of Article 200 of the Penal Code and effective and context-oriented decisions issued by the Office of the General Prosecutor regarding violence against unions must make headway.

Trade union confederations view the project and role of the ILO in the field of technical cooperation in a positive light; however, they are pessimistic regarding the achievement of their aims, as they do not see in the Ministry of Labor or Office of the General Prosecutor real political intent to comply with the LAP or the recommendations of the High-Level Mission of the ILO.

VI. MACROECONOMIC CLIMATE OF THE FTA

Two years after the FTA with the United States entered into effect, this agreement has not contributed to guaranteeing labor rights, has not increased employment, and has resulted in economic damage that will undoubtedly escalate with the passage of time. As a result, this enormous economic sacrifice has not been offset by increased union strength or reinforced employee rights, and it is exacerbating deindustrialization and the agricultural crisis.

The FTA involves the free flow of goods and services, freeing up of capital accounts, elimination of all types of barriers to economic relations between the two countries, and foreign investment guarantees. Global interaction between developed and underdeveloped countries is thereby deepened and made more sensitive to change.

The macroeconomic climate is defined by global imbalances, which are measured by national current account surpluses and deficits. On the one hand, the United States has the highest current account deficit in the world, while emerging countries have surpluses, some of which are high, including those of China, Japan, and Germany. In 2006, the United States reached its highest historic deficit, USD 803 billion [sic] dollars, which equals 6% of this country's GDP and 1.5% of the world's. Between 2005 and 2008, the average deficit equaled USD 746 billion [sic], which equals 5.5% of the country's GDP and 1.4% of the world's.

The crisis changed this because the US deficit fell by half in 2009. Throughout this year and during 2013, the US maintained a relatively-low deficit. Based on the principle that international transactions in goods and services represent a closed system, i.e., if some countries have a deficit, others must have a surplus, the effects of the United States' accelerated deficit decrease would, by definition, imply a similar accelerated decrease in the surpluses of emerging countries. The mechanism employed by the US involved high issuance in the form of bond purchasing and lowering interest rates to devalue US currency and revalue other world currencies.

The impact of the United States' economic decisions extend beyond its borders. There is sufficient empirical evidence to uphold a correlation between current account adjustments in the US and various lending crises throughout the world. Basically, worldwide commerce takes place in dollars. The major source of dollars is the US current account deficit.

When this deficit decreases, as it has in recent quarters, worldwide liquidity drops. This is reflected as a fall in the central bank reserves deposited in the US Federal Reserve. When dollars are scarce, countries can obtain them by going into debt, attracting foreign investment, or increasing exports. The latter has become difficult due to worldwide low growth. As a result, the solution for countries such as Colombia has been to waive tariffs and capital controls, accept a flexible exchange rate, and use foreign investment as a means of propelling growth.

Nineteen months after the FTA with the United States entered into effect, this climate has intensified all of the economic and social effects that could result from a trade agreement of this type. An increasing current account deficit financed by foreign investment under a flexible exchange rate regime has led to extremely-high, prolonged revaluation that has adversely affected strategic sectors of the economy, including the industrial and agricultural sectors. This instability is reflected in sector composition. Mining, which has been the main source of growth and specialization in production, has shown symptoms of depletion. This year, performance was lower than that of last year, and next year's will be worse. The majority of industrial activities have been in recession for more than one year.

Agriculture has stayed afloat due solely to a large amount of budget subsidies, and exports have fallen in both sectors due to aggressive international prices⁷⁵.

Currency revaluation has also affected employment. The most-productive sectors that generate the highest levels of added value, such as industry and agriculture, are being dismantled, while cheap imports are replacing domestic work. This is resulting in higher levels of unemployment and informality. As a result, employment growth is below the historical trend, the majority of industrial and agricultural prices are higher than international prices, and wages are lower than productivity. This represents a significant decline in the quality of work.

Trade results with the United States over the last 19 months have been closely linked to this economic climate. However, all indications point to a change in the near future. The Fed announced a reduction and progressive elimination (tapering) of the issuance program, which was the cause of these effects. This change will result in the opposite effects: the devaluation of the peso will put downward pressure on wages due to an increase in the price of imports, resulting in higher inflation. Sectors on the verge of bankruptcy will find it difficult to initiate growth, and exports will be based on the primary sector. This will increase specialization in production.

Trade results with the US 19 months after the FTA entered into force. After the Colombia's 2013 trade results were published by the National Administrative Department of Statistics (DANE)⁷⁶, the government immediately launched into false diagnoses and hid the troublesome balance. One week after the official figures had been published, the Ministry of Commerce and Industry stated that exports to the US had increased by 13% since the trade agreement had entered into force. This statement deserved an in-depth analysis of trade results. The conclusion reached conflicted with that proposed by the ministry. The government's response betrays its improvisation and the lack of technical rigor backing its statement. All indications point to an attempt by the government to conceal the true outcome.

In general, there has been a 45.5% plunge in the trade surplus, which dropped from USD 4.032 million to USD 2.199 million. This result is alarming when taking into consideration the 24.74% drop in the trade surplus between 2011 and 2012. That is, over two consecutive years, Colombia's trade advantage fell by 58.95%, which represents a drop of USD 3.158 million in monetary terms.

The result was even more unfavorable with the United States, with which it had a trade surplus of USD 8.25 million in 2012 that fell to USD 2.777 million in 2013, that is, a 66% decrease. The accumulated surplus had been reduced by one-third by almost two years

⁷⁵ Sarmiento, Eduardo (2013). "Balance 2013." *El Espectador*, December 21, 2013. Available at: <http://www.elespectador.com/opinion/balance-2013-columna-465532>

⁷⁶ National Administrative Department of Statistics. Series of exports and imports, trade competitiveness indicators, actual sales and production indices, and total manufacturing industry employment. <http://www.dane.gov.co/>

after the FTA was signed with the US. The average fall in the balances corresponding to the last three years totals 68%. This is a loss of more than USD 5.8 million.

The steep drop in the trade surplus slowed as a result of a 15.5% decrease in exports and a 14.7% increase in imports. This is not conjecture; it is a trend that had been in place since August 2012, only two months after the FTA was signed.

Exports to the US related to the industrial and (mainly) agricultural sectors decreased. In general, 14 of 23 lines experienced drops in external sales, including fuel (-15.4%), sugar and confectionery (-38.5%), edible fruit (-13.7%), metals and manufactured metal goods (-32%), textiles (-3.6%), and others.

When comparing results by product between 2011 and 2013, agricultural product exports such as coffee, tea, herbs, and spices dropped by 24%, while exports of plastic and manufactured plastic goods fell by 22%. Food product exports fell by 20%, and clothing and textile exports by 17%. In all cases, the FTA trade balance with the United States was negative.

Agriculture under the FTA with the US. A recent report drafted by Fernando Barberi and published by Oxfam (2013) indicates that results for the agricultural sector position it as the clear loser, as it contains products pertaining to the rural economy that are at imminent risk of disappearing. As mentioned in the document, "The results contradict the promises announced by the Colombian government regarding the benefits of the agreement. During these first few months, imports from the United States have increased at a much-higher rate than exports to it, which has caused the trade balance to deteriorate. . . . the agricultural sector is being forced to engage in unequal competition using products that are subject to significant subsidies."⁷⁷

The agricultural and industrial sectors have been severely affected in particular, and the outlook asserted by the government has met with difficulty. "While industrial and agricultural exports from Colombia to the United States barely increased by USD 21 million—by less than 10%—, imports of US products increased by USD 248 million—by two-and-a-half times." This confirms a deterioration in the agricultural and industrial trade balance, which has gone from a negative balance (deficit) of USD 17 million to one of USD 344 [million] during nine months of the agreement.

An analysis of the agricultural sector alone, not including the industrial sector, shows that the trade balance fell by 17%, that is, from a surplus of USD 1.283 million to one of USD 1.057 million.

Oxfam established an alert system to monitor the effects of the FTA on the agricultural sector and concluded that dairy products, rice, white corn, and pork have been the most harmed and are at the greatest risk. Wheat, chicken, carrots, and peas are at medium-risk. Finally, the lowest-risk products, some of which have already been adversely affected

⁷⁷ Barberi, Fernando (2013). "La agricultura, los pequeños productores agropecuarios y el primer año de vigencia del Acuerdo de Libre Comercio suscrito con Estado Unidos." Oxfam. Bogotá, 2013.

as a result of opening up the economy, are sorghum, yellow corn, onions, beans, and tomatoes.

The agricultural sector outlook for the coming months will continue to be alarming as long as current conditions remain the same. The increase in US imports competing with Colombian agricultural sector products will directly affect domestic prices by causing drops of between 15% and 55%. As a result, decreases of between 19% and 77% in harvested area and of between 18% and 54% in production could occur.

Industry in the FTA. The industrial sector is another losing sector due to the FTA with the United States. Not only have exports declined, which explains the major reason for the deterioration of the trade balance with the US, but industrial production has also permanently decreased over the past two years. In 2013 alone, industrial production fell by 1.9%, which was nine times greater than expected. Industrial import penetration has been harmful to production and job creation in the sector.

An analysis of indicators related to trade competitiveness in the industrial sector for several subsectors reveals that the relationship between exports and industrial production (export propensity) has worsened as a result of decreases in both exports and production. In turn, the import penetration rate, which addresses imports and their apparent consumption, has increased. This could result in the replacement of domestic by foreign goods.

The first indicator (export propensity) shows a 64% drop in dairy product production. Other products that stand out are baked goods (-16%), sugar products (-47%), textiles (-27%), apparel (-24%), iron and steel (-6%), auto parts (-20%), and others. This indicator is consistent with trade and production results from the aforementioned sectors, which produce below their installed capacities and whose exports decreased between the first quarter of 2012 and the first quarter of 2013, a period during which the results of the FTA can be measured.

The second indicator, the import penetration rate, indicates that dairy products (139%), sugar products (171%), textiles (9%), chemical substances (3%), iron and steel (5%), metal products (3%), household appliances (8%), auto parts (8%), and other imports have increased and that this has had a direct effect on the consumption of foreign goods, which are replacing domestic goods. This indicator was analyzed between the first six months of 2011 and the first six months of 2013.

The effects of poor industrial performance on employment are evident. An analysis on the period between May 2012 and December 2013 shows that industrial employment decreased by approximately 4% compared to the total industrial employment index (including coffee threshing). Sectors that stand out include textiles (-8%), apparel (-9%), leather (-16%), shoe manufacturing (-16%), chemical substances (-13%), plastic products (-5%), machinery and electrical appliances (-15%), auto parts (-17%), etc.

This serves as evidence that there is a relationship between industrial subsector trade results and the creation or destruction of jobs. The FTA with the United States has led to a production specialization in mining, which has left an industry exposed that has greatly restricted international demand. This has resulted in a process by which cheap imports have replaced domestic work due to the revaluation of the exchange rate and to increasing inflows of foreign investment.

According to official statistics, the job situation has continued to deteriorate, and there has been no improvement in the past two years. In 2010, 9,829,000 individuals were engaged in the informal economy. This figure increased to 9,920,000 in 2013. Employment in the agricultural sector dropped from 18.5% to 16.9% in 2013, as well as from 12.8% to 12% in the manufacturing sector. The decrease in unemployment was due to the growth of informal sectors or to unemployment disguised as domestic labor, which grew from 694,000 to 710,000 between 2010 and 2013; as self-employment, which grew from 8,315,000 to 9,002,000 during the same period; or as unpaid work with family members, which grew from 912,000 to 938,000. Meanwhile, the fact that the number of day laborers dropped from 810,000 to 756,000 between 2010 and 2013 reflects a decline in activities.

CONCLUSIONS

It can be concluded that the Colombian government has failed to comply with the LAP in a broad political sense. This is most clearly expressed by the following four issues:

1. Regarding the issue of institutional strengthening, which included the creation of the Ministry of Labor, the expanded hiring and training of inspectors, the creation of an anonymous labor violation reporting system, and the development of a tripartite conflict resolution system, the Colombian government implemented measures without considering structures and, even less, how to ensure institutional fluidity and coherence. The government did not hire the required number of inspectors, and their recruitment did not comply with International Labor Organization standards, severely affecting the inspectors' autonomy, technical capacity, and job security. Many of the laws and decrees were passed without ensuring their legal consistency and without guaranteeing that they could be effectively applied to concrete issues arising in the country's system of employment. Thus, not surprisingly, the actions of the new ministry failed to change the vulnerable situation of thousands of Colombian workers and thousands of trade unionists. Labor inspection in Colombia remains weak, purely administrative, and although now more inspections are conducted, there are still no positive results for workers. Sanctions serve more as public relations successes for the Ministry of Labor than as punishments capable of exerting pressure for changing the fraudulent behavior of many businessmen in the country. Few sanctions have been confirmed, and fewer have resulted in an order for payment, and, as far as we know, no significant amount has been paid during the three years since the LAP came into force.

2. Regarding the issue of labor formalization and the prohibition of illegal labor intermediation, the Colombian government has played a duplicitous role. On one hand, an effort has been made to reduce the number of Worker Cooperatives (CTAs)—a hiring scheme that exemplifies the complete violation of labor rights. However, this relative decrease in the number of Worker Cooperatives (CTAs) and their "associates" does not mean that illegal intermediation has decreased. These structures have simply metastasized into new and "creative" forms of labor subcontracting, such as SAS and "union contracts," or have also become camouflaged as other existing and legal organizations, such as EST and other service contracts. Although they differ in terms of their legal structure, all these hiring schemes have served to maintain and even increase illegal labor intermediation.

Here, we highlight the creation of "false unions" for the purposes of signing "union contracts" through which labor is supplied to private companies and public institutions.

These false unions are being created to replace Worker Cooperatives (CTAs), and the figures are staggering. While in 2010 there were only 50 cases of this hiring arrangement, in 2011, 164 union contracts covering a total of 37,064 workers were registered, and by 2012, this figure had risen to 703 cases and 158,878 employees. Of these cases, 699 (99.43 % of the total) were classified as belonging to the "health and social services" sector. For 2013, according to the Ministry of Labor, the number of "union contracts" for labor intermediation continued to grow, with 964 contracts signed throughout the year, of which 94.3% occurred in the social services and health sector—a figure that expresses the expanding dynamic of this creative form of illegal labor intermediation.

But perhaps the most troublesome issue is that most cases of false unions and the execution of "union contracts" have taken place in the public health sector, without the Ministry of Labor exercising control or supervision over the fraudulent use of the right to organize. It is the State itself that promotes delaborization, or precarious working conditions and the distortion of the role of unions.

Likewise, the policy of promoting "formalization accords," where fines are forgiven by means of agreements, has so far been ineffective. During 2012 and 2013, labor inspectors and the ministry's Territorial Directorate endorsed the execution of 36 formalization accords covering 12,030 workers. All agreements were made between ministry officials and employers, without any worker or labor union participation or input. In some cases, this was done covertly. The Ministry of Labor has not published a list of workers who "benefit" from these agreements and has not indicated how their jobs have been formalized. Furthermore, according to Minister of Labor Pardo, "formalization" only refers to an employment contract, regardless of the contract's term or whether the contract is executed between workers and the subcontracting entity rather than the companies that are the beneficiaries of the work.

3. The protection and guarantee of the right to organize in Colombia have not been strengthened by the signing of the LAP. Regarding this issue, in addition to the failure to promote full compliance with assumed commitments, measures have had no positive effect whatsoever on Colombian unions. This is the case of the amendment of Article 200 of the Penal Code, which establishes criminal punishments for the improper use of collective pacts. As of today's date, this amendment, along with Law 1453 of 2011, has not resulted in any conviction. Furthermore, as of the end of February of this year, there were only three investigations underway that had been initiated in accordance with Article 200. One of these is in regard to a complaint filed in July of 2013 by the union Ultraclaro & TIC in Bogota. At a settlement conference held on March 10, 2014, the acting government prosecutor claimed in the proceedings that the issue at stake was "atypical," that is, that the case did not conform to Article 200 of the Penal Code and that, as such, it did not constitute a criminal case, but a labor dispute. In another case, the National Transport Services Union (SNTT), Floridablanca local, filed a complaint in May 2013. After a settlement conference on August 13 of that year, which produced no result, there has been no further information on the prosecutor general's investigations. In other words, the case appears to be in semi-permanent limbo. Meanwhile, the negative impacts on the right to organize have been placed on hold. This ineptitude or disinterest on the part of the State on this issue has been welcomed by a sector of the country's business class.

According to ENS statistics, between 2011 and 2012, the use of collective pacts grew by 28%, while the use of collective bargaining agreements grew by only 1%, with one peculiar

factor. Of the 215 collective pacts signed in 2012, 58 were signed in parallel with collective bargaining processes with unions, that is, employers offered equal or superior benefits to non-union workers to deter their union affiliation and their coverage under collective bargaining agreements. In other words, in 26.97% of cases, collective pacts were used in response to a union's request to bargain collectively or as a union containment strategy. Meanwhile, in 157 cases (73.02%), collective pacts were used as a preventive strategy.

The ways of using collective pacts to do away with or weaken unions, or to circumvent collective bargaining, are varied and include: (i) providing higher benefits with a collective pact (57% of cases analyzed in the ENS' study previously mentioned); (ii) granting the same benefits as the collective bargaining agreement, provided unions are not joined (86%); (iii) providing benefits to non-unionized employees during the collective-bargaining process to discourage union membership or to halt the bargaining process; (iv) extending the application of collective pacts to mergers and business acquisitions (43%); (v) establishing collective pacts as the limit to or ceiling of a union's collective bargaining (71%); and (vi) creating long-term collective pacts, in one case of up to 10 years, in order to prevent unions from organizing. By 2013, the dynamics of the signing of collective pacts hadn't changed significantly. While there was a slight decrease in the number of pacts signed (204), it's important to note that 63 of them were signed for "the first time" in a given company, demonstrating the popularity they have gained as a corporate mechanism to marginalize trade unions. In addition, knowing that so many new companies have adopted this controversial concept of collective bargaining, regardless of the legal impediments, says a lot about the inefficiency and/or negligence of the Ministry of Labor and the Office of the General Prosecutor to reach an agreement and thus be able make progress in the joint investigation activities and punish employers who use collective pacts where there is a trade union organization.

4. Regarding the issue of anti-union violence, impunity, and trade unionist protection. Anti-union violence is not an issue of the past, nor has it been overcome. Almost three years after the LAP entered into effect (from April 7, 2011 to February 17, 2014), violence against trade unionists has continued to be a feature of union activity in Colombia. During this period, 73 unionists were killed, and there were 31 attempted murders, six forced disappearances, and about 953 death threats, with no significant progress in investigations, no initiation of trials, and no convictions or arrests. It should be emphasized that certain violence indicators registered increases in 2013, including 26 homicides of unionized workers, 13 attempted murders, 28 cases of harassment, and 13 arbitrary arrests.

According to information provided by the Office of the General Prosecutor, as of October 2013, 598 sentences had been issued regarding cases of crimes against unionists. This does not imply that all of these cases escaped impunity, particularly if the following factors are taken into account: 598 sentences do not necessarily mean that 598 trade unionists were victims of a crime, as there may be several sentences regarding the same case, and these are not all convictions, since they may include acquittals; furthermore, most cases fail to identify the entire anti-union group or motives because of a lack of evidence. In other words, these cases do not meet international standards or are not sufficient for discerning the truth.

There are a total of 1,545 cases under investigation corresponding to events that took place between August 30, 1988 and February 23, 2013. The efforts of the National Unit for

Human Rights, specifically those of the group of prosecutors investigating cases of anti-union violence, do not exclusively address the investigation of cases of violence against trade unionists; thus, their capacity to overcome impunity in these cases is reduced.

Concerning the progress of investigations reported by the group of prosecutors that investigate cases of antiunion violence in the National Unit for Human Rights and International Human Rights, out of the cases that are currently underway (1,007), almost half (41%) are only in the initial stages. It can thus be concluded that, regarding homicide, there is an impunity rate of 86.8%. The crime of imposing a threat, which is the crime trade unionists experience the most, has the highest rate of impunity (99.9%). Crimes involving forced disappearance, forced displacement, and kidnapping had 99.6%, 99.5%, and 90.6% impunity rates, respectively. In general, in regard to crimes involving serious human rights violations, impunity in cases involving trade unionists is extremely high, averaging 96.7%.

During the past year, protection schemes have been dismantled. Risk reassessment has led to a decrease in danger. However, these assessments are not contingent on the perpetrator having been captured or a conviction having been obtained. Thus, protective measures are being dismantled without any judicial or police response to previous threats. The UNP reported that as of October 2013, 565 risk studies had been carried out, the results of which indicated that there had been one extreme risk, 202 extraordinary risks, and 296 ordinary risks. Sixty-six risks were invalidated. The allegations submitted by trade union organizations before the LAP entered into force included the dismantling of protection schemes, risk assessments with ordinary results, and complaints of erratic and unjustified delays and administrative procedures. These are the same types of complaints that are currently being submitted.

5. Effects of the FTA between Colombia and the United States. The FTA has not contributed to guaranteeing labor rights, has not increased employment, and has resulted in economic damage that will undoubtedly escalate with the passage of time. As a result, this enormous economic sacrifice has not been offset by increased union strength or reinforced employee rights, and it is exacerbating deindustrialization and the agricultural crisis.

After the Colombia's 2013 trade results were published by the National Administrative Department of Statistics, the government immediately launched into false diagnoses and hid the troublesome balance. One week after the official figures had been published, the Ministry of Commerce and Industry stated that exports to the United States had increased by 13% since the trade agreement had entered into force. According to official figures, Colombian exports to the United States decreased by 15.5% in 2013, while imports increased by 14.7%, causing a drop of 66% in the trade surplus, which fell from USD 8.25 million in 2012 to USD 2.777 million in 2013. The sectors that suffered the most were the industrial, manufacturing, textile, and coffee, tea, and plant production sectors.

Based on a study carried out by Oxfam, the effects of the FTA on the agricultural sector include the imminent risk of the disappearance of nine crops due to the agreement's entry into force. This will have serious consequences on the agricultural economy and on producer income. The agricultural industry trade balance with the US fell by nine times, while the agricultural sector surplus decreased by 17% during the first months of the

agreement. Forecasts regarding cheap imports in this sector indicate that they will affect domestic prices, leading to a steep decrease in farmed land and in agricultural production.

The industrial sector is another losing sector due to the FTA with the United States. Not only have exports declined, which explains the major reason for the deterioration of the trade balance with the US, but industrial production has also permanently decreased over the past two years. Industrial import penetration has been harmful to production and job creation in the sector. An analysis of indicators such as export propensity, which relates industrial production to exports, and the import penetration rate, which measures the effect of imported goods on apparent consumption, shows that since the agreement entered into effect, industrial exports and manufacturing production have fallen at an accelerated rate, while imports of industrial goods are in competition with and are replacing domestic products. The subsectors that stand out based on this analysis are the dairy product, automotive and auto parts industry, textiles and apparel, and sugar product subsectors.

The effects of poor industrial performance on employment are clear. Between May of 2012 and December of 2013, industrial employment dropped by 4%. In turn, the number of employees engaged in informal work grew by nearly 100,000 between 2010 and 2013. Domestic labor and self-employment are the types of employment that have registered growth. This shows that the employment situation continues to deteriorate and that it has not improved over the past two years.

RECOMMENDATIONS

Since the Colombian government has demonstrated that it never had a true interest in complying with the LAP, today, three years since its execution, it is of fundamental importance that the Colombian government first comply in full with all 37 measures covered in the LAP. Additionally, as a serious gesture demonstrating the intention to implement a broad policy to extend the protection and guarantee the labor rights of Colombian workers, the United States and Colombian governments must immediately commit to carry out the following:

- 1.** Extend the period for monitoring and following up on the LAP for a further four years.
- 2.** Form a binational independent committee responsible for monitoring compliance with each of the 37 measures of the LAP to be made up of: representatives of the congresses of both countries, the Trade Union Confederation of the Americas (TUCA), the United States and Colombian trade union confederations, and representatives of non-governmental organizations working in the fields of labor and union rights.
- 3.** For the Colombian government to submit a full plan for implementing the Labor Action Plan and for it to submit this plan to public debate and to the Permanent Committee on Wage and Labor Policies for review.
- 4.** For the government to demonstrate its political intentions by calling trade union organizations together under the auspices of the Permanent Committee on Wage and Labor Policies in order to establish public policies in labor to eliminate illegal employment relationships, protect and promote the right to organize, and protect trade unionists and investigate crimes committed against them.

5. To jointly design and implement a policy with trade union confederations aimed at eliminating all types of illegal outsourcing and that includes necessary legal changes, broad labor inspection programs, public campaigns that promote the execution of direct employment contracts, the participation of trade union organizations in inspection and in the negotiation of formalization agreements, and delivering the ability to collect the fines imposed by the Ministry of Labor to the National Office of Taxes and Customs (DIAN).

6. To design and implement an emergency plan in coordination with trade union confederations in order to expedite the admission of criminal complaints concerning infringements on the right to organize, to establish arbitral tribunals, and to inspect companies that make illegal use of collective pacts and benefit plans.

7. In light of the incredibly-disastrous effects of the FTA with the United States, both in terms of the abrupt decline in Colombian exports to the US and of negative impacts on the industrial and agricultural sectors, all of which have caused a notable deterioration in the quality of employment in Colombia, we believe that the FTA warrants a serious review.

Many trade union organizations undertook actions aimed at applying the very measures that were adopted in the LAP. However, the vast majority of these efforts have been in vain and, in many cases, have only backfired on workers. This is the case for port and palm workers, who have been subjected to the most aggressive and illegal forms of outsourcing and delaborization in Colombia.

We would like to emphasize that thousands of workers and their trade union organizations have tried to make use of the new legal provisions that protect them against labor abuses, but most have found themselves more vulnerable since judges, prosecutors, and labor inspectors almost always refuse to provide the protection available under the new legal framework. These demands require a serious and committed response from government institutions. To date, none has been given.

Twenty-two million workers are crying out for jobs in which their rights are not violated, their desire for decent positions in which the freedom to associate and bargain collectively are respected, and where they are treated with the dignity deserving of a human being and as subjects with rights.