



Evaluation of the First Year of Implementation of the Labor Action Plan

- It is necessary to conduct a public evaluation of the Labor Action Plan that allows for improvement in implementation;
- It is neither reliable nor responsible to affirm that the Labor Action Plan has accomplished its objectives; and
- Disturbing anti-union violence and restrictions on the right of association persist in Colombia

April 7, 2012, was the first anniversary of the implementation of the U.S.-Colombia Labor Action Plan. We were all expecting – as should be the case within a democratic society – that the Colombian Government (GOC) would present and submit a full evaluation available for public discussion. However, this has not taken place.

On the contrary, when visiting the government website,¹ where achievements in the Plan's implementation should be reported, one sees that it is outdated and that information is scattered. There is a complete absence of a full evaluation of the Labor Action Plan. Meanwhile, the GOC publishes partial reports and declarations in the United States affirming, without documentation, that Colombia has fulfilled its commitments under the Labor Action Plan. It is neither truthful nor responsible to the country or to its workers to assert that the GOC has successfully implemented the Plan.

As we will demonstrate in this evaluation, the Colombian Government has not adopted the measures that they committed to. Of the 37 measures within the Action Plan, at least 9 have not been adopted. Of the remaining 28 which have been adopted, the implementation of several can be regarded as partial or insufficient.²

¹ http://wsp.presidencia.gov.co/Especiales/2011/Paginas/TLC_EEUU.aspx

² In order to see in full detail the measures adopted and the degree of implementation, please refer to the text "[Seguimiento a las medidas del plan de acción en derechos laborales](#)" (Action Plan on Labor Law Measures Follow Up), drafted by ENS based on available information.

It should be acknowledged that the government has adopted important measures, such as creating the Ministry of Labor, increasing the number of district attorneys and inspectors for cases regarding violence against unionists, and creating new regulations to control illegal labor intermediation by associated labor cooperatives (*cooperativas de trabajo asociado*, CTAs). However, these measures have yet to produce discernible changes in the labor environment. Some formal aspects of the LAP have been fulfilled, but their implementation faces many obstacles. The informal economy, the volatility of the labor market, and anti-union practices have not changed, and all indicators point to a persisting lack of decent work.

The Labor Action Plan produced many expectations which have not been fulfilled. On the contrary, there are many instances proving that the Action Plan has been unable to reverse the problems it was intended to confront, and the cases that demonstrate its positive effects have been the exception rather than the rule. This is mainly due to the fact that the government has affirmed that the Plan has been reduced to the adoption of only some of the measures without any social dialogue or compliance with ILO standards. These kinds of measures alone cannot transform public policy on labor, and they have a minimal impact on the reality of labor conditions in the country because they have not been consulted and do not comply with ILO standards.

The Colombian government has made a commitment to the United States government to implement the Action Plan that should improve the labor rights situation in Colombia. However, the Plan has not been debated, evaluated, or assessed by the very people it should benefit: Colombian workers and their legal representatives, unions and federations. This shortcoming affects the ability of the Plan to accomplish its goals.

It is very telling that the three main Colombian union federations, along with the AFL-CIO (the most important union federation in the United States), agree that – contrary to what the Colombian government insists – the conditions of the Labor Action Plan have not been satisfied, workers are still suffering from job instability, and it is virtually impossible to freely organize unions.

The ENS has followed the implementation of the Labor Action Plan because, as we have indicated on various occasions, we believe that the Plan's measures are positive. However, the Plan needs to be drafted in compliance with the conclusions made by the ILO High Level Observation Mission that visited Colombia in February of last year. Greater political will is necessary in order to make the Plan a reality. The government needs to move beyond formal modifications and meet with Colombian society, not just USTR, the Department of State, and the Department of Labor in the United States.

Therefore, it is urgent for the government to comprehensively evaluate the Plan, discuss the evaluation with union federations, and agree upon actions to improve implementation; these ought to be the first steps taken.

In order to reroute this plan from the path to failure that it is presently on, it is necessary to have greater, more sustained political will to build the state's capacity to protect labor and union rights. It is also necessary to transform public policies and overcome

institutional apathy, which has consolidated into a culture of impunity. Impunity leads to labor law violations and abuses of the freedom of association in Colombia.

Union Federations' Opinions

Tarsicio Mora (President CUT)

"In regards to the Obama-Santos Labor Action Plan, the CUT established a clear position before society, Colombian workers, and the world. Some even asserted that the CUT was very radical and was therefore isolating itself. However, now, a year later, reality proves that we took the right stand; it proves that the Plan could not move beyond paper towards true implementation, that it had no teeth, and was not really obligated to ensure compliance. It built expectations for workers that have not been realized. The only objective was to sign a document that would promote free trade agreements."

"Disrespect for labor rights and union activity continues. There is still disrespect for right to life as evidenced by the crimes and threats against trade unionists. Furthermore, collective bargaining and ILO agreements are still disrespected."

"When agreements on such sensitive issues are created, they must be safeguarded with regulations and mechanisms that keep governments from violating or simply failing to comply with the agreement. As long as the plan lacks such mechanisms, everything will be reduced to statements of good will."

William Millán (Vice-President CGT)

"Rather than consisting of concrete action, the Obama-Santos Plan is a set of good intentions, a series of political statements that is typical of the type of political situation that surrounded the FTA's approval, but in practice it has not delivered. There have been some improvements, but we cannot affirm that this plan has had the expected outcome."

"The CTAs are still here. Temporary service contracts impede the right to unionization and continue to be promoted primarily by the state. The freedom to unionize, the right to association, and rights to collective bargaining are still not respected. Collective pacts are rampant. We acknowledge that there has been a decrease in the murder of unionists, but it remains a serious problem. In regards to impunity, the developments within the Attorney General's Office (*Fiscalía General de la Nación*) are not what we expected. The gains are derived not from the Attorney General's Office's investigative activity, but rather from confessions made by paramilitaries. There are issues regarding the protection of threatened unionists, and the protection unit that was created to confront this issue has resulted in more red tape. For example, more personnel are contracted through temporary service contracts, which in turn have weakened protection schemes at a time when threats against union members have increased."

"But we are not only waiting for the Obama-Santos Plan to deliver, we are also waiting for the government to comply with the tripartite agreement signed by CGT and CTC on May 26 of last year. What we demand is respect for agreements, so that they can move from rhetoric to tangible change. We believe that social dialogue needs to be

strengthened, so that we can reach an agreement on the decisions that affect us. So far, we have been mere spectators of policies dictated by other actors.”

Miguel Morantes (President CTC)

“After one year, we can see that the Labor Action Plan was deceitful. It has consisted of empty rhetoric devoid of real action. It led nowhere. It has not been effectively implemented. The core issue was to put an end to labor intermediation, but the plan has been rendered useless in this regard. They put out regulations and decrees in order to limit CTAs, but these have failed to disappear. They have also been transformed into other means of labor intermediation, such as the simplified stock companies (SAS), therefore making a mockery out of the Action Plan in terms of labor intermediation.”

“The issue of the freedom to unionize remains critical, and workers continue to be laid off [for attempting to unionize]. In the case of the CTC, we can see how many unions have had such difficulties. For example, in the case of a union in the municipality of Jamundí, Valle del Cauca, 43 founding workers were laid off, one was murdered, and the president has been threatened and harassed by the mayor of that municipality.”

“What we are demanding is to be deceived no longer. When something is agreed upon, it should be fully implemented. Announcements can’t simply be made in order to attain other objectives, as it seems to be the case with the Obama–Santos Action Plan.”

Richard Trumka (AFL-CIO President)

In a letter by Mr. Trumka addressed to President Obama and published by various media outlets in Colombia, the U.S. government was asked to abstain from certifying that Colombia has complied with the Action Plan. Mr. Trumka pointed out that “Moving too quickly toward implementation could jeopardize future improvements for Colombian workers, undercutting efforts to secure labor and other human rights and harming the workers of both countries.”

ENS Critique

The Labor Action Plan includes some 37 concrete measures that the government should adopt on 10 major themes, all addressing 5 goals: Overcoming violence against unions and impunity, promoting the formalization of labor by eliminating illegal labor intermediation, protecting the right to association, protecting the right to collective bargaining, and strengthening the state’s institutions related to labor.

In order not to repeat what was stated in the document published by ENS, titled “Labor Action Plan: A new frustration? Critique of the first six months of the implementation of the Labor Action Plan agreed upon the Governments of Colombia and the United States” ([see link](#)) on October 5, 2011, we will focus on an analysis of the new measures that were adopted as well as existing obstacles to demonstrate that the Labor Action Plan has not achieved its intended outcome.

Overcoming Violence and Impunity

Violence against union members continues. After the Labor Action Plan was signed on April 7, 2011, 28 union members have been murdered, ten have suffered assassination attempts, two have been forcibly disappeared, and around 500 have received death threats. In 2011, 30 were murdered in total, and, so far, in 2012, five have been killed. Since 1986, 2,921 union members have been murdered in Colombia.

Even though these murder figures are lower than they have been in prior years, they are still high and very concerning. They highlight the persistence of an environment that is systematically hostile to union activities.

Impunity continues. The measures adopted by the Attorney General's Office to strengthen investigative capacity are very recent and have not significantly modified the degree of impunity. The new investigative methodologies that relate to victims have yet to be designed. There is no long term plan in place to move from issuing a few sentences towards achieving a genuine right to truth, as well as reparation for victims.

Perhaps the most concerning issue is that the government continues to minimize and undermine the dignity of victims in its reports on violence, statistics, and impunity. This tendency was widely questioned in the recent UNDP report entitled "Acknowledge the past. Build a Future: Report on Violence against Union Members and Unionized Workers 1984–2011." The government received the report willingly and committed to working on the development of their recommendations.

Promoting Labor Formalization by Eliminating Illegal Labor Intermediation

In 2011, Decree 2015 established sanctions for the illegal use of CTAs. However, it does not regulate other types of labor intermediation, including collective pacts, temporary service contracts, simplified stock companies (SAS), and other entities that have arisen to carry out the same functions and activities that CTAs used to carry out, without directly contracting workers.

The measures taken by the government do not respond to these new forms of intermediation. Issuing legal regulations to end labor intermediation by CTAs is not sufficient in controlling the behavior of businesses that quickly adapt their strategies in order to continue violating labor rights. Intermediation has taken on new forms (SAS, collective pacts, etc.), but there has not been an adequate response by labor inspectors. Inspectors must be more efficient and provide oversight in order to ensure that sanctions and decisions are obeyed.

In spite of the new legislation and some labor inspections, most of the companies that hire their workers through CTAs and temporary services companies have not changed their labor relations. In these cases, workers remain in precarious situations and are prevented from exercising their labor and union rights.

Important measures have not been implemented, such as promoting the rights of workers employed by CTAs and creating capacity-building mechanisms for reporting abuses. A mechanism was built for such purposes, but it was dismantled.

The Ministry of Labor reports that it is conducting labor inspections in order to control these practices, but at the same time accepts registration of the entities that have emerged to replace some of the cooperatives. It does not take action on fraud among the entities and companies utilizing simplified stock companies (SAS).

In the case of the port sector in Colombia, CTAs changed their legal status and turned into SAS carrying out the same functions and activities CTAs used to prior to their prohibition. In Puerto Wilches, where a palm company and several CTAs were fined USD \$6.6 million, not one worker that was subject to labor intermediation has been contracted. The health sector in Antioquia is even more troubling, as the owners of the CTAs created union organizations to conduct labor intermediation through "union contracts."

The figures submitted by the government in regards to the formalization of the labor market are unfounded and have even less of a direct relation to the implementation of the Labor Action Plan. The Ministry of Labor reported the formalization of 395,000 jobs this week.

If a policy that will complement existing legislation is not created and efficient strategies are not developed, the prohibition of labor intermediation will not be possible. This would be yet another frustration for the nearly two million workers that are subject to the abuses of these labor intermediaries.

Protection of the Right to Union Association

The Action Plan was set to establish penal sanctions against those impinging freedom of association. Article 200 of the Penal Code was reformed through Law 1453. It established sanctions of one to two years for whoever violates the freedom of association, assembly, or the right to strike. However, this type of legal action does not protect the right to collective bargaining, nor does it take on a wide range of anti-union practices. Most importantly, we are not aware of a single sentence that has resulted in prison time for an employer who violates the freedom to unionize.

In spite of several reports by union organizations, this "protection" has not been effective in discouraging violations or punishing violators. There are several factors that influence this. Perhaps the most important factor is that investigators do not know the extent of these laws.

The violation of the right to unionize was established in the criminal code over ten years ago. According to our data, it has only been applied twice because it is very difficult to apply in practice as it is open to interpretation. Intensifying the punishment does not result in adequate or sufficient protection of the right to association.

In any case, protection of the freedom to unionize in a country like Colombia, which is marked by deep anti-union sentiment, requires many measures that should protect workers in an immediate and effective manner. Laws and the promotion of protection

policies for the freedom to unionize would be the appropriate response from the state, given the long trajectory of anti-union activities in the country.

Protection of the Right to Collectively Bargain

The government refuses to prohibit collective pacts in companies where union organizations exist, despite several ILO recommendations. This has allowed companies to continue using collective pacts as an efficient tool to weaken and eliminate unions.

According to data collected by ENS, between 2010 and 2011, 323 companies submitted collective pacts, 66 of which were companies that already had union and collective bargaining agreements in effect. This coexistence led to the weakening of 44 unions and the disappearance of 22. The remaining 257 companies only have collective pacts.

As long as Article 481 of the Substantive Labor Code is not reformed, companies will continue utilizing collective pacts to prevent the creation of unions. When unions do manage to emerge, companies keep them cornered and slowly destroy them.

The government avoids discussing the important subject of core and permanent services, thereby limiting itself to compiling the existing legal precedents in an inexact, incomplete and biased manner. The government avoids mentioning sentences that favor the use of strikes in essential public services and court rulings that demand that the government regulate the issue. The ILO Expert Commission has systematically pointed out that the services that are considered essential in Colombia violate ILO Convention 87. The ILO has requested modification of this legislation, but the state has not complied.

The government has refused to issue a decree that would recognize 800,000 public service workers' right to collective bargaining. For several months, the government and all of the public sector unions, which make up part of the three union federations in Colombia, reached an agreement on the draft of the decree. However, the draft has yet to be issued eleven months after it was agreed upon.

Strengthening the State's Labor-Related Institutions

The Colombian government has complied with the creation of the Ministry of Labor and the gradual increase in the number of labor inspectors. However, the coordination and the training of labor inspectors, the creation of a hotline for reporting abuses, improvements in the ability of the Ministry of Labor to intervene in labor conflicts, the promotion of dialogue, and the participation of union organizations are all pending issues.

There is a notorious lack of coordination and understanding between institutions and their employees. Announcements and actions taken by high-level officials are not observed by the employees in charge of implementing them. They do not understand the new political and legal context of labor issues, and this lack of understanding impedes their ability to adequately protect labor and union rights. The officials do not understand the new laws (the penal code for district attorneys and the labor code for labor inspectors), and there is a lack of discipline with regard to the new obligations and decisions made by the national government.

Institutional torpor and setbacks in the administrative and legal protection system for labor and union rights are evident. The administrative backlog facing labor inspectors is still years behind.

The free hotline to report complaints to the Ministry of Labor was transferred to the Ministry of Health and Social Protection for health-related complaints.

Legal processes are delayed for years, and judicial redress is not an option that efficiently protects labor rights.

There are workers and union organizations that cease to exist before getting answers from the judicial system or labor inspectors.

The new Ministry has not been able to foster a consistent dialogue or the effective participation of union organizations. Some regulations have been issued and some programs have been designed, but their design and creation did not include the participation of unions. Therefore, these steps will have little effect because they are unknown and there is a lack of input from the most vulnerable and most affected populations.

It is necessary to bear in mind that unions are in a privileged position which allows them to quickly and efficiently identify the most serious violations of freedom of union and labor rights. In spite of this, the government does not invite unions to work on the implementation of the Action Plan.

Distrust and pessimism have not been overcome. Unions have suffered from the lack of protection by labor inspectors, indolence of district attorneys and investigators, and stigmatization by high-level government officials. This has made it difficult for unions and the state to work together. Public statements alone will not eliminate these obstacles. It is necessary for the government to accomplish quick and concrete results in cases of recent murders and violations of the right to unionize, as well as cases that have not been resolved for years.

Conclusions and Recommendations

The Labor Action Plan has not been fully implemented. Even though 75% of the legal actions have been taken, some of these are insufficient and others are at least incomplete. At any rate, they have not resulted in relevant or sustainable solutions.

It is necessary for the government to carry out a complete and detailed evaluation of the Labor Action Plan's implementation. This evaluation should be widely discussed in order to analyze progress, identify difficulties, and propose solutions. In order to do this, a methodology for evaluating the impact of the Labor Action Plan must be agreed upon. The obvious site for this debate is the Permanent Commission for the Agreement of Wages and Labor Policies (*Comisión Permanente de Concertación de Políticas Salariales y Laborales*).

In order for the Labor Action Plan to achieve its objectives, it is necessary to bind it to the formulation and implementation of new public policies for both labor and unions. The ENS suggests the following:

- A policy for overcoming violence and impunity that establishes protective and investigative strategies. The policy should turn Colombia into a country where union activity can be exercised without being intimidated by violence. The policy would make way for collective reparations for the trade union movement. This policy should be based on the conclusions of the recent UNDP report and it should include the proposals that unions have submitted in recent years.
- A job formalization policy, which should design strategies that reduce informal labor where individuals lack social and workers' protections in a quick and sustainable way.
- A promotion and protection policy for the freedom to unionize that contributes to breaking the deep anti-union sentiment present in the country. The policy should include measures that guarantee that workers can create labor unions without fear of reprisals.

In order to implement these policies, public institutions in charge of the protection and promotion of labor rights will need to be strengthened, redesigned, and better coordinated.