



The Colombian Labor Action Plan: A Five Year Update

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Summary:

Over the past five years, the Obama Administration has worked closely with Colombia to address serious labor concerns in the context of the United States-Colombia Trade Promotion Agreement (CTPA). Central to this collaboration has been the Colombian Action Plan Related to Labor Rights (Action Plan), which was launched in 2011 and includes specific commitments by Colombia to address key areas of concern, including violence against unionists, impunity for the perpetrators of the violence, and protection of labor rights.

As we mark the five-year anniversary of the Action Plan, we note that Colombia has made meaningful progress across a number of areas, including a significant decline in the use of fake worker cooperatives that undermine workers' rights, a reduction in violence against labor unionists, and a doubling of the number of labor inspector positions in Colombia's Ministry of Labor, which was re-established in 2011 consistent with commitments under the Action Plan. This progress has contributed to tens of thousands of workers joining or forming new unions in Colombia, with a reported 150,000 new union members since 2011.

There are also important challenges that remain that Colombia is working to address. For example, as cooperatives have declined, some other forms of illegal subcontracting have increased. To address this problem, Colombia has just issued new regulations that specifically target all other forms of subcontracting, beyond cooperatives, that undermine the rights of workers. The new regulations provide detailed indicators for labor inspectors to uncover illegal subcontracting and guidelines for applying fines as high as one million dollars to punish employers who use contracting arrangements that violate labor laws. If these regulations are systematically and robustly applied, their impact on other forms of illegal subcontracting could be as significant as the impact that earlier regulations have had on illegal cooperatives.

Other challenges include a relatively low rate of fine collection for labor law violations. However, seeking more expeditious fine collection, Colombia has recently undertaken to transfer responsibility for collecting labor fines to a publicly-owned, for-profit agency specializing in debt collection. There have also been relatively few prosecutions in cases of violence and threats against union members and criminal cases brought against employers for infringing on certain workers' rights. Colombia, with the assistance of the International Labor Organization (ILO),

has prioritized twenty of the pending criminal cases against employers for labor rights violations, and its efforts have resulted in successful conciliations in some cases of such employer misconduct.

The Office of the U.S. Trade Representative (USTR) and the U.S. Department of Labor (DOL), in coordination with the U.S. Department of State, have led the Administration's engagement with Colombia on these issues, including through multiple meetings with Colombian counterparts, often at the highest levels. In addition, in 2015, DOL stationed a Labor Attaché at the U.S. Embassy in Bogotá to directly support these efforts on the ground.

This report describes progress and challenges under the Action Plan at the five-year mark.

Background:

In the context of congressional consideration of the CTPA, the Obama Administration negotiated with the administration of Colombian President Juan Manuel Santos an Action Plan to address labor issues that previously had seemed intractable. These issues included, among others, violence and discrimination against trade union members, impunity for acts of labor-related violence, delays and backlogs in the program to protect threatened unionists, widespread fake worker cooperatives used to undermine workers' rights, and illegal use of collective pacts negotiated with individual workers to weaken unions and avoid collective bargaining. The Action Plan detailed concrete steps that Colombia would take within specified time frames to address such major areas of labor concern. The two governments initialed the Action Plan on April 7, 2011.

Violence and Threats against Unionists and Impunity for the Perpetrators:

Colombia has made progress in a number of areas:

- **Protection program for unionists under threat of violence.** 589 union members are currently in Colombia's national protection program, including approximately 300 who have armored vehicles and/or bodyguards for full-time protection. No union member in the protection program has been killed since the National Protection Unit's inception in 2011.
- **Additional prosecutors and police investigators.** In 2011, Colombia's Prosecutor General assigned over 20 prosecutors exclusively to crimes against union members and labor activists, and Colombia's National Police assigned an additional 100 full-time judicial police investigators to support the prosecutors. Currently, 22 prosecutors focus exclusively on cases of violence against unionists and labor activists, with the support of approximately 80 judicial police investigators.
- **Prosecutions of perpetrators of labor homicides.** In January of this year, Colombia handed down a 22-year sentence against the man convicted of murdering union leader Edith

del Consuelo Santos Jiménez in 2014. Earlier, in two landmark cases in 2013, Colombian courts convicted “intellectual authors” of the 2001 murders of two union leaders in the coal sector and one in the agriculture sector and sentenced the perpetrators to 38 years and 17 years in prison, respectively. Stakeholders have long pressed Colombian authorities to investigate and bring to justice such “intellectual authors” and not just those who directly commit the crimes.

- **Decline in homicide rates.** There has been a steady decline in Colombian homicide rates, including for union members and labor activists. From 2001 to 2010, Colombia’s National Union School, a labor rights NGO, reported an average of close to 100 murders of union members per year. Since 2011, the number dropped to an average of 26 labor homicides per year, and in 2015 there were 18 labor homicides reported. Continued efforts to provide protection to threatened unionists and address impunity for perpetrators of labor violence will be key to ensuring this downward trend continues.

Work continues to address remaining challenges:

- **Protection for unionists under threat of violence.** The budget for the protection program in 2016 is the same as the budget for 2015, and the number of protection requests has remained at a similar level. The program, however, has had difficulty meeting the legally established deadline for issuing decisions on requested protection. Under Colombian law, such decisions should take no more than 30 working days from receipt of the request for protection. In 2015, the process took an average of three months. The program faces resource constraints, as do many Colombian government-sponsored programs, due primarily to the impact of falling global oil prices on government revenues. These constraints limit the program’s capacity to address the delays and to attend to any increase in protection requests.
- **Conviction rates in recent labor homicides.** According to the Prosecutor General’s Office, in the 130 labor homicides that have occurred since 2011, there have been only seven convictions. Recent information on the status of ongoing investigations for these cases was not available from the Prosecutor General’s Office at the time of publication of this report.
- **Impunity for threats against labor leaders and activists.** Threats against labor leaders and activists, particularly through text messages, phone calls, letters, emails, and other forms of communication are often difficult to trace, and progress on prosecutions in these cases remains slow. Unions reported 94 cases of threats in 2015. Although the Prosecutor General has assigned prosecutors and investigators to cases of threats against labor leaders and activists, there have been no convictions in cases of labor threats since 2011.

Strengthening Labor Laws and Enforcement:

Colombia has taken important steps to strengthen labor laws and their enforcement:

- **Ban on abusive labor cooperatives and other similar third-party contracting.** The Colombian government enacted new legal provisions and regulations in 2011 and 2013 to prohibit and sanction with significant fines the misuse of cooperatives and other similar third-party contracting arrangements that undermine workers' rights. A 2014 ruling by the Colombian Constitutional Court strengthened inspectors' ability to investigate these employment relationships. The number of unlawful cooperatives has dropped significantly, largely in response to Colombia's early efforts under the Action Plan to focus on strengthening and applying labor laws intended to combat such arrangements. However, many employers shifted to other forms of subcontracting – such as simplified stock companies (known as SASs) and union contracts (subcontracting conducted by unions) – to similarly avoid direct employment relationships and undermine workers' rights. To help address this shift to such other subcontracting arrangements, the Colombian government issued a decree in January intended to combat unlawful union contracts. In addition, the government has just issued a new decree explicitly targeting other alternative forms of unlawful subcontracting. The new subcontracting decree provides detailed instructions to labor inspectors to identify subcontracting arrangements that undermine the rights of workers and to apply potentially very significant fines on employers engaged in such abusive hiring practices. This is a critical development and the new decree, if systematically and robustly applied could have a significant impact on the abuse of subcontracting.
- **Increase in labor inspectors.** Since June 2011, the Colombian Ministry of Labor increased the size of the labor inspectorate from 424 inspectors to 904. Over 837 of those inspector positions have been filled.
- **Fines imposed for unlawful subcontracting.** The Colombian Ministry of Labor reports that, between January 2012 and October 2015, it levied \$8 million in fines for unlawful subcontracting that undermines workers' rights. However, the number of such fines imposed in the five priority sectors identified in the Action Plan—palm oil, sugar, mines, ports, and flowers—is low compared to the number of inspections undertaken on the issue, and the collection of those fines has been slow. Nonetheless, in an important development in 2015, Colombia collected one of the largest of these fines – which was also one of the first imposed for unlawful subcontracting – in the amount of over \$650,000 from *Oleaginosas Las Brisas*, a company in the palm oil sector. This is, currently, the first fine for unlawful subcontracting collected in the priority sectors. Moreover, in an attempt to alleviate the existing backlog and delays, Colombia has undertaken to transfer the fine collection functions. Specifically, the *Servicio Nacional de Aprendizaje* (SENA), the national training agency with little expertise in fine collection, is the Colombian agency tasked with labor fine collection. Colombia recently signed an agreement to transfer responsibility for fine collection from SENA to a

publicly-owned, for-profit agency that specializes in collecting debts owed to the Colombian government.

- **Decline of cooperatives in the sugar sector.** To date, more than 90 percent of sugar cane cutters (totaling roughly 9,000 workers) who previously worked in unlawful cooperatives have formed unions and negotiated collective bargaining agreements with subsidiaries of the main sugar processing companies. According to sugar sector unions, several of these agreements are already slated to be renegotiated this year. Although the workers are employees of the subsidiaries and not the main companies themselves, labor unions in the sugar sector report that the subsidiaries largely have sufficient operating budgets and that the unions are generally able to negotiate over wages and working conditions with them.
- **Formalization of workers in the palm sector.** 410 workers in the palm sector previously in abusive third-party contracting arrangements now have direct contracts with their employer, due to a collective bargaining agreement and a tripartite “formalization agreement.” Formalization agreements were established in the context of Action Plan commitments to eliminate subcontracting arrangements that undermine workers’ rights. They provide a useful vehicle for employers, who have been sanctioned for engaging in illegal contracting arrangements, to hire workers in exchange for having their fines reduced over time. One such agreement, with *Palmas del Cesar*, involved affected unionized workers in its negotiation and was recognized by workers as a model that should be followed in other sectors for formalizing workers. More generally, there has been a 297 percent increase in the number of unionized workers in the palm sector.
- **Reform of criminal code.** In 2011, as specified in the Action Plan, the Colombian Congress reformed Criminal Code Article 200 to allow for penal sanctions for employers that undermine workers’ right to organize and bargain collectively, including by extending better conditions to non-union workers through collective pacts. The ILO is currently working with the Prosecutor General’s Office to identify those pending cases with the greatest chance of successful prosecution and to prioritize them for investigation.

Work continues to address remaining challenges:

- **Enforcement of Criminal Code Article 200.** The Prosecutor General’s Office reports that to date, charges have been filed in five of the 278 cases that are pending with the Office under the 2011 reforms to Criminal Code Article 200, and one of these five cases is currently on trial. Two other cases of the 278 have been successfully “conciliated” or settled with the prosecutor.
- **Inspections conducted in priority sectors.** In 2014, labor inspectors undertook 54 investigations for illegal subcontracting in the five priority sectors identified in the Action Plan. Only one fine was imposed. As of October 2015, there were 121 investigations for illegal subcontracting in the priority sectors; to date, none has resulted in a sanction for the

use of illegal subcontracting. Labor groups have expressed concerns that the Ministry of Labor is shifting from imposing fines to simply notifying employers of their legal obligations to comply with the law.

- **Implementation of “formalization agreements”.** The establishment in 2013 of “formalization agreements,” which provide a vehicle through which employers hire workers long-term who were previously in unlawful subcontracting relationships, was an important development. However, there have been concerns from labor groups and others about their implementation in some cases, including that some have not resulted in direct employment relationships or permanent contracts with the main employer; do not cover all workers affected by illegal subcontracting; or have been negotiated without meaningful involvement of the affected workers. There is also increasing concern that although the agreements may result in the waiver of fines imposed for illegal contracting, they are not adequately monitored to ensure that all covered workers remain employed for a period of five years, as required for full fine waiver. In addition, in 2015, the Colombian Ministry of Labor removed the requirement that an employer signing a formalization agreement must finance a bond to cover workers’ salaries should the company not comply with the agreement.

LOOKING AHEAD

The labor concerns that are the subject of the Action Plan represent entrenched and historical challenges in Colombia, and fully and effectively addressing them requires intensive and continued engagement over time. The Obama Administration has engaged closely with counterparts in the Colombian government over the course of the last five years and remains committed to continuing this engagement over the next year. USTR and DOL officials met with Colombian government officials, including Colombian Minister of Labor Luis Eduardo Garzón, in December 2015 to discuss areas where concerns remain. On January 15, 2016, Secretary of Labor Thomas E. Perez met with Minister Luis Eduardo Garzón to continue the engagement. In addition, in April 2015, DOL stationed a labor attaché full time in Bogota, one of only two such DOL attachés in the world at present. DOL’s Labor Attaché, working closely with others in Embassy Bogota and in coordination with the U.S. Ambassador, engages daily with the Colombian government and continuously monitors and follows up on labor concerns, including in real time as they arise.

Further, to help Colombia meet the labor law and enforcement challenges that still exist, DOL is funding a \$9.8 million ILO project, from 2012 – 2016, focused primarily on strengthening the overall capacity of the Colombian Ministry of Labor. In addition to providing extensive training to all 800+ labor inspectors, with a focus primarily on combatting illegal subcontracting, the project has designed and monitored the implementation of nine technical tools for use by labor inspectors. These tools include guides for the gradation of sanctions and a check-list to identify unlawful ambiguous and disguised labor relationships that undermine workers’ rights. DOL also funds two additional technical assistance projects. One is a \$1.5 million project started in 2012 and running through 2017 with Colombia’s National Union School (*Escuela Nacional Sindical*),

a labor rights NGO, to run “Workers’ Rights Centers” in four Colombian cities. The centers provide free legal advice to workers to raise awareness of their rights under Colombian labor laws and improve workers’ ability to exercise and claim their labor rights, for example by filing well-documented complaints with the Ministry of Labor. The other is a \$9 million project started in 2013 and running through 2017 that works to reduce child labor and promote safe work conditions in the non-formal mining sector.

USTR and DOL, in coordination with the Department of State, are committed to continuing throughout 2016 to work in close collaboration with stakeholders in both the United States and Colombia and with the Colombian government to achieve the underlying goals of the Action Plan and to support the efforts of Colombian workers to exercise their labor rights.