



UPDATE: The Colombian Labor Action Plan: Three Years Later April 7, 2014

The United States-Colombia Trade Promotion Agreement (CTPA) includes strong protections for workers' rights, including enforceable commitments to adopt and maintain high labor standards. In addition, President Obama insisted that the Colombian government take concrete steps to address a number of serious labor concerns before he sent the trade agreement to Congress for approval. These concerns included violence against Colombian labor union members and inadequate efforts to bring the perpetrators of such violence to justice, and insufficient protection of workers' rights. The U.S. and Colombian governments agreed on those concrete steps in the Colombian Action Plan Related to Labor Rights (Action Plan) announced in April 2011.

Since then, the Government of Colombia has made meaningful progress under the Action Plan, but much important work remains to solidify and build on this progress to improve respect for labor rights in Colombia. This update describes such areas of progress, as well as remaining challenges and the Obama Administration's ongoing efforts and cooperation with the Government of Colombia to address them.

The Government of Colombia has met certain Action Plan commitments by passing laws that strengthen workers' rights protections; hiring hundreds of new labor inspectors to expand enforcement of labor laws and regulations; hiring and training one hundred new police investigators and over twenty new criminal prosecutors to focus on cases of violence against unionists; and taking enforcement actions to combat abusive third-party contracting, including the assessment of significant fines against violators.

However, concerns exist about implementation of certain aspects of the Action Plan, including collection of assessed fines, prosecution of recent labor homicide cases, and combatting newer forms of abusive contracting.

The Obama administration is working closely with the Colombian government to address areas of concern. Regular meetings and ongoing communication between the U.S. and Colombian governments since the launch of the Action Plan in 2011 have focused on achieving the underlying goals of the plan, including through technical assistance and cooperation activities to help build the institutional capacity of Colombia's Ministry of Labor.

In November 2013, the two governments announced their commitment to continue regular meetings on the issues under the Action Plan through at least 2014. The first meeting this year took place January 29-30, during a visit to Colombia by officials from the U.S. Trade Representative, the U.S. Department of Labor, and the U.S. Embassy in Bogota. That meeting in January builds on intensive engagement by the Obama administration on Colombia labor issues in 2013, including visits by U.S. officials to Colombia in February, September, and November, and meetings between Secretary of Labor Thomas E. Perez and Colombian Minister of Labor Rafael Pardo and between President Barack Obama and Colombian President Juan Manuel Santos in Washington in December. In addition, the inaugural meeting of the Labor Affairs Council under the CTPA was held in Washington in June and was chaired by Minister Pardo and Acting Secretary of Labor Seth D. Harris and attended by officials from the U.S. Department of Labor, the U.S. Trade Representative, and the U.S. Department of State.

Protecting Union Leaders and Labor Activists

Colombia's National Protection Unit (UNP), housed within Colombia's Ministry of Interior, provides protection measures for individuals, groups, and communities in Colombia that, due to their position or the performance of their duties, may face an extraordinary or extreme risk of targeted violence. The Colombian government has expanded the scope of the UNP's program for union leaders to also provide protection for labor activists, union organizers, and former labor activists still under threat. The Santos administration increased that program's budget by over 30 percent and hired additional personnel.

- 671 union members are currently in the protection program, which had a 2013 budget of \$187 million, \$45 million of which was dedicated for unionists and labor activists;
- In accordance with an Action Plan commitment, the Colombian government reformed the risk assessment process in December 2011 and eliminated a backlog of hundreds of risk assessments for applicants to the protection program;
- 258 vehicles, with bodyguards, are assigned to union leaders and labor activists for full-time protection, including 61 armored cars;
- Teachers face particular risks in Colombia, especially those who work in remote areas. In accordance with an Action Plan commitment, the Colombian government strengthened the specialized teacher protection program, including by making it easier for teachers to relocate when they receive threats. In 2013, 350 teachers were temporarily reassigned under the protection program for educators; and,
- No unionist under protection has been killed.

Ongoing efforts in this area include:

- There are concerns that bodyguards hired through private contractors may not undergo adequate background checks and may be more susceptible to corruption. The Colombian government is in the process of directly hiring all bodyguards who provide protection under the program as government employees; and,
- The U.S. Agency for International Development (USAID) is providing roughly \$250,000 per year to the National Protection Unit.

Prosecuting Cases of Violence against Union Leaders and Labor Activists

The Santos administration has increased the budget of Colombia's independent Prosecutor General's Office, in part to expand law enforcement resources and personnel to investigate and prosecute cases in which the victims are union members or labor activists.

- In accordance with an Action Plan commitment, the Prosecutor General mandated that judicial police determine in the initial phase of a homicide investigation whether the victim was a union member or labor activist;
- The Prosecutor General assigned over 20 prosecutors exclusively to crimes against union members and labor activists;
- In accordance with an Action Plan commitment, the National Police assigned an additional 100 full-time judicial police investigators to support the prosecutors charged with investigating cases involving union members and labor activists;
- While even a single murder is too many, homicide rates for Colombians have steadily declined over the past decade, including for union members and labor activists. This trend continued in the period since the Action Plan was announced, with an average of 26 murders per year of union members from 2011 to 2013, compared to an annual average close to 100 from 2001 to 2010;
- However, there are concerns about the growing number of threats against union members and labor activists. Addressing these, including through more effective prevention and prosecution efforts, will be important to ensuring that workers are able to exercise their right to freedom of association;
- In 2012, the Prosecutor General's Office launched the specialized Context and Analysis Unit, composed of inter-disciplinary experts tasked with investigating patterns and context of similar cases, including labor homicides throughout Colombia. The creation of this unit supports Action Plan goals to identify and effectively prosecute intellectual authors of labor homicides and determine patterns of criminal activity that target union members and labor activists;

- Roughly 599 perpetrators have been sentenced in the over 2,850 cases of labor homicides that occurred between 1986 and 2010. The Prosecutor General has a legal mandate to continue investigating all unresolved homicides;
- In two landmark cases, Colombian courts in 2013 convicted the “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 roughly 38 years and 17 years in prison, respectively (both are incarcerated); and,
- There are concerns, however, about prosecutions in more recent homicides. According to the Prosecutor General’s office, in the 79 labor homicides that have occurred since 2011, there has been only one conviction. The Prosecutor General reports having accused an additional 10 suspects in two of these cases and issued one arrest warrant. The Prosecutor General is also currently prosecuting those two cases, including four suspects in the 2012 murder of a union leader in the sugar sector. Case specific updates for the remainder of the 79 cases, however, have not been available to date.

Ongoing efforts to address remaining challenges:

- Threats against labor leaders and activists have increased significantly, in the form of text messages, phone calls, letters, emails, and other forms, all of which are often difficult to trace. The Prosecutor General has assigned prosecutors and investigators to cases of threats against labor leaders and activists;
- The International Labor Organization is training Colombian prosecutors, investigators, and judges on labor rights and investigating crimes against union leaders and labor activists, through a program funded by the U.S. Department of Labor; and,
- In addition, the U.S. Department of State is funding programs that train investigators and prosecutors throughout Colombia on the best practices for crime scene investigation - including forensics evidence handling, investigation of threats, and prosecutorial management of cases for trial.

Strengthening Labor Laws and Enforcement

In line with Action Plan commitments, the Colombian government created a stand-alone specialized Ministry of Labor in 2011, separate from the former Ministry of Health and Social Protection. To lead this agency, President Santos appointed Minister of Labor Rafael Pardo, a respected national figure, who committed to making immediate progress in specific areas, including: 1) addressing the illegal practice of disguising employment relationships and undermining workers’ rights by maintaining a work force in “cooperatives” and other forms of third-party contracting; 2) strengthening the labor inspection system, primarily by hiring and training hundreds of new labor inspectors; and 3) promoting labor rights and tripartite social dialogue.

- In accordance with an Action Plan commitment, 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 employment relationships that undermine workers' rights;
- In accordance with an Action Plan commitment to hire 480 new labor inspectors over a four-year period, the Ministry of Labor has increased the size of the labor inspectorate from 424 inspectors to 724 inspectors, with an additional 180 slated to be hired in 2014;
- Labor inspectors are currently undertaking 47 investigations in the five priority sectors of palm oil, sugar, mines, ports and flowers for illegal subcontracting, and a total of 290 investigations throughout Colombia are underway on this issue;
- Inspections have, in some cases resulted in fines, but there has been little progress on fine collection. The Ministry of Labor has levied \$81 million in fines for illegal contracting that undermines workers' rights. According to Ministry figures, roughly five percent has been collected to date;
- Fines in five key (priority sector) cases have totaled more than \$4 million, including a \$1 million fine against a palm oil company that contracted 300 workers through five illegal cooperatives. The fines in these five key cases have yet to be collected, and thus far 96 of the 300 workers at the palm oil company have been hired directly;
- To date, more than 70 percent of sugar cane cutters (roughly 7,000) who were previously in illegal cooperatives in Colombia's sugar sector have formed unions and negotiated collective bargaining agreements with subsidiaries of the main sugar processing companies. Although most workers do not have direct employment contracts with the main companies, labor unions in the sugar sector report that these subsidiaries are properly funded and unions are able to negotiate over wages and working conditions with these entities. There are no remaining cooperatives in the sugar sector;
- In January 2013, the Colombian government passed a law establishing formalization agreements as a mechanism to hire workers previously in unlawful subcontracting relationships, in part to bolster Action Plan goals of shifting workers in illegal cooperatives into long-term direct employment relationships. The agreements are to be negotiated between employers and the Ministry of Labor in consultation with affected workers and, among other terms, are to include financial guarantees covering worker remuneration. There are concerns about the implementation of the formalization agreements in some cases, including where agreements do not require direct employment relationships or permanent contracts with the main enterprise benefiting from the labor or do not cover all workers affected by illegal subcontracting; and,

- In accordance with the Action Plan, in 2011 the Colombian congress reformed the criminal code, establishing criminal penalties and possible imprisonment for employers that undermine the right to organize and bargain collectively, including by extending better conditions to non-union workers through collective pacts. Currently, the Prosecutor General's office is investigating 294 cases of alleged violations of the reformed article. It will be important to see whether these investigations lead to convictions, where warranted, or successful "conciliations" (government-led efforts to resolve alleged violations through voluntary negotiations between workers and employers).

Ongoing efforts to address remaining challenges:

- The U.S. Department of Labor is funding a five-year, \$7.8 million International Labor Organization project beginning in 2011 to: (1) strengthen the capacity of the Colombian Ministry of Labor, especially the labor inspectorate, to effectively enforce Colombian labor laws and guarantee fundamental rights at work; (2) strengthen existing social dialogue institutions and their stakeholders; and (3) strengthen the institutional capacity of the Colombian government to enhance protection measures for trade union leaders, members, labor activists, and organizers and to combat impunity for perpetrators of violence against them;
- Although the number of illegal cooperatives has dropped significantly, largely in response to Colombia's focus on strengthening and applying labor laws to combat such arrangements, many employers have shifted to other forms of unlawful subcontracting that similarly avoid direct employment relationships and undermine workers' rights, such as simplified stock companies, known as SASs. The Colombian government is aware of the problem and presently working to develop appropriate tools to address it, including a new legal instrument explicitly targeting such illegal alternative forms of abusive third-party contracting;
- Although Colombia's national apprenticeship system (SENA) is charged with collecting fines for labor violations, until recently it was barred from collecting these fines if an enterprise could demonstrate that it had filed a judicial appeal of the case. To address this problem SENA recently announced new rules authorizing it to require and hold collateral payment from an enterprise pending the outcome of the judicial appeal. SENA has not yet begun to implement the new resolution and is presently developing procedures to do so;
- The U.S. Department of Labor is funding a three-year, \$1.5 million project started in 2012 with Colombia's National Union School (*Escuela Nacional Sindical*), a labor rights NGO, to create "Workers' Rights Centers" in four Colombian cities. The centers provide free legal advice to workers to raise awareness of labor laws and improve workers' ability to protect and claim their labor rights, including through filing well-documented complaints with the Ministry of Labor; and,

- USAID provides \$1 million each year to the American Center for International Labor Solidarity (Solidarity Center) for union strengthening and organizing.

Conclusion

The Colombian government has taken steps to implement the Action Plan and has made meaningful progress, as described above. It is critical that these efforts be carried forward, as important work remains to be done. The Government of Colombia has worked in close collaboration with us to date. We intend to continue working closely with the Colombian government to address areas of concern and remain committed to achieving the underlying goals of the Action Plan.