

Making the Colombia Labor Action Plan Work for Workers



Photo: Steven Tori

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AFL-CIO

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THREE YEARS AGO, the U.S. and Colombian governments made numerous and specific promises to improve labor rights in Colombia. At the time, the U.S. government said fulfilling these promises would be a precondition to enacting any free trade agreement (FTA) with Colombia. Presidents Obama and Santos announced a “Labor Action Plan (LAP),” which was supposed to fix many of the enduring problems that have prevented Colombian workers from freely and safely exercising their rights.

The LAP was supposed to improve respect for labor rights to make possible the implementation of a free trade agreement between our two countries. A year after announcing the LAP, the two governments moved forward to implement the trade agreement.

The LAP made big promises. It promised protections to address the violence that targets union leaders; it promised legal reforms to ensure workers could become direct employees instead of subcontractors; it promised a new ministry of labor that would proactively protect labor rights; and it promised criminal prosecutions of companies that illegally repress workers’ right to join a union of their choosing. While the AFL-CIO appreciated the efforts of Presidents Obama and Santos to improve the situation for Colombia’s working families by implementing the Labor Action Plan, we said at the time the Labor Action Plan did not go far enough to ensure the safety and security of Colombian workers. We said that before our governments declared victory on the Labor Action Plan and moved ahead with the FTA, we needed to see real change. We demanded measurable proof that workers would be better off, that union leaders would be safe, and that unions were growing larger and stronger as a result of the action plan. In a word, we were skeptical.

And we were right. On April 7, 2014, Colombia’s National Union School (ENS in Spanish) and the Colombian labor movement released a report that details the many ways the Labor Action Plan has not

delivered on its promises—violence against trade unionists continues; in the three years since the Labor Action Plan was signed, 73 more trade unionists were murdered in Colombia. That alone is reason enough to say the Labor Action Plan has failed. The ENS report shows the number of decent jobs has not increased in Colombia, and that the majority of the workers who were promised direct contracts and permanent employment still are trapped in informal hiring arrangements, no closer to being able to join a union or improve their jobs than they were three years ago. In spite of numerous new labor laws and decrees, and hundreds of new labor inspectors, not a single company fined by the Ministry of Labor for violating the law and workers’ rights has paid up, and companies still are violating worker rights in Colombia with impunity.

Today we must take stock of these promises made three years ago. The AFL-CIO joins the Colombian labor movement and the ENS by releasing this report on the LAP. We include the words of workers who are struggling to defend their rights and to make the Labor Action Plan deliver on its promises.

I hope that both reports will serve as a wake-up call to Presidents Obama and Santos, and to the government officials responsible for protecting worker rights. They need to know their work is far from finished. They must do more to ensure Colombian workers can organize to improve their lives in a climate of respect for their fundamental rights. The AFL-CIO will continue to stand with the working people of Colombia and fight for their right to improve working conditions and standards of living, rebuild their unions, and demand that our governments deliver what was promised in the LAP. I promise we won’t rest until they do.



Richard L. Trumka
President, AFL-CIO



Photo: Steven Toff

Why Did the United States and Colombia Sign the Labor Action Plan?

ON APRIL 7, 2011, the governments of Colombia and the United States signed the “Colombian Action Plan Related to Labor Rights.” In creating the Labor Action Plan (LAP), both governments recognized that workers in Colombia continued to face serious problems when exercising their basic labor rights, as they had for at least 25 years. These challenges ranged from threats, deadly violence and impunity to widespread use of forms of hiring—informality, temporary work and avoidance of direct hiring—that made organizing and bargaining increasingly difficult, if not impossible. Colombia long has been an extremely dangerous country for trade unionists and other human rights defenders, who confront systemic violence and repression. Since 1986, about 3,000 trade unionists have been murdered.¹ Given these persistent problems, unions and broader civil society in both countries seriously questioned whether the government of Colombia would comply with international labor standards and other obligations. For this reason, though each country’s president signed the U.S.-Colombia FTA in November 2006, and Colombia ratified it in 2007, solid U.S. congressional opposition initially prevented it from being ratified.



Photo: Rhett Doumitt

The 2011 Labor Action Plan was presented as a way to move forward, both with worker rights and with the trade agreement. In addition to dramatic human rights abuses, Colombian workers and unions faced a legal framework that made stable, direct employment increasingly rare and encouraged hiring practices that undermined a mature system of labor relations in which core worker rights could be exercised. The Colombian labor movement and the AFL-CIO considered the LAP insufficient in scope to address the reality faced every day by workers, including the extreme levels of violence and impunity. As an answer to a labor rights problem of such duration and proportions, the LAP was made even more ineffective because its terms were not incorporated into the trade agreement itself. It did not require Colombia to provide any way of measuring sustained and meaningful enforcement of the commitments, or to demonstrate actual improvement on the ground. No objective measures of the LAP’s impact were made a precondition to a congressional vote on the trade agreement or to its entering into force.

To this day, success or failure in fulfilling the commitments of the LAP has no impact whatsoever on Colombia enjoying the supposed benefits of the trade agreement. Three years after its signing, the LAP did effectively serve the purpose of gaining the ratification of the stalled FTA. However, it has done extremely little to improve the lives of Colombian workers or the ability of unions or the government to defend those workers’ rights. Limited and incipient progress made under the LAP before the FTA entered into force has waned greatly, and in recent months workers trying to organize, bargain and seek responses from the government to defend their rights have seen reversals of the modest advancements that had begun in some key areas.

The approval of the FTA by the U.S. Congress, without verifying full compliance with the LAP, significantly reduced the political will behind the plan and contributed decisively in turning the LAP into a new frustration for Colombian workers. U.S. trade

policy should be developed with these experiences in mind. As the U.S. government pursues new trade agreements like the Trans-Pacific Partnership (TPP), that include countries like Malaysia, Mexico, and Vietnam that long have been recognized by the U.S. government as having major failures in labor rights, the inadequacy of nonbinding agreements to bring a country into compliance should be clear. A schedule of well-crafted administrative, legislative and technical cooperation measures can provide a first step toward restoring worker rights. However, without a system of concrete benchmarks and other measures to assess the ability of workers to claim those rights and remedy violations on the ground in a sustained way and link that performance to accessing the trade benefits being proposed, such agreements will not lead to a trading partnership that includes protection and respect for worker rights. Investors and corporations would never accept such weak mechanisms to defend their interests in a trading partnership. And the U.S. government does not propose such weak mechanisms for capital—but it does for labor.

Regardless of any success the government of Colombia may have had in checking off the 10 specific items listed in the LAP, as far as improving conditions on the ground, the government of Colombia has not fulfilled the commitments of the LAP. These changes will happen only when there is political will on the part of the Colombian government and will require sustained resources and commitment over a number of years. Therefore, despite the serious shortcomings of the LAP both before and since the FTA entered into force, both the Colombian and U.S. labor movements remain interested in holding both governments to the commitments they made. Both countries' workers understood the limitations and flaws of the LAP, and unions never would have proposed such a weak plan. Unions also understood that the struggle to reverse decades of anti-worker policy and practices and anti-labor repression and violence in Colombia—as anywhere—will take considerable time. For this reason, the Colombian and U.S. labor movements insist that both governments must renew these commitments for the next four years and fulfill the promises made to Colombian workers in the LAP so that it begins to make a difference in their lives.

WHAT THE LAP PROMISED

*Former U.S. Trade Representative Ron Kirk:
“The Action Plan is designed to significantly
increase labor protections in Colombia.”²*

The commitments made in the LAP can be described as administrative, legislative and technical cooperation measures and placed in four basic categories: 1) reducing threats, violence and impunity; 2) reducing informality and illegal forms of hiring; 3) reforming and enforcing laws to protect the right to organize and bargain collectively; and 4) institutional capacity building of the Ministry of Labor. In the LAP, the only follow-up mechanism consisted of both governments agreeing to meet at both the technical and senior official level from the date of the signing through the end of 2013. In November 2013, both governments agreed to meet through 2014, but once again said nothing about evaluating the impact of the LAP.

This report challenges the assertions made by the government of Colombia that all the commitments of the LAP have been fulfilled. These claims began as early as January 2012, only nine months after the LAP was signed and only three months after the creation of Colombia's Ministry of Labor, the agency charged with leading implementation.³ U.S. government authorities made slightly less categorical claims in April 2012, saying “Colombia has successfully implemented the *key elements* of the Action Plan” (emphasis added) and recognizing “Colombia's important steps to fulfill the Action Plan Related to Labor Rights.”⁴ More recently, the U.S. Congressional Research Service concluded that “[a]s of the end of January 2014, Colombia accomplished all of its Action Plan commitments by completing the hiring of 480 new labor inspectors, ahead of the December 2014 target date.”⁵ Clearly, there are different evaluations of whether or not Colombia has completely implemented the LAP, and when it did so.

Unlike the conclusions reached by either government, this report includes comments by workers, unions and the respected National Union School in Medellín to explain why the LAP has not achieved its goal as stated by the USTR “to significantly increase labor protections in Colombia.” Below are just a few of the facts on the

ground gathered by the National Union School, unions and workers that demonstrate the failure of the LAP in the four categories above. Thorough quantitative and qualitative analysis of the implementation of the LAP, input from unions, workplace-based cases and point-by-point evaluation of the 37 measures committed to in the LAP are available in the full ENS report.⁶

1) The LAP has not eliminated or significantly reduced violence and impunity. In 2013, 26 trade unionists were murdered, four more than in 2012. Attempted murders also increased, from seven to 13 over that period. Since the LAP was signed, there have been 31 attempted murders, six forced disappearances and nearly 1,000 death threats. Likewise, impunity remains high at 86.8% for murder and a near total 99.9% for threats against unionists. The overall impunity rate for human rights violations against trade unionists is at 96.7%. These figures show the actual results of the measures included in the LAP a year after the Colombian government claims to have fulfilled all the commitments.⁷

While there had been some advances in protection programs, unions report that in 2013 there has been an increased tendency to withdraw protection measures and persistent delays in performing risk assessments. In both pursuing investigations and in providing protection programs, the LAP made progress in its first year insofar as the government hired staff, but the hirings have not yielded results. Notably, the figures above on increased violence and threats, persistent impunity and negative evaluations of access to protection programs were registered after the FTA went into force.

2) Contrary to assertions by the government of Colombia, the LAP has not reduced informality and the use of illegal forms of hiring. Labor intermediation—the entrenched practice of using various legal fictions to avoid a direct relationship with workers that is rampant among Colombian employers—was an explicit target of the LAP. Having identified cooperatives, particularly “Associated Work Cooperatives” (CTAs), as the dominant form of intermediation, the government of Colombia did act to reduce the use of CTAs by more than a third.⁸ However, the reduction of CTAs was accompanied by an alarming increase in other forms of labor intermediation. In effect, the progress the Colombian government made in

reducing CTAs as called for in the LAP was erased by allowing other forms of labor intermediation to increase greatly. This opening was caused by the failure to include other “creative” forms of labor intermediation when the law’s applicability was narrowed strictly to CTAs in the regulations issued in 2011 for the 2010 formalization law (see box below). In November 2013, the Ministry of Labor passed Decree 2798, presumably to correct the weaknesses of Decree 2025 and expand it to cover all forms of fraudulent subcontracting. The text of the new decree further undermines the intention behind Decree 2025 by stating subcontracting is outlawed only when “it implies a denial or violation of labor rights” and no longer for core, mission work in a given company.

LAP, Page 2, Part III:

“Article 63 of Law 2010 prohibits the misuse of cooperatives or any other kind of relationship that affects labor rights, and imposes significant fines for violations.” Subsequently, the government of Colombia issued Decree 2025 and weakened this broad and inclusive definition of illegal labor intermediation, opening the way for a subsequent increase in hiring through simplified joint stock companies (SAS)* and “union service contracts” signed by organizations that do not legitimately represent workers or have the capacity to hold employers accountable to the workers or the government.

* A SAS (“simplified stock company”) is an employment arrangement in which the worker is considered to be a partner in an independent corporation. Employers then contract with the independent corporation to provide labor. This legal fiction not only gets the employer out of a direct relationship with the worker, it means the relationship is not covered under Colombian labor laws.

Taking advantage of these openings in the new regulations, businesses have turned CTAs into other existing and legal arrangements to continue hiring core permanent positions through intermediaries—precisely the workers targeted by the 2010 law, and the LAP as a whole, to be converted into direct employees. Although technically different in legal structure, each of these hiring schemes serves the same purpose: to maintain and even increase illegal labor intermediation.

As a result, even after the LAP had supposedly been fulfilled, “labor intermediation [remains] entrenched in the Colombian labor market, with higher levels now than when laws and regulations were enacted in 2010 and 2011 to address the problem.”⁹ As the ENS concludes idiomatically: “What is put out of the house through the door comes back in through the window.”¹⁰

Employers continue to use labor intermediation to avoid contributions to social security and other payroll taxes associated with direct employees and to stifle organizing efforts. A few major companies, such as Carrefour, Exito and Fabricato Textiles, calculated the costs and decided to formalize. A handful of others effectively were formalized by steadfast workplace organizing and bargaining by unions, but these examples are few and far between—and did not result from any concerted action by the Ministry of Labor to apply the new laws. Many Colombian employers insist they need the labor cost savings that various forms of labor intermediation bring. They maintain this in spite of a 2010 Ernst and Young study demonstrating that labor costs in Colombia are cheaper than those in Brazil, Mexico, Chile and Costa Rica, and only marginally higher than Colombia’s Andean neighbors.¹¹

3) The LAP has not effectively reformed and enforced laws to protect the right to organize and bargain collectively. Colombian unions were particularly hopeful about modifications to Article 200 that criminalized violations of freedom of association, which was intended to provide a mechanism to enforce labor laws. Unfortunately, the modified law has not resulted in increased enforcement. To date, no employer has been convicted under the new law, nor are any convictions expected in the near future. At the end of February 2014, there were only three active Article 200 investigations.¹² The Ministry of Labor claims it sent

199 cases to the attorney general for investigation, but the attorney general has provided no information or commentary on the cases. Along with the failure to communicate between the Ministry of Labor and attorney general’s office, there is little coordination between labor inspectors and prosecutors, leaving prosecutors inclined to close cases for which they do not feel competent to conduct investigations. There is almost never any participation by workers or unions in the process. In one of the cases currently being investigated, court documents from March 2014 show the prosecutor established the case was not a penal offense but a labor conflict—a conclusion likely reached by a fundamental misunderstanding of how to apply the new criminal code.¹³

The failure of the LAP to protect the right to organize and bargain collectively is made clear by comparing how collective bargaining has fared. The last three years have seen the continued use of collective pacts and the rise of “union service contracts”—a form of labor intermediation through which “unions,” in most cases fraudulent entities created by employers and unrepresentative of the workforce, agree to supply their members’ labor to employers.

Over the last four years, authentic collective bargaining actually decreased as a percentage of all collective work contracts, even though the LAP was designed to increase the viability of worker organizing and bargaining collectively through their unions with employers. As the ENS report summarizes:

By the end of 2013, almost three years after the LAP took effect, collective bargaining agreements (CBAs), the only way of advancing bilateral negotiations between employers and unions on work structures and conditions of work in a given worksite, have

COLLECTIVE WORK AGREEMENT BY TYPE, 2010–2013								
Type of Agreement	2010		2011		2012		2013	
	Cases	%	Cases	%	Cases	%	Cases	%
Union Contract	50	9.62	164	25.79	703	57.39	964	63.76
Collective Bargaining Agreement	246	47.31	304	47.80	307	25.06	344	22.75
Collective Pact	224	43.08	168	26.42	215	17.55	204	13.49
Total	520	100.01	636	100.01	1,225	100	1,512	100.00

Source: *Escuela Nacional Sindical*, Union and Labor Information System (Sislab), Dynamics of Collective Bargaining Subsystem with information provided by the Ministry of Labor.¹⁴

declined noticeably among the various forms of collective contracting available in Colombia. In 2010, before the LAP was signed, CBAs represented 47.31% of all agreements signed. By the end of 2013, this figure fell to only 22.75% [see table, page 8]. In other words, just during the LAP's implementation period, possibilities for signing a CBA have become increasingly limited while the space for signing "union contracts" and continuing or signing new collective pacts has expanded, illustrating the backsliding on union rights.

4) In spite of investing considerable resources of the U.S. and Colombian governments, the LAP has not increased the institutional capacity of the Ministry of Labor.

In the first months after the LAP came into effect, the newly created Ministry of Labor did expand hiring and training of labor inspectors, oversee the creation of an anonymous labor violation reporting system and develop a tripartite conflict resolution system. However, the LAP made many changes in procedures without considering already existing practices and laws or coordinating roles among existing government agencies. There has been a pronounced lack of coordination between the Ministry of Labor and the attorney general's office. The government claims to have hired the required number of inspectors, but recruitment did not comply with International Labor Organization (ILO) standards, severely affecting these inspectors' autonomy and technical capacity. As of April 7, 2014, not one of the new labor inspectors has been recruited or hired through a civil service posting or a competitive and transparent process.¹⁵ More than 85% of all current labor inspectors are provisional hires. This lack of job security further compromises

their capacity to act objectively and diminishes the value of the training provided by the ILO.¹⁶ The vast majority of labor inspections that have been conducted were administrative interviews at employers' offices, rather than visits to factories, production facilities and workplaces, where violations would be apparent—at least to trained, competent and committed inspectors.¹⁷

Reforms were passed without considering consistency with existing laws, or any mechanisms to ensure enforcement and oversight. Not surprisingly, these measures were insufficient to transform the vulnerable situation of Colombian workers and union members. Labor inspection remains weak and purely administrative, so while more inspections are conducted, there still are no positive results for workers. Fines levied serve more as public relations successes for the Ministry of Labor than acts of enforcement capable of exerting pressure to change the fraudulent behavior of employers. According to the ENS, none of the large fines, capable of being an effective deterrent for violations and setting precedents for proper application of the laws, have been paid during the three years since the LAP was signed.

The Colombian labor movement has a positive evaluation of the ILO technical cooperation and training program included in the LAP, but the government has shown little willingness to implement the recommendations or apply the trainings in practice. Though the government of Colombia committed to engaging with the ILO as part of the LAP, in practice the technical cooperation and training program, too, has met with resistance on the part of the Ministry of Labor.



Photo: Steven Toff

Retired dock workers often are seen in front of the entrance to the port. Many suffer from permanent injuries that ended their careers. They receive no pension, no disability and no social security despite their years of service. They are at the mercy of the community.

How Colombian Workers and Unions Responded in Key Sectors



Photo: Steven Toff

Palm workers attempted to map out the various labor intermediaries involved at their worksites. In the end, the effort spanned an entire wall in a gymnasium-sized room.

SEEING THE LAP AS A PROMISE that the government would facilitate industrial relations and proactively promote labor rights, many workers and workplace-level unions planned and executed organizing campaigns, pursued new bargaining proposals or engaged in dialogue with employers and the government expecting that new laws and regulations—and the scrutiny of the LAP—would create an enabling environment for them to claim their rights. However, workers’ hopeful enthusiasm and commitment to work for a new era in Colombian labor relations was not greeted with an equal interest by employers or the government. As the following case studies demonstrate, even in specifically targeted sectors including palm, sugar, oil and ports, the LAP has done little to enhance workers’ ability to safely and effectively exercise their fundamental rights.

PALM

Colombia’s palm oil industry has grown dramatically in recent years, but rather than sharing in these gains, workers on palm plantations have seen their lives and livelihoods deteriorating. Decades ago, nearly all

workers were directly employed by the companies they worked for, and many had union representation. Today, nearly all work is outsourced through cooperatives. Extreme violence in palm-growing regions has hurt efforts to build a legitimate voice for workers on the job. Many union leaders have been murdered and threatened, and pro-union workers routinely are blacklisted and harassed.

Palm workers at the Bucarelia plantation initially were hopeful regarding reforms instituted through the LAP. However, Miguel Conde of El Sindicato Nacional de Trabajadores de la Industria Agropecuaria (SINTRAINAGRO)-Puerto Wilches recounts the enormous obstacles workers faced when they tried to formalize employment, and how little the LAP has changed conditions on the ground. In June 2011, workers heard about the recently enacted Decree 2025, which outlawed the use of cooperatives for core work. Increasing numbers of workers on the plantation had been hired through cooperatives. Conde says the union “had collective bargaining coming up in two of

our worksites [Bucarelia and Brisas] and we decided that we should combine union bargaining with a demand that the company hire cooperative workers directly.... To our surprise, the employers responded by simply saying the law did not apply to [the palm sector], and the Labor Ministry didn't say differently. The workers were not ready to accept that, so in light of the employers' refusal to negotiate any sort of change according to the law, the cooperative workers declared a work stoppage together with the strikes that we [the unionized workers] were declaring at our worksites."

At first it was just the workers at Bucarelia and Brisas, but the protests soon spread. "There were some four to five thousand that joined the protest," Conde recalls. Riot police were called in and violently attacked the workers, and the employers trucked in strikebreakers, but eventually an agreement was reached to settle the work stoppage. Under the terms of the agreement, the Labor Ministry would inspect the plantations and assess sanctions for any violations found, and the employers promised not to retaliate against workers who participated in the strike. However, Conde says, "the employers failed to honor the agreement from the first day." Over time, the employers effectively fired hundreds of workers involved in the strike. "We started getting death threats in the union, and [there were] anonymous pamphlets blaming the union for the core rot disease (*podrimiento de cogollo*) that was affecting the palm trees."

The government conducted its first inspections under the LAP at Bucarelia, and assessed fines for violating Decree 2025, which was supposed to prohibit subcontracting core positions. However, "[t]he sanction was never paid," reports Conde, and there have been no efforts by the government to collect it. "The employers openly mocked us, saying that they would never pay any fines or hire any subcontracted workers directly." In 2013, Bucarelia signed a formalization accord, but it did not require the direct hiring of any of the workers that were subcontracted illegally. It provided for the direct hire of only 45 workers, most on temporary contracts. "So, of the 600 cooperative workers that protested, none of them were included in the 45 that were supposedly formalized. And the new 45 weren't even hired directly, they were hired through a SAS," Conde says.

"In [March 2014] the company terminated 24 full-time workers and suspended the contracts of another 62, all union members," reports Conde. "The reason offered was decreasing production, but they contracted 37 new workers through the SAS. Workers at the plantation informed us fruit was rotting because there were not enough workers to cut it all," he says. "In the end, the new law was never applied, no workers were ever formalized, hundreds of workers were fired, we are under constant threat of violence, union members are out of work and the union is on the verge of disappearing. The government does nothing to protect us, so we have no choice but to stop work again. There is surely going to be trouble, but we have nothing else we can do."



Miguel Conde

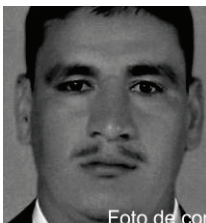
Photo: Rhett Doumitt

SUGAR

Workers on sugar plantations continue to face systemic violence, precarious conditions and workplace hazards. Cutting sugarcane is physically demanding and dangerous work. Cutters work long hours for meager pay. Like the palm industry, cane cutters used to be treated as direct employees, but now most are subcontracted through labor intermediaries. Increasingly, employers have been pressuring the few who have representation to renounce their affiliation or lose their livelihood. Rights, wages and working conditions have steadily eroded, leaving many workers and their families in poverty. The LAP has failed to reverse this trend.



As Mauricio Ramos, a sugar worker and head of the union SINTRAINAGRO explains, “the government, represented by the Ministry of Labor, has done nothing to promote the union and guarantee the right to freedom of association” in places like La Cabaña plantation. In January 2013, shortly after registering a new union local, 100 members of SINTRAINAGRO effectively were fired, including the union’s entire executive board. Ramos says approximately 500 other workers were forced to renounce their union affiliation to renew their work contracts.



On Jan. 28, 2013, union activist Juan Carlos Pérez Muñoz was murdered on his way to work. Ramos reports the union has received no information from the government about the investigation of the case, but has learned indirectly the prosecutor claimed Juan Carlos was not a member of the union—and that his murder therefore was not union-related—even though the prosecutor had been given proof of his union affiliation.

Conditions continue to be repressive with no response from the government. Ramos reports that “[s]alaries have decreased, and they do not allow workers to meet in groups of more than two. Everything is controlled, the zone is patrolled by an army battalion and they do not permit anyone to make even the slightest complaint.” The union has filed complaints detailing anti-union activities and ongoing labor intermediation, but Ramos says “the Ministry of Labor decided to archive the [freedom of association] investigation, arguing that they found no reason to investigate.... and in the case of illegal labor intermediation, we have not received any response.”

Ramos has been the target of threats and harassment for his work with the union. In September 2013, a friend warned him there was an order out that if he was seen at the worksite, “I should get a bullet.” He also has received threatening phone calls. “Our union’s future is uncertain,” Ramos says, but despite the immense pressure and personal dangers, “we are continuing the process to gain labor rights for sugar workers.”

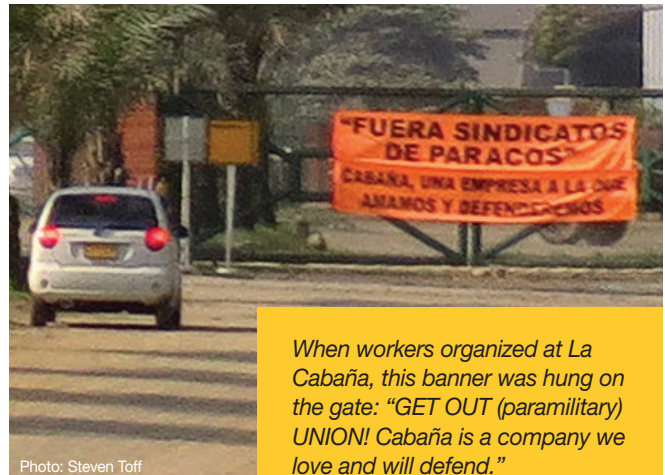


Photo: Steven Toff

When workers organized at La Cabaña, this banner was hung on the gate: “GET OUT (paramilitary) UNION! Cabaña is a company we love and will defend.”

OIL INDUSTRY

Héctor Sánchez has been the target of persistent threats, harassment and legal persecution for his work as a union organizer. His struggle is indicative of how little has changed for those who try to organize workers in the oil sector. In July 2011, more than 5,000 petroleum workers walked off the job at the multinational company Pacific Rubiales. Unión Sindical Obrera (USO) grew its membership to 4,000 workers and presented a collective bargaining proposal to the company. Workers report security forces violently attacked the protestors. “Various workers were seriously hurt,” reports Sánchez. “One lost an ear, and another lost an eye.”

In an effort to defuse the labor conflict, the Colombian government convened a meeting with USO and company representatives in Bogotá, ostensibly to reach an agreement. However, Sánchez remembers, “while we were negotiating in Bogotá, the company secretly brought another union into the worksite. At the end of the process, the company announced an ‘agreement’ with this other union, which had not been present during negotiations. Unfortunately, the government gave its approval to this agreement, and that is how negotiations ended,” he says. “The government supported the company in this effort to derail the process and force a company union.” Police and government troops were brought in to patrol the worksite “so we could not return to protest. We feel completely defrauded. It was an alliance between the company and the government to end the union and violate the workers’ rights. And it was all done under the LAP.”

According to a complaint filed with the Ministry of Labor by USO, workers were persecuted *en masse*: Thousands, including Sánchez, effectively were fired,

while others were required to renounce their USO affiliation and join the employer-controlled union to keep their job. The company “made about 2,200 workers disaffiliate,” Sánchez reports. “The Labor Ministry was absent. Myself and 180 other workers filed a complaint for violating the right to freedom of association, but the ministry ignored it. They never responded.”

Sánchez reports becoming “an object of persecution by the company’s private security forces, the police and the military.” In late 2013, Sánchez says the local prosecutor brought spurious criminal charges against him and three other USO leaders for their roles in the 2011 work stoppage, even accusing them of kidnapping 150 workers to force them to attend a union meeting. The USO leaders were arrested and spent several months in prison. At the time, Sánchez had been preparing to deliver key testimony in a criminal case brought against Pacific Rubiales under Article 200, the landmark LAP reform that imposes criminal penalties for certain violations of freedom of association. Sánchez and two other detained USO leaders were released after the prosecutor acknowledged irregularities in the case, but Sánchez worries his credibility as a witness has been destroyed deliberately.

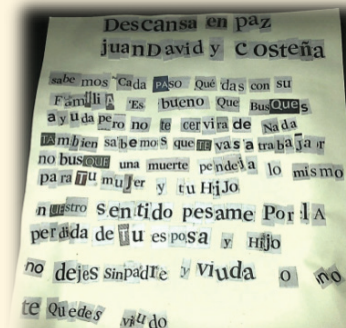
Sánchez also has received multiple anonymous death threats over the past year. For example, on July 16, 2013, he received a menacing note at his home, two days after a hearing in Puerto Gaitan, Meta. The incident coincided with a break-in at the offices of the organization REDHER, which had helped to organize the hearing. Sánchez had to remove his family from the area for their protection and does not feel safe returning to continue organizing. He requested protection from the government, but he says thus far the response has been inadequate. The government’s approach, he says is “doing the people who are threatening me a favor.”

Photo: Steven Toff



L to R: Campo Elías Ortíz, Rudolfo Vecino Acevedo (USO president) and Frederico Pulicio stand with Héctor Sánchez.

Sánchez found this note on his front doorstep: “RIP Juan David and Mrs. Sánchez. We know you and your family’s every move. You can ask for help but it will serve no purpose. We also know when you go to work. Do not look for a needless death for your wife and son. We offer our condolences on the loss of your wife and son. Do not leave your son without a father and wife a widow or find yourself a widower.”



PORTS

The humanitarian crisis in Colombia's busiest port, Buenaventura, is further evidence the LAP has failed to have any positive impact on workers and their communities. The bustling docks at this shipping epicenter belie the misery of Buenaventura's predominantly Afro-Colombian population, whose dire poverty has endured in spite of whatever benefits the FTA may have brought to Colombia's big businesses. According to the United Nations Commission on Human Rights, 63% of Buenaventura's Afro-Colombian residents live below the poverty line; unemployment is extremely high, at approximately 64%.¹⁸ An elevated paramilitary presence and a high crime rate in the city makes a mockery of the improvements to security, impunity and justice for Colombian families promised through recent government initiatives to promote land restitution, Afro-Colombian livelihoods, labor rights and peace. A March 2014 *Human Rights Watch* report stated that Buenaventura leads the country in new displacement of residents, with more than 13,000 people displaced from their homes in 2013 alone.¹⁹

In this context, the efforts of the national Port Workers' Union (Union Portuaria) to formalize port workers in Buenaventura, protect their health and safety on the job, and ensure they earn a decent wage have faced insurmountable obstacles. Even prior to the implementation of the LAP, the UP had tried without success to convene port operators and government authorities to address the problems of information and unsafe working conditions at the port. When the LAP was released in 2011, the union continued its struggle, using the LAP's promises as further justification for government intervention at Buenaventura and four other ports in Colombia.



In early 2012, the Colombian government sanctioned the Port Society of Buenaventura for failing to correct illegal labor intermediation. However, the fines never were collected. Workers organized a strike that was violently shut down by military police. Three men and a pregnant woman all suffered serious injuries.²⁰ In July 2012, the president of the UP-Buenaventura, Jhon Jairo Castro, received a death threat after traveling to the United States to denounce the situation. Eventually, the company announced a formalization accord, but it only covers 18 workers.²¹

Meanwhile, dangerous conditions at Buenaventura continue to needlessly claim lives. Injuries are so common that one worker called them "the usual form of retirement." Most who speak of conditions do so anonymously, out of fear of reprisal. Since nearly all work continues to flow through subcontractors, it is easy to get rid of anyone who complains publicly.

In Turbo, national and local authorities seem to have abandoned the year-and-a-half old inspections process. There has been no presence of the Labor Ministry authorities regarding the UP complaint on subcontracting, and inspections processes also are in limbo in Santa Marta, Cartagena and Barranquilla. The most important advance in the ports sector has been in Barranquilla, where the UP and the Port Society of Barranquilla negotiated an end to a yearlong labor conflict, signing a collective bargaining agreement on Dec. 9, 2013, covering 850 port workers and reinstating five fired union leaders. This agreement is the first collective bargaining agreement negotiated with a port society in more than 22 years. Although this is the first port society to recognize the union, and the agreement improves wages and conditions, it does not address the formalization of subcontracted workers, which has been a central demand of the union nationally. The Labor Ministry played no role in this historic agreement.

Though the critical situation for families in Buenaventura extends beyond the struggle of port workers to organize and negotiate for decent working conditions, it underscores the need for real political will and sustained government attention to reform. Just as the Colombian government's efforts to address the safety and security of Buenaventura's families have been stymied by paramilitary violence, a climate of lawlessness, and impunity, so have their efforts to deliver real improvements to port workers' labor rights under the Labor Action Plan.

Conclusions and Recommendations

THE WORKERS' EXPERIENCES described above demonstrate how many Colombian workers, particularly those in key industries, initially viewed the LAP as a sign of hope, and looked to it as a road map to progress. Unions based plans and strategic decisions on the LAP's promises, hoping it would enhance their ability to defend workers' interests. Unfortunately, for the reasons described in this report, examined in greater detail in the April 2014 ENS report, workers found that little changed when they tried to use the "significantly increased protections" of the LAP.

Workers depended on new protective measures to engage with employers and on the government to defend their rights, but they have been frustrated repeatedly by the lack of political will to ensure the LAP's administrative and legal measures are implemented to truly improve workers' lives. Official indifference became particularly pronounced when the free trade agreement entered into force.

Achieving progress on abusive subcontracting and informality under the LAP would be difficult even under better circumstances, but given the years of anti-union violence and conflict Colombian workers have endured, progress requires the political will to confront that past. Colombia's current government is making efforts to confront the country's long civil war, and to seek reconciliation through a difficult peace process and complex land restitution plan. However, Colombia's workers have not yet seen their reparations. If implementation of the LAP were pursued seriously by the government, it could begin moving forward in such a process.

Though the U.S. and Colombian governments concluded Colombia had fulfilled the LAP when they announced their intention to implement the FTA in April 2012, more recently they admitted there is much work still to do. In November 2013, the U.S. and Colombian governments agreed it was necessary to extend the LAP for another year, "underscoring several areas of mutual concern. These areas of concern include the collection of fines imposed for labor violations; targeted

inspections in the five identified priority sectors (palm oil, sugar, mines, ports and flowers); the investigation and sanction of all forms of abusive contracting; the status of hiring labor inspectors in line with Action Plan commitments; and violence and threats against trade unionists and continued impunity for the perpetrators."²²

The "areas of mutual concern" named above cover nearly the entire LAP. The AFL-CIO thinks that now, three years into the LAP, it is long past time to plan and define that work more seriously and measure progress on the ground toward the objectives of the LAP.

Fortunately, there is some recognition by the U.S. government that the LAP has not led to improvements in the conditions faced by workers. When announcing the extension of the LAP, former U.S. Deputy Secretary of Labor Seth Harris noted the gulf between the promises of the LAP and conditions on the ground: "Together, we must fulfill the commitments agreed upon in 2011. We look forward to continuing to work with Colombia to make these promises a reality for workers."²³ In a subsequent blog posting, he "acknowledge[d] that there is a great deal more work to be done."²⁴

Any serious attempt to improve labor rights in Colombia must take the long view of these challenges and their solutions. Therefore, we join the Colombian labor movement in making the following recommendations:

1. The monitoring and follow-up consultation process of LAP implementation should be extended for another four years.
2. An independent committee should be created that would be tasked with compliance monitoring of the 37 measures included in the LAP. This committee would be formed by members of congress from both countries, the national trade union centers of Colombia and the United States, the Trade Union Confederation of the Americas and representatives of non-governmental organizations that focus on labor rights.

3. The Colombian government should make a public presentation of a complete analytical report on the implementation of the LAP and submit that for public discussion and an analysis by the Permanent Commission on Coordination of Wage and Labor Policies (CPCCSL)

The AFL-CIO endorses the recommendations of the 2014 ENS report. These include asking the Colombian government to take the following actions:

- Any formalization agreement must include union participation during the whole negotiation period and it must result in the direct hiring of the workers involved by the principal firms that benefit from the workers' labor. Intermediary firms and subcontracting firms cannot be allowed to negotiate any formalization agreement.
- The Ministry of Labor must publicly disclose its recruitment and hiring process for labor inspectors, provide inspectors with a merit-based civil service career path and agree with the Colombian labor movement to a minimum percentage of permanent, full-time inspectors with clearly defined areas of work.

In addition, both governments jointly should take the following actions:

- Work with the independent committee proposed above to develop an LAP evaluation plan that includes objective and concrete measurable goals and results.
- Require the independent committee issue a public quantitative and qualitative analysis every six months disclosing information on at least the following points: progress in reducing all forms of labor intermediation; results of workplace labor inspections and fines paid; growth in unionization; and collective work agreements signed.

Also, the U.S. government should:

- Annually convene U.S.-based companies operating in Colombia to provide guidance on LAP-compliant hiring and subcontracting practices and on respecting the right to organize and bargain collectively.
- Ensure that U.S. development and technical cooperation provide sufficient funds for labor rights organizations to monitor labor rights, train worker and employer organizations and produce research and reports documenting progress against LAP commitments.

Endnotes

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