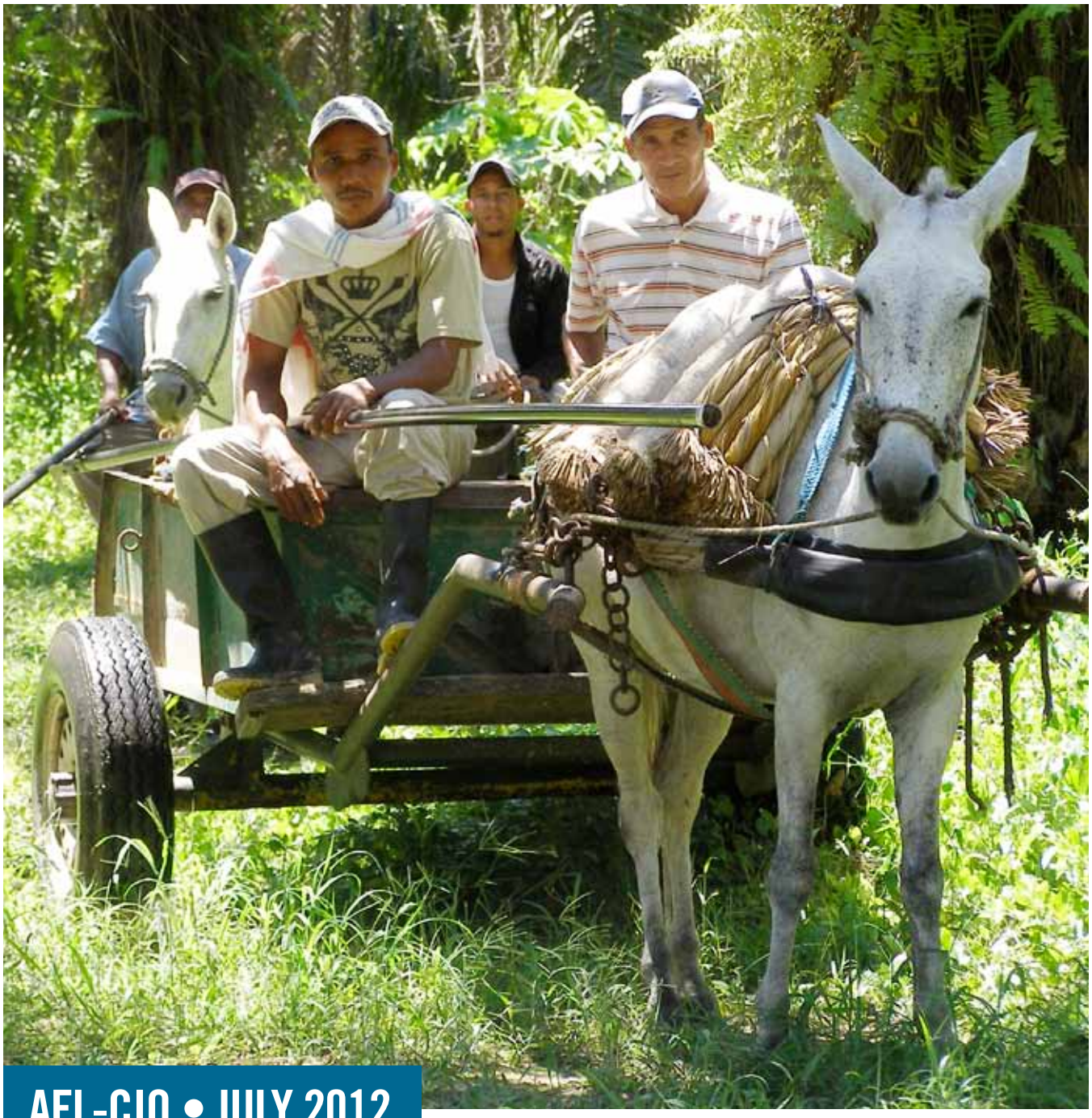
THE COLOMBIAN ACTION PLAN RELATED TO LABOR RIGHTS

The View Through Workers' Eyes



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INTRODUCTION

PHOTO: MARCELO SALINAS

Although in recent years the government of Colombia has made great efforts to reduce the power of armed organizations, modernize the economy and attract foreign investment, it has made little progress in addressing the needs of workers and their unions. While it no longer is on the verge of becoming a "failed state," Colombia remains the most dangerous country in the world for unionists, according to the International Trade Union Confederation (ITUC).[1] Approximately 3,000 Colombian trade unionists have been murdered since 1986—with the vast majority of cases still unsolved and the vast majority of perpetrators (both those who ordered the killings and those who carried them out) still unpunished.

Against a backdrop of more than a quarter-century of violence against unionists and human rights defenders and an apparent lack of interest or ability to defend workers' fundamental labor rights, including the rights to freedom of association and collective bargaining, the United States and Colombia in April 2011 negotiated the "Colombian Action Plan Related to Labor Rights," (also known as the "Labor Action Plan") to forge a path forward for the long-stalled U.S.-Colombia Free Trade Agreement.

Though the Labor Action Plan included some important measures that Colombian unions and the AFL-CIO have been demanding for years, its scope was too limited—it fully resolved neither the grave violations of union freedoms nor the continuing violence and threats against unionists and human rights defenders. In addition, there was no specific provision in the Labor Action Plan requiring Colombia to establish a sustained, meaningful and measurable record of enforcement of any of the commitments prior to a congressional vote on or official entry-into-force of the trade agreement.

Although President Obama and U.S. Trade Representative (USTR) Ron Kirk announced on April 15, 2012, that the government of Colombia had taken "important steps to fulfill the Action Plan Related to

Labor Rights" and that the U.S.-Colombia Free Trade Agreement would enter into force a month later, the AFL-CIO thinks much work remains to be done to ensure workers in Colombia can exercise their rights without putting their lives at risk.

In conjunction with other organizations committed to improving the labor and human rights situation in Colombia, the AFL-CIO has been monitoring the progress of the Labor Action Plan and concludes that, although new laws and directives are in place, the government of Colombia has not yet demonstrated successful implementation. While there is good news concerning stepped-up protection for workers by the new protection unit (the UNP) and the change from indirect to direct employment at the supermarkets Carrefour and Éxito and the textile producer Fabricato, these changes have not yet penetrated the culture of general business practice and affect only a tiny fraction of the workforce. Too many workers still are denied their rights.

Workers across the economy, including in the five priority sectors identified by the Labor Action Plan (palm, sugar, mines, ports and flowers), continue to experience the following on a regular basis:

- Unwanted indirect employment relationships (both cooperatives and other forms of sham subcontracting used for core, permanent work), which prevent workers from exercising their rights to free association and collective bargaining;
- Unilaterally determined salary and benefit schemes imposed by employers to dissuade workers from joining a union ("*pactos colectivos*");
- Lower pay and benefits and worse working conditions than they would receive if they were free to organize and bargain; and
- Threats of death and violence against themselves and their families for attempting to exercise the very rights the Labor Action Plan aims to protect.

The AFL-CIO's examination of the evidence gathered from workers and their unions, discussions with staff from the relevant agencies in both the U.S. government and the government of Colombia, and information gathered from other interested civil society organizations leads to an inevitable conclusion: It is too early to declare the Labor Action Plan a success. Now is the time to devote even more attention, effort and resources to Colombian labor rights in order to avoid sending the message that workers are on their own simply because the trade agreement has gone into force.

Minister of Labor Rafael Pardo has been clear about his strong commitment to change. He cannot, however, create the comprehensive changes necessary overnight, singlehandedly or smoothly. The effort to modernize the Colombian economy's approach to labor relations certainly will be a long process involving steps both forward and back until a culture of respect for workers' rights is achieved—which is why the AFL-CIO and its Colombian counterparts, the CUT, CTC and CGT, jointly opposed the announcement the Labor Action Plan had made sufficient progress to allow the trade agreement to enter into force.

Colombian workers continue to face grave obstacles as they work to better their lives—and prematurely withdrawing the scrutiny of the U.S. government not only could lead to backsliding on the progress that has been made, but also to a violent backlash against those who continue to act as leaders for their communities. Workers have reported they feel violence and threats have increased since the announcement the trade agreement would be implemented.

The AFL-CIO urges the U.S. government and all interested parties to redouble their efforts to promote labor rights and protect *all* human and labor rights defenders in Colombia. The Labor Action Plan will require not *one year* of implementation, but *many years* of implementation to affect a culture that for too long was steeped in violence, repression and disrespect for workers.

In order to avoid repeating the work published last October, this report takes a different approach.[2] In the following pages, the AFL-CIO critiques key elements of Labor Action Plan implementation and presents vignettes of Colombian workers, who tell their experiences with the Labor Action Plan in their own words.

LABOR MINISTRY

The new Ministry of Labor ("*MinTrabajo*") has been established, and the minister has made positive statements and initial moves indicating he intends to make constructive changes. In addition, there is a new principal for the labor inspectorate who is providing critical leadership and approaching the mandate to eliminate sham subcontracting with earnest. However, many other key personnel in the ministry have not changed, and Colombian unionists tell us that beneath the newly placed leaders, the institution is riddled with corrupt, compromised officials who are dedicated to the "old way" of business. The entire culture of the ministry needs to change, and there simply has not been enough time yet for this to occur.

Workers report the application of the new laws to date has been symbolic, not systematic. Without systematic and thorough application of new and existing laws—to employers large and small throughout the economy—real change for workers will not occur. Instead, a few large fines will be widely publicized and reported, but after the reporters have moved on, workers will continue to lack the freedom to associate, organize and bargain collectively without risking their lives or livelihoods. The Ministry of Labor must make it *official policy* that labor laws will be enforced at all times in all sectors and develop a systematic plan to ensure compliance *in all workplaces across the country*.

Finally, the AFL-CIO understands not all of the new labor inspectors have been trained in new procedures that would better protect labor rights. The AFL-CIO recommends the Ministry of Labor report regularly and publicly on its cadre of inspectors, as well as the locations and specialties of these inspectors, so Colombian unions may better monitor in real time whether all of the promised inspectors are hired, trained, retained on the job and performing inspections in a systematic manner.

COOPERATIVES AND INSPECTIONS

Changes to Date Largely Have Been Unable to Help Workers Achieve Direct-Hire Relationships

Bottom Line: The Labor Action Plan committed to cracking down on illegal cooperatives so workers could be hired directly by employers and exercise their fundamental rights of freedom of association, organization and collective bargaining. Unfortunately, to date, enforcement efforts by the Ministry of Labor have been delayed, weak and primarily in response to worker agitation, rather than proactive.

Workers in all priority sectors (sugar, palm, flowers, ports and mines) report that, while the ministry has engaged in some efforts to step up inspections and even issue fines to some employers, the actions have not led to meaningful changes. In the ports sector, only about 160 workers, a miniscule portion of the approximately 18,000 workers in the sector, have been converted from cooperatives (short for associated work cooperatives, known as *cooperative de trabajo asociado* or CTAs in Spanish) to direct hires—but this occurred without Ministry of Labor participation. Moreover, the inspection guidance that enables inspectors to use and apply Decree 2025 was not even completed until April 2012, a full year after the Labor Action Plan went into effect and several months after new labor inspectors were supposed to have been hired and on the job, protecting workers.

The Ministry of Labor has highlighted its work in the palm sector as an example of its achievements under the Labor Action Plan. However, the cases receiving attention in this sector have come primarily as a response to a two-month strike by palm-sector workers and related political pressure. Only after Colombian Vice President Angelino Garzon intervened to negotiate an accord in the presence of international observers did the ministry begin inspections to address the longstanding misuse of cooperatives in this sector—seven months after the Labor Action Plan was signed. Even so, the fines are under appeal and the palm workers report no improvements as a result of the sanctions.[3]

In fact, hundreds have left the community because—contrary to the terms of the negotiated accord—they were barred from their workplaces (in effect, they were fired) in apparent retaliation for their labor action. Others were threatened by paramilitaries and fled to safety. While some plantations have converted their cooperatives into *sociedades por acciones simplificadas* (SASs, simply another form of subcontracting), others continue to operate as they did before the Labor Action Plan. The Ministry of Labor should be inspecting and sanctioning employers for the alleged reprisals against workers (applying Article 200 of the penal code and referring the cases and probative material to the *Fiscalía*). The ministry appears to be largely absent from the region, however. Meanwhile, the strike leaders (union and nonunion alike) have received numerous death threats (see worker stories for additional detail).

On a related note, the AFL-CIO and Colombian counterparts have been working to determine whether Decree 2025 applies to the misuse of all forms of subcontracting that interfere with labor rights, consistent with Article 63 of Law 1429, or only to the misuse of cooperatives and pre-cooperatives so denominated. The Office of the Legal Advisor of the Ministry of Labor twice responded that the law only applies to CTA cooperatives. More recently, the Ministry of Labor issued a third response (dated July 11, 2012) that the AFL-CIO believes fails to resolve the issue. The question of Decree 2025's scope is a critical one because the "renaming" of cooperatives to SASs and other structures, as outlined in the AFL-CIO's October 2011 report, continues; the Ministry of Labor has not yet effectively addressed this renaming. To put an end to this renaming practice and provide comprehensive protection for workers, the AFL-CIO recommends that the government of Colombia issue a new decree to resolve the ambiguities of Decree 2025. Issuing a new decree that extends Decree 2025 to all forms of labor intermediation and subcontracting for core, permanent work will help workers in their efforts to formalize their labor relationships and ensure compliance with the Labor Action Plan.

The *Escuela Nacional Sindical* (ENS)'s analysis confirms our own: "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, *contratos sindicales*, 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."[4,5]

The lack of effective change from cooperatives to direct-hire relationships is perhaps best summed up by Miguel Conde, general secretary of the Puerto Wilches local of SINTRAINAGRO, an agricultural workers union, who stated that due to legal restrictions, intimidation and the rise of the co-ops, "it's now easier to form a guerrilla group than a union."[6]

One Worker's Story
REYNALDO GUILLEN

Reynaldo Guillen is a laborer on a palm oil plantation near the small village of Puente Sogamoso in Magdalena Medio, Santander, Colombia. He has worked on the plantation for more than five years. He is not considered a direct employee, even though his bosses at the plantation tell him what to do, punish him for alleged mistakes and decide if he can work or not. He is subcontracted through a cooperative. As such, he ends up spending about half his monthly pay on the tools he needs to work, his government health care and worker's accident insurance and various fees charged by the cooperative. Reynaldo and his co-workers in the cooperative do not want to be in a cooperative. They are obligated to join a cooperative if they want to work on the plantation.

"The cooperatives aren't real. They are set up by the company," Reynaldo says. "We are forced to work in these cooperatives by the companies. In the cooperatives, we have to pay for everything out of what would have been our salary. The company ends up paying half what they would for employees. And we can't join the union, so we can't ever get better pay or conditions. In the cooperative, if we get hurt, the company doesn't have to deal with us. We can't work, so we're out, and with no possibilities for health care or another job."

Since the palm sector has expanded and taken over most of the area around Puente Sogamoso in recent years, there are few if any other options for work. Thousands of palm workers in the area share Reynaldo's situation. In September 2011, Reynaldo joined a number of other cooperative workers to visit the local agricultural union office, SINTRAINAGRO, to seek help to change their plight. The local union had some months earlier hosted a workshop to teach workers about the recently enacted laws and regulations to prohibit the misuse of cooperatives or any other kind of subcontracting relationship that would interfere with workers' rights.

The new measures SINTRAINAGRO promoted had been announced five months earlier, in April 2011, when President Santos signed the Labor Action Plan with President Obama as part of the process to advance the U.S.-Colombia Free Trade Agreement. The Labor Action Plan, among other things, promised to eliminate the use of sham cooperatives as a means to undermine basic labor rights. The local palm workers' union in Puente Sogamoso began to inform workers of the new legal requirements soon afterward.

On Sept. 22, 2011, Reynaldo and 2,500 other cooperative workers joined with the local union in a mass protest demanding compliance with the new laws and the direct hiring of the thousands of subcontracted palm workers in the area. By the first week of November, more than 4,000 cooperative workers were supporting the action. Strike breakers were bused in to confront the protesting workers and, purportedly at the behest of employers, the national police brought in hundreds of anti-disturbance police to confront the workers and force them back to work. The strikers, however, held their ground, forcing a negotiation that concluded Nov. 11 with the signing of an agreement between workers, employers and the government—with critical mediation provided by Colombian Vice President Angelino Garzon.

The agreement required the Colombian government to promptly begin applying the new laws and regulations eliminating illegal subcontracting through cooperatives. Although the inspections began in November, the process has been slow.

During the weeks of the strike and protests, Reynaldo and other workers reported armed outsiders began to circulate about the community. In November, one of the principal union leaders began to receive threatening calls to his cell phone. In December, several days before Christmas, Reynaldo and other cooperative leaders began to receive cell phone threats as well. Additionally, armed men on motorcycles approached some union and cooperative leaders, telling them to cease all protests and work stoppages. Reynaldo was called several times on his cell phone and warned that if he did not stop fomenting trouble, he would not make it to Christmas alive.

In January 2012, the Ministry of Labor began to levy the first significant fines against palm employers as a result of the inspections conducted in November. The plantation where Reynaldo works received a large fine (which the Ministry of Labor offered to commute if the employer chose to hire the workers directly).[7] Unfortunately, Reynaldo's bosses told the workers they would appeal, and that nothing was going to change in the meantime. Indeed, nothing has changed for the workers, some of whom staged a short work stoppage in the processing plant in March to encourage compliance with the law.

On April 14, Reynaldo was sitting alone in a local café when three men he did not know approached him. One sat down at his table, and the other two positioned themselves on either side, a short distance away. Reynaldo could see they were carrying guns, slightly concealed under their shirts. The man at his table told him in an expletive-filled outburst, "We know you have kids in Barranca. Don't be pig-headed, or something could happen. From now on, keep quiet." The man then ordered three beers. He sat looking at Reynaldo for a few minutes, finished his beer, again admonished Reynaldo to keep quiet, and left, leaving Reynaldo to pay.

"I'll tell you something, if it's going to take another year to end this problem [hiring workers indirectly], there won't be anybody left," Reynaldo explained on May 1, International Workers' Day. Sitting in the thick, afternoon heat outside the union hall in Puente Sogamoso, he went on: "Already a lot of the workers who participated in the protests have left. The leaders are throwing in the towel." Many leaders and activists of the cooperative workers report being blacklisted after the signing of the agreement in the vice president's office in November, despite the inclusion of a condition barring reprisals against workers who participated in the protests. Others received threats, like Reynaldo.

When asked what effect the combination of reprisals and threats has had on the organizing movement, Reynaldo was pensive. "I'm afraid. Some have decided that they can't keep doing this; that they have to think of their families. Many have gone off looking for work in other areas, away from trouble. It's a lot of trouble for simply insisting that they [the employers] comply with the law." While the negotiated settlement that occurred in November likely would not have happened in the absence of the Labor Action Plan, Reynaldo and other Colombian workers still wait for justice and the full protection of the laws. Promises on paper are not enough to change their lives.

THREATS, VIOLENCE AND IMPUNITY

A Continued Need for Strengthened Protection Programs and Effective Criminal Justice

AGUILAS NEGRAS

"BLOQUE ANTISUBVERSIVO DEL MAGDALENA MEDIO"

ORGANIZACION DE CARACTER MILITAR Y ANTISUBVERSIVA

En nombre de nuestra organizacion .." BLOQUE ANTISUBVERSIVC DEL MAGDALENA MEDIO"... nos dirigimos a todos los habitantes de PUENTE SOGAMOSO y sus alrededores, para hacerles saber que seguimos haciendo presencia en esta region y que vamos a reiniciar una campaña de "EXTERMINIO "que nuestro accionar nunca ha desaparecido, que nuestro proposito es permanecer en las regiones donde siempre hemos tenido influencia, hemos llegado nuevamente para quedarnos, somos de largo aliento, para ello continuaremos con nuestra firmeza en recuperar la tranquilidad y sosiego ciudadano y de ese modo no permitiremos el retorno de la GUERRILLA (FARC - ELN)... y los grupos delincuenciales mal llamados .....URABEÑOS. ..RASTROJOS.... BOTALONES.... a esta region .... que hoy en dia, estan liberados de esta nefasta influencia, por eso queremos hacerles saber que nada deben temer aquellos que actuan dentro del marco constitucional y legal. pero tambien sabemos de informaciones recogidas por nuestra organizacion que en PUENTE SOGAMOSO. existen todavia una serie de " personajes " que aun siguen colaborando con nuestros enemigos, ante esto solo nos limitamos a decirles que vayan cavando sus propias ...." FOSAS "..... y alisten sus ... " ATAUDES "..... porque desde este momento los hemos declarado ..... OBJETIVO MILITAR .....

Nidia Caamaño (sapa de la policia - sijin - fiscalia) - Moises Torres (auxiliador de la guerrilla) - Alvaro Ramirez (auxiliador de la guerrilla- urabeños) - Miguel Conde (auxiliador de la guerrilla- urabeños) Pablo Gil (auxiliador de la guerrilla)- Donaldo Pinzon (auxiliador de la guerrilla - urabeños)-Pablo Menco (auxiliador de la guerrilla) - Gregorio Cueto (auxiliador de la guerrilla) - Oneida Gomez (auxiliadora

Murders of trade unionists in Colombia are down from peak levels. While the 30 unionist murders in 2011 are an improvement over 2010's 51 murders, even one murder of a trade unionist is too many. However, even if murders of trade unionists currently are decreasing, other types of intimidation against unionists (including threats, forced disappearances and various forms of assault) appear to be on the upswing. The ITUC reported 480 specific violations of trade unionists' rights to life, freedom and physical integrity in Colombia in 2011.[8] Although most of the violators remain unknown, in about 70 percent of cases in which a perpetrator could be identified, it was a paramilitary group[9]—a clear sign the demilitarization of the paramilitary groups remains a work in progress. Moreover, the ITUC reports the Colombian government is implicated in these violations beyond its failure to ensure workers are safe; brutal police repression has been used to silence workers who exercise their constitutionally guaranteed right to strike.[10]

Moreover, a decrease in trade unionist murders cannot be celebrated when it is accompanied by increased violence against other types of human rights defenders. Unfortunately, the level of safety for human rights defenders deteriorated in 2011 despite efforts by the Santos administration to create a better climate. According to *Somos Defensores* (We are Defenders), the coordinated national and international campaign for Colombian human rights defenders, **every eight days in Colombia in 2011, a human rights defender was killed.**[11] According to *Somos Defensores*, attacks against human rights defenders increased 36 percent in 2011 compared with the previous year.[12] A total of

239 defenders were attacked in 2011, compared with 174 in 2010. Fifty-nine percent of the attacks were threats, 20 percent assassinations, 10 percent arbitrary detentions, 7 percent physical attacks, 3 percent forced disappearances and 1percent other kinds of attacks, including arbitrary use of the legal system to harass defenders.[13] In addition, 13 unionists and human rights defenders have been murdered in the first three months of 2012 alone, according to congressional testimony by Lisa Haugaard of the Latin American Working Group.[14]

Despite the progress made by the new protection unit, the UNP, its charges remain in grave danger. Of the 11 unionists already killed in 2012 for their union activities, Daniel Aguirre, general secretary of SINALCORTEROS, the sugar cane cutters union, is emblematic. On April 27, 2012, Aguirre was on his way home in Florida, Valle del Cauca with his wife when someone (apparently a *sicario*, or hit man) shot him twice in the head. Aguirre was one of the leaders of the sugar cane work stoppage of 2008 and a primary negotiator on behalf of workers. The sugar company where he worked was reportedly the first one to negotiate a change away from the cooperative structure as a result of the Labor Action Plan. Daniel's employer set up a new company with the same owners to hire the cutters. The new company is a direct employer and even signed a real collective bargaining agreement with the union.[15] His death is a major blow to the sugar cane cutters' movement.

As in 2011, other extreme forms of intimidation also continue. Agricultural federation FENSUAGRO union activist Herman Henry Diaz was kidnapped or forcibly disappeared in late April 2012. Representatives from UNITEHERE! and the United Steelworkers (USW) met Diaz as part of a "Justice for Colombia" delegation to Puerto Asis, Putumayo Department, in February 2012. Diaz had been a leading coordinators of a human rights hearing the American delegation attended. At the time of his disappearance, Diaz had been organizing a delegation of 200 activists from the Valle de Guamez municipality, Putumayo Department, to take part in a mass patriotic march in Bogotá. He last was seen in Puerto Vega at 3:30 p.m. on April 18.

On May 12, 2012, several leaders from diverse unions in different parts of the country received the same threat via text message, including: Renet Morales of the SINTRAINAGRO palm oil workers' union local in San Alberto; Jhonsson Torres of the SINALCORTEROS sugar cane cutters' union; Wilson Ferrer of the CUT regional union in Santander state; Jhon Jairo Castro of the Union Portuaria ports union; and the Puente Sogamoso local of SINTRAINAGRO (which received a more general threat on a cell phone belonging to the union). In these five cases, the text messages originated from the same phone number; the messages threatened that activists would be "put to sleep early" and indicated the sender knew the locations of their families. In addition, several leaders of SINTRAINAGRO in the Puente Sogamoso region, including Carlos Daniel Ardila, Miguel Conde, Moises Torres and Pablo Emilio Menco, were named and threatened in pamphlets distributed in their community by a paramilitary group known as the "Black Eagles." So far, only one of the threatened leaders has received protection.

The AFL-CIO joins the International Verification Mission on the Situation of Human Rights Protection in Colombia in emphasizing that a "principal tool for protection and respect for the work carried out by human rights defenders in the country is the effective investigation and punishment of the material and intellectual authors of all crimes, including attacks, aggressions and threats."[16] However, elimination of impunity is a long-term process. For now, as ENS has noted, "impunity continues."[17]

One of the most important steps the Santos administration could take to protect trade unionists and human rights advocates—despite the absence of a requirement to do so in the Labor Action Plan—would be to act swiftly and decisively to capture and dismantle the paramilitary and successor groups that control both the countryside and many urban areas. The Santos administration also should suspend, investigate and prosecute any members of the army and police, as well as any government officials who collaborate with them, who interfere with trade unions as well as worker, indigenous, land rights, Afro-Colombian and other advocates as they engage in work to improve their lives and communities. Given the persistence of threats against unionists from paramilitary and successor groups, such action would have an immediate impact on the safety and security of workers and advocates.

One Worker's Story

CARLOS DANIEL ARDILA

Like Reynaldo Guillen, Carlos Daniel Ardila works on a palm plantation in Puente Sogamoso. As president of the Puente Sogamoso local of the national agricultural workers union, SINTRAINAGRO, he is an even greater target for those who would repress labor rights. He has been a union leader all his working life. As president of the local, Carlos Daniel led the union's initiative to inform the palm workers in the region of the new legal requirements to end sham subcontracting. The union helped organize the protests and strike actions of the subcontracted workers in September and October 2011.

When various rank-and-file leaders of the subcontracted workers began being banned from their workplaces and receiving death threats, Carlos Daniel and the union encouraged them to keep the pressure on the Ministry of Labor to follow through with the inspections process. The workers held several brief protests to press for thorough application of the law and an end to reprisals against workers. The ministry finally sanctioned the first employer in late January. The ministry did nothing about the reprisals and more and more workers who had participated in the protests were earning less or banned from their workplaces entirely. The threats against union leaders and other workers began to increase in both number and harshness.

"I tried to get the *compañeros* (brothers) to go to the *Fiscalía* (prosecutor's office) and report the threats, but they think that will only cause more problems for them. They don't want to put their families in more danger," Carlos Daniel explained. "The Ministry of Labor has announced fines on two companies now, but there has been no move to enforce the fines, and the bosses are telling the workers that they are appealing sanctions, and won't ever pay a cent. The cooperatives will stay, or make some simple little changes on paper."

On April 19, a paramilitary organization known as the Black Eagles dumped hundreds of fliers in Puente Sogamoso. The fliers named community leaders and four of the key union leaders, including Carlos Daniel, as military targets and instructed: "Start digging your graves and preparing your coffins because from this moment on you are military targets." Another union leader received numerous phone calls stating "you're still pestering with the strikes, SOB, you need to shut up, leave the area, or we will go after your children."

"Some 200 subcontracted workers who led and participated in the movement to end the illegal contracting have left the area now, looking for work or peace of mind," lamented Carlos Daniel after a tense May 1 march in Sogamoso. "I'm nervous about my family, like the others. And now, the workers see only that after all the trouble and risk of the protests, they are worse off than before. More and more of the leaders are opting to back off."

There is good reason for Carlos Daniel and the others to fear the threats are real. In Puente Sogamoso, 12 union leaders and activists were murdered between 1996 and 2009. In San Alberto, a region near Puente Sogamoso, more than 100 SINTRAINAGRO union activists have been murdered in the union's history.[18] From 1994 to 2003, six union presidents were assassinated in San Alberto (including in the community of Las Minas). The last one, Juan Gomez of SINTRAINAGRO, Las Minas local, was killed in the midst of a union struggle against the company imposition of subcontracted cooperative workers replacing legal, direct employment.

The new protection unit, the UNP, has since offered protection to only one of the threatened palm-sector workers and union leaders, but the fact that more than 200 workers have left the region (due to blacklisting and threats) demonstrates how much work remains to be done. According to ENS, 34 unionists have been murdered since the announcement of the Labor Action Plan in April 2011. The dangers of declaring premature success of the Labor Action Plan are indeed grave—the lives of Carlos Daniel and tens of thousands of other worker advocates across Colombia weigh in the balance.

COLLECTIVE PACTS

Pactos colectivos are unilateral, employer-imposed contracts used to avoid real collective bargaining and negotiation with workers' representatives. Colombia promised to address the illegal use of this mechanism—a practice that denies workers their fundamental labor rights—in the Labor Action Plan. However, the illegal uses of *pactos colectivos* the AFL-CIO reported in October 2011 remain unresolved. The government of Colombia apparently has concentrated its efforts on creating the protection unit and creating an inspection process for cooperatives instead—as these two Labor Action Plan commitments seem to have progressed further.

Workers tell us no "campaign" to eradicate the misuse of these pacts has been conducted, as promised in the Labor Action Plan. There have been no "preventative inspections" of collective pacts, nor has the government of Colombia "shared" results of said inspections with interested parties, as promised. Such inspections likely would reveal that nearly all collective pacts, as practiced, violate the law.

The AFL-CIO recommends that the Ministry of Labor begin to focus on collective pacts as well as other neglected portions of the Labor Action Plan. Upon reflection, the swift deadlines in the Labor Action Plan may appear to some to have been too ambitious, but Colombia's workers cannot once again pay the price for inadequate resources or insufficient political will. Those whose employers implement collective pacts in order to deny workers their fundamental labor rights deserve immediate redress, not more waiting and hoping.

One Worker's Story

MARIA CRISTINA CADAVID

Maria Cristina Cadavid is the president of the flight attendants union, ACAV. She has worked for the airline Avianca for 18 years. She has been a union leader for the past seven years and was elected president two years ago.

"When I started working for Avianca, just about everybody affiliated to one of the unions in the company, with about 8,000 of the 9,000 employees affiliated and covered by collective bargaining contracts (there were different unions for different sections—ground crew, flight crew, pilots)," Cristina explained.

In 1995, the company began new policies that weakened the unions. One of these policies was the use of "collective pacts," or *pactos colectivos*. Unlike collective bargaining agreements, collective pacts are not negotiated, but unilaterally determined by employers, and typically used to prevent employees from organizing or to undermine existing unions. Under Colombian law, a company cannot implement a collective pact if more than half its employees belong to a union. The Ministry of Labor, however, turned a blind eye. Avianca encouraged flight attendants to sign up to the pact with incentives. "The company called the flight attendants to obligatory meetings where they were told that leaving the union and joining the pact would be better for their families. The pacts gave better benefits than the negotiated agreements. Among other things, a worker would receive an immediate bonus for leaving the union and joining the pact. Home loans were made available for pact members, and a certain number of free airline tickets were given to pact members," Cristina said.

At the same time, the company began to contract new flight attendants on short-term contracts. At the end of their one-year contract, workers who had joined the union were not renewed. The union filed a complaint with the Ministry of Labor against the collective pact in 1995, and the ministry ruled the collective pact was illegal, since a majority of workers were in a union when it was implemented. The company appealed the decision in 1996. In 2008, the high court (Council of State) upheld the ministerial ruling, declared the collective pact illegal and fined the company $7,500. At this point, ACAV had dwindled to about 500 members, of about 1,200 total flight crew employees (down from about 90 percent affiliation to about 42 percent affiliation).

In response to the court rulings, the company changed the name of the collective pact to a "voluntary benefits plan," but otherwise continued as usual. The fine was supposed to have been paid to the government professional training institution, SENA. Instead, the company paid in kind: SENA permitted the company to put the value of the fine to "worker training" for the employees. "We were given workshops on self-improvement or personal growth type stuff, which turned out to have a strong anti-union bias. So, even though the company violated the law by imposing a collective pact with the clear purpose of busting the union, after waiting 13 years to get a definitive ruling, the company maintained the illegal pact, continues to provide better benefits exclusively to those in the pact and was fined an illusory amount of money, which they were then permitted to use to further bust the union," Cristina noted.

The anti-union tactics have had an effect, Cristina continued: "Today, we face the pact and constant anti-union actions from the company. We now have 250 members in the union of about 1,200 workers (21 percent). In the entire company, including ground crew, pilots, etc., there are about 680 union affiliates of a total of about 15,000 workers, or about 4.5 percent, down from about 90 percent 14 years ago, when they started the collective pacts and other anti-union measures. We have several formal complaints before the Ministry of Labor regarding the collective pact and other illegal anti-union actions by the company, but have had no response from the Ministry of Labor."

Despite collective pacts being a "target" of the Labor Action Plan, despite a new law (Article 200) that makes it a crime, punishable by time in prison, to enter "into collective pacts, which provide better conditions to non-unionized workers than the conditions agreed to in collective agreements with unionized workers of the same company," and despite ACAV's efforts to seek help from both the U.S. and Colombian governments, Cristina reports the Labor Action Plan has not led to any improvements regarding collective pacts for the flight attendants she represents.[19]

CONCLUSION

In short, the AFL-CIO concludes the government of Colombia has not fully implemented the Labor Action Plan. As we concluded last October, while limited progress has been made in some areas, many key commitments remain unfulfilled, and workers report *no* noticeable changes in their ability to exercise fundamental labor rights. The advances to date appear largely symbolic. The AFL-CIO found little evidence to conclude that systemic changes are being made in the relevant institutions or that the new measures are being applied in a systematic way. A deeper foundation must be laid if any of the initial changes are to last.

However, we do not think what has not yet been accomplished must always remain out of reach. The Labor Action Plan gave Colombian working families hope—for some, it was the first ray of hope they had experienced in a long time. Failure to accomplish a monumental task does not represent permanent failure. What Colombian workers cannot afford, however, is abandonment of the goal.

We urge the U.S. and Colombian governments to commit the considerable resources and intense political will necessary to make the promised changes come to fruition. The implementation of the U.S.-Colombia Free Trade Agreement must not be the end of the story on Colombian labor rights, but only the beginning. The AFL-CIO, and our labor union and NGO partners, will continue to monitor the situation and provide support, resources and guidance wherever possible. But we cannot do it alone. The U.S. government must ensure the promises it made to benefit Colombian workers are realized.

Endnotes

1 "Colombia is the Most Dangerous Country for Unionists: ITUC," Jet van Dijck, in *Colombia Reports*, June 5, 2012 (http://colombiareports.com/colombia-news/news/24425-colombia-most-dangerous-country-for-unionists.html).

2 A copy of the AFL-CIO's point-by-point evaluation of the Labor Action Plan after six months of implementation can be accessed here: www.aflcio.org/content/download/3149/31576/version/1/file/colombia_laboractionplan10042011.pdf.

3 Many of the initial fines for violations of Decree 2025 were imposed pursuant to inspections (such as those issued in the palm sector in Puerto Wilches) that were performed without written guidance on how to implement Decree 2025. Inspectors used older guidance documents based on prior laws and regulations; sanctioned employers have raised this discrepancy in their appeals. Since these appeals still are outstanding, the delay in creating the guidance document for Decree 2025 may yet prove a serious impediment that results in delayed and denied justice for workers. The AFL-CIO urges the Ministry of Labor to reinspect any and all workplaces that have fines overturned due to improper guidance.

4 "Evaluation of the First Year of Implementation of the Labor Action Plan," *Escuela Nacional Sindical,* April 2012, at 5 (translation provided by the Washington Office on Latin America).

5 In its evaluation of Labor Action Plan implementation, ENS identified *contratos sindicales* as another form of sham subcontracting. In a *contrato sindical*, an employer essentially contracts with a union directly for a given job or work. There have been some positive examples of the use of the *contrato sindical* in Colombia in the past, particularly in the electric sector, but there always have been many bad examples. Unfortunately, in 2010, then-President Alvaro Uribe modified the *contrato sindical* by decree in a way that destroyed their usefulness for workers. A constitutional court ruling in 2011 determined that workers in a union with a *contrato sindical* with a company do not have a labor relationship with *anybody*—neither the company nor the union—and therefore have *no worker rights.* So, while the *contrato sindical* once had potential to be used by unions to good effect, it now serves only as another scheme to deny worker rights. There is now a great risk that *contratos sindicales* will be used as "protection contract" mechanisms. The AFL-CIO will continue to monitor this form of labor relationship.

6 "Meet the New Boss: The Rise of Colombia's Labor Co-ops," John Otis, *The Global Post*, March 1, 2012 (www.globalpost.com/dispatch/news/regions/americas/colombia/120228/meet-the-new-boss?page=full).

7 Mintrabajo sancionó a Oleaginosas Las Brisas de Puerto Wilches, in *Vanguardia.com*, Jan. 28, 2012 (www.vanguardia.com/economia/local/141077-mintrabajo-sanciono-a-oleaginosas-las-brisas-de-puerto-wilches). The Ministry of Labor reported these fines in its publication "Achievements 2011–2012."

8 "ITUC Annual Survey of Violations of Trade Union Rights (2012)," International Trade Union Confederation, June 2012 (http://survey.ituc-csi.org/).

9 *Id.*

10 *Id.*

11 "Informe Somos Defensores 2011," Somos Defensores, March 4, 2012 (www.somosdefensores.org/index.php?option=com_content&view=article&id=105:2011-cada-8-dias-fue-asesinado-un-defensor-de-derechos-humanos-en-colombia-&catid=20:informe-siaddhh-2011&Itemid=11). Note that these figures largely do not overlap with ENS's figures for trade union murders; only three murders appeared on both ENS's and Somos Defensores' 2011 lists. *See also* Report of the International Verification Mission on the Situation of Human Rights Protection in Colombia, Nov. 28 to Dec. 2, 2011 (www.usofficeoncolombia.org/uploads/application-pdf/MissionReport.pdf).

12 "Informe Somos Defensores 2011," *id.*

13 *Id.*

14 "Colombian Human Rights Situation 'Grim' in 2012: NGO," Rosemary Westwood, in *Colombia Reports*, May 18, 2012 (http://colombiareports.com/colombia-news/news/24129-us-committee-hears-plea-for-improved-human-rights-protection-in-colombia.html).

15 The workers have reason for continued concern, however. The initial capitalization of this new company was reportedly only about $10,000. It can apparently dissolve at any time without notice and will lack sufficient assets to pay its obligations to workers if it does so. The Ministry of Labor's vigilance is important in this regard. If the ministry makes clear to employers that sham cooperatives and other sham forms of contracting no longer will be tolerated, the employer is more likely to retain this new employment structure. If instead the ministry signals it is retreating from the Labor Action Plan, the workers likely will pay the price, as the employer will have an incentive to return to its use of cooperatives.

16 "Report of the International Verification Mission," *supra* note 11, at 31.

17 "Evaluation of the First Year of Implementation," *supra* note 4, at 5.

18 What began as only one union, SINTRAINAGRO, has split into two unions, SINTRAINAGRO and SINTRAPALMA.

19 Ironically, while failing to address the continuing illegal use of collective pacts by Avianca, the Ministry of Labor did fine the company for illegal use of cooperatives. *See* "Millonaria sanción a Avianca por contratar con cooperativas," in *ElHeraldo.co*, June 1, 2012 (www.elheraldo.co/local/millonaria-sancion-a-avianca-por-contratar-con-cooperativas-69472) and *Mintrabajo* announcement (www.mintrabajo.gov.co/index.php/medios-julio-2012/716-mintrabajo-abre-otras-1620-investigaciones-laborales.html). However, the AFL-CIO notes this fine applied only to certain units of the company—it is not clear why the investigation failed to include all Avianca employees. The AFL-CIO urges the Ministry of Labor to perform a comprehensive inspection for cooperatives at Avianca and to act decisively regarding Avianca's continued use of collective pacts.

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