

Three Years of Non-Compliance with the Obama-Santos Labor Action Plan

Three years ago, on April 7, 2011, the governments of Colombia and the United States signed an agreement known as the "Labor Action Plan" (LAP) aimed at addressing egregious worker rights violations and overcoming the obstacles for ratifying the free trade agreement by the U.S. Congress.

The LAP proposed positive albeit incomplete measures to improve protection and respect for labor rights. However, from the outset this side agreement lacked the enforcement mechanisms needed to ensure that all of its commitments were fully implemented not only before the trade agreement entered into force but also on a continuing basis. As a result, after the FTA went into force the Colombian government no longer felt pressure to promote sustained and meaningful protection of labor and union rights that Colombian workers have lacked for so long.

The Colombian government seems to have understood the LAP as an agreement without the legal and political tools that would obligate its effective and complete implementation. The Colombian government seems to have viewed the LAP as principally a way to gain approval of the FTA by the United States Congress. The incipient process of reforms of the LAP was not sustained after the FTA was implemented.

Three years after the signing of the LAP and almost two years after the FTA came into force, the macroeconomic damage to Colombia has been profound. In the first full year of the FTA, Colombian exports to the US have fallen by over 15% while imports from the United States grew by nearly the same amount according to official Colombian data. At the same time, the rights of Colombian workers continue to be denied by many employers and ignored by the Colombian state; the LAP did not help contribute to sustainable development or shared prosperity.

Within this disheartening context for workers, we reiterate our rejection of the FTA signed between Colombia and the United States, and express our indignation that this plan, pitched as an effective means of protecting workers' rights, never had sufficient political will to ensure its full and meaningful implementation.

This Labor Action Plan committed the Colombian government to adopting 37 measures to solve problems due to: the weakness of the public institutions responsible for investigating and acting to remedy the situation of nearly seven million workers who lack social protection and labor rights because employers use illegal forms of hiring; the widespread and illegal use of Associated Work Cooperatives (CTA in Spanish); the lack of control over Temporary Service Companies (Empresas de Servicios Temporales or EST) and other forms of illegal subcontracting (SAS, foundations, etc.); the use of collective pacts by companies to undermine unions; massive violations regarding freedom of association for which there have been neither fines nor remedies to provide justice to workers; the absence of a legal definition of essential public services (which affects workers' right to strike); murders of and threats against union leaders; difficulty in accessing protection programs; and impunity for the thousands of crimes committed against union members.

Of the 37 measures that the Colombian government committed to implement, seven have not yet been adopted at all,^[1] and of 30 adopted, several of these can be classified as partial or insufficient. While the newly created Ministry of Labor did hire more labor inspectors, the exact quantity, focus and capacities of those hires remain ambiguous and transparency of the hiring process has been insufficient. Although workers saw improvements in other areas, including the creation of the UNP to provide physical protection schemes and the Context Unit to provide relevant investigations of violence against unionists, delays in the evaluation process and premature removal from protection programs remain and the Context Unit has yet to produce significant results in reducing impunity.

The government cannot claim to have fully complied with the LAP. Not only has it not implemented all of the measures, but those it has implemented have failed to produce sustained and meaningful changes in the reality faced by workers. There are many examples that indicate that the LAP does not solve the problems it intends to remedy while the examples that demonstrate LAP effectiveness are rare. The Colombian labor movement has a positive evaluation of the substantial ILO technical cooperation project of the LAP, however until now this cooperation has not improved the lives of workers. The Colombian labor movement is less optimistic of the eventual impact this will have as long as the aforementioned political will to promote rights in workplaces remains insufficient.

The inadequate implementation of the plan indicates that the Colombian government may have been more interested in earning the approval of the U.S. government and Congress than in reversing the informality, illegal outsourcing, precarious work, anti-union practices, violence against unions and impunity for crimes committed against labor union members. During the last three years, the lack of decent work has not been remedied and in some cases has worsened because the government lacks the political will to adopt and enforce effective policies for transforming the harsh reality of labor and trade unions in Colombia. This lack of effectiveness can be attributed primarily to the following factors:

1. The approval of the FTA by the United States 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.
2. The proposals presented by national labor confederations on complementary policies and measures to improve effectiveness of the LAP were not adequately taken into account; generally, measures were implemented unilaterally by the Colombian government without discussion or negotiation with workers or unions.
3. The measures were adopted without needed changes to the existing legal and political frameworks; the public policies created to address illegal labor relations, illegal subcontracting, violation of freedom of association, impunity, and protection of unionists were poorly conceived and prone to interpretations that led to exceptions and loopholes.
4. Commitment and political will at all levels of government to implement the LAP is insufficient. The state reacts temporarily to pressure exerted by the US government, but has failed to maintain the effort when the spotlight is turned off. Especially after the FTA entered into force, the Ministry of Labor, responsible for leading implementation, appears distant, indifferent, and inoperative in the face of the labor rights violations that workers and their unions suffer daily.
5. While a few employers eliminated cooperatives and engaged in direct hiring or collective bargaining with unions through subsidiaries, most employers have resisted implementing the new measures and have either continued past practices or found new ways to evade labor rights. This is likely due to legal loopholes, lack of clear policy directives, and, above all, the pronounced institutional weaknesses of the State.

Since the Colombian government has so far demonstrated that it lacks sufficient interest to comply with the LAP, it is fundamental today—three years after its signing—that the Colombian government begin by fulfilling in their totality all 37 measures outlined in the LAP. Additionally, as a gesture of serious will to implement a broad policy of protection and guarantees of the rights of Colombian workers, it is necessary that the governments of Colombia and the United States make three immediate commitments:

1. The extension of the monitoring and follow-up consultation process of LAP implementation for another four years.
2. The creation of an independent committee that would be tasked with compliance monitoring of the 37 measures included in the LAP and would be formed by: members of congress of 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 must make a public presentation of a complete analytical report on the implementation of the LAP and submit that to a public discussion and an analysis by the Permanent Commission on Coordination of Wage and Labor Policies (CPCCSL)

Many workers and unions executed organizing plans, legal strategies and proposals to employers and the government based on the expectation that the measures promised in the LAP would be applied. For the most part these unions have found themselves without such protections insofar as judges, prosecutors and labor inspectors almost always refuse to grant the protection that the new legal framework putatively grants.

Finally, due to the effects in Colombia of the Trade Agreement with the United States, as much in terms of the abrupt decline in Colombian exports to the US, and in its negative impacts on industry and agriculture, all of which have caused a deterioration in the quality of work available to Colombians, we believe that the FTA merits a serious review.

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Presidente CUT

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Presidente CTC

The following organizations also support this declaration:

Unión Sindical Obrera (USO)

IndustriALL Global Union- Américas

UNI-Union Network International –Américas

IUF-International Union of Food, Agricultural, Hotel, Restaurant, Catering,
Tobacco and Allied Workers' Associations--Américas

PSI-Public Services International --Américas

Coordinación Colombia-Europa-Estados Unidos

Plataforma Colombiana de Derechos Humanos,

Democracia y Desarrollo-Capítulo Colombia

Alianza de Organizaciones Sociales y Afines

Washington Office on Latin America (WOLA)

Latin America Working Group (LAWG)

International Labor Rights Forum (ILRF)

Trade Union Confederation of the Americas (TUCA)

[1] Improvement of the mediation and conflict resolution system; implementation of a system to prevent the misuse of the temporary service companies; reports on these companies' labor performance; campaign on illegal use of collective pacts, preventive labor inspection concerning illegal use of collective pacts; compilation and dissemination of doctrine and jurisprudence for definition of essential services; analysis of closed cases and agreements made for cases related to anti-union violence still pending investigation; internal plan for the prosecution to push cases where there is evidence, and provisionally close "cold cases" , while simultaneously boosting priority cases.

[2] See report, "Evaluation of compliance with adopted measures of the Labor Action Plan"

[3] See report on the first three years of the LAP, "LAP celebrates its 3rd Anniversary without benefits to workers"