

The U.S.-Colombia Labor Action Plan: Failing on the Ground

A Staff Report on behalf of
U.S. Representatives George Miller and Jim McGovern
to the Congressional Monitoring Group on Labor Rights in Colombia



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EXECUTIVE SUMMARY

Two members of the Congressional Monitoring Group on Labor Rights in Colombia – U.S. Representatives Jim McGovern and George Miller – recently traveled to Colombia and had the opportunity to meet with a wide range of Colombian stakeholders in order to assess the implementation and real-world impact of the U.S.-Colombia Labor Action Plan (LAP) which was signed in April, 2011. This report to the Congressional Monitoring Group on Labor Rights in Colombia (CMG) provides their impressions of the visit and offers recommendations on how to improve the LAP’s implementation.

More than two years ago, as congressional concerns about decades of severe labor rights abuses in Colombia, including a large number of unionist assassinations, had thwarted passage of the U.S.-Colombia Free Trade Agreement (FTA) signed in 2006, the government of Colombia (GOC) agreed to implement the LAP to improve the rights and conditions of workers and labor activists. Pursuant to the LAP, the GOC has undertaken important measures to protect workers’ fundamental rights, such as issuing new regulations to control illegal labor intermediation by associated labor cooperatives (CTAs) and creating the Ministry of Labor to enforce these and other rules. Many government officials, including those at the highest level, are working to implement the LAP and improve working conditions in Colombia. However, even with the best intentions, these officials’ actions do not always translate into political action and changed conditions on the ground in Colombia. Many of the historic promises of increased protections and improved conditions for workers and activists have yet to be realized.

Despite the LAP, murders and threats against union members and harmful subcontracting persist in Colombia largely unabated. At a minimum, 413 threats were documented, and 22 trade unionists were murdered for their union involvement in 2012.¹ On April 1, 2013, the 991st death threat against a member of the labor movement was received since President Juan Manuel Santos became president in June 2011.² Because of the fear of violence or employer retaliation associated with organizing or joining a union and the prevalence of anti-union and anti-worker prejudice, only four percent of Colombian workers are union members.

The failure to successfully prosecute crimes against workers (“impunity”) remains a serious problem. More than 90 percent of cases of violence against trade unionists do not result in conviction.³

After listening to more than 50 testimonies and meeting with workers, union leaders and labor lawyers over several days in Bogota, Buenaventura and Cali during August 2013, U.S. Congressmen George Miller and Jim McGovern found the following:

- **Indirect employment is still pervasive and growing.** While the LAP required the GOC to crack-down on sub-contracting, the practice has simply continued under new names.
- **The inspection system is ineffective and worker protections are weak.** Flagrant labor violations often go unpunished with the GOC failing to collect fines for violations.
- **The right to organize is being denied and a lack of justice prevails.** Retaliation against workers trying to form a union remains common with employers firing workers en masse.

The GOC has fallen woefully short of fulfilling its obligations under the LAP. Many of those who testified before the delegation reported that conditions have worsened since implementation of the U.S.-Colombia FTA. Accordingly, the U.S. Government must re-engage, particularly at the highest level, and make the expansion and enforcement of workers’ rights in Colombia a top priority. To this end, the report includes extensive recommendations for both the Colombian and the U.S. governments that are critical to making the LAP a reality on the ground.

Finally, reports of worsening labor rights conditions in Colombia provide an important lesson when developing trade policy. The fact that the LAP has not resulted in improving working conditions in Colombia merits attention especially in the context of current negotiations for a Trans-Pacific Partnership (TPP) FTA. The TPP includes Vietnam, a country that U.S. government reviews have highlighted as also having significant labor rights problems.

I. PURPOSE AND METHODOLOGY

The purpose of this report is to convey findings and recommendations of U.S. Congressmen George Miller and Jim McGovern – Members of the Congressional Monitoring Group on Labor Rights in Colombia (CMG) – resulting from an August 2013 fact-finding visit to Colombia hosted by the Washington Office of Latin America (WOLA). While in Colombia, the Members had an opportunity to examine compliance with the commitments made under the **2011 U.S.-Colombia Labor Action Plan (LAP)**. This report draws on evidence gathered from civil society organizations such as the Solidarity Center and National Labor School (*Escuela Nacional Sindical-ENS*) and employer organizations; discussions with government officials in both the United States and Colombia; and in particular, testimonies of workers, union leaders and labor lawyers collected over several days in Bogota, Cali and Buenaventura in August 2013. This report is not a technical or exhaustive analysis of the LAP with respect to all 37 commitments but serves as a snapshot of the LAP implementation as of August 2013.⁴ Representatives Miller and McGovern submit this report to their colleagues in the CMG to help discern a path forward to more meaningful and robust compliance with the LAP by the Colombian government with appropriate assistance from the U.S. Government.⁵ The Representatives also hope that the information provided is useful to the development of FTA Labor Chapter provisions and ensure that upcoming FTAs can improve labor conditions.

II. BACKGROUND

The Colombia-U.S. Free Trade Agreement (FTA) was signed in November 2006 under then-President George W. Bush. However, progress towards implementation of the agreement stalled due to serious concerns about violence against trade unionists and the failure to prosecute those responsible. In the last two decades, more than 2,800 Colombian trade unionists have been assassinated with near total impunity.⁶ Almost five years later, on April 7, 2011, Presidents Barack Obama and Juan Manuel Santos launched the Labor Action Plan (LAP) between Colombia and the United States, as a separate government-to-government agreement, developed in parallel with the US-Colombia FTA. The LAP promised improved worker rights while paving the way for a vote on the long-pending FTA. The LAP was intended to provide a road map for Colombia, with the assistance of the U.S. government, to protect internationally recognized labor rights, prevent violence against labor leaders, and prosecute the perpetrators of such violence.

In the summer of 2011, six Members of the U.S. Congress urged President Obama to include language in the implementing legislation for the Colombia trade agreement that required certification of compliance with the Labor Action Plan, a quantifiable reduction in the level of violence and improved prosecution of criminal and labor law violations before the agreement could come into effect. On July 19, 2011, the Members wrote: "To assure Colombia will be a fair trading partner which honors worker rights, we believe you should wait to see if the Labor Action Plan is being implemented as promised, and if conditions for working families in Colombia actually improve. It would be an enormous mistake to reward intentions rather than results."⁷

On October 12, 2011, however, when Congress finally passed the Colombian Free Trade Agreement by a vote of 262 to 167 in the House and 66 to 33 in the Senate, it did so without any conditions to reach benchmarks for measuring Colombian implementation of the Labor Action Plan or quantifying results on the ground. President Obama said of the passage of the FTA: "Tonight's vote, with bipartisan support, will significantly boost exports that bear the proud label 'Made in America,' support tens of thousands of good-paying American jobs and protect labor rights, the environment and intellectual property."

In his statement, Colombian President Juan Manuel Santos called the ratification of the agreement, “an historic day for Colombian and U.S. relations, an historic day for Colombia’s role in the world, and an historic day for the businessmen and workers of Colombia.”⁸ On October 21, 2011, President Obama signed the trade agreement into law.⁹



President Barack Obama Signs the U.S.-Colombia Labor Action Plan on October 21, 2011

Soon thereafter, Democratic Leader Nancy Pelosi and seven Members of Congress established a Congressional Monitoring Group on Labor Rights in Colombia to ensure that both the U.S. and Colombian governments continued to make progress on labor rights. This group continues to monitor the situation in Colombia.

By April 15, 2012, just one year after the Labor Action Plan was announced; the U.S. government certified that the Colombian Government had taken the necessary steps to comply with the Labor Action Plan, allowing both sides to put the U.S.-Colombia FTA into effect on May 15, 2012.

While President Obama called the trade deal a “win” for both nations and referred to strong protections in the accord for labor and the environment as “commitments that we are going to fulfill,”¹⁰ his statement acknowledged that the Colombian government had yet to realize many of the reforms needed to safeguard labor rights for Colombians.

Among the actions listed by the United States Trade Representative (USTR) as being required to fully implement the LAP were that the Colombian government:

1. Obtained legislation creating a separate Labor Ministry to improve institutional capability to protect labor rights.
2. Obtained legislation to institute criminal penalties, such as imprisonment, for employers who undercut the right of workers to organize and bargain collectively or threaten workers who exercise their labor rights.
3. Fast-tracked the effective date from July 2013 to June 2011 of new legal provisions, including significant fines that prohibit and sanction the misuse of cooperatives and other employment relationships that undermine workers’ rights by creating shell intermediaries that prevent workers from having a direct contract with their actual employer.
4. Issued regulations that implement these new legal provisions on cooperatives and other employment relationships, including significant fines for companies that violate these laws.
5. Began hiring 100 additional labor inspectors and budgeted for the hiring of 100 more labor inspectors in 2012, as part of a commitment to double the labor inspectorate by hiring 480 new labor inspectors over the next four years.¹¹

Without a doubt, these legislative, regulatory, and resource changes were critical to building an institutional framework to improve worker conditions through direct contracts and meaningful labor protections. The establishment of the Ministry of Labor and the expansion of its reach with an emphasis on enforcement through increased inspections were positive developments. During the first year of the LAP, there was reason to hope that the ability of workers to exercise their basic rights would advance.

However, on August 19, 2013, a little more than a year after the U.S.-Colombia FTA came into effect, Colombian farmers took to the streets and went on strike, joined by miners, truckers, public health care workers, students and others. The reasons for the strike given by many included: high fuel prices, expensive agrichemicals, government neglect of rural areas, and the free trade agreement with the United States.¹² The protest against the free trade agreement, once hailed by some as a victory for workers, called into question how far Colombia had come under the LAP in improving workers' rights.

In the midst of this labor strife and social upheaval, on August 25, 2013, Congressmen Miller and McGovern arrived in Colombia to evaluate the implementation of the Labor Action Plan and assess its results for Colombia's workers. They found the reality on the ground to have fallen significantly short of the promises of the LAP.

Law 1429:

Passed in 2010 by the Colombian Congress, Law 1429, or the "Law on Formalization and Generation of Employment," seeks to address the abuse of labor intermediaries. Article 63 of the law stipulates that user-employers must directly employ workers to perform "permanent core functions" of the employer and establishes significant fines of up to \$1.4 million U.S. dollars for violations. Significantly, Article 63 does not just apply to cooperative labor structures (CTAs), but also to other types of labor relationships that violate workers constitutional or labor rights. This law took effect on April 26, 2011.

"Republic of Colombia Labor Rights Report," United States Department of Labor, September 2011. Accessed October 1, 2013
http://www.dol.gov/ilab/media/reports/usfta/colombia_LRR.pdf.

III. FINDINGS

In Colombia, there are 22 million people who work to support themselves and their families, but fewer than 8 million have contracts, pensions or other indicators of formal employment with full labor protections. The remaining 14 million workers lack the most basic labor rights, such as the right to organize.¹³ President Obama was the first U.S. president to shine a spotlight on violence targeting trade unions and other longstanding and pervasive abuses of labor rights in Colombia. When he announced the Labor Action Plan to tackle these abuses, however, many human rights experts and other longtime observers of Colombia raised serious questions about whether the plan would result in actual protection of workers' rights.

Some believed and hoped that the Labor Action Plan provided a road map for Colombia, with the assistance of the United States, to protect internationally recognized labor rights, prevent violence against labor leaders and prosecute the perpetrators of such violence.

Indeed, during the August 2013 visit, the Members heard from many Colombians with an optimistic attitude toward a brighter economic future. However, many workers still face significant obstacles to improve their economic security. Workers from all sectors expressed deep frustrations with increased labor strife in the workplace since passage of the U.S.-Colombia FTA, failed or nonexistent enforcement of the right to organize and bargain collectively and continued death threats. Among other things, testimony during the visit demonstrated that:

The following sentiment by a representative from ENS best summarizes the testimonies presented. "We were very excited about the Labor Action Plan because it meant that labor rights were going to be a priority and hot topic at all social levels. But our enthusiasm has begun to wane. Today we are very pessimistic because we believe that the government is engaged in a public relations campaign and nothing else."

- Indirect employment is still pervasive and growing;
- The inspection system is ineffective and worker protections are weak;
- The right to organize is denied and a lack of justice prevails.

A. Indirect employment is still pervasive and growing.

The Ministry of Labor is not successfully guaranteeing the rights of workers consistent with the requirements laid out in the LAP. Both the Colombian and U.S. Governments proclaim that the commitments of the Labor Action Plan have been accomplished. Yet, this is not what was seen on the ground. For example, while the LAP as implemented by Decree 2025 banned third-party agencies and ended the process of subcontracting through cooperatives (CTA), as of 2012, there were still 2,890 CTAs in operation.¹⁴ CTAs function as if workers are self-employed, so that the companies that hire them need not abide by labor law.

At the same time, temporary agencies and new indirect hiring arrangements, accomplishing the same goal of CTAs of preventing workers from having a direct relationship with their employer and full labor rights, have multiplied.

Law 1610

Law 1610 was enacted in 2013 in response to employers continued use of intermediation. Because Decree 2025's scope is limited to workers in cooperatives, many employers simply renamed their intermediary relationships with employees. Passed in 2013, Law 1610 increases sanctions and institutes a shortened timetable to expedite the investigation of complaints. However, the effectiveness of the law remains to be seen. Previous attempts at compelling employers to enter direct employment relationships has been largely unsuccessful with a 28% rise in temporary service companies and 723 "contratos sindicales" signed in the last year, indicating an increase in the number of workers in insecure working arrangements.

"Rule of Law and Labour Rights in Colombia : Submission to the 8th Meeting of the Regulatory Policy Committee April 22-23 & The 47th Session of the Public Governance Committee April 25-26, 2013, Trade Union Advisory Committee to the Organisation for Economic Cooperation and Development. Paris, France, April 22, 2013.

Many workers discussed the proliferation of "contratos sindicales" – arrangements where as few as three individuals can constitute a union. These so-called union contracts (*contratos sindicales*), called phony union contracts by some, are employment agreements that bear little resemblance to what is typically considered a union. In these situations, the "union" is charged with providing labor to a company, rather than representing workers. In many cases, the companies themselves do not have employees; instead, they negotiate with the phony unions over wage and working conditions, while the unions directly contract the workers. This setup further eliminates the possibility of direct negotiation between management and labor as the phony unions are no longer required to have the approval of their affiliated workers to sign a contract with the company.¹⁵

Social security, health, and pension payments are required by law in Colombia. Under a phony union contract, it is the "union", rather than the company that pays the employer's contribution.

According to a briefing by ENS and workers' testimonies, this form of labor arrangement simply provides another way for cooperatives effectively to continue. In 2009, there were only three "contratos sindicales" in existence. In 2012, more than 400 of these new entities were created.

Decree 2025

*On June 8, 2011, the Colombian government promulgated Decree 2025 as part of its commitment under the Labor Action Plan to issue regulations on the implementation of Law 1429. Despite the broad prohibitions against intermediary worker institutions in Article 63 of Law 1429, Decree 2025 narrowed Article 63's scope to only cover cooperatives or CTAs. This restriction in jurisdiction compromises the ability of Article 63 to protect workers from employers' use of other intermediary structures, which prevent workers from accessing their labor rights. A 2012 [report](#) from the AFL-CIO documents employers' efforts to categorize cooperatives as other intermediary structures, such as *Sociedades por Acciones Simplificadas (SAS or simplified joint stock companies)* or *contrato sindicales* among others.*

José Luciano Sanín Vásquez, "This Action Plan Related to Labor Rights A New Frustration: Evaluation of the First Six Month Since the Implementation of the Action Plan Related to Labor Rights Between the Governments of Colombia and United States," Escuela Nacional

Workers included in these arrangements are not entitled to receive a steady salary, health care or pension payments.¹⁶ In the health sector, for example, the proliferation of “*contratos sindicales*” has weakened workers’ rights. These contracts deny workers the right to bargain collectively since they are basically forced to present the list of demands to themselves rather than to the employers. Even more dangerous to workers is the fact the Colombian government touts this development as an example of openness to unions, when instead these “*contratos sindicales*” provide no meaningful rights to unionize.

In addition to CTAs and “*contratos sindicales*,” the number of Simplified Stock Companies (SAS) is increasing in Colombia. According to the Colombian Federation of Chambers of Commerce (COMFECAMARAS), in 2012 there existed 64,421, an 11.6 percent increase from 2011 when 57,710 were in existence.¹⁷ SASs are alleged stockholder associations that oddly ban workers from owning stock. These organizations seem to function similarly to cooperatives, actively denying the right to direct contracts and relegating employees to temporary employment. On a number of occasions, the Members heard how companies declared that they had nearly no direct employees because their workers had been successfully handed to subcontractors, SASs or other third party entities.

Similarly, a fairly recent initiative by the Colombian government to help workers enter into direct contracts called “formalization agreements” raised more questions than answers during the visit. As several union leaders explained, the employer and the Ministry of Labor negotiate the formalization agreements as a legal mechanism to directly hire workers previously employed in abusive third-party arrangements. Although the goal of establishing such a process sounds promising, agreements are being reached that provide for the hiring of workers through third-party contracting mechanisms, like SASs, rather than directly and permanently.

One salient example mentioned was the case of Avianca, the airline company, which announced a formalization agreement with great fanfare earlier this year. According to the Solidarity Center, out of 6,494 full time workers, 3,473 had been subcontracted through service cooperatives. Of those, only 1,184 were formalized under this agreement between Avianca and the GOC receiving one-year contracts.

Workers were not consulted on the terms of the contracts, and some have been fired since the announcement. It is not clear what action, if any, the Ministry of Labor is pursuing to continue the process and formalize the remaining 2,289 illegally subcontracted workers not included in the original agreement.

In addition, Members received reports describing how Avianca workers found the new contracts imposed by the company to be inadequate in a variety of ways. This testimony underscored the difference between a “formalization agreement,” in which worker concerns are not incorporated, and the right of workers to bargain collectively, not solely on the duration of a direct contract, but on issues related to health care, injury compensation, workplace safety and other worker priorities.

Another important example recently highlighted by the Solidarity Center is the case of *Palmas Oleaginosas Bucarelia* in the palm sector. The Bucarelia palm plantation was one of the first companies to be inspected and fined for illegal labor intermediation, with fines totaling approximately \$9 million. The inspections process began as part of a settlement reached with the company following a labor dispute as the union, SINTRAINAGRO, attempted to press for formalization of workers and compliance with the new labor laws. (Bucarelia has approximately 600 subcontracted workers hired through nine CTA cooperatives.) However, in July 2013, Bucarelia signed a formalization accord without the input of the SINTRAINAGRO union and did not share the details of the formalization plan with any union representatives. A copy of the accord shows that a SAS will be created and will hire 45 workers directly, with 12 workers on permanent, “indefinite term” contracts and the remainder under short-term contracts. Forty percent of the formalized workers are new workers that had no previous relation to the company. The accord was signed directly by the Vice Minister of Labor, Jose Noe Rios. In the end, formalization agreements authorized by the Colombian government appear to cover only a select number of workers instead of all workers affected by the agreement. Furthermore, one of the most troubling factors regarding formalization agreements is the lack of transparency surrounding the policy itself. The Ministry of Labor touts labor formalization as government policy and as its top priority, with more than 15,700 workers benefitting from it.¹⁸

However, workers subject to these agreements do not have access to the contracts that supposedly cover them. Civil society organizations, labor unions and even the U.S. Department of Labor have not had access to these agreements. Union representatives and labor advocates told the Members that once a 'formalization agreement' is in place, attempts to organize a union are even more difficult if not impossible because the employer has determined that the employee/employer relationship is defined under a contract – a contract that is sanctioned by the Colombian government.

Minister of Labor Rafael Pardo told the Members during the August 2013 visit that the Ministry could provide a copy of a formalization contract for the Members to review, that these agreements are public documents, and that they would soon be on the Ministry website. The Members asked that copies of the formalization agreement be sent to the U.S. Department of Labor as Minister Pardo had previously promised; and that the Members receive the name of the contact person within the Labor Ministry who Colombian workers could contact for copies of the agreements and for the website address. The Members have not yet received this information.

B. The inspection system is ineffective and worker protections are weak.

A critical provision of the LAP was the implementation of a robust enforcement regime for labor rights through increased inspections and the imposition of fines. According to Colombian government officials, 100 new inspector positions were created. Currently, there are 624 labor and social security inspector positions. With additional hires scheduled for 2014, the goal is to reach a total of 904 inspectors.¹⁹ However, the Members were told that many of the inspectors had been hired outside a normal civil service application process, calling into question their credentials. In addition, Members also heard complaints from labor union representatives that when inspectors do find violations, there is no effective procedure for prosecuting the violations.

According to a Ministry of Labor report for 2012, Decree 2025, which outlawed the use of cooperatives and indirect employment practices, led to only eight investigations during the entire year. Meanwhile, inspections have not produced a single conviction for a violation of the freedom of association since 2011 when this legislation was passed.²⁰

According to ENS, at the same time that the Labor Ministry claimed to have increased the number of inspectors, site visits and settlements on inspections have decreased. While there were 644 site visits in 2011, there were 548 in 2012. Settlements – “*conciliaciones*” – had also decreased from 72,805 in 2011 to 70,563 in 2012.²¹

It is also difficult, even for those on the ground monitoring the inspection system like ENS, to assess the quality of inspections. ENS staff told the delegation about their concerns with the lack of follow through from inspectors in sharing the information they collect from site visits with their supervisors; and the absence of meaningful public information generated by the inspectors regarding the number of violations with respect to intermediary labor arrangements and freedom of association. ENS made clear that there is a dearth of public information on the inspection system that makes it challenging to assess its efficiency.

Moreover, workers and labor advocates also explained that many employers refuse to allow inspectors to enter their worksites for preventive visits. The lack of visits is especially troubling among the 2890 CTAs, where there were only 49 preventive inspections. Temporary service agencies also saw a troubling low number of preventive inspections – a mere 34 among the 578 agencies were inspected.²²

Regarding the assessment of fines, it became clear that the inspection system has been rendered ineffective. While the government is proud to announce that more than 139 billion pesos in fines (approximately 73 million U.S. dollars) have been imposed on employers, the imposed fines have yet to be collected. Minister Pardo told the delegation that the mechanism for the collection of fines was unfortunately not under his jurisdiction. The Colombian Congress established “*Servicio Nacional de Aprendizaje*” (SENA), an agency charged with professional and vocational education and training, as the beneficiary and “collector” of fines levied against companies that violate basic labor rights. Yet, according to Minister Pardo, SENA is not collecting the imposed fines to date.

Both Solidarity Center and ENS staff said that non-collection of fines gravely undermines the credibility of the new Colombia laws and the intent of the LAP. There is no record of any company transitioning to direct, permanent hiring relationships with employees because of fines assessed. One specific case that the Congressional Monitoring Group has closely monitored since 2011 is the situation of workers in the palm oil plantations in the Puerto Wilches area of Santander. Large scale fines were levied against 10 plantation owners for violating basic labor rights; yet not one penny has been collected. Meanwhile, more than 200 labor leaders have had to flee the area either from threats of violence or due to blacklists, effectively breaking the unions.

Staff at the U.S. Embassy confirmed that the biggest obstacle to successful implementation of the LAP was the failure to collect fines. Significant and enforced economic sanctions for labor rights violations would serve as the wake-up call that business-as-usual has ended and help develop a culture of respect for labor rights among Colombian employers. In sum, the failure of the Ministry of Labor to collect the already-imposed fines seriously undermines the effectiveness of the LAP.

Associated Work Cooperatives

Under Colombia law, workers can come together to form self-governed and independent enterprises called Associated Work Cooperatives, or Cooperativas de Trabajo Asociado (CTAs). Historically, employers have co-opted CTAs to avoid entering into direct employment relationships with workers while maintaining a de facto employer relationship and engaging in banned practices, such as controlling workers' schedules and determining conditions of employment. Workers in CTAs are classified as owners and thus exempt from many protections in the Labor Code. Moreover, workers are prohibited from unionizing and engaging in collective bargaining to improve their conditions. Prior to 2010, the laws governing CTAs were enforced against the CTA itself and not the de facto employer rendering this arrangement extremely attractive to employers.

"Republic of Colombia Labor Rights Report," United States Department of Labor, September 2011. Accessed October 1, 2013
http://www.dol.gov/ilab/media/reports/usfta/colombia_LRR.pdf.

C. The right to organize is denied and a lack of justice prevails.

Only four percent of workers in Colombia belong to a union, largely due to anti-union violence and fear of reprisals from employers.²³ But according to an ENS briefing during the visit, one positive aspect of the LAP implementation is an explicit decrease in killings of trade unionists. In 2013, 11 workers have been killed to date. In 2012, 22 were killed.²⁴ At the same time, however, violence against labor leaders continues in other modes, with threats, assaults, and disappearances reportedly on the rise.

Earlier this year, Juan Carlos Pérez Muñoz, labor activist and organizer of Sintrainagro La Cabaña, was murdered. Juan Carlos had recently affiliated with the labor union Sintrainagro, organizing his fellow workers from La Cabaña sugar mill in Colombia's La Cauca region. Many of the workers, including the union's executive board, were fired as management refused to renew the workers' contracts.²⁵

Death threats continue to be levied against union leaders and workers attempting to organize. ENS registered 760 threats thus far in 2013. It is not clear who is behind each threat, though paramilitary groups under new names such as *Bacrim* are often presumed to be responsible. While the number of threats against union members and activists is still high, ENS tracking for the current year does not reflect an increase (See tables 1-3). ENS representatives were quick to point out, however, that anti-union violence tends to be cyclical; and in the last few years there have been lulls and peaks. As a result, Colombia may be in one of those lulls. It is difficult to affirm whether the country is in a permanent new phase of reduced levels of violence. ENS representatives also reported, however, that threats now include death threats against family members – a new modality of intimidation. In fact, workers and those affiliated with representing workers reported to the Members that they felt a heightened insecurity and a sense that death threats had increased since the FTA was implemented.

Solidarity Center's staff summed up the impact of the LAP as follows: "This whole framework of new laws was to improve the situation of workers. But no doubt that they are worst off - they are black listed, scapegoated for lost business, cooperatives continue, abuses increased - they end up of owing money in some cases. Unions are more discredited than ever."

The National Protection Unit (NPU) is one government entity trying to safeguard workers and labor activists from continued threats and violence. Representative McGovern met with National Protection Unit (NPU) Director Andres Villamizar, who impressed Representative McGovern with his understanding of the challenges faced by workers trying to organize and the need to offer them protection. Director Villamizar said that the NPU is now protecting 619 labor leaders and activists at a cost of about 25 percent of his budget because the protection measures needed are more robust than in past years. His budget has increased to \$100 million this year as a result.

However, trade unionists pointed out that protection for labor activists is also subcontracted, which explains partly why they experience so many delays and difficulties with their security schemes. For example, according to these unionists, it is common for delays in the disbursement of funds to pay for the gasoline utilized by the cars assigned to them by the NPU, and, when the cars need repairs, the response is often inadequate.

In addition to implementation problems, trade unionists noted that the protection schemes given to unions often do not fully cover the protection needs of the union. For example, in the case of CUT Valle, one security scheme has been assigned for four directors. This means that each person is only guaranteed protection for one week per month. The delays in implementation and gaps that exist with the protection measures increase the likelihood that trade unionists and labor activists will be harmed. Improvements are required to guarantee that the schemes that are in place function rapidly and effectively.

Threats and killings of labor activists take place within the larger context of increasing threats and murders of human rights defenders. Representatives Miller and McGovern were surprised when they left their meeting with human rights defenders at the offices of the Inter-Ecclesial Commission of Justice and Peace (CIJP) in Bogotá and found a procession of armored cars. Every participant at this human rights meeting was faced with the necessity of having protection measures due to death threats, assassination attempts and intimidation due to their work. According to the “We are Defenders” (*Somos Defensores*), 37 human rights defenders were murdered in the first six months of 2013 and 153 attacks against defenders were recorded during this period.

Impunity is the area in which there has been the least progress, a frustration echoed by NPU Director Villamizar. Since 1986, ENS has registered 12,910 death threats and 2,941 killings. Yet, according to the Attorney General's office, there have only been 598 sentences; 1,539 inquiries; 223 investigations and 186 in judicial proceedings. Killings have a level of impunity of 93.4 percent, while death threats have an astonishing impunity level of 99.9 percent.²⁶

Although there is a new unit in the Attorney General's office in charge of these investigations, there is significant turnover in this agency, which impedes progress. The Attorney General's office has been criticized for processing each case individually, which hinders the ability to draw important connections between cases and move them collectively where appropriate. When the LAP began, the investigation unit judges received training, but there has been no follow up in the past year. The newly established Unit of Analysis and Context is now bringing together cases that appear related to one another, but it has yet to demonstrate an impact on prosecution of former or current murders of labor activists.

Unions and labor activists noted that there is also lack of progress in the investigation by the Attorney General's office into death threats. One trade unionist noted that "there are cases where the trade unionist is murdered before the Attorney General's office even responds regarding the death threat investigations."

Arranged with the assistance of Senator Alexander Lopez Maya, the Members heard testimonies during hearings in both Cali and Bogota from well over 50 union representatives from all around the country representing a wide variety of sectors.²⁷ These workers testified about the serious challenges they face when trying to form a union, the many forms of third-party-contracting models that robbed them of direct relationship with the employer and the right to organize, the experience of being under constant death threats and other forms of intimidation of union leaders.

In case after case, regardless of the sector, the workers testified to the lack of enforcement by the government. And even though the reform of Article 200 of the penal code was supposed to punish violations of the right to organize and collectively bargain with time in prison, the Members were told that the government has failed to take meaningful action in this respect. These workers urged the Members to communicate to the Santos Administration the need to stop the privatization of the public sector; respect and honor the right to collective bargaining and association; put an end to subcontracting; and respect their work. The Members received more than 1,000 pages in testimonies detailing hundreds of situations where violations have occurred and a lack of justice prevails.

The Members also met with ASOTRECOL, a group of injured workers who were fired from GM subsidiary Colmotores. The workers have been camped in front of the U.S. Embassy in Bogota for more than two years in protest of their firing, which the group and international observers assert was because of the injuries they sustained at the Colmotores factory outside Bogota.



Reps. Jim McGovern (D-MA) and George Miller (D-CA) meet with workers of ASOTRECOL who have been on strike for more than two years.

Finally, the Members also met with workers representing unions that had successfully bargained directly with their employers and reached an agreement, specifically in the public employee sector at the federal level. These workers were less interested in describing their road to success than outlining their concerns about a deteriorating landscape for Colombian workers overall, including for other public sector employees at the municipal and departmental levels.

Table 1. Violations to life, liberty and personal integrity against trade unionists in Colombia, from January 1st to September 30th, 2013

Type of Violation	2013	
	N° Cases	%
Threats	121	71.6
Forced Displacement	-	-
Assassinations	11	6.5
Harassment	13	7.7
Attempt with or without damage or injuries	11	6.5
Arrest (Unlawful Restraint)	11	6.5
Disappearances	-	-
Kidnap	-	-
Torture	-	-
Forced Entry	2	1.2
Total	169	100.0

Source: Information System of Human Rights, SINDERH, ENS.

Table 2. Violations to life, liberty and personal integrity against trade unionists in Colombia, from January 1st to December 31st, 2012

Type of Violation	2012	
	N° Cases	%
Threats	437	68.9
Forced Displacement	90	14.2
Assassinations	22	3.5
Harassment	49	7.7
Attempt with or without damage or injuries	7	1.1
Arrest (Unlawful Restraint)	20	3.2
Disappearances	5	0.8
Kidnap	0	0.0
Torture	2	0.3
Forced Entry	2	0.3
Total	634	100.0

Source: Information System of Human Rights, SINDERH, ENS.

Table 3. Violations to life, liberty and personal integrity against trade unionists in Colombia, from January 1st to December 31st, 2011

Type of Violence	2011	
	N° Cases	%
Threats	542	75.2
Forced Displacement	51	7.1
Assassinations	30	4.2
Harassment	61	8.4
Attempt with or without damage or injuries	12	1.7
Arrest (Unlawful Restraint)	16	2.2
Disappearances	3	0.4
Kidnap	3	0.4
Torture	2	0.3
Forced Entry	1	0.1
Total	721	100.0

Source: Information System of Human Rights, SINDERH, ENS.

IV. CASE STUDIES

A. Colombian Sugar Cane Workers Continue to Face Challenges When Organizing For Change

Sugar Cane Workers in Colombia have long endured low wages and benefits and other poor working conditions. When they have attempted to speak out, they have faced threats of violence and actual violence. These threats and violent acts are often alleged to be planned and carried out at the direction of employers. According to Colombia's Office of the Attorney General, the San Carlos sugar mill has long had ties to paramilitary groups under the guise of "security agreements." For example, the former San Carlos sugar mill Security Chief, Ramiro Rengifo, was recently charged with the murder of a trade unionist.²⁸ The same mill fired more than 300 workers in 2009 allegedly for union activity; the case remains unresolved.

In the city of Cali, the Members met with sugar cane cutters in the neighborhood of *Primavera y Nueva Independencia* at the entrance of Guacarí. These workers were employed by the sugar mill La Manuelita. The meeting occurred at 5:00 a.m. before the workers took buses to work the fields. Workers were tense during the meeting. The buses awaited them, and, if they were not on them for departure, the workers would likely get fired that day. The simple act of standing with the visiting Members was an enormous act of courage. Many of the workers talked of extremely poor working conditions, excessively long hours, and rampant intimidation when trying to form a union. They made clear that the implementation of the LAP had not produced positive results for them. If anything, their working conditions had worsened and their job security had grown more tenuous. Their wives also came, some holding children, "to stand in solidarity with the men," they said.



Reps. Miller and McGovern meet with sugar cane cutters in Cali

The experience of the workers of La Manuelita is not unusual. Sugar cane workers that have tried to organize over the last decade have met many of the same barriers faced by workers in other industries. Employers and other stakeholders have used security guards, Colombian police and even criminal organizations to stop sugar cane workers from organizing meetings, protests and strikes.

During the trip, Representative Miller met with Asocaña – the trade association representing the sugar industry. During the meeting they insisted that 80 percent of sugar cane cutters belonged to unions; 7,374 of 9,189 workers. But as we sought clarification on the types of unions across the industry, it became clear that some companies are employing sugarcane cutters through outsourcing methods such as SASs or phony unions – “contratos sindicales”. It was intriguing that the representatives of Asocaña spoke of these hiring mechanisms as direct, even if workers were not able to negotiate with the management of the sugar mill. It was emblematic of the double-speak surrounding labor/management issues.

Sugar cane companies have a record of retaliating against their workers who attempt to organize by firing them, forcing them into owner-vetted associations that pose as unions and forcing them to disaffiliate from unions that they disapprove of. Even when workers and employers come to agreements, employers have neglected the terms and are not held accountable by authorities. In failing to enforce labor laws and protections, the Colombian government has neglected vulnerable sugar cane workers, leaving them on their own.

B. Buenaventura and Port Workers

Representative McGovern visited the port city of Buenaventura. This port is essential to Colombia's commerce as it is where 60 percent of imports and exports leave and enter the country. It is an area where Colombia's long-standing internal armed conflict is rampant and illegal armed groups are vying for control of narco-trafficking routes to the Pacific, gold mining operations, port activities and waterways.

While the Revolutionary Armed Forces of Colombia (FARC) guerillas are in the rural areas of Buenaventura, three illegal post paramilitary demobilization groups or re-grouped paramilitaries (*La Empresa, Los Urabeños and Los Rastrojos*) are engaged in a violent battle for control of the neighborhoods in the port areas. These groups utilize brutal terror tactics to exert control and dominate the population. The Member and his staff were told about the use of chainsaws to dismember persons in broad daylight or in "torture houses" where residents can hear the screams. Among the victims were a large number of women who were first raped or sexually tortured before being killed in a sadistic manner and their body parts displayed publicly to set an example to others. Local groups estimate that at least eight Afro-Colombian women have been assassinated in this fashion in 2013 alone. This situation unfolds in areas where the public and security armed forces (police and military) are either present or very close by.

While Buenaventura is a strategic hub for international commerce, the riches of this growing global economy fomented by the U.S.-Colombia FTA mainly pass through Buenaventura and do not integrate or benefit the local Afro-Colombian population. State institutions have historically neglected Buenaventura and the existing institutions suffer from a high grade of corruption and acquiescence with illegal armed groups making the judicial and other systems inoperative.

Sixty-three percent of Buenaventura's residents who are Afro-Colombian live under the poverty line, and unemployment is 64 percent.²⁹ Buenaventura is both an expulsion and receptor site of internally displaced persons. According to United Nations High Commissioner for Refugees (UNHCR) an estimated 9,000 persons became internally displaced in 11 massive displacements in Buenaventura. In 2013, four displacements totaling some 1,600 persons have taken place thus far. Displacement is caused by combat between the groups, threats to communities and their leaders and homicides. Those with whom the Members spoke noted that intra-urban displacement is a serious issue with two massive displacements taking place in 2013, which alone affected 736 persons. Forced recruitment of youths by the illegal armed groups is commonplace and a major concern.



Rep. Jim McGovern (D-MA) meets with activists from the Black Communities Process (PCN) in Buenaventura.

It is within this context that port workers and their communities live. The lack of social investment by the port companies in the communities is evident, as well as the blatant racism by employers of Afro-Colombian workers. Impoverished communities, mostly persons displaced from other parts of the Colombia's Pacific coastal regions, living in the area of Bajamar where the port expansion is taking place to accommodate increased trade under the FTA, are under tremendous pressure through coercion, violence and other means to leave the area. Representative McGovern visited neighborhoods whereby the locals' houses are literally falling apart due to the economic activity by companies like TCBUEN and where residents are unable to sleep at night due to the noise pollution generated by around-the-clock operations. He also met with impoverished Afro-Colombian fishermen who can no longer go out to sea to fish and feed their families because persons associated with the companies will shoot at them if they see them in their traditional wooden canoes. Those who dare to fish in the area surrounding the port find dangerously polluted waters, as coal and other harmful substances are spilled into the port.

The labor rights situation for the port workers remains dire. Despite the LAP's attention to this sector by the Ministry of Labor, which levied sanctions against the port companies, the working conditions of workers and disrespect for union activity have not changed.

Subcontracting remains the norm and workers who try to organize are threatened or fired. The salary of a port worker in Buenaventura for a month is the equivalent of what a U.S. port worker makes in a day. Afro-Colombian workers are forced to work extended hours, between 12-13 hours per day without additional remuneration. Racism against Afro-Colombian port workers is such that many are passed up for promotions and never advance beyond the lowest rung jobs. It is common practice for workers to sleep in shipping containers since there does not exist adequate infrastructure for the workers. Safety equipment is very limited and many suffer crippling injuries that go minimally or entirely uncovered by workers' compensation. Given that most Afro-Colombian families are large and that the port worker may be the only person employed—and as such can be supporting 6-10 other people—the lack of fair wages and other basic standards has broad ramifications for the community.

Workers who have put in 13 to 15 years of service and retire are only given the equivalent of 50 weeks of pension benefits because they are subcontracted employees. If they could unionize, they would have adequate protections that prevent such practices from taking place. As a result, some 1,500 retired port workers who have dedicated their lives to this work have no real means to sustain themselves. Some are even forced to beg on the streets of Buenaventura in order to eat.

C. The Afro-Colombian Labor Council

In the city of Cali, Congressman Miller met with the Afro-Colombian Labor Council, founded by a group of 570 labor advocates in the palm oil, sugar cane, domestic work, port, and public service sectors, Afro-Colombian community advocates, and professors and students in an effort to promote racial inclusion in organized labor and in the country of Colombia.³⁰ The Afro-Colombian Labor Union includes representatives from the three largest trade union federations: the Unitary Workers Center, Central Única de Trabajadores (CUT); the Workers' Confederation of Colombia, Confederación de Trabajadores de Colombia (CTC); and the General Workers Federation, Confederación General del Trabajo (CGT).

These advocates testified to the barriers facing workers in Colombia, especially those of Afro-Colombian descent who face racial discrimination in addition to being systematically prevented for accessing their rights as workers.

In the meeting, the Afro-Colombian Labor Council explained that many Afro-Colombians are not union members. Traditionally Afro-Colombians were employed in the informal sector or in labor cooperatives, which are not unionized. For example, Colombian ports are principally staffed by workers of Afro-descent. Seventy-five percent of workers in this industry have malleable non-labor contracts, which leave workers without bargaining rights and open to abuse by employers.

Additionally, black workers involved in sugar cane industries, ports, and mining do not belong to unions because of the persecution of union members in Colombia by corporations and the inaction of government. As one member of the Afro-Colombian Labor Council put it, “the Government continues to make war on unions.”³¹ The Afro-Colombian community suffers disproportionately from forced displacement because of threats against labor organizers within their community.

Discrimination against this community is rampant and not discussed in Colombia. This group’s labor rights are frequently violated with 65 percent of Afro-Colombians employed in the informal sector and 29 percent employed in the formal sector making less than the minimum wage.³² The Afro-Colombian community is also disproportionately poor – representing more than 75 percent of Colombia’s poor even though they only make up 25 percent of the population.³³ This discrimination is reflected in the low-quality of employment for Colombians of Afro-descent despite the community’s educational attainment.³⁴ The Afro-Colombian Labor Council seeks to address these injustices and bring attention to the discrimination that Colombians of Afro-descent face.

Established in 2013 with the support of the *Escuela Nacional Sindical* (ENS), *Corporación Carabantú*, and the Solidarity Center, the Union of Domestic Service Workers (*Unión de Trabajadoras del Servicio Domestico* or USTRASD) is the first union established exclusively by Afro-descendent women and builds on the work of the Afro-Colombian Labor Council established a year earlier. The USTRASD combats both racism and gender discrimination. Colombia has a staggering gender gap in workforce participation with 8.5 million of the 18.2 million working age women employed in contrast to 12 million of working age men employed.³⁵

USTRASD also contends with the added challenge of organizing domestic workers who are notoriously susceptible to abuse in the workplace. Ninety percent of Domestic Workers in Colombia are Afro – Colombian,³⁶ and an in depth survey administered by ENS and *Corporación Carabantú* of female domestic workers in Medellin revealed that a quarter of respondents were victims of forced displacement and almost 98 percent were single heads of household with children.

Additionally, 85 percent of those surveyed did not have written work contracts and most were not paid the minimum wage or overtime, and more than half of the women who responded said they had experienced racial discrimination in the workplace.³⁷ In our meeting with the Afro-Colombian Labor Council, members of the council reported that discrimination against Afro-Colombians is so intense, that those of Afro-descent are not hired to work in hotels, even to clean rooms.³⁸

Despite the discrimination and institutional barriers Afro-Colombians face, the Afro-Colombian Labor Union and USTRASD continue to press for the inclusion of Afro-Colombians in the labor force and in the country. USTRASD reported that they have been trying to strengthen their relationship with the Labor Ministry so the Santos Administration can better address discrimination in the context of labor rights.

However, they complain that the Ministry is unwilling to follow through on its commitments. Instead, the Afro-Colombian Labor Council has reported that the government has disseminated false statistics and that mistreatment in the workplace continues with people working 15 days without a break and without compensation, leading one member of the Afro-Colombian Labor council to state, “the Minister of Labor does not care about the Labor Action Plan.” The Afro-Colombian Labor Union also reported a lack of concern about child labor in the mining and sugar industries. They said that children as young as 8 years old are working in the mines and that in areas such as Choco, where artisan mining is prevalent, children are going to work instead of to school. The Afro-Colombian Labor Council expressed frustration that “public policy has changed to help investors but the promised reforms for workers have yet to arrive.”³⁹

V. BEYOND THE LAP: Displacement and Discrimination against the Afro-Colombian Community

Representative McGovern visited the AguaBlanca District, the largest Afro-Colombian displaced community in the Cali area. There he and his staff met with displaced leaders representing different internally displaced people (IDP) organizations that form part of the National Association for Displaced Afro-Colombians (*la Asociación Nacional de Afrodescendientes Desplazados AFRODES*). Almost all who spoke stated that they had lost a close family member to violence and the conflict and that in many cases that person was a child or youth. The Member and his staff were told that the security situation of displaced leaders and their families remains grave and almost all the AFRODES leaders are subjected to constant death threats and intimidations.

The leaders noted that security incidents are not investigated and that the authorities do little to protect their lives. One leader explained that she had to move four times in the last year just to protect her life and that of her child. Illegal armed groups that operate in the District were attempting to forcibly recruit her child into their ranks. The lack of effective action on the part of the Colombian authorities to protect the Afro-Colombian population in this area is compounded by allegations that collusion between members of the illegal armed groups and police leads to inaction by the local authorities.

Discrimination towards this population was very evident. They live in a marginalized state of extreme poverty due to the combination of being displaced, Afro-descendant, and in many cases, single women heads of households. The authorities' neglect of this population is evidenced by the lack of implementation of public policies with a differentiated ethnic focus. The plans, programs and projects that seek to improve the welfare of Afro-Colombian communities do not provide for access to sufficient water, electricity or basic infrastructure. Most displaced persons live in precarious houses made out of scrap board. In areas denominated as red zones, or shantytowns, the lack of employment opportunities generates obstacles for persons to be able to live in dignity and maintain a basic standard of living for themselves and their families.

On December 1, 2012, Miller Angulo Rivera, a well-known IDP leader in Tumaco (Nariño department) was murdered. Since then, members of AFRODES have continued to suffer attacks at the national and regional level due to their work in defense of Afro-Colombian displaced persons' rights including physical assaults, kidnapping attempts, intimidation and cyber-attacks. Presently, more than 100 activists of AFRODES are under death threat. Last year, after protests and U.S. pressure, the NPU met with AFRODES to develop a plan that could individually and collectively protect AFRODES leaders. The NPU and AFRODES proposed six pilot projects to identify the collective risks faced by leaders in February 2013 and according to WOLA until now no collective protection measures have been adopted for members of AFRODES.



Rep. Jim McGovern (D-MA) with members of AFRODES Community Leaders in Aguablanca

In sum, AFRODES does not have collective measures in place to address their security risks and threats, while attacks against the leaders persist. In May 2013, Erlendy Cuero Bravo, Vice President of AFRODES with whom Representative McGovern met, was forced to abandon her home in Cali to save her life after being subject to persecution and death threats. In September 2013, Diego Balanta, another AFRODES leader in Cali, was attacked after months of persecution and threats. Luckily he escaped with his life. However, he was forced to abandon his home. Balanta had solicited measures from the NPU months prior and his risk characterized as ordinary therefore his protection petition denied.

VI. CONCLUSION & RECOMMENDATIONS

The members of the delegation conclude that the Government of Colombia is woefully falling short of compliance with the Labor Action Plan, and in many cases, these shortfalls have made working conditions for workers worse than before it came into effect. As in the case of Avianca, alleged improvements did not guarantee labor rights for all company workers. While the government points to an 82 percent decrease in killings of trade unionists compared with previous years, 11 individuals have been murdered in 2013 and death threats continue. Impunity is still a huge and unaddressed problem. Internationally recognized labor rights are not protected. And in the absence of an effective enforcement system and lax accountability, new forms of indirect hiring and phony unions are proliferating.

Although the government has signed formalizations agreements with the goal of securing direct contracts for workers, workers and worker organizations have not been consulted. These agreements appear to benefit a small number of workers within a company instead of all workers; and fail to guarantee worker participation in the formulation of the agreements and the resulting employment contracts. Finally, the Members were deeply concerned with the lack of transparency surrounding these agreements.

While the GOC touts the assessment of fines for labor violations as an accomplishment, the failure to collect those fines undermines any progress. Without the collection of assessed fines, employers continue to evade old and new laws. Many of the assessed fines have been appealed by sanctioned employers and none of the companies, whether in the sugar, port or other sectors, have transitioned to direct, permanent hiring; let alone recognize the right of their workers to organize and collectively bargain.

In addition, improvement in labor rights cannot take place in isolation. In the case of Valle del Cauca the dynamics of the internal armed conflict and narco-trafficking and their effects on the local population in the form of violence, displacement, forced recruitment and barbaric acts against persons living in areas where commercial activity is taking place cannot be ignored. The discrimination and violence taking place against Afro-Colombians in Buenaventura must be addressed.

Complementary to enforcement of the LAP, the U.S. and Colombian governments must devise a plan to address the consequences of the port expansion, as well as the conflict dynamics and social issues that are adversely affecting the populations and their leaders where this commercial activity is taking place.

RECOMMENDATIONS

Government of Colombia

The government of Colombia, with the assistance of the United States, must comply with the letter and spirit of the LAP. While legislative and resource benchmarks are met, full implementation of the LAP must result in measurable change on the ground in Colombia, affording actual respect for the labor and human rights promised to workers. Accordingly, the Members recommend the following:

- A. Strengthen the inspection system by not only expanding the capacity to assess the fines through trained inspectors, but prioritizing the collection of fines. Perhaps this would be the most significant step the government could take to change employer behavior with respect to workers' rights.
- B. Publicly disclose formalization agreements and allow worker consultation in their formulation. The formalization agreements must not provide for the hiring of workers through third-party contracting mechanisms, like SASs, and they must fulfill the promised goal of establishing direct, permanent employment with employers. They must also explicitly ensure the right of workers to associate, organize, and bargain collectively with the company should workers choose to do so following the signing of a formalization agreement with the Ministry of Labor.

- C. Set realistic and quantifiable goals to evaluate progress and make them and the results public to stakeholders such as worker organizations, civil service societies, and the public at large. Such goals should be set for the following areas: 1) reducing violence and threats of violence against trade unionists; 2) completing investigations and prosecutions of cases of anti-union violence, including threats, attacks and assassinations; 3) reducing contractual employment relationships that curtail worker rights such as cooperatives, SASs, phony unions and others.
- D. Work with U.S. Government authorities in consultation with the Afro-Colombian Labor Council to develop a plan that specifically addresses racial discrimination and the specific concerns of Afro-Colombian workers in the port, sugar, oil palm, mining and other sectors.
- E. Colombia's Attorney General's office must fully investigate and bring to justice the perpetrators of violence in Buenaventura and District of Aguablanca in Cali. In full consultation with community leaders and NGOs, the public security forces should combat the illegal armed groups operating in these areas and provide locals with protection from the barbaric acts taking place. Corruption between members of the police and illegal armed groups requires action from the Colombian Government. Death threats against trade unionists, human rights defenders and Afro-Colombian leaders should be investigated and victimizers brought to justice. USAID should assist the Colombian government with developing a program that addresses forced recruitment of youth by illegal armed groups (paramilitaries, guerillas and criminal gangs) and provides educational opportunities and skills training to youths in Buenaventura and the District of Aguablanca. Amongst those targeted for such programs should be IDPs and the children of displaced persons.
- F. The National Protection Unit must act to address the gaps that exist in its protection mechanisms for trade unionists, labor activists, human rights defenders and Afro-Colombian leaders. In the case of AFRODES it should proceed with the collective protection mechanisms and immediately address the inconsistencies in the individual protection mechanisms.

Government of the United States

The U.S. Government has to make the expansion of labor and worker rights in Colombia a top priority. While U.S. agencies have provided on-going monitoring and assistance to Colombia to strengthen institutions and capacity in the area of labor rights, an emphasis on labor rights has been absent from public communications at the highest levels of the Obama Administration, especially over the past year as conditions on the ground have begun to deteriorate.

The Administration promised the U.S. Congress, the American people, U.S. and Colombian labor organizations, along with other human rights defenders in both countries that the LAP would lead directly to Colombian workers being able to exercise their rights to form unions and bargain collectively, free from the threat of violence and death. The Members believe this promise will not be fulfilled unless swift action is taken in the following ways:

- A. The Obama Administration, including at the very highest levels, should make public statements in favor of labor rights in Colombia and the value of organized labor to a modern democracy and economic prosperity. Such statements should also encourage that progress in implementing the LAP should be reflected in concrete change and improvements on the ground in workers' rights and working conditions. Administration officials at all levels who travel to Colombia, along with U.S. Embassy officials based in Bogota, should ensure that public and private communications with their Colombian counterparts continue to emphasize the importance of labor rights as a priority in U.S.-Colombian relations.

- B. The Administration should undertake its own independent investigations, review and analysis of the status of labor rights in the priority sectors outlined in the Labor Action Plan in order to determine first-hand whether and how workers in those sectors are able to freely exercise their basic rights, including the right to associate, organize a union and bargain collectively with the company where they work, without the obstruction of third-party “employers” or other intermediaries. The International Labor Affairs Bureau within the U.S. Department of Labor (ILAB/DOL) has been most effectively engaged in monitoring and capacity-building with both the Colombian government and Colombian workers, and it is most uniquely qualified to carry out such on-the-ground, sector by sector, investigative reports. These reports should be made public and disseminated in the U.S. and Colombia.
- C. The U.S. Trade Representative along with the Departments of Commerce, Labor, State, Treasury and all other relevant agencies, should jointly prepare policies and practices that ensure that U.S. companies and investment in Colombia respect fully internationally recognized labor rights, standards and law and reflect the very best practices in labor-management relations. The U.S. private sector already has a significant presence in Colombia, and this participation is anticipated to increase. U.S. private and public sector presence in Colombia, including subsidiaries, should serve as models of respect for the rights of workers and trade unions and the guarantee of decent wages, benefits and a safe and secure workplace.
- D. The Administration should continue its financial assistance to and official support of the Medellín-based National Labor School (*Escuela Nacional Sindical/ENS*) and the Colombia-based offices and missions of the International Labor Organization (ILO) and the U.S. Solidarity Center. Their expertise, independent analyses and efforts to promote and protect labor rights in Colombia are indispensable in the effort to advance the rights of workers inside Colombia.

E. Before asking Congress to approve another trade agreement, such as the TPP, which poses similar labor and human rights issues, the Administration must first demonstrate concrete and effective improvements in workers' rights on the ground in Colombia under the LAP. Moreover, given the lessons learned in Colombia about the difficulty of ensuring improved labor rights once a FTA has been signed into law, it is imperative that the Obama Administration obtain strengthened labor standards and protections in the proposed TPP before the agreement is completed. Finally, the Administration must work to include a binding agreement with Vietnam – and other TPP countries with weak labor protections – that condition their participation in the TPP with respect to measurable labor rights' improvement on the ground.

Appendix 1

Itinerary of Members of the Congressional Monitoring Group

Sunday, August 25: Bogotá

August 25-30 WOLA-sponsored Fact-Finding Visit to Colombia

Accompanied by Rep. Jim McGovern (D-MA) and Rep. George Miller (D-CA)

Our group examined the current situation of labor rights, human rights, and prospects for a peaceful resolution of Colombia's conflict. Of particular interest was compliance with the commitments made in the 2011 U.S.-Colombia Labor Action Plan, which was agreed in the framework of the Free Trade Agreement approved that year.

We spent a half-day in Bogotá receiving general overviews of the human rights situation, a day in Cali meeting with labor and community leaders, a day in the Pacific port of Buenaventura meeting with labor and community leaders, then two days in Bogotá: one largely devoted to nongovernmental and labor leaders, and one largely devoted to U.S. and Colombian government officials.

Travelers:

- Adam Isacson (Senior Associate, WOLA)
- Gimena Sanchez Garzoli (Senior Associate, WOLA)
- Rep. James McGovern
- Rep. George Miller
- Cindy Buhl, Office of Rep. McGovern
- Leticia Mederos, Committee on Education and Workforce Democrats
- For some meetings: Sandra Hernandez, Editorial Board, *Los Angeles Times*
- For some meetings: Andrea Aquilla, Economic Officer in the Economic Section of the U.S. Embassy in Colombia
- For Colombian government meetings: Alfonso Cuéllar, Deputy Chief of Mission, Embassy of Colombia to Washington

Sunday, August 25: Bogotá

Cindy Buhl, Adam Isacson, Jim McGovern, Letty Mederos, and Gimena Sanchez

★ **3:00-5:30 Rhett Doumitt, AFL-CIO Solidarity Center, and Valkyrie Hanson, ILO Colombia.**

★ **6:00-7:30 Todd Howland, director, UN High Commissioner for Human Rights Field Office in Colombia, and colleagues.**

★ **8:00-9:30 Guillermo Correa, Director General, National Labor School**

Monday, August 26: Cali

★ **11:00-2:00 Meeting and lunch with Cali union leaders and fired workers collectives (SINTRACATORCE, SUBDIRECTIVA SAN CARLOS, SINTRACIHOBÍ, SINTRAHOSPICLINICAS, SINDICATO DEL PSIQUIATRICO, SINTRALLOREDA, SINTRAERT, SINTRAMASIVO, SINTRAMERCATEL (TRABAJADORES CLARO), SINTRAEMDES CARTAGO, SINTRAEMCALI and SINTRAICOLLANTAS.**

Cindy Buhl, Adam Isacson, Jim McGovern

★ **2:30-4:30 Internally displaced leaders in Aguablanca.**

Erlendy Cuero Bravo, Vice President, AFRODES

Letty Mederos, George Miller, Gimena Sanchez

★ **2:30-4:30 Afro-Colombian Labor Council.**

★ **5:00-6:30 Human rights, victims', indigenous and Afro-Colombian groups.** *Berenice Celeyta, President, NOMADESC*

★ **7:00-8:30 Dinner with Senator Alexánder López Maya.**

Tuesday, August 27: Buenaventura or Cali

Tuesday, August 27: Buenaventura or Cali

★ **4:30-5:45 Sugarcane workers.**

Cindy Buhl, Jim McGovern, Gimena Sanchez

★ **6:00-9:30 Drive to Buenaventura.**

Accompanied/briefed by Berenice Celeyta of NOMADESC, Alberto Bejarano, Chief of Staff to Sen. López Maya, Marta Giraldo of MOVICE, Vladimir Angulo of PCN, Diego Luis Balanta of AFRODES and Moira Birss as PBI escort, Feliciano Valencia of ACIN.

★ **9:30-11:00 Civil society leaders.**

Pastoral Afro-Colombiana

★ **11:00-12:00 Tour of Barrio San Jose of Bajamar neighborhood.**

★ **12:30-2:30 Lunch with Unión Portuaria Port Workers.**

Adam Isacson, Letty Mederos, George Miller

★ **1:00-2:00 Sugar cane association (ASOCAÑA).**

★ **3:00-4:00 *El País* Newspaper.**

Wednesday, August 28: Bogotá

★ **7:30-9:00 Breakfast with leaders of principal unions.**

Rosa Elena Flérez, Secretaria General, and one more (CTC); Luis Alejandro Pedraza (CUT).

★ **9:30-10:00 Press gaggle/conference at Colombia's Congress.**

★ **10:00-2:00 Union members from several sectors.**

Salón de la Constitución, Congress of Colombia.

Adam Isacson and Cindy Buhl

★ **1:00-2:15 Lunch with International Committee for the Red Cross.**

★ **3:00-4:30 Workers who have successfully negotiated contracts.**

Cindy Buhl, Adam Isacson, Jim McGovern

★ **5:00-6:00 Catholic Church Pastoral Social.**

★ **7:30-9:30 Dinner with foreign (mostly U.S. and U.K.) journalists residing in Bogotá.**

Thursday, August 29: Bogotá

★ **7:30-8:30 Breakfast with leaders of principal human rights groups.**

Yessika Hoyos, CCAJAR, Danilo Rueda, ICJP, Marco Romero, CODHES, Gustavo Gallon, CCJ, Ivan Cepeda, Alberto Yepes, Coordinación Colombia Europa-USA.

★ **10:00-11:30 Viceminister of Interior for Political Participation** *Aníbal Fernández de Soto, and Human Rights Director María Paulina Riveros.*

★ **12:00-1:30 U.S. Embassy.**

Chargé d'affaires Benjamin Zipf, political section chief Drew Blakeney, USAID mission chief Peter Natiello.

Cindy Buhl, Jim McGovern, Gimena Sanchez

★ **2:00-3:00 Andrés Villamizar, director of National Protection Unit, Interior Ministry.**

★ **4:00-5:30 Prosecutor-General Eduardo Montealegre, units of Context and Human Rights.**

★ **5:30-6:30 Coffee with members of Colombian government Historical Memory Commission.** *Hotel*

★ **7:00-8:30 Dinner with Labor Minister Rafael Pardo.**

★ **About 9:00-About 11:00 Drinks with colleagues.**

Home of Kimberly Stanton and Rafael Barrios

Friday, August 30: Bogotá

Return Home

Appendix 2

Participants in the union meeting in Cali, Colombia August 26, 2013

Patricia Bedoya, President of the SENA Union

Javier Mora - President of the Union of Claro Telecommunications Workers (Sintramercatel)

John Jairo Medina - President of the Mass Transit Union (Sintramasivo)

Regis Danilo Cordoba - President of the Union of Michellin Workers (Sintraicollantas)

Oscar Mauricio Soto Barbosa – Vice President of Sintraert

Unnamed person - Sintraemdes union

Omar Cedano - Presidente of the Sugar Cane Cutters Union (Sintracatorce)

Alexander Carrillo - President of the Tulua Directorate of Sintracatorce.

Hector Ivan Granada – Vice President of the Sintrahospiclinica union

Jose Milciades Sanches- President of Sintraunicol union

Ana Ruth Sanchez – Representative of the Sintracihobi union

Jorge Ivan Velez - Presidente of the Cali Public Sector Union (Sintraemcali)

Patricia Molina – Cali representative of the Alternate Democratic Pole Party

Alexander Lopez Maya – Senator of the Alternate Democratic Pole party

Aydee Casilimas Ruiz – Central Workers Union (CUT) in Cauca Valley

Appendix 3

Union Members from Several Sectors Testified at Salon de la Constitucion, Congress of Colombia August 28, 2013

- 1. USO – UNION SINDICAL OBRERA.** Caso de REFICAR y la operación petrolera en el Meta, Pacific Rubiales y Ecopetrol. Presidente: Rodolfo Vecino.
- 2. SINTRAMIENERGETICA.** Caso de la operación de mina y Puerto de Drummond en el Cesar y Magdalena. Presidente: Luis Enrique Morales.
- 3. ASOCIACION DE ENFERMOS DE DRUMMOND.** Caso de los enfermos de la operación minera de la transnacional Drummond en Mina y Puerto, en el corredor minero Cesar y Magdalena. Presidente: Aníbal Pérez Parra.
- 4. SINTRACABRON.** Caso de los trabajadores en la mina del Cerrejón, en la Guajira. Vicepresidente: Orlando Cuello.
- 5. SINTRAIMAGRA.** Sindicato Nacional de Trabajadores de la Industria de Productos Grasos y Alimenticios. El caso de la palma de aceite en el departamento del Meta. Presidente: Héctor Augusto Romero Riveros.
- 6. INTERSINDICAL AGROINDUSTRIAL Y ALIMENTARIO.** Caso de la palma aceitera en el Magdalena Medio. Coordinador: Pablo Elías Vargas.
- 7. ANTHOC.** Sindicato Nacional de Trabajadores de Clínicas y Hospitales de Colombia. Presidente: Héctor Alirio Alvis Gaviria.
- 8. ASMEDAS ANTIOQUIA.** Asociación Medica Sindical Colombiana, Seccional de Antioquia. Presidente: German Enrique Reyes Forero.
- 9. UNION SINDICAL COMFENALCO.** Caso de los trabajadores de las Cajas de Compensación Familiar. Presidente: Fernando Escobar.
- 10. SINTRAIME.** Sindicato Nacional de Trabajadores de la Industria Metalmeccánica, Mecánica, Metalúrgica, Ferroviaria. Javier E. Martínez Cabello.
- 11. SINTRABIOFILM.** Sindicatos de la Industria de los Petroquímicos en el Parque Industrial de El Mamonal, Cartagena. Presidente: Daniel Tercero Polo Lidueña.
- 12. SINALTRAINAL.** Sindicato de trabajadores de la Industria de los Alimentos. Presidente: Luis Javier Correa Suarez.
- 13. SINTRATAC.** Sindicato de Trabajadores del Transporte Aéreo. Caso de la tercerización laboral en la operación de AVIANCA TACA. Jesús Rincón.
- 14. ASOTRAINCOC.** Asociación de Trabajadores de la Industria de Gaseosas. Caso de Coca Cola FEMSA en las plantas de producción de Fontibón, Bogotá. Olga Lucia Gómez.
- 15. ASCOTRACOL.** Asociación Sindical de Conductores y Trabajadores del Transporte Terrestre de Colombia. Presidente: Urbano Ripoll Padilla.
- 16. SINTRAMETAL.** Presidente: Jose Manuel Arteta Tejera.

17. **SINTRALITOPLAS.** Sindicato de Trabajadores y Empleados de Flexografía y Plásticos. Presidente: Roger Daza Martínez.
18. **MADRES COMUNITARIAS, SUSTITUTAS, FAMI Y HOGARES INFANTILES.** Ediviges Campo, Madre Comunitaria.
19. **SINDENOR.** Sindicato de Enfermería de Norte de Santander, Presidente Alexis Fernando Martínez.
20. **SINTRAISS.** Presidente Alberto Pardo Barrios.
21. **ULTRAFLORES.** Unión Nacional de Trabajadores de las Flores. Caso de la tercerización laboral en la industria de las Flores en la Sabana de Bogotá. Katherine Álvarez Castillo, Asesora Legal.

Appendix 4

Contracting Situation of the Sugar Cane Cutters of the Cauca River Valley⁴⁰

Company	With Convention	Without Direct Contract	With Direct Contract	SAS Contractor	Affiliated to Sintrainagro	Affiliated to Sintrainal	Affiliated to Sintracatorce
INCAUCA	1700	0	1700	0	1500	0	0
PROVIDENCIA	795	0	795	0	641	45 ¹	0
PICHICHI	620	0	620	0	260	0	340
CASTILLA	900	0	0	0	600	0	0
MANUELITA	700	0	700	0	0	0	120 ²
SAN CARLOS	0	0	400	0	0	0	0
MAYAGUEZ	500	0	700	0	0	0	0
LA CABAÑA	150	1150	150	1150	560 ³	0	0
CARMELITA	100	300	100	300	0	0	0
RISARALDA	0	820	0	820	450 ⁴	0	0
RIOPAILA	0	900	0	900	0	0	0
MARIA LUISA	0	180	0	180	24 ⁵	0	0
TOTAL	4465	3350	5165	3350	4035	45	460

NOTE: There is a margin of error of 5% in these numbers. The union affiliation numbers are unofficial figures.

NOTES:

- 1.- Submitted list of demands and in conversations with the company.
 - 2.- Negotiating the petition and have an arbitration tribunal.
 - 3.- Presented a list of demands. Company refused to negotiate; instead fired the union's executive board and 80 workers.
 - 4.- They presented a formal complaint and started negotiating with contractors (SAS)
 - 5.- Had just formed the union when of its affiliates including members of the board were fired
- It should be noted that the part which says "direct contract" are in fact harvesting companies that are subsidiaries of the parent company. These subsidiaries were created to hire the cutters and were an initiative of the companies. They were not bound by the ministry of labor and have not yet defined in the sugar sector which is core permanent functions, neither for the sugarcane cutters nor for other activities.

- It is also clear that there are not 11,000 formalized workers
- It would be helpful for Minister of Labor Rafael Pardo to clarify the issue of the fired sugarcane cutters and union leaders of the La Cabana and Maria Luisa Millsand that he look into the death of fellow Sintrainagro leader Juan Carlos Pérez Muñoz.

Appendix 5

Buenaventura District Ombudsman (Personeria Distrital de Buenaventura)

STATISTICS ON MISSING PEOPLE 2013-09-13

Source: Information System Network on Disappeared Persons and Cadavers (*Sistema de Información Red de Desaparecidos y Cadáveres, SIRDEC*)

MISSING PEOPLE STATISTICS Period 01/01/2013 to 29/08/2013	
TOTAL REPORTED	87
TOTAL FACTS (Incidents) 2013	36
APPEARING ALIVE	4
APPEARING DEAD	1
STILL MISSING	31
WOMEN	3
MEN	33

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- ² Washington Office on Latin America (WOLA), "A Dismal Anniversary: U.S.-Colombia Labor Action Plan Still Lacking Implementation Two Years Later." April 10, 2013. Accessed at: http://www.wola.org/commentary/a_dismal_anniversary.
- ³ Escuela Nacional Sindical, Revista Agosto 2013. A Dos Años del Plan de Acción Laboral. Pages 3, 30.
- ⁴ For more detailed analyses and comprehensive reviews of the LAP – both positive and negative – please see:
<http://www.usleap.org/files/ENS%20April%202012%20LAP%20Chart%20Analysis%20English.pdf>;
AFL-CIO: [The Colombian Labor Action Plan Related to Labor Rights: The View Through Workers Eyes](#) (July 2012);
<http://www.usleap.org/files/GOC%20Achievements%20on%20LAP%202011-2012.pdf>;
<http://www.usleap.org/files/Comparative%20Assessment%20of%20Labor%20Action%20Plan%20Compliance%20Year%20One.pdf>.
- ⁵ Also see appendix number one for trip's itinerary.
- ⁶ Escuela Nacional Sindical, Revista Agosto 2013. A Dos Años del Plan de Acción Laboral. Page 3.
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- ¹⁵ Escuela Nacional Sindical, Personal interview, October 21, 2013.
- ¹⁶ Escuela Nacional Sindical, Revista Agosto 2013, A Dos Años del Plan de Acción Laboral. Page 3.
- ¹⁷ Creación de empresas aumentó 11,6 por ciento en 2012, Portafolio, January 9, 2013. Accessed at <http://www.portafolio.co/negocios/creacion-empresas-aumento-2012>.
- ¹⁸ Letter to Gimena Sanchez Garzoli at the Washington Office on Latin America (WOLA) from Ministerio del Trabajo República de Colombia, June 4, 2013.
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- ²⁰ Escuela Nacional Sindical, Revista Agosto 2013. A Dos Años del Plan de Acción Laboral. Page 28.
- ²¹ Escuela Nacional Sindical, Revista Agosto 2013. A Dos Años del Plan de Acción Laboral. Page 8.
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