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Colombia FTA and Labor Rights The House Democratic Benchmarks vs. the Obama Administration “Action Plan”

Colombia is the most dangerous country in the world in which to be a labor unionist. More unionists are assassinated in Colombia annually than in the rest of the world combined. This has contributed to the widespread public and congressional opposition to a U.S. “free trade agreement” (FTA) with Colombia. Since the Bush administration started FTA talks with Colombia in 2003, Members of Congress, unions, human rights and faith groups with expertise on Colombia have put forward demands for labor and other human rights violations to cease prior to consideration of any trade pact with that nation. The result? After declining in the year immediately following the FTA’s 2006 signing, [the number of unionist assassinations has grown](#) during the period of maximum congressional and public scrutiny, from 37 in 2007 to 51 in 2010. Meanwhile, forcible displacement and violence against Afro-Colombians and other vulnerable populations have increased.

To formally communicate to the administration benchmarks for improvement, on March 17, 2011, a group of six House Democrats led by Rep. Jim McGovern (D-Mass.) and House Education and Labor Committee Ranking Member George Miller (D-Calif.) sent President Obama a document providing in substantial detail many of the issues Colombia would have to address before any FTA should be considered. The document contained eight requirements related to ending violence against unionists; 15 requirements related to enforcement and prosecution; and five related to labor law reform. In sum, there were 28 requirements in the McGovern-Miller document. The fundamental principles included the need for a real change in conditions on the ground, not just paper changes to Colombian laws (ending violence against unionists and other rights defenders, prosecution of massive backlog of impunity cases related to past murders, etc); the need for change to be sustained before any FTA would be appropriate; and the importance of enforcement of commitments to change.

GOP and corporate officials have been escalating pressure on the Obama administration to present to the Colombian government a set of specific policies and practices the changing of which would facilitate speedy congressional consideration of the Colombia FTA to Congress. The week after yet two more Colombian unionists were assassinated, on April 6, 2011, the Obama administration announced a so-called “Action Plan” of commitments Colombia had made in closed-door talks to alter certain laws and practices related to labor rights. A more detailed description of the Action Plan was released the next day, and is available at: http://www.ustr.gov/webfm_send/2787. Most of these limited commitments must not be fulfilled before the administration would send an FTA to Congress. Even if all of the commitments were fulfilled, they do not include a reduction much less end to unionist assassination. The majority of the Action Plan commitments would not be enforceable under the FTA’s dispute settlement system, nor is there any other system for enforcing these pledges. The Action Plan:

- does not address six of the violence-related McGovern-Miller benchmarks, and addresses the remaining two only partially;
- does not address 12 of the enforcement-related McGovern-Miller benchmarks, and addresses the remaining three only partially;
- does not address one of the labor law reform-related McGovern-Miller benchmarks, and addresses the remaining four only partially.

As shown in the following side-by-side chart, the administration’s “Action Plan” does not *fully* address *any* of the 28 McGovern-Miller benchmarks, and fails to address 19 of them at all. The Action Plan makes no mention of complicit state actors in violence against unionists, the severe problems faced by Afro-Colombians, indigenous people and other vulnerable populations or the role of paramilitary groups or. Most importantly, the Action Plan does not incorporate the most important key end goal of the McGovern-Miller benchmarks: an elimination of unionist murders.

Problem and Goals for Colombia (direct quotes from McGovern-Miller plan)	McGovern-Miller Benchmark (direct quotes)	Does Obama “Action Plan” have a corresponding metric to McGovern-Miller?
<p>Ending Violence Against Trade Unionists and Other Human Rights Defenders</p> <p>Demonstrate a dramatic and sustained decrease from current levels in murders and attacks against trade unionists and rights defenders, with the clearly-defined goal and recognition that the only acceptable situation is one where all murders have ceased;</p>	<ol style="list-style-type: none"> 1. Establish and enforce a “zero tolerance” policy on extrajudicial killings by Colombia’s military, police and other State actors, including immediate suspension from duties and ending any incentives that may encourage such abuses. 2. Establish and enforce a “zero tolerance” policy on collaboration with abuses carried out by guerrillas, paramilitaries or other illegal armed groups and criminal networks by Colombian military, police or other State actors, including immediate suspension from duties. 3. Substantially strengthen the presence of professionally trained police in areas where successor groups to the paramilitaries are present, particularly in rural areas where police often are not present, ensuring full compliance with the zero tolerance policies and practices stated above. 	<p>No. The Action Plan does not address the Colombian government’s participation in killings.</p> <p>No. The Action Plan does not address the Colombian government’s complicity in killings.</p> <p>Partially. The Action Plan does not even mention the words “paramilitary”, “successor groups”, or “zero tolerance.” It does call for an additional 95 judicial police working exclusively on union matters, and notes that “The Prosecutor General’s Office will develop a plan and identify specific budgetary needs by May 20, 2011, to strengthen the institutional capabilities and the number of prosecutors and judicial police investigators assigned to process labor cases in the regional offices, based on an assessment of structural weaknesses or a lack of sufficient resources.” The Action Plan does not assess whether the 95 additional police are sufficient to comply with any target of reduced killings, let alone a zero tolerance target.</p>

<p>Ensure that members of state security forces do not engage in extrajudicial executions or other serious abuses against civilians, or collaborate with paramilitary successor groups and other illegal groups; and</p> <p>Demonstrate a substantial reduction in abuses committed by successor groups to the paramilitaries, and significant progress in dismantling their organizational structures.</p>	<p>4. Strengthen the Early Warning System of the Ombudsman’s Office (<i>Defensoría</i>), so that it has the necessary resources and stability to continuously monitor potential threats to civilians posed by successor groups. Ensure that the system’s risk reports are made public and that other State agencies take necessary actions to respond to these reports, protect the population and address the threats, including taking actions to sanction State agents who fail to carry out such duties.</p> <p>5. Ensure that protection programs and measures for trade unionists, rights defenders and other community leaders receive adequate and sustainable resources so that no one at risk or under threat who requires protection fails to receive it. In addition, the State should not delegate its responsibility to protect its citizens, and should abide by the recommendations described in the March 2010 Mission to Colombia Report of the U.N. Special Rapporteur on the Situation of Human Rights Defenders, namely that protection measures offered under Colombia’s Protection Program should not be privatized.</p>	<p>No. “Successor groups” are not mentioned, and the only mention of the Public Defender’s office is to expand their responsibilities through requiring them to sit on an interagency committee. No mention is made of strengthening the office’s resources. The April 7 document reads: “The Colombian Government will issue a decree by September 15, 2011, reforming the scope and functioning of the interagency committee which reviews risk assessments. The newly constituted committee will include representatives of the Inspector General’s Office and the Public Defender’s Office in order to enhance the objectivity of the assessment process.”</p> <p>With respect to risk reports, the Action Plan states: “The Ministry of Interior and Justice has begun an emergency plan to eliminate the backlog of risk assessments with respect to applications for protection filed by union members by July 30, 2011. Once the backlog is eliminated, the Colombian Government commits that the National Police will thereafter comply with the legal requirement to process all risk assessments within a 30-day period. The Colombian Government will provide monthly updates to interested parties beginning May 1, 2011.” Clearing of a backlog – or quicker processing of risk assessments – could be accomplished without protecting the population or addressing the threats. And the Action Plan does not mention any sanctions of State agents for any reason, even failure to rapidly process risk assessments.</p> <p>Partially. The Action Plan does not mention the call to not delegate or privatize State responsibilities, as called for in the UN report.</p> <p>The April 7 document commits Colombia’s Ministry of Interior and Justice to issue a ministerial declaration broadening the scope of who is covered by the protection program to include “(i) labor activists, (ii) persons who are currently engaged in active efforts to form a union, and (iii) former unionists who are under threat because of their past activities.” In the first year, \$6 million in resources will be “reallocated” “in order to provide adequate support for the expansion of the program during the current fiscal year. “Thereafter, the Colombian Government will assess the level of funding necessary to support the expanded program during the 2012 fiscal year and include such funding in the Budget Project to be presented to the Colombian Congress by July 30, 2011. The Colombian Government and the U.S. Government will work together periodically to evaluate utilization of the program and the level of funding to ensure that the objective of effectively protecting all those covered by the program is achieved... The Ministry of Interior and Justice will immediately implement administrative measures to strengthen the existing protection system, and will provide interested parties with monthly updates on the steps taken to achieve such improvements beginning April 22, 2011.”</p> <p>Several aspects of the plan are worth noting. First, the first year’s resources are merely reallocated funds – meaning funding for other justice programs will be reduced. Second, the second year’s funding is not guaranteed – the Action Plan merely calls for a budget request to be made. Third, the Action Plan does not measure the adequacy of the new protection measures by the McGovern-Miller benchmark that “no one at risk or under threat who requires protection fails to receive it.” Rather, the Action Plan assesses adequacy merely with respect to the redefined scope of the protection program, and does not evaluate whether the new scope is itself adequate to ensure that “no one at risk or under threat who requires protection fails to receive it.” The new scope does not apparently provide protections for “rights defenders and other community leaders” – a key McGovern-Miller benchmark.</p> <p>The Action Plan also states, “The Colombian Government will amend by April 22, 2011, its teacher relocation and protection program contained in Resolución 1240 of 2010, to ensure that meritorious requests are granted and to eliminate pecuniary sanctions against teachers found not to be under extraordinary risk. The Colombian Government will share the draft resolution with the U.S. Government and will work with the U.S. Government to ensure that the agreed objectives</p>
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	<p>6. Ensure the removal from national intelligence files of references to unionists and union organizations that were included in the files because of their union activity.</p> <p>7. In coordination with union organizations, carry out a multi-year national campaign to promote the legitimacy of union organizations in Colombian society.</p> <p>8. Dismantle organizational structures and substantially reduce abuses by paramilitary successor groups by establishing and effectively enforcing a mechanism to identify land and illegal assets that paramilitaries, members of successor groups or their accomplices may be holding, and ensure their recovery and restitution to victims. Importantly, this needs to include measures and funding that effectively protect the safety of those returning to their former lands. It also needs to include return of land to Afro-Colombian and indigenous communities in a manner that respects their Constitutionally-protected rights, including the right of prior consultation.</p>	<p>are addressed. The Colombian Government and the U.S. Government will also work together to evaluate utilization of the program and the dynamics of threats and risks to ensure that the program is achieving the objective of effectively protecting those covered by it. The Colombian Government will share quarterly reports on the program with interested parties beginning July 1, 2011.”</p> <p>It’s worth noting that the Action Plan allows the Colombian government to determine whether or not requests are “meritorious” or whether a teacher faces something less than “extraordinary risk.” The Action Plan appears to not fully eliminate the possibility of the Colombian government sanctioning teachers that request protection. The evaluation metric envisioned in the Action Plan is merely to assess whether the program’s stated beneficiaries are “effectively protected.” No evaluation is offered as to whether the resolution actually meets the standard “that no one at risk or under threat who requires protection fails to receive it.”</p> <p>No.</p> <p>No.</p> <p>No.</p>
<p>Strengthening Investigation, Prosecution and Breaking the Culture of Impunity</p> <p>The Government</p>	<p>1. Develop a new strategy for investigating and prosecuting cases of anti-union violence, drawing upon the expertise of union and human rights organization through direct consultation on such a strategy, and including the following measures:</p>	<p>Partially. The Action Plan does not outline a “new strategy”, so much as an augmentation of the budget and staffing of the existing strategy. The Action plan also quotes from a communication from the Prosecutor General’s office to the Colombian government, which reports on directives that have already been issued. The existing directives relate to 1. a requirement that judicial police determine if victims have union ties; 2. a requirement that different divisions of the government share evidence and information about criminal case involving union murders; and 3. an analysis of closed cases “in order to extract lessons that can help improve the guidelines and protocols for effectively investigating and prosecuting future cases. The analysis will search for lessons learned in order to improve future efforts to identify the intellectual authors and other perpetrators of such crimes, any repeat offenders, the existence of any patterns relating to</p>

<p>of Colombia must demonstrate a dramatic increase from current levels in the <u>rate</u> and significant improvement in the <u>quality</u> of criminal investigations and prosecutions of:</p> <p>Perpetrators of anti-union violence, including convictions in a significant number of the more than 2,800 killings of trade unionists reported since 1986;</p> <p>Perpetrators of violence against other rights defenders, including Afro-Colombian and indigenous leaders;</p> <p>Members of paramilitary successor groups and their accomplices;</p> <p>State actors responsible for extrajudicial killings; and</p> <p>State actors who have collaborated</p>	<ul style="list-style-type: none"> • Staff the Attorney General’s special sub-unit for crimes against union members with prosecutors with expertise in the subject area and reassign all other cases unrelated to trade union violence. (When the sub-unit was created, it pooled prosecutors from unrelated divisions and added the union cases onto their workload.) • Ensure investigations examine the context of these crimes rather than treating them as isolated cases. The failure to do so means that connections are not made that could lead to the identification of other perpetrators, intellectual authors or beneficiaries. Every effort must be made to identify and prosecute intellectual authors. • Ensure prosecutors follow up on credible evidence that implicates members of the armed forces, politicians or business leaders. If the evidence points towards State actors, prosecutions should continue up the chain of command to those responsible. • Ensure that the accused and convicted be in custody, as trials in absentia do not adequately end impunity. Far too many of the sentences are unenforceable because the 	<p>targets, criminal methods, and any evidence of motives. The results of this analysis will be made available to the public and widely publicized. The understanding gained from the analysis and its wide dissemination will serve as a tool to reduce impunity and deter future crimes.”</p> <p>The Prosecutor General’s communication also references new plans to 1. train “judicial police investigators on crime scene management” and investigative techniques; 2. strengthen regional offices; 3. establishing victims’ assistance centers and offer psychological support.</p> <p>It is unclear whether the communication forms an integral part of the overall Action Plan.</p> <p>Moreover, the only consultation requirement is to hold “periodic meetings with representatives of the union confederations and the Escuela Nacional Sindical (ENS) to undertake a comparison of the unionist homicide cases in the ENS’ database versus the Prosecutor General Office’s database in order to try to reconcile the discrepancies.” The Action Plan does not call on the Colombian government to utilize their expertise, and the phrasing of this commitment makes it sound like a forum to convince ENS that its numbers are wrong.</p> <p>Partially. The Action Plan mentions future possible training programs to build expertise, but does not address the issues of improperly pooling prosecutors.</p> <p>No. The Action Plan only mentions an already ongoing Prosecutor General effort to analyze closed cases to learn about such “context” of anti-union crimes. The Action Plan does not contain the McGovern-Miller benchmark on ensuring that future investigations examine such context.</p> <p>No. The Action Plan does not mention investigation of state actors.</p> <p>No. The Action Plan does not mention trials in or not in absentia.</p>
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<p>with, benefited from, or tolerated the criminal acts of paramilitaries or their successor groups.</p>	<p>accused is not in custody.</p> <ul style="list-style-type: none"> • Ensure that convictions are based on more than the mere admissions of guilt by paramilitaries participating in the Justice and Peace process. Prosecutors should follow all lines of inquiry in order to establish full truth about crimes and acquire information to identify intellectual authors and who benefited from the murder. • Ensure that the special prosecutors for labor union cases handle all the reported cases, not just the reduced number they are currently investigating. Assess the universe of murder cases found in the database of the <i>Escuela Nacional Sindical</i> (ENS), not the subset currently under review by the <i>Fiscalía</i>. Issue a plan for overcoming impunity that establishes a credible process for investigating and prosecuting this caseload, with annual benchmarks and the financial and institutional resources required to accomplish those benchmarks. (Colombian labor organizations have suggested designing a 10-year plan to achieve this goal.) Special attention should be given to the 12 departments and 25 unions that account for 85% of the homicides against unionists and investigations should prioritize the murders of the 737 union leaders killed since 1986. <p>Further, the Colombian government must, among other steps:</p> <ol style="list-style-type: none"> 2. Ensure that all criminal cases involving human rights abuses by State actors, including members of the military and security forces, are handled by civilian authorities. 3. Strengthen and increase the size of the specialized unit of prosecutors in the Attorney General’s Office charged with investigating successor groups and assign them sufficient resources to carry out their work effectively. 	<p>No.</p> <p>No. In fact, the Action Plan doesn’t note that the <i>Fiscalía</i> list is smaller, it only notes that the ENS numbers should be “reconciled” with the official list.</p> <p>The Action Plan does not contain specific benchmarks for reducing impunity. It mentions “Issuing internal guidance to prosecutors to accelerate action on those cases with leads and to provisionally close cold cases. This should include a special focus on the ‘priority labor cases’ identified by the Colombian labor unions as well as labor cases from recent years.” In other words, the universe of cases continues to be a mere subset of the full ENS list, and a priority is placed on closing rather than resolving “cold cases.”</p> <p>The Action Plan does not establish priority departments or unions.</p> <p>No. The Action Plan does not mention abuses by State actors, let alone require that the cases be handled by civilian authorities.</p> <p>No. The Action Plan does not mention successor groups.</p>
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	<p>4. Ensure that the National Unit for Human Rights and International Humanitarian Law of the Attorney General’s Office, including its Sub-Unit for Crimes Against Union Members and the sub-units charged with investigating extrajudicial killings and violence against rights defenders, have sufficient resources and staff to effectively carry out their work.</p> <p>5. Conduct thorough investigations not only of individual members of successor groups, but of their criminal networks, including financial backers and collaborators within the State.</p> <p>6. Provide the mandate and resources to vigorously arrest, investigate and prosecute the perpetrators of <i>new</i> cases of violence against trade unionists and rights defenders so that violence and murder with impunity are no longer the norm.</p> <p>7. Increase funding for the Attorney General’s witness protection program for human rights cases, especially those involving violence against trade unionists and other rights defenders, so that the program has sufficient resources to ensure that all witnesses requiring it in fact receive appropriate, timely and effective protection measures.</p> <p>8. Establish and implement a robust system to effectively investigate threats against trade unionists and other rights defenders and bring to justice the perpetrators. Threats have a chilling effect on trade union activity and human rights advocacy and amplify the ability of perpetrators of violence to operate with impunity.</p> <p>9. Develop a State policy that establishes collective reparations for the union movement, including collective reparations within the Draft</p>	<p>No. The Action Plan does not establish specific benchmarks in this area, let alone establish that the unit “have sufficient resources and staff to effectively carry out [its] work,” as called for in the McGovern-Miller benchmark.</p> <p>No. The Action Plan does not mention State complicity or successor groups at all.</p> <p>No. There is mention of some criminal code changes, and budget and personnel increases. But the Action Plan does not state a benchmark that violence and murder with impunity must no longer be the norm.</p> <p>No. The Action Plan does not mention witness protection programs.</p> <p>Partially. The Action Plan states: “The Colombian Government has submitted to the Colombian Congress legislation to reform the Criminal Code by establishing criminal penalties for employers that undermine the right to organize and bargain collectively. This reform encompasses a wide range of practices that could adversely affect fundamental labor rights. The new article in the Criminal Code will penalize this conduct with up to five years of imprisonment... The Colombian Government has submitted to the Colombian Congress amendments to the Criminal Code referenced [in previous sentence] that: (1) broaden the definition of illegal threats to include such threats directed at individual union members and activists that are meant to intimidate those seeking to exercise their rights of freedom of association and to organize and bargain collectively; and (2) strengthen the penalties for illegal threats to include imprisonment. The Colombian Government is seeking enactment of these reforms by the Colombian Congress by June 15, 2011.” Unfortunately, the Action Plan does not establish a benchmark of an actual reduction in threats, only a request by Colombia’s president that that the legislature consider a paper change to the Criminal Code.</p> <p>No. The Action Plan does not reference reparations.</p>
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	<p>Law on Reparations for Victims of Violence, as expressed in the conclusions of the February 2011 ILO Mission in Colombia.</p>	
<p>Strengthening Fundamental Workers Rights</p>	<p>The Colombian government must take immediate measures to address these concerns:</p> <p>1. Colombian labor law must explicitly provide for the full range of rights contained in the ILO Declaration on Fundamental Principles and Rights at Work and in the eight core ILO conventions that Colombia has ratified (see page 12), as required under the terms of the FTA, although little has been done to do so since Colombia formally approved the FTA in 2007. These include, but are not limited to: the rights of all workers, both public and private, to freedom of association and to collectively bargain over their terms and conditions of employment; revising the legal definition of “essential services” in which employees are banned from striking in conformity with ILO definitions and jurisprudence; explicitly permitting parties to engage in industry-wide bargaining; and recognizing the fundamental right to strike. Particular attention must be given to advancing the absolute prohibition of acts of anti-union discrimination and other obstacles to the exercise of freedom of association and collective bargaining presented by the use of associated work cooperatives (CTAs), as well as collective accords in enterprises with non-unionized workers (<i>pactos colectivos</i>). The president should ensure legal conformity with these rights through the promulgation of decrees, executive orders, regulations and directives to relevant ministries; by proposing to and gaining the approval of the Colombian Congress of changes to current labor law and the labor code; and by robustly implementing the resulting laws and policies.</p> <p>2. As recommended by the February 2011 ILO Mission, the Colombian government must ensure changes to Colombian labor law and legislative action are vigorously pursued in a timely and</p>	<p>Partially. The Action Plan simply asserts that the May 10 deal helps meet these ILO standards, although unions disagree.</p> <p>The Action Plan makes a set of very prescriptive and detailed recommendations on cooperatives, temporary service agencies and collective pacts.¹ But there is no outcome-based benchmark that captures the McGovern-Miller call “to guarantee the rights of freedom of association and collective bargaining” or “ensure compliance with international labor rights and standards.”</p> <p>The Action Plan ignores the McGovern-Miller call to revise “the legal definition of ‘essential services’ in which employees are banned from striking in conformity with ILO definitions and jurisprudence.” Instead, the Action Plan states: “The MSP will collect the body of Colombian doctrine, case law, and jurisprudence that has narrowed the definition of essential services. The MSP will disseminate this information as well as relevant guidelines to labor inspectors, the judicial branch, unions, and employers by April 22, 2011.” In other words, the Action Plan simply states that Colombia has already taken a step, and only commits the government to “disseminate” the information.</p> <p>Partially. The Action Plan commits Colombia’s president to “seek to have [the criminal code reform] legislation enacted by June 15, 2011.” The Action Plan also notes that “The Colombian Government has submitted legislation to amend the effective date of the provisions contained in Article 63 of the 2010 Law of Formalization and First Employment so that the provisions are effective immediately upon passage of the Development Plan legislation, rather than on July 1, 2013.</p>

<p>expeditious manner. These measures should be submitted for consultation, at a minimum, to the appropriate ILO mechanisms set up to work with Colombia on these matters, Colombian labor organizations, and the National Commission on Social Policy and Salaries prior to their submission to Congress.</p> <p>3. The Ministry of Labor should be reconstituted, as announced by the Santos government, and provided consistent and sufficient funding to carry out its functions, including the necessary funds and personnel to carry out labor inspections and enforce employment policy. It should draw upon the technical assistance offered by the ILO Office, be designed to conform with internationally-recognized ILO standards, and as recommended by the February 2011 ILO Mission to Colombia, facilitate national dialogue that results in agreements between the government, union organizations and the private sector.</p> <p>4. In addition to strengthened inspection enforcement that occurs through a reconstituted Ministry of Labor, working through the Ministry of Mining and Energy, the Director of Mines, and the Director of INGEOMINAS (mine safety enforcement, mine rescue, etc.) the Colombian government should codify new mine safety rules that will prevent mine explosions and fires, eliminate non-tariff trade barriers so that mining companies can import safe explosives designed for mining, and provide the necessary resources to expand the number of mine inspectors with qualified staff in order to ensure mines are</p>	<p>Article 63 prohibits the misuse of cooperatives or any other kind of relationship that affects labor rights, and imposes significant fines for violations. The Colombian Government has introduced this amendment in the Development Plan Bill. The Colombian Congress will vote on the bill by the end of May 2011.”</p> <p>This may be a step towards the McGovern-Miller benchmark of timeliness, although there is no requirement that the Colombian legislature actually accept what Colombia’s president asks.</p> <p>There is no requirement to actually consult with labor groups on the ground. This could lead to a repeat of the implementation of the Peru FTA, where Peru tried to implement its FTA forestry commitments without consulting with affected groups – leading to bloodshed and conflict.</p> <p>Partially. The Action Plan contains no “reconstitution” of the Ministry of Labor, but it does envision staffing increases. The Action Plan also calls on Colombia to “seek the cooperation, advice, and technical assistance of the ILO...”</p> <p>The Action Plan does not call for “agreements between the government, union organizations and the private sector,” as called for by the McGovern-Miller benchmark.</p> <p>No. The Action Plan calls on Colombia to “establish as priority sectors for labor inspections: palm oil, sugar, mines, ports, and flowers. These sectors will be identified as priorities in the MSP decree authorizing the hiring of the 100 new labor inspectors. The MSP will confirm to the U.S. Government by April 22, 2011, that it has begun conducting, and will continue to conduct, preventive inspections in these sectors.” It does not call for new mine safety rules.</p>
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<p>regularly inspected for compliance.</p> <p>5. The Colombian government must demonstrate and increase confidence in its ability and commitment to guarantee the rights of freedom of association and collective bargaining. In order to do so, it should issue decrees and regulations that allow workers to contract directly with their employers in industry sectors where such relationships existed in the past and/or where agreements were negotiated but not implemented. These include, but are not limited to, ensuring that:</p> <ul style="list-style-type: none"> • The port workers contract directly with the Port Societies, eliminating all subcontractors in port-related employment and allowing 100% direct contracting between labor (employees) and the Port Society (employer). The President should direct the Ministry of Labor and provide it with the necessary support to remove subcontractors in all port-related employment, transition employees into the formal workforce with direct contracts, and ensure compliance with international labor rights and standards. The President should provide port workers protection during this transition period. • The sugarcane workers contract directly with refineries, eliminating use of third party sub-contractors, including the Associative Labor Cooperatives (CTAs). The President should direct the Ministry of Labor and provide it with the support necessary to remove the CTAs, transition employees into the formal workforce with direct contracts, and ensure compliance with international labor rights and standards. The President should provide the sugarcane workers with protection during the transition period. • The telecommunications workers contract directly with telecom companies, 	<p>Partially. As noted above, the Action Plan calls for more inspections in ports, sugarcane, palm oil and flowers. It does not address telecom workers.</p>
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	<p>eliminating the use of cooperatives (CTAs). The President should direct the Ministry of Labor and provide it with the necessary support to remove the CTAs, transition employees into the formal workforce with direct contracts, and ensure compliance with international labor rights and standards. The President should provide the telecom workers with protection during the transition period.</p>	
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ENDNOTES

ⁱ III. COOPERATIVES

The Colombian Government has submitted legislation to amend the effective date of the provisions contained in Article 63 of the 2010 Law of Formalization and First Employment so that the provisions are effective immediately upon passage of the Development Plan legislation, rather than on July 1, 2013. Article 63 prohibits the misuse of cooperatives or any other kind of relationship that affects labor rights, and imposes significant fines for violations. The Colombian Government has introduced this amendment in the Development Plan Bill. The Colombian Congress will vote on the bill by the end of May 2011.

The MSP will dedicate 100 labor inspectors exclusively to address cases involving cooperatives. The MSP decree referenced in Section I above will authorize the hiring of 100 new labor inspectors for the MSP's regional offices, and indicate that 50 of these labor inspectors will be assigned exclusively to cases involving cooperatives. As noted in Section I, the MSP will issue the hiring decree by April 22, 2011, and complete the hiring and training of these inspectors by December 15, 2011. The second group of 50 labor inspectors specializing in cooperatives will be hired during 2012.

The MSP will establish as priority sectors for labor inspections: palm oil, sugar, mines, ports, and flowers. These sectors will be identified as priorities in the MSP decree authorizing the hiring of the 100 new labor inspectors. The MSP will confirm to the U.S. Government by April 22, 2011, that it has begun conducting, and will continue to conduct, preventive inspections in these sectors.

The Colombian Government will issue regulations implementing the 2010 cooperatives law by June 15, 2011. These regulations will, inter alia, clarify earlier cooperatives laws, ensure coherence among these laws and the new 2010 cooperatives law, and:

- a) Set forth clear and sufficiently broad definitions of "permanent core function" and "intermediation" to adequately address abuses;
- b) In cases where the MSP has found that companies have denied worker rights through abuse of the provisions of these laws, promote compliance by the companies through a strategy of offering to waive fines, wholly or in part, when the employer agrees to create and maintain a direct employment relationship with the affected workers;
- c) Establish fine levels that are higher for repeat offenders and large-scale violators; and
- d) Establish that a cooperative should presumptively be considered to be engaged in violating the relevant laws if it does not exhibit financial independence, if its members do not have autonomy in conducting the work done by the cooperative, if the members were in any way coerced to join a cooperative in order to remain employed, if the cooperative is involved in any form of labor intermediation, if the workers do not have access to the economic proceeds of the cooperative or if the workers do not objectively own the capital, methods of production, and assets of the cooperative.

The MSP is preparing a draft of these regulations, and will work with the U.S. Government to ensure that the agreed issues are addressed. The MSP will provide a draft to the U.S. Government by April 22, 2011.

The MSP and the Superintendencia de Economía Solidaria will also strictly apply and enforce the requirements that cooperatives be autonomous and self-governing.

The MSP will develop and conduct through the "Subcomisiones Departamentales de Concertación Laboral," among other mechanisms, an outreach program to inform and advise workers of:

- a) Their rights under the laws and regulations governing cooperatives;
- b) The remedies and courses of action available to workers through the courts in order to enforce recognition of a direct employment relationship, particularly when an MSP labor inspector has made a finding that such a relationship exists; and
- c) The existence of criminal penalties for employers who are responsible for undermining the right to organize and bargain collectively, once the reforms to the Criminal Code referenced in Section II above are adopted by the Colombian Congress.

The initial phase of the outreach program will start by June 15, 2011. The program will be permanent and budgeted fully for 2012 and beyond. The MSP will:

- a) Share with the U.S. Government a plan for these outreach efforts by April 22, 2011;
- b) Work with the U.S. Government to ensure that the agreed objectives are addressed; and
- c) Launch the program shortly thereafter.

The Colombian Government will provide quarterly reports on its enforcement results to all interested parties.

IV. TEMPORARY SERVICE AGENCIES

The Colombian Government will implement a regime to prevent the use of temporary service agencies to circumvent labor rights. The regime will include such actions as improving the inspection process, designing a new training program for labor inspectors to raise their awareness of this issue, and building databases to identify regions and sectors where there has been abuse.

In addition, the robust enforcement regime will include a monitoring and reporting mechanism by which all interested parties can verify progress and compliance with labor laws. As a first step in building this mechanism, the MSP will issue quarterly reports for interested parties that include the results of the different measures, such as preventive inspections, penalties, fines, the cancellation of licenses and permits, and the list of those agencies found to be in violation. The first report will be issued by April 22, 2011.

The MSP will:

- a) Share a draft of the enforcement plan with the U.S. Government by April 22, 2011;
- b) Work with the U.S. Government to ensure that the agreed upon objectives are addressed;
- c) Conduct a series of preventive inspections by June 15, 2011; and
- d) Fully implement the enforcement plan by December 15, 2011.

V. COLLECTIVE PACTS

The Colombian Government has included in the bill to amend the Criminal Code referenced in Section II above a provision stating that it is a crime, subject to imprisonment, to use collective pacts to undermine the right to organize and bargain collectively by extending better conditions to non-union workers in such pacts.

The MSP will conduct a public outreach campaign to promote awareness of the illegality of using collective pacts to undermine the right to organize and bargain collectively. The campaign should be ready to launch by June 15, 2011, by which date it is expected that the Criminal Code reform will be approved. The MSP will launch the campaign immediately upon approval of the Criminal Code reform, and will continue the campaign through 2011. The Colombian Government will budget additional resources for the campaign for 2012.

The MSP will implement a robust enforcement regime, including preventive inspections and use of the anonymous labor complaint mechanisms referenced in Section I above to detect and prosecute violations. The Colombian Government will share quarterly reports of the preventive inspections with interested parties.

The Colombian Government will seek ILO technical assistance to monitor the use of collective pacts as part of a broader request for cooperation, as described in Section VII below.

The Colombian Government will develop a plan and timeline for the public outreach campaigns and for implementation of the robust enforcement regime, as well as its request for ILO technical assistance, all to be shared with the U.S. Government by April 22, 2011, and will work with the U.S. Government to ensure that the agreed objectives are addressed.”