

COLOMBIAN ACTION PLAN RELATED TO LABOR RIGHTS

April 7, 2011

The Colombian Government has confirmed its ongoing commitment to protect internationally recognized labor rights, prevent violence against labor leaders, and prosecute the perpetrators of such violence. In furtherance of this commitment, the Government of Colombia and the Government of the United States agree that the following measures have been taken, or will be taken in the time frames indicated below:

I. LABOR MINISTRY (Currently the Ministry of Social Protection (MSP))

The U.S. Government welcomes the creation of a specialized Labor Ministry as the appropriate institutional vehicle to implement a broader and more effective regime to protect labor rights. This decision can provide the framework for the Colombian Government to mobilize resources and strengthen enforcement.

The Colombian Government will plan and budget for the hiring of 480 new labor inspectors under the civil service system over a four-year period, including the hiring of at least 100 new labor inspectors during 2011. The Finance Ministry will approve a budget reallocation by April 15, 2011, to fund the hiring of the first 100 inspectors. 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 Colombian Government will ensure that funding for at least an additional 100 labor inspectors is included in the 2012 budget to be prepared by May 30, 2011, with final approval expected in October 2011.

The MSP will improve the system for citizens to file complaints, anonymously or otherwise, concerning labor rights violations. This improved system will include both a toll-free telephone hotline and a new web-based mechanism for registering complaints. The MSP will conduct outreach to promote awareness of these complaint mechanisms. The MSP will establish the telephone hotline and web-based mechanism by April 22, 2011, and begin publicizing the new complaint mechanisms immediately thereafter.

The Colombian Government will establish a plan to improve the MSP's mediation and conflict resolution system in all 32 Departments (states) by assigning specialized resources to the MSP's regional offices, training workers and employers in conflict resolution, and conducting outreach. The MSP will prepare a plan for workshops on conciliation and Alternative Dispute Resolution mechanisms for labor inspectors by April 22, 2011, begin the workshops by June 15, 2011, and complete an initial phase of training by December 15, 2011. The MSP will also start conducting outreach to the public, employers, and workers through TV programs and printed material by June 15, 2011.

II. CRIMINAL CODE REFORM

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 will seek to have this legislation enacted by the Colombian Congress by June 15, 2011.

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.

VI. ESSENTIAL SERVICES

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.

VII. INTERNATIONAL LABOR ORGANIZATION OFFICE

The Colombian Government will seek the cooperation, advice, and technical assistance of the ILO to help in the implementation of the measures outlined in this document related to labor rights. The Colombian Government will work with the ILO to strengthen the presence and expand the capacity and role of the Organization in the country. In addition, the Colombian Government will request ILO involvement to foster the Tripartite Process with the goal of ensuring the full protection of labor rights and compliance with labor laws.

As it prepares this request to the ILO, the Colombian Government will consult with the Tripartite Commission by June 15, 2011.

The U.S. and Colombian Governments will work together to identify the necessary resources and sources of support. The Government of Colombia will present a formal request to the ILO regarding the activities described above by September 15, 2011.

VIII. PROTECTION PROGRAMS

The Ministry of Interior and Justice will issue by April 22, 2011, a Ministerial Resolution broadening the scope of the definition of who is covered by its 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. The Ministry will consult with the relevant unions to verify the status of these individuals.

The Colombian Government will plan and budget for the additional resources necessary to support the resulting expansion of the protection program. The Colombian Government will initially increase funds by more than 50 percent for the 2011 fiscal year by reallocating COP 12 billion (approximately US\$6 million) 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 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.

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. The Colombian Government will share the relevant parts of the draft decree 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.

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.

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 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.

IX. CRIMINAL JUSTICE REFORM

The President will issue a directive to the National Police by April 22, 2011, assigning ninety five (95) additional full-time judicial police investigators to support the prosecutors in charge of investigating criminal cases involving union members and activists. These judicial police investigators will be assigned exclusively to investigate labor cases. The Colombian Government will complete the assignment to these cases of 50 of the 95 new judicial police investigators by June 30, 2011, and of the remaining new judicial police investigators by December 15, 2011.

The Colombian Government will respond favorably to a request from the Prosecutor General's Office for the necessary resources to finance new and increased activities for reducing impunity in general and for implementing this Action Plan. The Prosecutor General's Office will submit the budget request by May 20, 2011.

The Prosecutor General's Office has informed the Colombian Government of the following actions it has taken, and plans to take, to combat impunity in the cases involving union members and labor activists:

The Prosecutor General's Office has issued a directive requiring the judicial police, the Technical Investigative Body (CTI), and prosecutors investigating criminal cases to determine during the initial phase of an investigation whether a victim was an active or retired union member, or was actively engaged in union formation and organization.

The Prosecutor General's Office has issued a directive to the chiefs of the Unit of Justice and Peace and the Unit of Human Rights ordering them to share in an effective manner evidence and information about criminal cases involving union members and activists, as well as teachers, journalists, and human rights activists.

The Prosecutor General's Office will develop a plan and identify specific budgetary needs for training judicial police investigators and prosecutors on crime scene management, as well as jointly training them in investigative techniques with specific reference to the issues involved in labor cases. The Prosecutor General's Office will send to the U.S. Government by April 22, 2011, the 2011 detailed training program and will work with the U.S. Government to ensure that the agreed objectives are addressed. The

Prosecutor General's Office will request from the U.S. Embassy in Bogota its input and cooperation to refine, enhance, and support the training program. The U.S. Government will provide technical assistance coordinated by the U.S. Embassy in Bogota, the U.S. Department of Justice, and the U.S. Department of Labor.

The Prosecutor General's Office will present to the Colombian Government by May 20, 2011, its specific budget request associated with the financing of the training program, to be reviewed for the purpose of inclusion in the 2012 budget.

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 Prosecutor General's Office will finalize by July 15, 2011, an analysis of closed cases of homicides of union members and activists, 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 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.

The Prosecutor General's Office will develop a plan and identify specific budgetary needs for establishing victims' assistance centers specialized in human rights cases, including labor cases. The Prosecutor General's Office will staff these centers with professionals with expertise on human rights/labor issues. The Prosecutor General's Office will direct these centers and enable them to share information with the victims and their families about the status of the cases, as well as provide legal and psychological support. The Prosecutor General's Office will share with the U.S. Government the plans and budgetary allocations for this project by June 15, 2011, and will work with the U.S. Government to ensure that the agreed objectives are addressed.

The Prosecutor General's Office will develop a program to address the backlog of unionist homicide cases that will include:

- a) Holding 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 meetings will begin by April 22, 2011, with the aim of finalizing this process by the end of the year; and
- b) 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. This will be accomplished by June 15, 2011.

The Prosecutor General's Office will improve public reporting with respect to completed criminal cases involving labor violence:

- a) The Prosecutor General's Office will by April 22, 2011, publicize the results of the cases decided from January 1, 2011, and thereafter will similarly publicize the results of all subsequent cases; and
- b) The Prosecutor General's Office will by June 15, 2011, identify methods for posting aggregate information about all completed cases to date on its website.

The Colombian Government has submitted to the Colombian Congress amendments to the Criminal Code, referenced in Section II above, 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.

X. FOLLOW-UP MECHANISM

To assess progress in implementing this Action Plan, the U.S. and Colombian Governments have agreed to meet as follows:

- a) For the balance of 2011: Every two months at the technical level and once at the senior officials level;
- b) For 2012: Four times a year at the technical level and twice a year at the senior officials level; and
- c) For 2013: Two times a year at the technical level and once at the senior officials level.

The 2013 meeting of Senior Officials will decide on further meetings.