CWA

As Goes Telefonica:

How One Company Represents the Problems and Challenges of the Colombia Free Trade Agreement & the Action Plan on Labor Rights

The State of Play

In large part due to concerns over Colombia's treatment of workers and hostility toward labor organizing, the U.S. has not moved forward on the Colombia Free Trade Agreement (FTA).

However, in April 2011, the White House announced an "Action Plan Related to Labor Rights" that, in the White House's view, "will lead to greatly enhanced labor rights in Colombia and clear the way for the U.S.-Colombia Trade Agreement to move forward to Congress." The Action Plan includes metrics and goals related to persistent problems regarding Colombia's hostility toward unions and lack of standards for workers' basic rights.

The Action Plan indicates that it focuses on "Preventing Violence and Prosecuting the Perpetrators;" "Protecting Workers' Rights;" and "Labor Provisions in the U.S.-Colombia Trade Promotion Agreement." While these are the right topic areas to address given Colombia's persistent problems on each of these fronts, there remain real concerns about how the plan will be implemented, enforced and whether it will ultimately be effective.

<u>Judging from early action, and based especially on the case study of the company Telefonica, we have little to no confidence that the Action Plan in its current form will bring about the desperately needed changes to Colombia</u>. Overall:

- The long-term record of the Colombian government does not instill confidence.
- The ability of workers to organize remains severely restricted.
- Colombia remains the most dangerous country in the world to be a trade unionist.
- The early actions regarding fidelity to the Action Plan are not positive or reassuring.
- There is no enforcement mechanism.
- Murders and violence against labor activists continues.

The myriad problems of Colombia – in its treatment of workers and unwillingness to meet real benchmarks regarding labor protections – are manifested through the example of one company. Telefonica<u> shows how Colombian employers actively avoid labor laws, entrench the country's anti-union climate, and are primed to circumvent Action Plan goals. Through their example, Telefonica provides a reminder of why progress on the Action Plan is</u>

needed before moving forward on the trade agreement. We need an Action Plan that is actually enforceable.

Telefonica – A Lens to Look at the Larger Debate

Telefonica is a Spanish company that operates in 25 countries and has 287.6 million customers worldwide, making it the 5th largest telecom company in the world in terms of market capitalization. In 2006, Telefonica acquired a majority share of Colombia Telecom, becoming the major telecommunications provider in Colombia in the process.

However, since establishing itself in the nation, Telefonica has become a case study in how Colombian employers actively avoid labor laws and entrench the country's anti-union climate. Now, Telefonica is primed to circumvent Action Plan goals – offering a fresh reminder of why fidelity and real progress on the Action Plan is so critical before moving forward on the trade agreement.

It is important to insist now that a multinational company such as Telefonica honor the intent of labor law reforms in Columbia. Additionally, the larger debate over the Colombia FTA must recognize that we should not advance the trade agreement until Telefonica and similar Colombian actors are able to provide sufficient proof that they are adhering to the intent of labor law reforms and the Action Plan, while fostering a new culture toward workers in Colombia.

Below is an overview of how Telefonica suppresses and subverts workers rights and intends to continue to side step important reforms in Colombia:

- **Telefonica uses private, third party agencies to effectively avoid compliance with Colombian labor laws and union organizing**. Telefonica's current operations intentionally lie outside the the limits of Colombian legal reforms on several fronts: the definition of core and permanent work functions and its use of third parties to perform core functions and the use of third parties to contract with cooperatives.

  Telefonica engages a number of third party operators -- including cooperatives, private businesses and temp agencies -- to perform essential functions. Workers hired by outsourcing and temp agencies as well as those hired directly by Telefonica under short term contracts face the effective elimination of their organizing and bargaining rights through the nature of their short term contracts. Workers are often hired under rotating short term (3-6 month) contracts that are renewed over and over again, sometimes for years. Employers can use short term contracts as a way to ensure that workers have no access to Freedom of Association and Collective Bargaining (FOA).

  Should workers demonstrate some interest in union activity employers do not have to fire them for organizing (which would be a violation of FOA) because they can just not renew the contracts. It makes an anti-union dismissal unnecessary while providing the employer the same result.

The numbers speak for themselves. In 2010, Telefonica directly employed 11,421 workers in Colombia, but another significant portion of the company's operations are outsourced to third parties. It is estimated that an additional 8,000 jobs, about 40 percent of Telefonica's total operations in Colombia, are outsourced. About 15 percent of that outsourced work is estimated to be directly performed by workers in cooperatives. While cooperatives are required to register with Colombia's Ministry of Social Protection, they are not required to list their clients or their associates. This lack of transparency makes it difficult to track down specific information on the relationship between cooperatives and third party contractors. To assure full transparency, companies that use outsourcers, third parties and cooperatives should be required to provide information including name, location, number of employees, employee job titles and wages, etc.

- **Telefonica actively deters union organizing and fosters a climate of fear to maintain the status quo:** Management at Telefonica uses a variety of tactics to deter worker organizing, including clamping down on workers' discussions about the union or distributing union materials, questioning workers about their union support, and conducting one-on-one as well as group meetings to disparage the union.

  Additionally, Telefonica uses third parties as a threat to workers who might support unionization. The predominance of third party operators and related employees creates an atmosphere in which Telefonica employees feel easily expendable and is a powerful antidote to worker unionization. One worker told UNI researchers "knowing that any day could be my last and that there are other workers out there who could easily replace me, makes me afraid to put myself out there for the union."

  Another powerful tactic is terminations and firings. In 2010, Telefonica terminated, on average, 70 workers per month. Thus, workers' fears of job loss are not unfounded. In June last year, Telefonica fired 432 employees without justification and without notice. Overall, Telefonica's strategy of combining a ready pool of willing workers through its contracted outsourcers and the regular terminations of employees creates an effective and intimidating tool to prevent unionization and to hold down labor costs. Telefonica has effectively kept its workplace virtually union-free by creating an overall climate of fear and job insecurity.

- **Telefonica does not think the Action Plan has teeth**: Telefonica's Human Resources Director stated to a UNI researcher that he does not believe that reforms to the country's law such as the Action Plan Related to Labor Rights will have any significant impact on the company. Once Telefonica outsources to the third party, he suggested, the company is not responsible for the actions of the third party. The HR Director's response may be a misunderstanding of the law or an insightful understanding of the weakness of the law. In any event if these elements are not corrected in an enforceable implementation agreement, there will be no effective recourse.

Why It All Matters & The Bottom Line

The Telefonica example raises larger questions about Colombia's continued hostility to worker protections and basic rights, as well as questions about the enforceability of the Action Plan.

This is far from an abstract or inconsequential debate – from 2005 to 2009, 284 trade unionists were murdered in Colombia. Another 47 trade unionists were murdered in Colombia in 2009. In the nearly the last two decades, more than 2,700 Colombian trade unionists have been assassinated with a near total rate of impunity (approximately 96%). In 2011, at least seven more trade unionists have been killed.

Despite the overwhelming need for reform, public information shows that the Colombian government already has failed to meet the deadline on at least five of the steps outlined in the Action Plan. Additionally, the Office of the U.S. Trade Representative refused to share whether and how the Colombian government has met some of the other benchmarks outlined in the Plan.

Until Colombia adheres to and provides tangible progress on Action Plan goals and metrics, we fear the Plan is more rhetoric than reality. We should use this time and this opportunity to encourage true democratic reforms in Colombia before moving forward on the FTA. We must insist on real change, a timetable to measure progress and incorporate enforcement agreements into the implementation language

Congress should not consider the Colombia FTA until there is demonstrable progress that Colombian workers can freely exercise their basic rights to organize and bargain collectively and that companies like Telefonica adhere to making the Action Plan reality, and not just rhetoric.