



TRADE UNION ADVISORY COMMITTEE
TO THE ORGANISATION FOR ECONOMIC
COOPERATION AND DEVELOPMENT
COMMISSION SYNDICALE CONSULTATIVE
AUPRÈS DE L'ORGANISATION DE COOPÉRATION
ET DE DÉVELOPPEMENT ÉCONOMIQUES

Submission to the OECD Public Governance Committee

Impunity in Colombia

Paris, 21 April 2015

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Introduction

1. The 51st session of the Public Governance Committee (PGC) has been organised to discuss the current OECD accession process, including Colombia. The TUAC has raised concern about the public governance situation in Colombia on a number of occasions. At the 47th session of the Public Governance Committee on 25-26 April 2013, the TUAC issued a written submission to the PGC on the “Rule of Law and Labour Rights in Colombia”¹. The paper exposed:

- the exceptional severity of the human rights risks to trade unionists and other human rights defenders in Colombia, including assassinations;
- a defect in the judiciary and police system leading to de facto impunity for the assassinations of trade union members;
- the weak enforcement of labour law;
- the violation of freedom of association and collective bargaining;
- the absence of substantive social dialogue between government and trade unions.

¹ http://www.tuac.org/en/public/e-docs/00/00/0C/BB/document_doc.phtml

2. Since then, the TUAC has raised Colombia's accession process to the OECD in several OECD bodies. On public governance *per se*, on the 3 March 2015 representatives of the OECD Secretariat (the GOV Directorate) attended a TUAC meeting with Colombian trade union representatives from the *Central Unitaria de Trabajadores de Colombia* (CUT), the *Confederación General del Trabajo* (CGT) and the *Confederación de Trabajadores de Colombia* (CTC). At the meeting, the Colombian trade union representatives underlined Colombia's inadequate enforcement frameworks and the ineffectiveness of its justice institutions, as demonstrated by high levels of impunity. They described a glaring gap between the claims made on the international stage, and the reality on-the-ground.

3. The Roadmap for Colombia's Accession to the OECD provides that the PGC should review whether Colombia has a "sound structure of government [...] accompanied by coherent enforcement frameworks and effective justice institutions". TUAC's position is that the PGC should request further action from Colombia during the Accession process.

Facts and figures on violence & impunity

4. Colombia continues to be the most dangerous country in the world to be a trade unionist or a human rights defender. Illegal and abusive employment practices are also widespread.

Violence against trade union members

5. So far in 2015, 2 trade unionists have been assassinated. In 2014, 20 trade unionists were assassinated with a further 210 receiving death threats. An updated list since April 2011 is in Annex III. According to data collected by the Escuela Nacional Sindical (ENS), from 1 January 1977 until 31 March 2015, there was a total of 13,827 cases of violence against trade unionists including: 3,067 assassinations (22.2%); 6,660 death threats (48.17%); 1,889 forced displacements (13.67%); 727 arbitrary detentions (5.26%); 348 attacks (2.52%); and 171 kidnappings (1.24%)².

6. In the past five years, the level of violence against trade unions has declined. However, and as shown in table 1, the number of assassinations rose between 2012 and 2013, from 24 to 36, and the number of attacks and incidents of harassment rose overall. Moreover, the violence is increasingly targeted at trade union leaders. Anecdotally, it is reported that the level of threats has increased, just as the level of assassinations has declined. But the available data does not support this – an explanation may be that threats are not reported. The situation on-the-ground therefore remains essentially unchanged. Danger and fear are the staples of daily life for Colombian trade unionists.

Table 1: Violence against trade unionists 2011- 2015

Type of Violence	2010	2011	2012	2013	2014	2015 (as of April)
Threats	408	543	449	308	210	41
Forced Displacement	46	51	90	2	1	
Harassment/Intimidation	19	61	50	59	73	
Assassinations	53	30	24	36	20	2
Arbitrary Detention	4	16	20	24	12	1
Attacks	22	13	8	23	23	3
Enforced Disappearances	10	3	5	1	-	
Kidnapping	6	3	-	2	-	

² ENS, www.ens.org.co Report on the First Four Years of the Implementation of the Labour Action Plan, 7 April 2015.

Type of Violence	2010	2011	2012	2013	2014	2015 (as of April)
Illegal Search	3	1	3	2	2	
Torture	3	2	2	-	-	
Total	574	723	651	452	341	46

Source: ENS Database – information last requested by TUAC, 15 March 2015

Violence against Human Rights defenders

7. There is also high and persistent violence against Human Rights defenders that are not trade unionists. In its 2014 report, *Somos Defensores* reports that in the last 5 years, 260 Human Rights defenders have been assassinated, 759 threatened and 97 arbitrary arrested. In total, 1313 acts of aggression against Human Rights defenders³. In 2014 it reports 626 violations, 488 threats, 55 assassinations (78 in 2013), 41 attacks, 23 arbitrary arrests, 1 disappearance, 8 arbitrary uses of the penal system, 10 thefts of information.

Illegal and abusive employment practices

8. Employers in Colombia, both the private and public sector, have a long history of illegal and abusive employment practices including:

- Illegal labour intermediation: millions of Colombian workers are hired by forms of illegal subcontracting including cooperatives⁴, simplified stock companies⁵, “union contracts” (*contractos sindicales*), temporary service agencies, and contracts for service delivery. The aim is to avoid the direct employment relationship, so exempting workers from the protection of the labour code and undermining labour rights.
- “collective pacts” (*pactos colectivos*) that are “negotiated” directly between employers and non-unionised workers. These pacts have been criticised by the ILO. Pacts which provide better terms than union agreements are illegal under Colombian law.

9. As a result, a high percentage of Colombian workers are trapped in informal and/or illegal work. Less than half have a written or verbal contract of employment (46.6%, out of an employed population of 21,063,000).

Enforcement frameworks and justice institutions

Violence against trade union members

10. As shown in table 2, according to the ENS and based on confidential reports provided by the *Fiscalia* (Office of the Prosecutor), the total impunity rate for crimes of violence against trade unionists is 96.6%. For assassinations, the rate is 86.8%, although as some convictions were made *in absentia* (the perpetrators never went to jail) then the actual rate is higher. Furthermore, the majority of those convicted are “foot soldiers”, not those who planned or “benefited” from the assassinations. The impunity rate for threats against trade unionists is 99.9%.

³ Programa *Somos Defensores*, La Divina Comedia, Informe Anual 2014 - Sistema de Información sobre Agresiones contra Defensores y Defensoras de Derechos Humanos en Colombia, 2015, page 56 & See also *Somos Defensores* quarterly (Jan-March 2015) <http://somosdefensores.org/index.php/en/publicaciones/informes-siaddhh/133-la-amenaza-fantasma-boletin-trimestral-siaddhh-enero-febrero-2015>

⁴ Associated worker cooperatives are legal structures used by employers to break the direct employment relationship when in reality workers are under the effective supervision and control of the employer.

⁵ A *Sociedades por Acciones Simplificadas* (SAS) is an employment arrangement in which the worker is considered to be a partner in an independent corporation. Employers contract with the independent corporation.

11. The US Government similarly reports that for 110 assassinations of trade unionists that have occurred since 2011⁶, there have been just 4 convictions – an impunity rate of 96.36%. It also records that none of the 1,100 cases involving threats against trade unionists made since 2011 have been resolved.

Table 2: Impunity rates for violence against trade unions

Type of Violence	Impunity
Death Threats	99.9%
Forced Displacement	99.5%
Assassination	86.8%
Enforced Disappearances	99.6%
Kidnapping	90.6%

Source: ENS & confidential progress reports provided by the *Fiscalia* to ENS as part of an arrangement agreed under the LAP

12. Official data provided by the *Fiscalia* (Office of the Prosecutor) shows that there is insignificant progress in the number of investigations and the status of the cases of violence against trade unionists. The data made available – as shown in table 3 – only covers just half of the homicides (1,545 cases, but the reports and accusations of ENS shows at least 3,067 murders) and excludes other crimes (forced disappearance, threats, etc.). Out of 1,545 cases assigned, only 971 are active; and out of them, 554 are in the preliminary stage. Only in 417 cases, some progress in the investigation was achieved.

Table 3: Status of investigations of homicides against trade union members. Office of the General Prosecutor, as of June 30, 2014

Indicator	Law 600	Law 906	Total
Cases assigned	1340	205	1545
Cases in process	785	187	975
Victims	1711	238	1949
Cases in Preliminary Stage and Inquiry	385	167	553
Cases in Instruction and Investigation	220	2	221
Accused	290	41	331
Cases in Trial	180	18	198
Regular Court Decisions	341	25	366
Court Decisions / plead guilty	157	8	
Convictions	344	25	369
Regular decisions 268 Decisions / plead guilty	620	32	652
Warrants of Arrest	157	8	165

Source: ENS, Report on the First Four Years of the Implementation of the Labour Action Plan, 7 April 2015

Violence against Human Rights Defenders

13. According to *Somos Defensores* the impunity rate for investigations of crimes against Human Rights defenders and social leaders between January 2009 and June 2013 was 95%. Only 12 of the 219 cases the investigations had a result, which means that investigations have passed the first phase of the new “accusatory penal system” (*Sistema Penal Acusatorio*) in only 5% of cases.

14. Only 2.2% of the reported cases (only 5 out of 219 assassinations) have reached the phase of trial. And 59 out of 219 are “stuck” at the *Fiscalia*. The body in charge of investigations has no data, does not know if there is an investigation open, or simply has never responded to the information request. 27% of crimes against Human Rights defenders in Colombia between 2009 and 2013 are on ice.

⁶ Standing Up for Workers: Promoting Labor Rights through Trade, Special Report, Feb.2015, p.20-21.

Effectiveness of recent reforms and measures

15. The Colombian authorities have committed to a number of measures and reforms to eliminate impunity including capacity building of the judiciary system, protection of trade union and human rights activists, and enforcement of labour laws. Overall however, and as exposed below, there is low implementation in many areas that are critical to the coherence of enforcement frameworks and the effectiveness of justice institutions. In addition, and as shown in Annex I, recent quantitative analysis of the implementation of the US-Colombia Labour Action Plan (LAP) finds that Colombia has implemented just 50% of the commitments made.

Capacity building of the judiciary

16. Colombian authorities report taking a series of steps to increase capacity of the judiciary including: increasing the budget of the *Fiscalia*, which is responsible for investigating and prosecuting cases of violence against trade unionists and assigning 20 prosecutors exclusively to crimes against union members (and labour activists) and 100 full-time judicial police under a new to the Context and Analysis Unit, *Unidad Nacional de Análisis y Contextos* (UNAC).

17. The ENS reports that the new “specialist” unit does not deal exclusively with trade union cases. It also handles non-trade union cases. More fundamentally, investigators and prosecutors are failing to take a systematic approach to investigations. There is a need to develop a methodology to address the logic of violence against trade unions and to improve coordination between the legal staff of the Attorney General’s UNAC, who investigate individual cases of anti-unionist violence, and the staff assigned by the Attorney General.

National protection programme

18. The Colombian government has put in place a “National Protection Unit”, *Unidad Nacional de Proteccion* (UNP). Despite this positive measure, there has been no change in the impunity rates which remain shockingly high (96.6%).

19. Importantly, while the US government reports that the National Protection Unit increased its budget by 30% in 2013, the budget was reduced in 2014 and will be cut by another 32bn pesos (USD13m) in 2015⁷. UNP is facing a budget crisis. Protection was withdrawn from 1800 people in August 2014 for financial reasons. It is also mired in a corruption scandal involving 2 bn pesos (USD806,000). *Somos Defensores* reports that over the past 3 years UNP has rejected 56% of requests for protection made by Human Rights defenders⁸.

20. Colombian trade unions criticise the UNP for being reactive rather than proactive and taking an “individualistic approach” to risk assessment rather than a systematic one. The risk assessment protocol does not include a contextualised analysis and is considered to inadequately capture the risks facing trade unionists. There are significant delays in the assessment process which take more than the prescribed 30-day period. Trade unions report that protection is removed, even when there is no change in the risk. There are insufficient resources allocated to the programme. Travel costs such as oil are not covered, meaning that in practice, trade union representatives are unable to be protected when they travel. The US

⁷ <http://www.elpais.com.co/elpais/judicial/noticias/unp-buscara-ahorrar-32000-millones-esquemas-seguridad> & <http://www.elnuevosiglo.com.co/articulos/4-2015-unp-ahorrar%C3%A1-m%C3%A1s-de-32-mil-millones-en-seguridad.html>

⁸ Programa Somos Defensores, La Divina Comedia, Informe Anual 2014 - Sistema de Información sobre Agresiones contra Defensores y Defensoras de Derechos Humanos en Colombia, 2015, p.56

Government reports concerns that the hiring of bodyguards through private contractors raises concerns about corruption and thereby safety⁹. Trade unions report that they should be able to select their own bodyguards given that the post requires such a high degree of confidence.

Enforcement of labour rights

21. Colombia reformed its Criminal Code (Article 200) by making it a crime punishable by a prison sentence for employers to undertake anti-union activity, including for collective pacts. So far no employer has been sanctioned for violations of Article 200 and that no illegal collective pact has been terminated.

22. Colombia has also brought new provisions in its law to clamp down on illegal labour intermediation. Employers however, including in the public sector, have exploited loopholes in the law to develop new forms of illegal labour sub-contracting. Only 5% of the billions of pesos of fines imposed for illegal sub-contracting have been collected.

23. Colombia's capacity for enforcing labour standards is woefully inadequate as measured by the number and function of labour inspectors. The exact number of inspectors is unknown (between 703 and 723) but falls far short of ILO benchmarks. Under the US-Colombia Labour Action Plan, Colombia has increased the number of inspectors, but the majority have been hired on provisional contracts, more than half have been assigned to administrative tasks, not site inspection, they fail to play a preventative role, and there are some geographical areas for which there are no labour inspectors.

Conclusion

24. In view of Colombia's longstanding failure to enforce labour rights, the ineffectiveness of its justice institutions, the dangers that face Colombian trade unionists, and the severe risks to Colombian workers that result from unregulated work, the PGC should request further action from Colombia during the accession process. In Annex II, we list several proposals of corrective measures aiming at:

- Reducing impunity;
- Strengthening protection;
- Eliminating illegal labour intermediation;
- Implementing Article 200 of the Criminal code;
- Eliminating collective pacts; and
- Strengthening the Ministry of Labour

25. Beyond the mandate of the PGC and looking at the overall accession process of Colombia, a Special Monitoring Process on labour rights should be established during the accession process. This should be rigorous, transparent and participatory and involve the Colombian trade unions. The first task should be to ensure that Colombia implements its existing international commitments. The process could involve:

- drawing up a time-bound and results-based plan with measurable indicators in consultation with the Colombian trade unions;
- creating a Monitoring and Evaluation Committee involving the Colombian trade unions, tasked with compliance monitoring;
- verifying that the Colombian Government meets existing international commitments;
- requiring the Colombian Government to publish a six-monthly progress report that systematically analyses the implementation of the measures. This report should be

⁹ Standing Up for Workers: Promoting Labor Rights through Trade, USTR and DOL, Special Report, February 2015, p.2

verified by the Committee and discussed by the Permanent Commission on Coordination of Wage and Labour Policies (CPCCSL).

Annex I: Implementation of the Labour Action Plan (as of April 2015)

Adapted from ENS, Report on the First Four Years of the Implementation of the LAP, 7/04/ 2015

Maximum score is 3.

LAP THEME	MEASURE	MEASURE SCORE	THEME SCORE
I. Ministry of Labour	(i) Creation of the Ministry of Labour	2.1	1.75 (58.3%)
	(ii) Raising the number of inspectors	1.15	
	(iii) Training for Labour Inspectors (ILO)	1.7	
	(iv) System for citizens' complaints	1.15	
	(v) Strengthening the system for mediation in conflicts	2.65	
II. Penal Code Reform	(i) Reform of Article 200 of the Criminal Code	0.65	0.65 (21.6%)
III. Cooperatives (CTAs)	(i) Prohibition of illegal use of CTA and other forms	0.65	1.34 (44.6%)
	(ii) Direct Employment Relationship	0.95	
	(iii) Monitoring by Ministry of Labour and Supersolidaria	1.8	
	(iv) Promotion of rights	3	
	(v) Assigning 100 inspectors	0.5	
	(vi) Prioritizing 5 strategic sectors	1.15	
IV. Temporary Service Agencies (ESTs)	(i) Supervision/ monitoring	1.8	1.98 (66%)
	(ii) Quarterly reports	2.15	
V. Collective Pacts (Pactos Colectivos)	(i) Sanctions for illegal use	0.65	0.8 (26.6%)
	(ii) Public outreach campaigns	0.15	
	(iii) Preventative inspections	0.8	
	(iv) ILO Technical Assistance	1.6	
VI. Essential services	(i) Collation of jurisprudence on the definition of essential services	0.8	0.8 (26.6%)
VII. ILO Office of Colombia	(i) Assistance for implementing the agreement	2.5	2.5 (83.3%)
VIII. Protection Programme	(i) Expanding coverage	2.15	2.18 (72.3%)
	(ii) increased funding	2.35	
	(iii) Emergency plan for cases	2.15	
	(iv) Disclosure of information on obligations	1.95	
	(v) Modification of CRER (risk assessment Committee)	2.3	
	(vi) Strengthening the teachers' programme	2.15	
IX. Penal Justice Reform	(i) 95 new judicial police investigators to support prosecutors	1.6	1.475 (49.2%)
	(ii) Resources to finance greater investigation activities	2	
	(iii) Actions to overcome impunity	1.15	
	(iv) Capacity building on investigating crimes against trade unionists	2	
	(v) Analysis of closed cases	1.3	
	(vi) Centre for support to victims	1.95	
	(vii) Building a list of cases to investigate	1.3	
	(viii) Plan to decongest/unblock homicide cases	0.85	
	(ix) Public disclosure of investigation and sentences progress	1.3	
	(x) Legal regulation of threats	1.3	
X. Follow-up Mechanism	(i) Assessment of the LAP	1.5	1.5 (50%)

Annex II: TUAC proposals of corrective measures

Reducing impunity

<i>ACTION</i>	<i>ASSESSMENT</i>	<i>CORRECTIVE MEASURES</i>
DEVELOP A 10-YEAR PLAN	Investigators and prosecutors are failing to take a systematic approach to investigations. There is a need to develop a methodology to address the logic of violence against trade unions.	In consultation with unions and other victims establish a plan and a methodology for investigating and prosecuting the remaining and substantial caseload, with annual benchmarks and the financial and institutional resources required to accomplish those benchmarks. Involve the trade unions and human rights groups in developing the plan and the methodology.
ATTORNEY GENERAL'S SPECIAL SUB-UNIT FOR CRIMES AGAINST UNION MEMBERS ¹⁰	Colombia reports taking a series of steps including: increasing the budget of the Attorney General's Office, which is responsible for investigating and prosecuting cases of violence against trade unionists; assigning 20 prosecutors exclusively to crimes against union members (and labour activists). ENS reports that the specialist unit also handles non-trade union cases.	<p>Increase the number of prosecutors with expertise in this specific area and re-assign other case-loads.</p> <p>Improve coordination between the legal staff of the Attorney General's Special Sub-unit, who investigate individual cases of anti-unionist violence, and the staff assigned to the Context Unit (Unidad Nacional de Análisis y Contextos: UNAC) of the Attorney General.</p> <p>Apply the methods developed by this Unit to improve investigations into organised crime to cases of trade union violence so as to take a systematic approach.</p> <p>As a priority identify the intellectual authors or beneficiaries of violence against trade unions, in order to prevent further acts of violence.</p>

Strengthening protection

<i>ACTION</i>	<i>ASSESSMENT</i>	<i>CORRECTIVE MEASURES</i>
ADOPT A PREVENTATIVE APPROACH	Colombian trade unions criticise the Protection Programme UNP for being reactive rather than proactive and taking an individualistic approach to risk assessment rather than a systematic one. The risk assessment protocol does not include a contextualised analysis.	Adopt a more systematic approach to trade union protection. The programme should include the participation of trade union leaders in the development of the procedures and policies.
RISK ASSESSMENT COMMITTEE	The risk assessment process is considered to inadequately capture the risks facing trade unionists.	Give trade unions representation on the risk assessment committee (CERREM – the Committee for Evaluation of Risks and Recommendations of Measures).
SET UP AN EARLY WARNING SYSTEM	/	Develop an Early Warning System with the necessary resources and stability to continuously monitor potential threats. Design, in collaboration with the three Colombian trade union confederations (CGT, CTC, CUT) a follow-up mechanism and a methodology for identifying potential risks.
INCREASE RESOURCES	Trade unions report that protection is removed, even when there is no change in the risk. There are insufficient resources including for petrol, meaning that they are unable to be protected when they travel.	Provide adequate resources for protection programmes and measures so that trade unionists, rights defenders, and other community leaders receive adequate and sustainable resources and no one at risk or under threat who requires protection fails to receive it.
ACCESS TO PROTECTION	Colombian trade unions report that there are significant delays in the assessment process	Reduce significantly the delay in the provision of protection.

¹⁰ Subunidad OIT de la Fiscalía de Colombia.

<i>ACTION</i>	<i>ASSESSMENT</i>	<i>CORRECTIVE MEASURES</i>
	which take more than the prescribed 30-day period.	
BODYGUARDS	The US Government reports concerns that the hiring of bodyguards through private contractors raises concerns about corruption and thereby safety ¹¹ . Trade unions report that they should be able to select their own bodyguards given that the post requires such a high degree of confidence.	Hire bodyguards on the basis of direct employment contracts with <i>per diems</i> for missions and contributions to social protection. Allow unions to select their own bodyguards.
EVALUATION	/	The UNP should undertake regular evaluations of the adequacy of the measures provided with the recipient. Protection should not be removed in the absence of a criminal sentence of the perpetrator(s).
TRANSPARENCY	The budget is not published.	The UNP should publish the budget, and its implementation and evaluation of its activities.
CONDUCT AN INQUIRY INTO CORRUPTION	/	Conduct an in-depth investigation/inquiry into the misallocation of funds at the UNP and determine the functionaries responsible. Sanctions and disciplinary (penal) action must take place once responsibility is determined.

Eliminating illegal labour intermediation

<i>ACTION</i>	<i>ASSESSMENT</i>	<i>CORRECTIVE MEASURES</i>
CHANGE THE LAW	Colombian trade unions identify the evolving forms of labour intermediation to be a major problem. The US Government considers this to be an outstanding issue of the LAP. The Government has agreed to bring in a new law to close the existing loopholes with regard to core functions.	Bring in a new law to prohibit the use of all forms of intermediation for permanent core functions in a company.
PUBLIC SECTOR	The public sector is a major user of new forms of labour intermediation, including “trade union” contracts.	Prohibit labour intermediation in the public sector and in State-owned Enterprises for permanent core functions.
“TRADE UNION” CONTRACTS	Colombian trade unions expressed concern over the escalating use of “trade union” contracts ¹² , particularly in the health sector. These have risen from c50 in 2010 to 984 in 2014. ¹³ The growing number of fake contracts is being used to demonstrate improvements in freedom of association.	Change the law to prohibit the use of “trade union” contracts.
TEMPORARY SERVICE AGENCIES (ESTs)	Temporary services agencies are legal, but are used for illegal practices. The Government made quarterly reports available on inspections between 2012 and 2013.	Publish annual data on temporary service agencies, especially concerning the numbers of EST, the numbers of workers employed by EST and the number of contracts these workers sign with EST, annually.
INSPECTORS	It is unclear whether there is an established team of 100 inspectors dedicated exclusively to illegal cooperatives or what investigations they	Publish information on the numbers and investigations undertaken by the investigators.

¹¹ Standing Up for Workers: Promoting Labor Rights through Trade, USTR and DOL, Special Report, February 2015, p.2.

¹² These are contracts with fake unions that are established by employers.

¹³ Figures quoted in TUAC Meeting on Colombia’s Accession to the OECD, OECD, Paris, 3 March 2015.

<i>ACTION</i>	<i>ASSESSMENT</i>	<i>CORRECTIVE MEASURES</i>
	have undertaken as there is no public information provided.	
INSPECTIONS IN FIVE PRIORITY SECTORS	ENS reports that 47 investigations have been carried out in the priority sectors, compared to 243 investigations in other sectors, indicating that they have not been assigned “priority”.	Increase the number and effectiveness of inspections in the five priority sectors of palm oil, sugar, mines, ports and flowers, including training of inspectors of illegal forms of labour intermediation.
COLLECTION OF FINES	The US Government reports that only 5% of the \$31 million levied fines for illegal subcontracting have been collected. ENS reports a large number of fines were cancelled. The law has since been changed. No fines or other sanctions for illegal sub-contracting were levied in 2014.	Push forward with reforms to support collection of fines for illegal intermediation.
FORMALISATION AGREEMENTS	There is evidence that formalisation agreements are being used to avoid sanctions and are not establishing permanent or direct employment relationships with the main enterprise benefiting from the labour, and/or do not cover all workers affected by the illegal subcontracting.	Modify the method for negotiating formalisation agreements: <ul style="list-style-type: none"> - Include trade union participation; - Result in the direct hiring of the workers involved by the firms that benefit from the work; - Prohibit intermediary firms or subcontractors from negotiating formalisation agreements.

Implementing Article 200 of the Criminal code

<i>ACTION</i>	<i>ASSESSMENT</i>	<i>CORRECTIVE MEASURES</i>
IMPLEMENT ARTICLE 200 OF THE PENAL CODE	To date there have been no prosecutions.	Accelerate the investigation and prosecutions of violations of anti-union discrimination under Article 200, which criminalises violations of freedom of association, including collective pacts.
		Complete investigations into the 294 cases that have been brought by trade unions under Article 200. The Attorney General’s office should develop a target plan for addressing the backlog - 50 investigations per 6 months.
	No fines have been collected from employers for anti-union activity	Improve significantly the collection of fines.
	There is poor coordination between the Ministry of Labour and the Attorney General’s Office on the handling of cases filed. There is little transparency on the complaints made and the status of investigations.	Improve institutional cooperation between the Ministry of Labour and the Attorney General’s Office on the handling of cases filed, by establishing a protocol.

Eliminating collective pacts

<i>ACTION</i>	<i>ASSESSMENT</i>	<i>CORRECTIVE MEASURES</i>
ELIMINATE COLLECTIVE PACTS (“PACTOS COLECTIVOS”) IN WORKPLACES WHERE A UNION IS PRESENT	Colombian trade unions consider collective pacts to pose a major obstacle to trade union rights.	Amend the legislation so that: <ul style="list-style-type: none"> - direct negotiations with non-unionised workers should only be possible in the absence of trade unions. This is in line with European Parliament Resolution 2628; - ensure that they provide no bar to the negotiation of collective agreements.

Strengthening the Ministry of Labour

ACTION	ASSESSMENT	CORRECTIVE MEASURES
INCREASE NUMBER OF INSPECTORS	Colombia made a commitment under the LAP to hire 480 new inspectors. It is not possible to know the current situation as different numbers are reported: <ul style="list-style-type: none"> - <i>According to the US Government:</i>¹⁴ the number of inspectors hired is 294 (increased from 424 in 2011 to 718 in 2014) so the shortfall is 186 inspectors. The US Government reports that another 188 is ready to be hired. - ENS estimates the shortfall to be around 201 inspectors, based on different numbers reported by the Ministry of Labour: <ul style="list-style-type: none"> • 714 (October 2014) • 703 (November 2014) • 723 (Figure provided for 2014). 	Fully comply with commitments made under the LAP, and then make a time-bound plan for complying with ILO benchmarks which would mean hiring 2000 inspectors on permanent contracts (1 inspector for every 10,000 occupied workers).
REPORTING/ TRANSPARENCY	There is no one authoritative publicly accessible source of information on the numbers of inspectors hired, their employment status, training and function.	Make information publicly available.
RECRUITMENT PROCESS	None of the new labour inspectors have been recruited through a competitive and transparent process, which is in violation of ILO Conventions 81 and 129.	Inspectors should be recruited through a competitive, merit-based civil service career path The Ministry of Labour should publicly disclose its recruitment process for labour inspectors.
EMPLOYMENT CONTRACTS	ENS estimates that c85.5% of the new inspectors hired are provisional hires. This has repercussions for the effectiveness of ILO training programmes, as well as for decision-making and autonomy of the inspectors.	Inspectors should be hired on the basis of a direct permanent contract.
ACTIVITIES OF INSPECTORS	Colombian trade unions report that a high number of inspectors are engaged in administrative tasks, rather than undertaking on-site inspections. ENS reports that c57% is engaged in administrative tasks. ¹⁵	Re-assign inspectors to workplace inspections and make information on the numbers and function of inspectors.
ROLE OF INSPECTORS	Colombian trade unions report that inspectors are paying insufficient attention to prevention.	Strengthen the preventative role of inspectors.
TRAINING	Labour inspectors lack adequate training in law, especially in forms of labour intermediation, but also need expertise in different disciplines including safety and health and inspection methodology. An estimated 80% lack relevant technical experience.	Train inspectors, including in international labour law, and in specialised areas of inspection, including labour intermediation and health and safety. A corps of inspectors should be trained as specialists for certain types of inspections (e.g., safety and health).
WAGES	Inspectors are not sufficiently well paid to remove incentives for corruption.	The salaries of inspectors should be increased.
MATERIALS	Transport costs of labour inspectors are reimbursed only up to 4,000 pesos. Colombian trade unions report that in practice travel expenses are not reimbursed for visits made without prior approval of the Regional Directorate. Unforeseen expenses are also not reimbursed.	Provide the materials necessary to perform their duties, in line with the mobile nature of their job. This should cover travel costs to remote areas, and reimbursement of incidentals.
AUTONOMY	Colombian trade unions report that inspectors lack independence.	Strengthen independence of inspectors <i>vis a vis</i> employers and

¹⁴ Standing Up for Workers: Promoting Labor Rights through Trade, USTR and DOL, Special Report, February 2015. p.21.

¹⁵ ENS, Report on the First Four Years of the Implementation of the Labour Action Plan, 2015.

<i>ACTION</i>	<i>ASSESSMENT</i>	<i>CORRECTIVE MEASURES</i>
		government.
COMPLAINTS MECHANISM	The telephone hotline and web-based mechanism established for filing complaints on violations of labour rights violations does not deal with the complaint, or trigger a labour inspection, ¹⁶ but functions as a gateway for making an appointment. This means that there is no confidentiality. The on-line form only allows individuals, not organisations (trade unions) to file a complaint.	Improve the system, through consultations with the Colombian trade unions including allowing for a complaint to be filed by a trade union.

¹⁶ ENS, 2015

Annex III: Homicidios de Sindicalistas en Colombia

April 2011 – March 2015

		Fecha	Municipio	Departamento	Tipo de sindicalista	Sindicato
1	RAMIRO SANCHEZ MUÑOZ ANTONIO	08-abr-11	PUERTO BOYACA	BOYACA	DIRIGENTE SINDICAL	ASOTMEM
2	BOHORQUEZ CHAVEZ LUIS ALBERTO	10-abr-11	SAN VICENTE DEL CAGUAN	CAQUETA	TRABAJADOR DE BASE	AICA
3	CHAGÜI CUETER JUAN CARLOS	15-05-2011	BARRANQUILLA	ATLANTICO	DIRIGENTE SINDICAL	SIGGINPEC
4	SIERRA VERGARA DIONIS ALFREDO	15-05-2011	LA APARTADA	CORDOBA	TRABAJADOR DE BASE	ADEMACOR
5	GIRALDO HECTOR ARMANDO	19-05-2011	YUMBO	VALLE	DIRIGENTE SINDICAL	SINTRAMUNICIPIO
6	CASTRO CASAS CARLOS ARTURO	23-05-2011	CALI	VALLE	DIRIGENTE SINDICAL	SINTRAEMCALI
7	CUADRADO NUÑEZ FREDDY ANTONIO	27-05-2011	CIENAGA	MAGDALENA	TRABAJADOR DE BASE	EDUMAG
8	GOMEZ CARLOS JULIO	29-05-2011	CALI	VALLE	DIRIGENTE SINDICAL	SUTEV
9	DE LOS RIOS CARDENAS JORGE ELIECER	08-06-2011	DOS QUEBRADAS	RISARALDA	DIRIGENTE SINDICAL	SER
10	PEÑATA LOPEZ ALEJANDRO JOSE	20-06-2011	SAN PELAYO	CORDOBA	DIRIGENTE SINDICAL	ADEMACOR
11	SERNA WILMAR	31-07-2011	APARTADO	ANTIOQUIA	DIRIGENTE SINDICAL	SINTRAINAGRO
12	ZUÑIGA EDUARDO FABIAN	31-07-2011	APARTADO	ANTIOQUIA	TRABAJADOR DE BASE	SINTRAINAGRO
13	ARANGO ZAPATA MARIA EUGENIA	10-ago-11	TARAZA	ANTIOQUIA	TRABAJADOR DE BASE	ADIDA
14	GONZALEZ GARNICA RAFAEL ANDRES	16-ago-11	CARTAGENA DEL CHAIRA	CAQUETA	DIRIGENTE SINDICAL	FENSUAGRO
15	DIAZ VILLA LUIS ALFONZO	22-ago-11	MONTERIA	CORDOBA	DIRIGENTE SINDICAL	SINTRAUNICOL
16	TAPIAS JIMENEZ NALLYD	01-09-2011	ARBOLETES	ANTIOQUIA	TRABAJADOR DE BASE	ADIDA
17	DURANTE ALVAREZ LUIS HUMBERTO	03-09-2011	APARTADO	ANTIOQUIA	DIRIGENTE SINDICAL	SINTRAINAGRO
18	MARTINEZ BERRIO JOSE ALBERTO	03-09-2011	ASTREA	CESAR	TRABAJADOR DE BASE	ADUCESAR
19	QUIROS VIVAS LUIS ARBEY	07-10-2011	SAN LORENZO	NARIÑO	DIRIGENTE SINDICAL	SIMANA
20	BETANCOURT BALLESTEROS TARCISIO	08-10-2011	YUMBO	VALLE	DIRIGENTE SINDICAL	SINTRAMUNICIPIO
21	CARMONA BERMUDEZ JOHN FREDY	09-dic-11	MEDELLIN	ANTIOQUIA	DIRIGENTE SINDICAL	SINALTRAINAL
22	FONSECA DIAZ ANIBAL	13-dic-11	GUAMAL	MAGDALENA	TRABAJADOR DE BASE	EDUMAG
23	OCHOA SERNA DORA LILIANA	16-dic-11	SEGOVIA	ANTIOQUIA	DIRIGENTE SINDICAL	SINTRAOFAN
24	HILARION PALACIOS VICTOR MANUEL	10-ene-12	SAN LUIS DE CUBARRAL	META	DIRIGENTE SINDICAL	FENSUAGRO
25	ARREDONDO MAURICIO	17-ene-12	PUERTO ASIS	PUTUMAYO	DIRIGENTE SINDICAL	USO
26	GONZALEZ BLANDON ALEXANDER	19-ene-12	ANDALUCIA	VALLE	DIRIGENTE SINDICAL	SINTRAENTEDIMCCOL
27	PAUBLOTT GOMEZ RICARDO RAMON	26-ene-12	BARRANQUILLA	ATLANTICO	DIRIGENTE SINDICAL	SINALTRAINAL
28	AMEZQUITA EFRAIN	15-02-2012	CALI	VALLE	DIRIGENTE SINDICAL	SINTRAMASIVO
29	MALLAMA MIGUEL ANGEL	25-03-2012	JAMUNDI	VALLE	DIRIGENTE SINDICAL	SINTRAXAMUNDI
30	AGUIRRE PIEDRAHITA DANIEL	27-abr-12	FLORIDA	VALLE	DIRIGENTE SINDICAL	SINALCORTEROS
31	MAGACHI AVILA HORACIO ELIAS	05-06-2012	CALI	VALLE	DIRIGENTE SINDICAL	UTP
32	MARTINEZ GERARDO	15-06-2012	CALOTO	CAUCA	DIRIGENTE SINDICAL	FENSUAGRO

33	LONDOÑO GUSTAVO	25-06-2012	CALOTO	CAUCA	DIRIGENTE SINDICAL	FENSUAGRO
34	MARTINEZ ARTEAGA BENJAMIN	25-06-2012	CHINU	CORDOBA	TRABAJADOR DE BASE	ANTHOC
35	JURADO GERARDO	01-07-2012	POPAYAN	CAUCA	DIRIGENTE SINDICAL	SNNT
36	CARDENAS CHITIVA EDER TOMAS	23-07-2012	PARATEBUENO	CUNDINAMARCA	DIRIGENTE SINDICAL	SINDISPETROL
37	ALVAREZ PIMIENTA HERNAN ALONSO	29-07-2012	MEDELLIN	ANTIOQUIA	TRABAJADOR DE BASE	SUTIMAC
38	MACIAS ROJAS SAUL RAINER	19-ago-12	EL TAMBO	NARIÑO	TRABAJADOR DE BASE	ASOINCA
39	HERRERA FUENTES ANCIZAR	22-ago-12	MORELIA	CAQUETA	TRABAJADOR DE BASE	AICA
40	GOMEZ MINA JOSE HEBERTH	18-09-2012	SARAVENA	ARAUCA	DIRIGENTE SINDICAL	ASEDAR
41	FLOREZ VERGARA OSMAN	19-09-2012	SAHAGUN	CORDOBA	TRABAJADOR DE BASE	ADEMACOR
42	RAMIREZ JARAMILLO ARNULFO DE JESUS	01-10-2012	GUATICA	RISARALDA	DIRIGENTE SINDICAL	SER
43	ZAMBRANO SOLARTE JAIME RAMIRO	01-10-2012	LINARES	NARIÑO	TRABAJADOR DE BASE	SINDESS
44	LARA NESTOR FABIO	17-10-2012	CALI	VALLE	DIRIGENTE SINDICAL	SINTRAVIECAL I
45	PEREZ JACKSON DANILO	30-10-2012	VALLEDUPAR	CESAR	DIRIGENTE SINDICAL	SEUP
46	RECALDE JAIRO ELIAS	10-11-2012	GUACHUCAL	NARIÑO	DIRIGENTE SINDICAL	SIMANA
47	RIVAS PARRA MILTON ENRIQUE	11-dic-12	PUERTO GAITAN	META	DIRIGENTE SINDICAL	USO
48	PEREZ OSCAR	09-ene-13	EL BAGRE	ANTIOQUIA	TRABAJADOR DE BASE	ADIDA
49	MENDOZA MEDRANO JOAQUIN	14-ene-13	CARTAGENA	BOLIVAR	TRABAJADOR DE BASE	SINCONTAXCAR
50	PEREZ MUÑOZ JUAN CARLOS	28-ene-13	CORINTO	CAUCA	DIRIGENTE SINDICAL	SINTRAINAGRO
51	GUTIERREZ ELIZABETH	30-ene-13	LA VICTORIA	VALLE	DIRIGENTE SINDICAL	SUTEV
52	RANGEL ZAMBRANO EDILBERTO	06-02-2013	ARAUCA	ARAUCA	TRABAJADOR DE BASE	UTP
53	HINESTROZA MENDOZA NESTOR MANUEL	08-02-2013	SINCELEJO	SUCRE	TRABAJADOR DE BASE	UTP
54	GARCIA MORERA LEONARDO	13-02-2013	BOLIVAR	VALLE	TRABAJADOR DE BASE	SUTEV
55	CASSO DIZU SALVADOR	09-03-2013	CALDONO	CAUCA	TRABAJADOR DE BASE	ASOINCA
56	RUIZ TOVAR MARIO MANUEL	11-03-2013	NECHI	ANTIOQUIA	DIRIGENTE SINDICAL	ADIDA
57	ANDRADE JOSE NICOLAS	22-03-2013	ORITO	PUTUMAYO	TRABAJADOR DE BASE	ASEP
58	PIZO GARCIA GUSTAVO ADOLFO	25-03-2013	TOTORO	CAUCA	DIRIGENTE SINDICAL	SINPEAGRIC
59	OSPINA RESTREPO LUIS ALFONSO	27-03-2013	PUERTO TRIUNFO	ANTIOQUIA	TRABAJADOR DE BASE	ADIDA
60	BELTRAN NARCISO	12-abr-13	GALAPA	ATLANTICO	DIRIGENTE SINDICAL	FANAL
61	MANCERA BERNAL DANIEL	16-abr-13	BARRANQUILLA	ATLANTICO	TRABAJADOR DE BASE	UTP
62	SIAGAMA CAIZALES LUIS IRLAN	27-abr-13	MISTRATO	RISARALDA	TRABAJADOR DE BASE	SER
63	ESPINOSA CABARCAS FABIAN ENRIQUE	13-05-2013	CARTAGENA	BOLIVAR	TRABAJADOR DE BASE	SINCONTAXCAR
64	MESA HENAO FRANCISCO JOSE	14-05-2013	MEDELLIN	ANTIOQUIA	TRABAJADOR DE BASE	ADIDA
65	MARTINEZ MEJIA DIDIER	04-06-2013	FLORENCIA	CAQUETA	TRABAJADOR DE BASE	UTP
66	RUBIO HERRERA ESNEIDER	04-06-2013	FLORENCIA	CAQUETA	DIRIGENTE SINDICAL	UTP
67	CAMPO RODRIGUEZ LUIS FABIO	15-07-2013	CALI	VALLE	DIRIGENTE SINDICAL	
68	LOPEZ FUENTES GLORIA LUCY	31-07-2013	POPAYAN	CAUCA	TRABAJADOR DE BASE	ASOINCA
69	OCAMPO CEPEDA FRANCISCO JAVIER	04-ago-13	CALI	VALLE	DIRIGENTE SINDICAL	SUTEV
70	PRADA VIDALES JIMY	09-ago-13	PLANETA RICA	CORDOBA	TRABAJADOR DE BASE	ADEMACOR

71	MOSQUERA HEILER	29-ago-13	NATAGAIMA	TOLIMA	TRABAJADOR DE BASE	ASTRACATOL
72	VILLA PEREZ GUILLERMO DE JESUS	13-09-2013	DOS QUEBRADAS	RISARALDA	TRABAJADOR DE BASE	SER
73	FLOREZ VIVEROS FERNANDO	27-09-2013	CALI	VALLE	DIRIGENTE SINDICAL	SINDOEPAL
74	PERDOMO PIMENTEL RAUL	27-09-2013	ORITO	PUTUMAYO	TRABAJADOR DE BASE	USO
75	RODRIGUEZ RAMOS GRACIELA	08-10-2013	PAMPLONA	NORTE DE SANTANDER	TRABAJADOR DE BASE	ASINORT
76	GOMEZ VERTEL JUAN DAVID	08-11-2013	MEDELLIN	ANTIOQUIA	DIRIGENTE SINDICAL	ADIDA
77	LOPEZ TRIVIÑO OSCAR	09-11-2013	BUGALAGRANDE	VALLE	DIRIGENTE SINDICAL	SINALTRAINAL
78	RAMIREZ JOHANI ANTONIO	09-11-2013	SEVILLA	VALLE	TRABAJADOR DE BASE	SUNMCOL
79	PIEDRAHITA LLANOS ROBINSON	13-11-2013	PUERTO BERRIO	ANTIOQUIA	TRABAJADOR DE BASE	ADIDA
80	MONTERROSA BOLAÑOS HECTOR JOSE	17-11-2013	MEDELLIN	ANTIOQUIA	DIRIGENTE SINDICAL	ADIDA
81	OSORIO BARRETO MYRIAM EDITH	19-11-2013	MARIQUITA	TOLIMA	TRABAJADOR DE BASE	SIMATOL
82	GARCIA HERREROS CARLOS EDMUNDO	04-dic-13	CUCUTA	NORTE DE SANTANDER	DIRIGENTE SINDICAL	USSEP
83	CAMPEROS PEDRO ALEJANDRINO	06-dic-13	SARDINATA	NORTE DE SANTANDER	DIRIGENTE SINDICAL	SINDENORTE
84	MARIN ROLONG EVER LUIS	04-ene-14	SOLEDAD	ATLANTICO	DIRIGENTE SINDICAL	SINALTRACEB A
85	GOYENECHE GOMEZ MANUEL IGNACIO	06-ene-14	PUERTO ASIS	PUTUMAYO	TRABAJADOR DE BASE	USO
86	SALAZAR JOSE JULIAN	13-ene-14	TULUA	VALLE	TRABAJADOR DE BASE	SINTRACOLOM BINA
87	NAMUNDIA QUERAGAMA LIZ MENIA	23-ene-14	PUEBLO RICO	RISARALDA	TRABAJADOR DE BASE	SER
88	PALACIOS ARQUIMEDES	04-abr-14	SEGOVIA	ANTIOQUIA	TRABAJADOR DE BASE	ADIDA
89	QUINTO JESUS ADAN	09-abr-14	TURBO	ANTIOQUIA	DIRIGENTE SINDICAL	CGT
90	SOLORZANO ARENAS WILSON JAVIER	29-abr-14	ESPINAL	TOLIMA	DIRIGENTE SINDICAL	UTP
91	RODRIGUEZ CANTILLO TOMAS	09-05-2014	CIENAGA	MAGDALENA	DIRIGENTE SINDICAL	SINTRAINAGRO
92	APONTE BEDOYA PABLO EMILIO	16-05-2014	CARTAGO	VALLE	DIRIGENTE SINDICAL	SINTRAEMSDES
93	ACANAMEJOY JOSE ANTONIO	17-05-2014	IPIALES	NARIÑO	TRABAJADOR DE BASE	FENSUAGRO
94	ESTERILLA JOSE YINER	17-05-2014	IPIALES	NARIÑO	TRABAJADOR DE BASE	FENSUAGRO
95	LOPEZ ORTEGA DEIVI	17-05-2014	IPIALES	NARIÑO	TRABAJADOR DE BASE	FENSUAGRO
96	YATACUE SECUE BRAYAN	17-05-2014	IPIALES	NARIÑO	TRABAJADOR DE BASE	FENSUAGRO
97	AVENDAÑO ARANGO JOSE ARLEX	16-06-2014	TULUA	VALLE	DIRIGENTE SINDICAL	FENSUAGRO
98	OSORIO OCHOA DIEGO	03-07-2014	CUCUTA	NORTE DE SANTANDER	TRABAJADOR DE BASE	UTP
99	SANTOS JIMENEZ EDITH DEL CONSUELO	29-ago-14	ACACIAS	META	DIRIGENTE SINDICAL	SINPROSEG
100	URIBE JHON JAIRO	16-09-2014	LA ESTRELLA	ANTIOQUIA	DIRIGENTE SINDICAL	ANDETT
101	JIMENEZ PORTILLA ALVARO ANDRES	20-09-2014	TARSO	ANTIOQUIA	TRABAJADOR DE BASE	ADIDA
102	HINCAPIE ARENAS JORGE ELIAS	23-09-2014	ENVIGADO	ANTIOQUIA	DIRIGENTE SINDICAL	ANDETT
103	MEDINA ORTEGA NELSON	17-10-2014	VILLAVICENCIO	META	DIRIGENTE SINDICAL	USO
104	MUÑOZ FORERO JAVIER	11-ene-15	TULUA	VALLE	DIRIGENTE SINDICAL	FENSUAGRO
105	GUEVARA ARANGO RAUL ANCIZAR	07-03-2015	MARMATO	CALDAS	DIRIGENTE SINDICAL	EDUCAL