



Submission to the OECD Public Governance Committee

Update on Colombia

Paris, 19 April 2016

Introduction

1. The 53rd Session of the Public Governance Committee (PGC) meeting on 21-22 April is to discuss the Accession process of Colombia in Closed Session. The TUAC has raised concerns with the PGC about the public governance situation in Colombia on a number of occasions. TUAC made written submissions to the Committee at the 47th Session on 25-26 April 2013 (“Rule of Law and Labour Rights in Colombia”ⁱ) and the 51st Session on 23-24 April 2015 (“Impunity in Colombia”ⁱⁱ), respectively. This submission provides an update on the situation in Colombia with regard to violence against trade unionists, the level of impunity, and enforcement.

2. The most recent reports on labour and human rights violations in Colombia were published earlier in April 2016, on the occasion of the 5th anniversary of the Labour Action Plan (agreed as part of the Free Trade Agreement between the US and Colombia), by the Office of the U.S. Trade Representative and the U.S. Department of Laborⁱⁱⁱ, the Colombian Ministry of Labour^{iv}, and the Colombian Escuela Nacional Sindical (ENS)^v. In light of these reports, and the most recent available data, it is TUAC’s assessment that the situation has not substantially improved in Colombia in the past year and therefore the PGC should request further information and policy action from Colombian authorities, and postpone its decision on Colombia’s Accession.

Violence against trade unionists

3. Table 1 compiles the latest figures provided by the ENS, together with data from previous reports. It shows that the level of violence in 2015 has not been substantially reduced. The number of threats is on the decrease but remains at an alarming level (157). 18 trade unionists were assassinated. Attacks, kidnapping, enforced disappearances and intimidation, are all still a reality for Colombian trade unionists.

Table 1: Violence against trade unionists 2011- 2015

Type of Violence	2010	2011	2012	2013	2014	2015 (prov)
Threats	408	543	449	308	210	156
Forced Displacement	46	51	90	2	1	1
Harassment/Intimidation	19	61	50	59	73	26
Assassinations	53	30	24	36	20	18
Arbitrary Detention	4	16	20	24	12	12
Attacks	22	13	8	23	23	10
Enforced Disappearances	10	3	5	1	-	3
Kidnapping	6	3	-	2	-	4
Illegal Search	3	1	3	2	2	2
Torture	3	2	2	-	-	5
Total	574	723	651	452	341	237

Source: TUAC submission to the PGC April 2015 & ENS April 2016

Protection for trade unionists under threat of violence

4. The protection programme of the Colombian authorities set up to protect trade unionists under threat remains under-resourced and either too slow or unable to respond, leaving trade unionists at risk un-protected. In its most recent report, the ENS concludes that “*violence against trade unionists is not a thing of the past*” and that “*the protective measures that have been taken are still insufficient*”.

5. According to the US Government report “*The program (...) has had difficulty meeting the legally established deadline for issuing decisions on requested protection. Under Colombian law, such decisions should take no more than 30 working days from receipt of the request for protection. In 2015, the process took an average of three months. The program faces resource constraints, as do many Colombian government-sponsored programs, due primarily to the impact of falling global oil prices on government revenues. These constraints limit the program’s capacity to address the delays and to attend to any increase in protection requests*”.

Impunity for violence against trade unionists

6. The figures in Table 2 show that there have been no improvements in the last year in the total impunity rates for crimes of violence against trade unionists, which remain staggeringly high at between 99.9% for death threats and 83.3% for torture.

Table 2: Impunity rates for violence against trade unions

Type of Violence	Reported April 2015	Reported 2011-2015
Death Threats	99.9%	99.9%
Forced Displacement	99.5%	98.1%
Assassination	86.8%	87%
Forced Disappearances	99.6%	91%
Torture		83.3%
Kidnapping	90.6%	70.8%

Source: TUAC submission to the PGC April 2015 & ENS April 2016

7. The US Government’s report raises similar concerns:

- “*in the 130 labor homicides that have occurred since 2011, there have been only seven convictions. Recent information on the status of ongoing investigations for these cases was not available from the Prosecutor General’s Office at the time of publication of this report*”;
- “*Threats against labor leaders and activists, particularly through text messages, phone calls, letters, emails, and other forms of communication are often difficult to trace, and progress on prosecutions in these cases remains slow. Unions reported 94 cases of threats in 2015. Although the Prosecutor General has assigned prosecutors and investigators to cases of threats against labor leaders and activists, there have been no convictions in cases of labor threats since 2011*”;
- The report concludes that “*Continued efforts to provide protection to threatened unionists and address impunity for perpetrators of labor violence will be key to ensuring this downward trend continues*”.

Enforcement by the judiciary

8. According to the ENS, of the 130 killings between 2011 and 2015, only 82 have been following by a formal investigation of which 70 in inquiry and 3 in research, and just 9 are in the trial stage. With few exceptions, those convicted are the foot-soldiers, not the party ordering the murders – defined as the “intellectual author” in Colombia. The US Government report concedes that “[S]takeholders have long pressed Colombian authorities to investigate and bring to justice such “intellectual authors” and not just those who directly commit the crimes”.

9. Access to and proper functioning of the judiciary is also of concern as regards labour rights. According to the ENS report, of 150 complaints for unlawful and anti-union collective agreements and use of illegal outsourcing filed with the judiciary during 2011-2015, 130 are still pending in the Ministry. Of the remaining 20 cases, in 94% of cases the procedure has taken more than a year.

Recommendations to the PGC

10. Considering the continued violence against trade unionists, the evidence of ineffective enforcement and the shockingly high impunity rates reported above, and in our previous submissions, in our view the PGC should not yet make a decision on Colombia’s Accession. Instead the PGC should request further information and policy action from the Colombian authorities.

11. We further re-iterate our call for effective corrective measures submitted to the PGC last year^{vi}. The proposals, *inter alia*, aim to reduce impunity, strengthen protection and improve the efficiency of the judiciary. We stress the importance of establishing a Special Monitoring Process on labour rights during the Accession process.

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

ⁱⁱ http://www.tuac.org/en/public/e-docs/00/00/11/F3/document_doc.phtml

ⁱⁱⁱ <https://ustr.gov/about-us/policy-offices/press-office/press-releases/2016/april/ustr-and-dol-issue-five-year-update> & <https://ustr.gov/sites/default/files/2016-Colombia-Action-Plan-Report.pdf>

^{iv} <http://www.mintrabajo.gov.co/abril-2016/5902-balance-de-cinco-anos-del-plan-de-accion-laboral-colombia-estados-unidos.html>

^v <http://ens.org.co/index.shtml?apc=a---;1;-:-;&x=20171767>

^{vi} http://www.tuac.org/en/public/e-docs/00/00/11/F3/document_doc.phtml