



**Colombia's Accession to the OECD**  
**TUAC Submission to the Employment, Labour and Social Affairs Committee (ELSAC)**  
**12 April 2017 (Corrected Version)**

*“High informality and a strong reliance on non-standard contracts have weakened the bargaining power of workers in Colombia. Violence continues to be a challenge in spite of considerable progress and strongly affects trade union activities. While social dialogue in the public sector has been recently enhanced, legislative loopholes continue to affect collective bargaining in the private sector. A range of reforms have strengthened the labour inspection system, however more efforts are needed.... In particular the collection of fines imposed by labour inspectors on employers violating the labour law remains very problematic.”<sup>1</sup>*

## 1. TUAC Position

1. TUAC considers that Colombia has **failed to make adequate progress** on the recommendations made by ELSAC in April 2015, with regard to **respect of labour rights and the rights and safety of trade union representatives**.

2. TUAC is aware of potential opportunities under the “Fast Track” legislative process for implementing the Peace Accord, in particular Chapter 2, *Political Participation*, and that Colombia is currently establishing a transitional justice system. In February 2017, at the OECD, the Colombian Labour Minister announced new measures to implement ELSAC’s recommendations. Nonetheless, TUAC considers it essential to assess **actual progress made, not recent announcements**.

3. TUAC also fully understands that OECD membership marks the beginning, not the end, of a journey, along which a country expects to improve its policies and practices. However, Colombia has been criticised over a number of years for failing to implement commitments made on labour rights in various international processes including, in 2017, by two ELSAC members, Canada and the US. This signals a **lack of political will**. It also points to the importance of the OECD **maintaining leverage**, which is considerably stronger in a pre-accession rather than a post-accession context.

## 2. Summary of Progress Made

4. The Roadmap for the Accession of Colombia to the OECD, exceptionally, provided that ELSAC review Colombia’s *“policies to ensure the full respect of labour rights, with a particular focus on the rights and safety of trade union representatives”*. TUAC understands that ELSAC evaluated Colombia’s policies and practices at its meeting on the 16-17 April 2015 and requested further policy action on: labour informality and sub-contracting; labour law enforcement; collective bargaining; protection for trade union leaders and members; and impunity for crimes against trade unionists.

5. Two years on, the situation remains largely unchanged. Legislation introduced in April 2016 to tackle illegal subcontracting was considered a backward step,<sup>2</sup> and has since been suspended by the Council of State in March 2017. The number of inspections has declined, despite an increase in the number of inspectors. The collection of fines for anti-union activity remains low. No progress had been made in eliminating the option of negotiating collective pacts with non-unionised workers. While the number of assassinations of trade unionists decreased from 21 in 2015 to 17 in 2016, the number of death threats increased from 118 to 181. There has been no reduction in impunity for violence against trade unionists. In 2016, the impunity rate for assassinations was reported to be 87% and for death

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<sup>1</sup> OECD Reviews of Labour Market and Social Policies: Colombia 2016, Chapter 3, Enforcing Labour Rights in Colombia, p.97.

<sup>2</sup> This sentence was revised after submission to ELSAC, in order to make the meaning clearer.

threats 99.8%.<sup>3</sup> There have been no convictions under Article 200 of the Criminal Code, which criminalises violations of trade union rights. In the past 5 years there has been 1 investigation.<sup>4</sup>

6. The lack of progress is confirmed by the three Colombian trade union confederations the Confederación General del Trabajo (CGT), the Confederación de Trabajadores de Colombia (CTC), and the Central Unitaria de Trabajadores de Colombia (CUT). At a meeting held at the OECD on 20 February 2017,<sup>5</sup> the unions presented their **joint position that Colombia should not be invited to join the OECD**. While previously divided on the issue of OECD membership,<sup>6</sup> today, the trade unions are united in their concern over **Colombia’s lack of progress and lack of political will** with regard to commitments made on labour rights and trade union safety.

7. The situation is also confirmed by recent governmental reports. In January 2017, the Governments of Canada and the US published their respective responses to official complaints filed by trade unions concerning Colombia’s failure to comply with labour rights commitments of their respective trade agreements.<sup>78</sup> These reports document the lack of progress on the issues covered by the ELSAC mandate and make a number of recommendations. The 2017 report of the *ILO Committee of Experts on the Application of Conventions and Recommendations* underlines a similar lack of progress.<sup>9</sup>

**TABLE 1: SUMMARY OF PROGRESS ON ELSAC RECOMMENDATIONS<sup>10</sup>**

RECOMMENDATIONS	TUAC ASSESSMENT AND RECOMMENDATIONS
<b>LABOUR INFORMALITY AND SUB-CONTRACTING</b>	
<b>Prohibit the misuse of civil-law contracts that undermine the labour rights of the workers involved</b>	<p><u>Assessment:</u> Decree 583 (April 2016) is considered a backward step. Two trade union confederations CUT and CGT filed a formal complaint against the Decree in April 2016. In March 2017, the Decree was <i>provisionally suspended</i> by the Council of State in response to a complaint filed by an employers’ organisation.</p> <p><u>Recommendation:</u> Repeal Decree 583.</p>
<b>Companies should be required to formalise employees working under such contracts through regular employment contracts that ensure access to all basic labour rights.</b>	<p><u>Assessment:</u> No progress.</p> <p><u>Recommendations:</u></p> <ul style="list-style-type: none"> <li>- Enact a law that requires companies to have direct, open-ended employment contracts for workers that provide core permanent functions;</li> <li>- Sanction employers for violations of this law;</li> <li>- Adopt a public policy approach to promoting formalisation agreements in line with Law 1610 of 2013.</li> </ul>

<sup>3</sup> Escuela Nacional Sindical (ENS), The State of Labour and Union Rights in Colombia, Information for TUAC, September 2016.

<sup>4</sup> INFORMACIÓN SINDICALISTAS ENERO 2011 – DICIEMBRE 2016, Fiscalía, p8.

<sup>5</sup> Representatives of the OECD held four meetings with the three Colombian trade union confederations, from 2014 to 2017.

<sup>6</sup> The CGT previously supported OECD membership considering that it could “*contribute to a virtuous cycle of improvement in Colombia*”.

<sup>7</sup> In January 2017, the Canadian National Administrative Office published its response to a trade complaint against Colombia filed on the 16 May 2016: Review of Public Communication \$”/2016-1:

<https://www.canada.ca/en/employment-social-development/services/labour-relations/international/agreements/2016-1-review.html>

<sup>8</sup> On 11 January 2017, the Office of Trade and Labor Affairs of the US Department of Labor published its response to a trade union complaint filed against Colombia filed on the 16 May 2016: Public Report of Review of U.S. Submission 2016-02 (Colombia):

[https://www.dol.gov/sites/default/files/documents/ilab/PublicReportofReviewofUSSubmission2016-02\\_Final.pdf](https://www.dol.gov/sites/default/files/documents/ilab/PublicReportofReviewofUSSubmission2016-02_Final.pdf)

<sup>9</sup> This Report was published in February 2017 as part of the preparations for the International Labour Conference, 106<sup>th</sup> Session, 2017, but the information used is from before 1 September 2016.

<sup>10</sup> OECD Reviews of Labour Market and Social Policies: Colombia 2016, Assessment and Recommendations, pp32-33.

RECOMMENDATIONS	TUAC ASSESSMENT AND RECOMMENDATIONS
<b>LABOUR LAW ENFORCEMENT</b>	
<b>Increasing the number of labour inspectors towards international standards</b>	<p><u>Assessment:</u> The number of inspectors has increased to 904 positions, of which an estimated 819 are filled.<sup>11</sup> Trade unions report <b>limited number of inspections in rural areas</b> and an overall <b>lack of institutional commitment</b>. Only an estimated 62% of inspectors carry out inspections.<sup>12</sup> Over 85%<sup>13</sup> of inspectors are temporary hires. Complying with ILO benchmarks would mean hiring 2000 inspectors on permanent contracts (1 inspector for every 10,000 occupied workers).<sup>14</sup></p> <p><u>Recommendation:</u></p> <ul style="list-style-type: none"> <li>- Increase the number of inspectors;</li> <li>- Hire inspectors on the basis of a direct permanent contract;</li> <li>- Recruit inspectors through a competitive, merit-based civil service career path.</li> </ul>
<b>Ensuring sufficient resources for labour inspectors</b>	<p><u>Assessment:</u> The number of inspections has decreased, despite the fact that the number of inspectors has increased, signalling a reduction in capacity. Inspectors experience technical and logistical resource constraints including reliance on paper-based systems, non-payment of <i>per diems</i>, and lack of transportation for travel to rural areas.</p> <p><u>Recommendation:</u></p> <ul style="list-style-type: none"> <li>- Provide the materials necessary for inspectors to perform their duties, in line with the mobile nature of their job, including covering travel costs to remote areas, and reimbursement of incidentals;</li> <li>- Increase the salaries of inspectors;</li> <li>- Roll out the electronic case management system prepared by the ILO.</li> </ul>
<b>Ensuring that all labour inspectors receive appropriate training and implement the lessons learned</b>	<p><u>Assessment:</u> The high turnover of inspectors reduces the effectiveness of training. The ILO estimated that there was a 50% turnover among those inspectors trained by the ILO from 2013-2016.<sup>15</sup></p> <p><u>Recommendations:</u></p> <ul style="list-style-type: none"> <li>- Conduct systematic and ongoing training based on the ILO training that has already been carried out;</li> <li>- Train inspectors on formalisation/labour intermediation/abusive forms of sub-contracting.</li> </ul>
<b>Undertaking sufficient preventive inspections in addition to inspections following complaints</b>	<p><u>Assessment:</u> No progress.</p> <p><u>Recommendation:</u> As part of a public policy approach to promoting formalisation, in line with Law 1610 of 2013, undertake preventative inspections at the industrial sector level.</p>
<b>Shortening significantly the administrative process of fines collection</b>	<p><u>Assessment:</u> In 2016 the Servicio Nacional de Aprendizaje (SENA) signed an agreement with CISA (Central de Inversiones S.A.), in order to strengthen its fine collection processes. There is, however, still little progress. In January 2017, both the Canadian and US Governments underlined the lack of progress made fine collection.</p>

<sup>11</sup> The exact number is unknown. This number is for 2016.

<sup>12</sup> Calculated on the basis that 537 out of 819 inspectors carry out inspections, which is reported in the report of the US Government: US Government Response: Public Report of Review of U.S. Submission 2016-02 (Colombia), 11 January 2017, p.7

<sup>13</sup> The US Government reports that in 2016, 105 out of 819 inspectors were permanent employees.

<sup>14</sup> OECD Reviews of Labour Market and Social Policies: Colombia 2016, Assessment and Recommendations, p122.

<sup>15</sup> Public Report of Review of U.S. Submission 2016-02 (Colombia), 11 January 2017, p.8

[https://www.dol.gov/sites/default/files/documents/ilab/PublicReportofReviewofUSSubmission2016-02\\_Final.pdf](https://www.dol.gov/sites/default/files/documents/ilab/PublicReportofReviewofUSSubmission2016-02_Final.pdf)

RECOMMENDATIONS	TUAC ASSESSMENT AND RECOMMENDATIONS
<b>Re-visiting and re-financing...companies whose fines have expired</b>	<p><u>Assessment:</u> A key problem is that the payment of fines can be suspended pending the outcome of lengthy appeals.</p> <p><u>Recommendation:</u> Change the process so that fines are paid provisionally, even where there is an administrative or judicial appeal.</p>
<b>Monitoring closely the content and implementation of formalisation agreements negotiated between companies and the Ministry of Labour</b>	<p><u>Assessment:</u> The Ministry of Labour does not conduct ongoing monitoring of formalisation agreements, nor guarantee the participation of unions in their development and implementation. The problems that arise include: employers using formalisation agreements to avoid sanctions without establishing permanent or direct employment relationships and/or without covering all the workers affected by the illegal subcontracting; firing workers without 'just cause' within the protected five year period after formalisation.</p> <p><u>Recommendation:</u></p> <ul style="list-style-type: none"> <li>- Reform Law 1610 of 2013 to guarantee the effective participation of trade unions in the negotiation, implementation and follow-up of formalisation agreements.</li> </ul>
<b>Establish and implement a framework of cooperation between the Ministry of Labour and the Prosecutor General's Office to improve the prosecution of labour cases under the Penal Code</b>	<p><u>Assessment:</u> Trade unions do not know of any convictions for complaints dealt with under Article 200 of the Penal Code. This information was also reported by Canada and the US 2017.</p> <p><u>Recommendations:</u></p> <ul style="list-style-type: none"> <li>- Establish a protocol to improve institutional cooperation between the Ministry of Labour and the Attorney General's Office on the handling of Article 200 cases filed;</li> <li>- Develop a target plan for addressing the backlog of Article 200 cases.</li> </ul>
<b>COLLECTIVE BARGAINING</b>	
<b>Promoting a two-tier system of sectoral and firm-level bargaining by elaborating the regulations on sectoral and regional bargaining in the Labour Code</b>	<p><u>Assessment:</u> The law only recognises bargaining at the company level;</p> <p><u>Recommendation:</u> Reform the law to guarantee <u>multi-level</u> bargaining by industrial sector, economic group and regional level.</p>
<b>Eliminating the option to negotiate collective accords with non-unionised workers</b>	<p><u>Assessment:</u> On 21 March 2017, the media reported that Labour Minister López had announced at a meeting of the Tripartite Commission new proposals to restrict the possibility of negotiating collective pacts. As yet there are no guarantees that these proposals will be implemented.<sup>16</sup></p> <p><u>Recommendation:</u> Introduce a law to eliminate collective pacts and trade union service contracts, in workplaces where trade unions exist.</p>
<b>Extending collective agreements automatically to all employees of a company</b>	/
<b>Requiring multiple trade unions in the same company to form a bargaining team to ensure a single collective agreement</b>	<p><u>Assessment:</u> No progress.</p> <p><u>Recommendation:</u> Regulate the process of collective bargaining in a company with multiple unions through a single negotiating committee whose membership is proportional to the size of the union, to avoid undermining bargaining by company unions.</p>
<b>VIOLENCE AND IMPUNITY</b>	
<b>Ensuring sufficient and permanent resources for the</b>	<p><u>Assessment:</u> Trade unions report that protection has been reduced. Bodyguards are assigned without <i>per diems</i> to pay for food/hotels or</p>

<sup>16</sup> <http://www.portafolio.co/economia/empleo/mintrabajo-limitaria-pactos-colectivos-en-las-empresas-504320>

RECOMMENDATIONS	TUAC ASSESSMENT AND RECOMMENDATIONS
<b>Protection programme</b>	vehicles for transport to rural areas. <u>Recommendation:</u> - Hire bodyguards on the basis of direct employment contracts with <i>per diems</i> for missions and contributions to social protection and other protections of a public sector employee; - Allow unions to select their own bodyguards.
<b>Reducing the amount of time for completion of the risk assessment process for people under immediate threat</b>	<u>Assessment:</u> No progress. <u>Recommendation:</u> Involve trade unionists at risk in risk assessment process to improve the quality/avoid misinformation.
<b>Monitoring the sufficiency of the provided protection measures and increasing them if deemed inadequate</b>	/
<b>Ensuring effective controls to prevent corruption</b>	<u>Assessment:</u> The sub-contracting of bodyguards involves the payment of kickbacks. <u>Recommendation:</u> - The UNP should publish its budget; - Hire bodyguards on the basis of direct employment contracts with <i>per diems</i> for missions and contributions to social protection.
<b>Implementing an evaluation instrument for and providing participants the option of becoming part of a collective protection scheme</b>	/
<b>Addressing the low rate of conviction for threats and violence against trade unionists</b>	<u>Assessment:</u> Impunity rates have remained consistently high. In 2016 the number of specialist judges for handling cases of trade union assassinations was reduced from three to one. Trade unions also report concerns over the involvement of Mobile Anti-Disturbances Squadron (Escuadrón Móvil Antidisturbios, ESMAD) in labour disputes. <u>Recommendation:</u> - Take a systematic approach to improve investigations into cases of trade union violence.

### 3. Implementation of ELSAC Recommendations on Labour Rights and Trade Union Safety

#### 3.1 Labour Informality and Sub-contracting

8. Millions of Colombian workers are hired under various forms of illegal subcontracting,<sup>17</sup> which have the effect of exempting workers from the protection of the labour code and undermining labour rights. In its background report prepared for the ELSAC meeting in April 2015, the OECD called for Colombia to prohibit the misuse of such relationships and to oblige companies to formalise those workers hired under such contracts.

9. In April 2016, the Colombian Government introduced Decree No. 583, which was drawn up without consultation with the Colombian trade union confederations. Far from prohibiting the “misuse” of labour intermediation practices, this Decree legalises outsourcing in core activities. It permits private and public companies to outsource their core business activities to third parties if these companies comply with trade union rights. It also allows firms to transfer its workers to sub-contracting firms. **Trade unions consider that Decree 583 is a backward step and should be repealed.**

<sup>17</sup> including cooperatives (CTAs), Simplified Joint Stock Companies, (SASs), false union contracts, some temporary service agencies (ESTs).

10. The Canadian and US Governments criticised Decree 583 in their recent responses to the complaints filed under their respective bilateral trade agreements with Colombia (see *BOXES 1* and 2). The Canadian Government called for Decree 583 to be repealed, while the US Government recommended that Colombia take “*additional effective measures to combat abusive subcontracting*”.

11. On 15 March 2017, the Council of State (*Consejo del Estado*) announced the provisional suspension of the Decree, following a complaint filed by ACOSSET, the employers’ organisation that represents temporary agencies. The Council is expected to give its final decision later in 2017.

#### ***BOX 1: ILLEGAL LABOUR INTERMEDIATION/SUBCONTRACTING: CANADA***

Findings: ...Decree 583 was adopted in 2016 with a view to putting an end to the misuse of subcontracting. Unfortunately, the Decree was difficult to understand and led to the weakening of important legal measures designed to protect workers against improper subcontracting... the Decree was interpreted as “legalizing” the subcontracting of permanent core business functions under certain circumstances although the law had previously been interpreted as prohibiting such subcontracting in all circumstances....

Recommendations:

- repealing Decree 583... and replacing it with a legal instrument that unambiguously empowers labour inspectors to combat the misuse of intermediation and subcontracting;
- ensuring that labour inspectors are empowered to identify and address situations where intermediation or subcontracting is being used to disguise a direct employment relationship...;
- developing guidelines for labour inspectors that identify permanent core business functions in specific economic sectors;
- directing enforcement resources at ensuring that civil law contracts (e.g. SAS, associated work cooperatives) are not used to deny workers social and labour protections provided in the law.

#### ***BOX 2: ILLEGAL LABOUR INTERMEDIATION/SUBCONTRACTING: UNITED STATES***

Findings: Despite the significant steps the GOC has taken to combat abusive subcontracting, the OTLA has significant concerns that the MOL is not taking sufficient action to implement the new decrees or to otherwise enforce prohibitions on abusive subcontracting that may undermine the rights to freedom of association and collective bargaining.

Recommendations: Take additional effective measures to combat abusive subcontracting... including improving application of existing laws and adopting and implementing new legal instruments where necessary.

### *3.2 Labour Law Enforcement*

#### *3.2.1 Labour Inspection*

12. In its background report, the OECD emphasised the need to strengthen labour inspection stressing that the “*high frequency of labour law violations and the low coverage of collective bargaining in Colombia make a well-functioning labour inspection system all the more important to ensure decent working conditions for Colombian employees*”.<sup>18</sup> The OECD recommended that Colombia increase the numbers of inspectors, the level of resources and training, and the number of preventative inspections.

13. At a meeting at the OECD on the 20 February 2017, the Colombian trade union confederations described the ineffectiveness of the labour inspectorate in Colombia, particularly in rural areas. While the number of inspectors increased from 410 inspectors in 2011 to 819 in October 2016, they reported a dramatic **decrease in the number of inspections**: in 2010, 423 inspectors carried out 24,631 administrative investigations and made 9,066 workplace visits; in 2015, 819 inspectors undertook just 3,099 investigations and only undertook 1,063 visits.<sup>19</sup> The majority of inspectors are hired on provisional contracts. Inspectors still do not have sufficient capacity, autonomy and resources.<sup>20</sup>

<sup>18</sup> OECD Review of Labour Market and Social Policies Chapter 3, Enforcing Labour Rights in Colombia, p.122.

<sup>19</sup> Submission by the Central Unitaria de Trabajadores de Colombia (CUT) to the OECD, 15 March 2017.

<sup>20</sup> OECD Review of Labour Market and Social Policies, Enforcing Labour Rights in Colombia, p.98.

14. Canada and the US also underline the need to strengthen the labour inspectorate (see *BOXES 3-4*). Canada makes precisely the same recommendations in January 2017 as the OECD did in April 2015: increase training and resources and undertake preventive inspections. The US Government finds that inspections in rural areas – 94% of Colombia’s territory, 32% of its population<sup>21</sup> – are “infrequent” and calls for a national inspection strategy that prioritises at-risk sectors.

***BOX 3: LABOUR LAW ENFORCEMENT: CANADA***

Findings: ... in order to fulfil their functions, labour inspectors require adequate training and resources including clear and consistent direction on the application of the law. This is particularly important in cases with a high level of complexity.

Recommendations:

- providing labour inspectors the appropriate training and resources to perform effectively their duties, including preventive and proactive labour inspections;
- investigating multiple complaints filed against a particular employer under a single process.

***BOX 4: LABOUR LAW ENFORCEMENT: UNITED STATES***

Findings: ... the OTLA has concerns about:

- (1) the lack of capacity of the Labor Inspectorate, in particular with regard to inspectors’ difficulty traveling to rural areas, high staff turnover, lack of a consistent national strategy, and failure to implement a national case management system;
- (2) delays in the MOL’s inspection process;...

Recommendations: Improve the labor law inspection system to ensure inspections comply with legal procedures and timelines and are carried out in accordance with a national inspection strategy targeting at-risk sectors

3.2.2 Collection of Fines

15. In its background report, the OECD highlighted concerns over the collection of fines imposed by labour inspectors<sup>22</sup> (collected by SENA (Servicio Nacional de Aprendizaje)), including long delays and fines expiring after three years. It recommended that Colombia takes steps to shorten the process and improve transparency and to re-visit and re-fine companies, where fines have expired.<sup>23</sup>

16. In February 2017, the three Colombian trade union confederations reported that there was no improvement in the collection of fines and that the majority had still not been collected. The 2017 reports of Canada and the US confirm that the collection of fines related to violations of the rights to freedom of association and collective bargaining remains a major problem (see *BOXES 5-6*).

***BOX 5: COLLECTION OF FINES: CANADA***

Findings: ... despite increases in the amount of fines, the measures in place may not produce the desired results unless the process for collecting the fines is effective.

Recommendations:

- streamlin[ing] the administrative process for more effective imposition of fines, including considering the harmonization of existing sanctions in both the Substantive Labour Code and other labour law;
- ensur[ing] that Colombia’s public collector (CISA) effectively collects the fines and makes the achieved results known in the short and medium term, including an analysis of whether the fines imposed have a sufficient deterrent effect.

<sup>21</sup> Public Report of Review of U.S. Submission 2016-02 (Colombia), 11 January 2017, p.7.

[https://www.dol.gov/sites/default/files/documents/ilab/PublicReportofReviewofUSSubmission2016-02\\_Final.pdf](https://www.dol.gov/sites/default/files/documents/ilab/PublicReportofReviewofUSSubmission2016-02_Final.pdf)

<sup>22</sup> OECD Review of Labour Market and Social Policies, Chapter 3, Enforcing Labour Rights in Colombia, p.126.

<sup>23</sup> *Idem.* p.128.

### **BOX 6: COLLECTION OF FINES: UNITED STATES**

**Findings:** ... (3) delays and lack of systematic collection of certain fines related to the rights to freedom of association and collective bargaining. The OTLA's review also raised questions regarding the imposition and application of fines.

**Recommendation:** Improve fine application and collection to ensure that employers who violate labor laws are sanctioned and that fines are collected in a timely manner...

### *3.3 Collective Bargaining and Collective Pacts*

17. In its background report, the OECD explains that, unlike most member countries of the OECD, employers in Colombia have the possibility to negotiate collective pacts (*pactos colectivos*) with non-unionised workers.<sup>24</sup> The OECD recognises that these “*collective accords are sometimes used by employers to prevent the emergence of trade unions or weaken their influence*”<sup>25</sup>. It recommends that Colombia eliminate the option of negotiating collective pacts with non-unionised workers.<sup>26</sup>

18. In February 2017, the Colombian trade unions reported welcome progress in collective bargaining in the public sector, having negotiated two national framework agreements benefitting 1 million public sector workers.<sup>27</sup> Collective bargaining coverage in the private sector, however, remains consistently low (c2%). They reported no progress on reducing the number of **collective pacts** with the figures confirming an overall upward trend – 170 in 2011 covering 38,420 workers, compared to 216 in 2015 covering 100,000 workers.<sup>28</sup> There is also a high impunity – the Ministry of Labour sanctioned just 5 companies for the unlawful use of collective pacts over 5-year period from 2011-2011.<sup>29</sup>

19. The lack of progress in reducing the number of collective pacts is confirmed by the ILO, Canada and the US. In February 2017, the *ILO Committee of Experts on the Application of Conventions and Recommendations* ‘once again’ called on Colombia to take the necessary measures to ensure that collective pacts with non-unionized workers can only be concluded in the absence of trade unions. In its January 2017 report, the Canadian Government found that the “*number of collective pacts has not declined*” since 2011<sup>30</sup>, calling for them to be eliminated, while the US Government recommended that Colombia take “*additional effective measures to combat*” (see *BOXES 7-8*).

20. On 21 March 2017, it was reported that Labour Minister López, at a meeting of the Tripartite Commission, announced new proposals to restrict the possibility of negotiating collective pacts. There is no guarantee, however, that these proposals will be implemented.<sup>31</sup>

### **BOX 7: COLLECTIVE BARGAINING: CANADA**

**Findings:** the use of collective pacts ha[ve] been broadly recognized by both domestic and international observers as an impediment to the ability of unions to form and effectively defend the collective interests of their members.

**Recommendations:** Eliminate collective pacts. These pacts undermine the ability of independent trade unions to organize and negotiate authentic collective agreements thereby unduly interfering with the balance of power in labour relations.

<sup>24</sup> OECD Review of Labour Market and Social Policies, Colombia 2016, Chapter 3, Enforcing Labour Rights in Colombia, p.116.

<sup>25</sup> *Idem*.

<sup>26</sup> OECD Review of Labour Market and Social Policies, Colombia 2016, Chapter 3, Enforcing Labour Rights in Colombia, p.99.

<sup>27</sup> TUAC meeting, OECD, Paris, 20 February 2017.

<sup>28</sup> ENS, February 2017, p.4. TUAC does not have figures for 2016.

<sup>29</sup> ENS, The State of Labour and Union Rights in Colombia, Information for TUAC, September 2016.

<sup>30</sup> Review of Public Communication S<sup>7</sup>/2016-1: <https://www.canada.ca/en/employment-social-development/services/labour-relations/international/agreements/2016-1-review.html>

<sup>31</sup> <http://www.portafolio.co/economia/empleo/mintrabajo-limitaria-pactos-colectivos-en-las-empresas-504320>

### **BOX 8: COLLECTIVE PACTS: UNITED STATES**

**Findings:** The OTLA recognizes the efforts of the MOL to prioritize and investigate the unlawful use of collective pacts. Nevertheless, the OTLA found that collective pacts in Colombia have sometimes been used to undermine the rights to freedom of association and collective bargaining and has ongoing concerns regarding the GOC's enforcement of the Labor Code's prohibition against such practices.

**Recommendation:** Take additional effective measures to combat collective pacts, including improving application of existing laws and adopting and implementing new legal instruments where necessary.

#### *3.4 Violence against Trade Unionists*

##### **3.4.1 Incidents of Violence**

21. Colombia continues to be the most dangerous country in the world to be a trade unionist.<sup>32</sup> In 2016, 17 trade unionists were assassinated according to ENS, 4 fewer than in 2015 (the data are still preliminary).<sup>33</sup> Alarming, however, the number of threats rose significantly from 118 in 2015 to 181 in 2016, with the result that the overall number of violent incidents rose from 203 in 2015 to 258 in 2016 (see TABLE 2). A recent UN report similarly noted that in 2016 “*the situation of male and female human rights defenders continued to cause concern*” including of trade unionists.<sup>34</sup>

**TABLE 2: VIOLENCE AGAINST TRADE UNIONISTS: 2011- 2016<sup>35</sup>**

<b>Type of Violence</b>		<b>2010</b>	<b>2011</b>	<b>2012</b>	<b>2013</b>	<b>2014</b>	<b>2015</b>	<b>2016<sup>36</sup></b>
Homicides	(ENS)	53	31	24	36	21	21	17
Homicides	(Attorney General)	37	36	30	33	21	20	12
Threats		408	544	449	337	242	118	181
Forced Displacement		46	51	90	3	1		
Harassment/Intimidation		19	61	50	63	77	28	28
Arbitrary Detention		4	16	19	24	17	8	5
Attacks		22	13	9	18	24	17	17
Enforced Disappearances		10	3	5	1	-	2	
Kidnapping		6	3	-	4	-	3	
Illegal Search		3	1	3	2	2	2	8
Torture		3	2	2	-	1	4	2
<b>Total</b>		<b>574</b>	<b>725</b>	<b>651</b>	<b>488</b>	<b>385</b>	<b>203</b>	<b>258</b>

22. On 23 March 2017, the Colombian Oil Workers' Union (USO) issued a statement denouncing threats and harassment by paramilitary groups against their members: “*Affiliates, activists and leaders of USO are suffering constant attacks and threats against our lives*”. The OECD background report in 2015 specifically recognised that “*...threats are often used as a strategy to generate fear and disrupt trade union activities*”.<sup>37</sup>

### **BOX 9: VIOLENCE AGAINST TRADE UNIONS: ASSASSINATIONS<sup>38</sup>**

On 5 March 2017, brother and sister José Antonio Anzola Tejedor and Luz Ángela Anzola were killed within two hours of each other in the Department of Meta. Both were members of a local peasant farmer union SINTRAGRIM, which forms part of the larger trade union FENSUAGRO. Armed men with covered faces arrived at their house in the night and in the morning they were killed.

<sup>32</sup> In absolute numbers not per capita.

<sup>33</sup> This figure is still preliminary.

<sup>34</sup> UN High Commissioner for Human Rights on the situation of human rights in Colombia, March 2017.

<sup>35</sup> Provided by the ENS Database. Information up until 28 February 2017: requested by TUAC, 20 March 2017.

<sup>36</sup> The data for 2016 are preliminary.

<sup>37</sup> OECD Review of Labour Market and Social Policies, Colombia 2016, Chapter 3, Enforcing Labour Rights in Colombia, p.99.

<sup>38</sup> <http://www.justiceforcolombia.org/news/article/2487/brother-and-sister-trade-unionists-killed-in-central-colombia>

### **BOX 10: VIOLENCE AGAINST TRADE UNIONS: DEATH THREATS**

On 3 March 2017, a death threat was made against Eric Amador Toro, the National Treasurer of the Union of Colombian Health Workers, SINTRASALUDCOL. The letter said the union leader “had been targeted as a military objective for his ‘condemnations’ expressed as a member of the SINTRASALUDCOL Union”. It demanded that Mr Amador stop work and leave his city if he wanted to avoid endangering his life and that of his family. The letter further threatened that “there will be no second communication”.

On 16 March 2017, death threats were made to members of Sintraviescols' National Steering Committee, industrial union present in Seguridad Atlas Ltda and Andina de Seguridad del Valle Ltda in Colombia. In a pamphlet signed by the “Bloque occidental urbano de Cali” the following trade unionists were declared military targets because of their union work: Jaime Cárdenas, National President; Eduard Andrés Lenis, National Prosecutor; Carlos Alberto Zúñiga, Vice President; John Alexander Paz, National Secretary; Omar Caicedo, Hospital Secretary, Óscar Modesto Montaña, Julián Rocha and Carlos Gómez.

#### *3.4.2 Protection Programme*

23. In its background report, the OECD report highlighted a number of challenges facing the National Protection Unit, including its uncertain budgetary situation<sup>39</sup> The OECD recommended the provision of sufficient and permanent resources, shortening risk assessment from 33 to 7 days<sup>40</sup>, and designing, with the unions, a system for assessing collective risks in order to give collective protection.<sup>41</sup> It also noted the intention of the National Protection Unit to directly hire 1500 body guards<sup>42</sup>.

24. In February 2017, the Colombian trade unions reported that National Protection Unit continues to face severe challenges. The protection programme is under-resourced: e.g. trade unionists assessed to be most at risk while assigned a bodyguard and a vehicle, are not given an allowance for petrol or *per diems* for the bodyguards to accompany trade unionists when they travel. Delays in risk assessment continue. Bodyguards are hired through sub-contracting.

#### *3.5 Impunity*

##### 3.5.1 Impunity for Violence against Trade Unionists

25. In its background report, the OECD noted that the “vast majority of homicides remain unresolved and the intellectual authors of murders and attacks are seldom prosecuted”.<sup>43</sup> It called for Colombia to take action to address the low rate of conviction for threats and violence against trade unionists.

26. The most recent data, provided by the Attorney General (Fiscalía) show that for the period 2011-2016 a total of 152 cases of assassinations of trade unionists have been handled by the Attorney General’s Office, of which 127 are open (c84%) and 25 closed (16%). Of the 127 open cases, 9 are at the investigation stage (c7%), while 13 have gone to trial (c10%). Of the 25 closed cases, 10 have resulted in a conviction:<sup>44</sup> **less than 7% of the 152 cases.** For all attacks against trade unionists, including assassinations, the number of convictions fell in 2016 (see *FIGURE 1*).

<sup>39</sup> OECD Review of Labour Market and Social Policies, Chapter 3, Enforcing Labour Rights in Colombia, p.104.

<sup>40</sup> *Idem*, p.105.

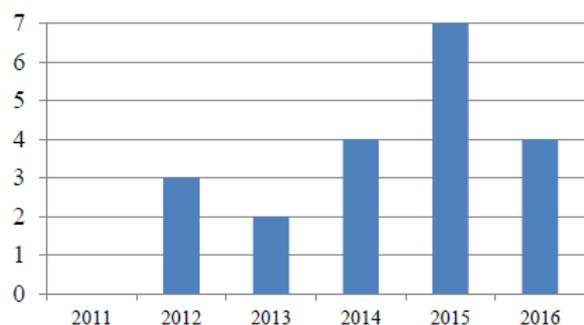
<sup>41</sup> *Ibid.*

<sup>42</sup> *Ibid.*

<sup>43</sup> *Ibid.*

<sup>44</sup> INFORMACIÓN SINDICALISTAS ENERO 2011 – DICIEMBRE 2016, Fiscalía, p8-9.

**FIGURE 1: CONVICTIONS FOR ATTACKS INCLUDING ASSASSINATIONS<sup>45</sup>**



27. For the same period, 2011-2016, the Attorney General reports a total of 673 cases concerning other forms of violence against trade unionists, the majority of which is death threats (84%). Of the 241 open cases, most (96.6%) are still at the preliminary inquiry stage. **There is only 1 formal investigation.** There is no information available on the outcome of closed cases (see *TABLE 3*).

**TABLE 3: OTHER CASES OF VIOLENCE AGAINST TRADE UNIONISTS<sup>46</sup>**

	Total	Open Cases				Closed Cases
		<i>Of which</i>	<i>Preliminary inquiry</i>	<i>Formal investigation</i>	<i>Legally actionable</i>	
Threats	548	195	195			353
Forced Displacement	9	7	7			2
Forced Disappearances	7	5	5			2
Kidnapping	6	1	1			5
Arbitrary detention	13	7	7			6
Gun shooting at a car	3	2	1	1		1
Extortion	15	5	5			10
Attacks with injuries	66	13	6		7	53
Assassination attempt	6	6	6			0
<b>Total</b>	<b>673</b>	<b>241</b>	<b>233</b>	<b>1</b>	<b>7</b>	<b>432</b>

28. Despite high impunity rates, in June 2016, the Higher Council of the Judiciary reduced from 3 to 2 the ILO judges that had been assigned exclusively to cases of murders of members of the trade union movement. In March 2017, there was still just 1 judge handling this case load.

**BOX 11: VIOLENCE AGAINST TRADE UNIONISTS AND IMPUNITY: CANADA**

**Findings:** ...The role played by government institutions to properly investigate and prosecute those responsible for violence against union members is essential to tackle violence and impunity. The strengthening of the National Protection Unit in recent years has been critical in the fight against violence affecting trade unionists. But these efforts and the progress achieved could be compromised if the institution is not provided with appropriate and sustained financial resources... There are also serious concerns at the national and international levels regarding excessive use of force by the Mobile Anti-Disturbances Squadron (Escuadrón Móvil Antidisturbios, ESMAD)... Several reports detail how ESMAD has on multiple occasions seriously injured workers.

**Recommendations:**

- providing the National Protection Unit sufficient and permanent financial resources to operate effectively;
- ensuring that inter-institutional coordination mechanisms (between the Ministry of Labour and the Office of the Attorney General) are in place for the exchange of information and sharing of relevant evidence;
- critically and independently examining the role of the ESMAD, whose actions and interventions have been strongly criticised by Colombian and international stakeholders for excessive use of force;

<sup>45</sup> FIGURE 1 is reproduced from TUAC's Submission to the Public Governance Committee, revised version 21 March 2017: Source: Fiscalía 2017 (Tabla 9: Sentencias condenatorias por agresiones contra sindicalistas).

<sup>46</sup> *Idem*: Source: Fiscalía 2017 (Tabla No 10: Noticias Criminales de Otros Delitos-Activos y terminados).

### ***BOX 12: VIOLENCE AGAINST TRADE UNIONISTS AND IMPUNITY: UNITED STATES***

**Findings:** ...although Colombian law prohibits anti-union threats and violence and although union-related homicides have declined since 2011, in practice, the system in place in Colombia to investigate and prosecute cases of anti-union threats and violence faces serious structural challenges. The history of and continued high rate of impunity in cases of threats and violence against unionists undermines the right to freedom of association and raises concerns about the adequacy of investigation and prosecution for violence against trade unionists in Colombia.

**Recommendation:** Improve the investigation and prosecution of cases of violence and threats against unionists, prioritizing recent cases.

#### ***2.5.2 Impunity for Trade Union Rights***

29. Colombia reformed its Criminal Code in 2011 (Article 200) making it a crime punishable by fines and possible imprisonment for employers to undermine trade union rights – the right to form or join a trade union and the right to bargain collectively. This covered a variety of anti-union practices, including entering into collective pacts that provide better conditions to non-unionised workers than the conditions agreed to in collective agreements with unionised workers of the same company.

30. In its background report, the OECD reported that the Attorney General’s Office was currently investigating 277 cases of alleged violations of Article 200 that had been transmitted by the Ministry of Labour stating that “*it will be important to see whether these investigations lead to convictions, where warranted*”.<sup>47</sup> According to the most recent data provided by the Fiscalía (Attorney General), for the period 2011-2016 no employer was sanctioned for violations of Article 200.<sup>48</sup> This lack of progress is also reported by the Canadian and US Governments (see *BOXES 13-14*).

31. Out of a total of 1844 Article 200 cases investigated by the Attorney General’s Office, only 1 out of 530 open cases is under investigation. Of the 1314 closed cases, 258 have been terminated because they were not validated/followed up by the complainants.<sup>49</sup> This could be explained by cases being transferred from the Ministry of Labour to the Attorney General’s Office as Article 200 cases, without the knowledge of complainants. This underlines the need to improve communication as well as to strengthen institutional cooperation between the Ministry of Labour and the Attorney General’s Office.

### ***BOX 13: IMPUNITY: ENFORCEMENT OF ARTICLE 200: CANADA***

**Findings:** No case of trial and subsequent conviction under Article 200 of the Criminal Code, which criminalizes violations of freedom of association, was reported by the Colombian Government.

**Recommendations:** ... reviewing active files for violations under Article 200 of the Criminal Code, in particular those that may not be pursued due to timelines and for which immediate measures would be required...

### ***BOX 14: IMPUNITY: ENFORCEMENT OF ARTICLE 200: UNITED STATES***

**Findings:** Currently, there is a significant backlog of Article 200 cases, which could take years to address. Additionally, the OTLA found no evidence of any convictions under Article 200, although 82 cases have been successfully conciliated.

**Recommendations:** ...ensure the swift resolution of cases under Criminal Code Article.

<sup>47</sup> OECD Review of Labour Market and Social Policies, Chapter 3, Enforcing Labour Rights in Colombia, p.19.

<sup>48</sup> INFORMACIÓN SINDICALISTAS ENERO 2011 – DICIEMBRE 2016, Fiscalía.

<sup>49</sup> Idem, Tabla 4, p.8.