



Submission to the OECD Public Governance Committee  
**Updated Figures on Impunity in Colombia**  
Paris, revised version 21 March 2017

**Key messages:**

- The level of violence against trade unionists did not decrease in 2016.
- The PGC should be concerned by the effectiveness of the judiciary system in Colombia. The Committee should form a judgment based on facts and figures, not based on political announcements and commitments.
- The figures provided in this submission clearly show that there is no improvement in the judicial treatment of cases. High levels of impunity persist for the killing of and for violence against trade unionists as well as for violation of labour rights;
- Accordingly, the TUAC recommends that the PGC does not agree on a formal opinion at this stage and does not endorse any such formal opinion at the upcoming 55th Session.

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**Introduction**

The 55<sup>th</sup> Session of the Public Governance Committee (PGC) meeting on 24-25 April 2017 is to discuss the accession process of Colombia in Closed Session, including the adoption of a Formal Opinion, which would put an end to the process. 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”<sup>i</sup>), the 51<sup>st</sup> Session on 23-24 April 2015 (“Impunity in Colombia”<sup>ii</sup>) and the 53<sup>rd</sup> session on 21-22 April 2016 (“Update on Colombia”<sup>iii</sup>).

This submission provides an update on the situation in Colombia with regard to violence against trade unionists, the level of impunity and enforcement. The data shown below compile the most recent figures provided by the *Escuela Nacional Sindical* (ENS) with those provided by the Colombian judiciary authorities, the *Fiscalía General de la Nación*, in a report on the situation as of 3 February 2017<sup>iv</sup>.

This submission does not cover violence against other categories of activist than trade unionists (such as community, peasant, indigenous, LGTB, environmental activists and peace campaigners). According to the British NGO *Justice for Colombia* however, 534 political

activists were killed during the 2011-2015 period<sup>v</sup>. More information can also be found on the website of the Office of the United Nations High Commissioner for Human Rights<sup>vi</sup>.

### Violence against trade unionists

As shown in Table 1, the number of assassinations decreased in 2016 compared with previous years. 12 trade unionists were assassinated according to the authorities (17 according to the ENS) compared with 20 in 2015 (21 according to the ENS). However the overall level of violence did not decrease according to the latest reporting by the ENS (February 2017). The numbers for threats and illegal search are on the rise, the number of attacks and intimidation are stable.. Two trade unionists are reported to have been tortured in 2016.

To be sure, the killings and the death threats continue in 2017. José Antonio Anzola Tejedor and Luz Ángela Anzola, affiliated with a local peasant farmer union, SINTRAGRIM, were murdered last 5th March 2017 in the province of Meta<sup>vii</sup>. Days later, Eric Amador Toro, the National Treasurer of the Union of Colombian Health Workers, SINTRASALUDCOL, received a letter which said the union leader had been targeted as a “military objective” and ordered him to 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”<sup>viii</sup>.

Table 1: Violence against trade unionists

Type of Violence		2010	2011	2012	2013	2014	2015	2016
Assassination	(ENS)	53	31	24	36	21	21	17
	(Fiscalía)	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	20	24	17	8	5
Attacks		22	13	9	18	24	17	17
Forced disappearance		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>652</b>	<b>488</b>	<b>385</b>	<b>203</b>	<b>258</b>

Source: ENS & Fiscalía 2017 (Tabla 6: Denuncias Homicidio - Desagregadas por Año de denuncia 2011-2016)

### Impunity for assassination of trade unionists

Despite the reduction in the level of violence against trade unionists in Colombia, the level of impunity measured by the number of cases pending, and cases closed leading to no sanctions, has remained at high level and has in fact aggravated in 2016 for a majority of forms of violence against trade unionists.

In our previous submission we reported a level of impunity of 87% for assassinations of trade unions during the 2011-2015 period. 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 – the “intellectual author”.

The latest figures provided by the Fiscalía, covering 2011-2016, do not suggest any improvement in 2016 compared to previous years. As shown in table 2 and figure 1, out of a total number of 152 cases, 127 are still pending (84%) and 25 have been closed (16%), of which only 10 led to a conviction (7%).

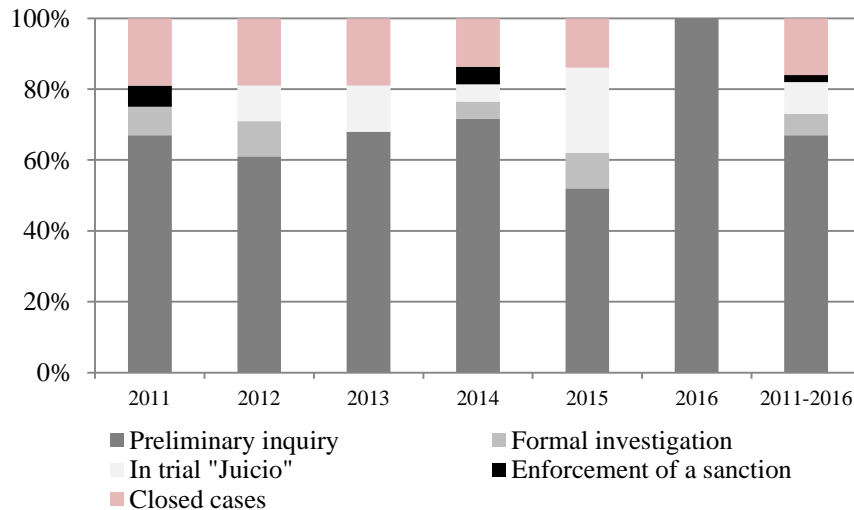
Not only is there no improvement in the treatment of cases in 2016, but there is no improvement in the treatment of past cases neither. In fact there is a remarkable consistency in the proportion of cases that are still pending year by year. To give an example, in 2011, 36 cases of assassination were filed and reported by the Fiscalía. Five years later, 80% of these cases (29) are still pending and two thirds of them (24) are still at the stage of preliminary inquiry.

Table 2: Judiciary treatment of assassination cases

	Total nb		Cases pending					Closed cases
	Fiscalía report (table 6)	Fiscalía report (table 7)	Of which:	Preliminary inquiry	Formal investigation	Ruling ('Juicio')	Enforcement of sentence	
2011	36	36	29	24	3	0	2	7
2012	30	31	25	19	3	3	0	6
2013	33	31	25	21	0	4	0	6
2014	21	22	19	16	1	1	1	3
2015	20	21	18	11	2	5	0	3
2016	12	11	11	11	0	0	0	0
<b>total</b>	<b>152</b>	<b>152</b>	<b>127</b>	<b>102</b>	<b>9</b>	<b>13</b>	<b>3</b>	<b>25</b>
		(a) = (b)+(g)	(b) = (c) + (d) + (e) + (f)	(c)	(d)	(e)	(f)	(g)

Source: Fiscalía 2017 (Tabla 6: Denuncias Homicidio - Desagregadas por Año de denuncia 2011-2016 & Tabla 7: Procesos activos Homicidio - Desagregados por etapa )

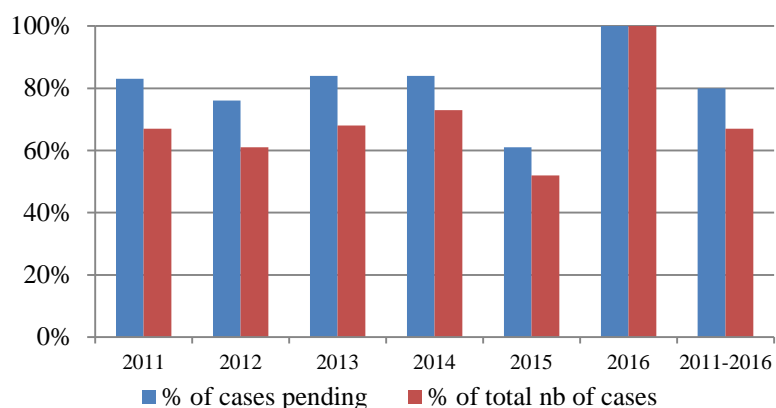
Figure 1: Judiciary treatment of assassination cases



Source: Fiscalía 2017

As shown in Figure 2, and with the notable exception of 2015, over 60% of all cases of assassinations are still at the preliminary inquiry stage, a proportion that reaches +80% for cases that are pending.

Figure 2: Proportion of assassination cases that are still at preliminary inquiry level in 2017



Source: Fiscalía 2017

With regard to the outcome of the 25 closed cases, the data provided by the Fiscalía do not provide year-by-year information. As shown in table 3, it is reported that over the 2011-2016 period, only 10 of the 25 cases led to a conviction. In other words, since 2011, less than 7% of the 152 cases of assassination of trade unionists treated by the Colombian judiciary ended into a conviction.

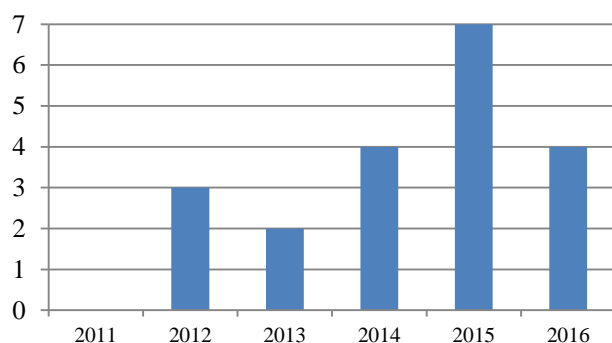
Table 3: Outcome of closed cases

	Nb	% of total nb of cases
Total number 2011-2016	25	16.4%
<i>Of which:</i>		
<i>Closed without further action</i>	12	7.9%
<i>Conviction</i>	10	6.6%
<i>Expiration of the judicial process</i>	1	0.7%
<i>Inactivated due to connection with other cases</i>	1	0.7%
<i>Preclusion</i>	1	0.7%

Source: Fiscalía 2017 (Tabla 8: Actuaciones para terminación de casos)

The Fiscalía, however, reports an annual number of “convictions”, but fails to specify the number and the nature of the cases that are covered – other than stating that the above 10 convictions for assassination are included. According to the figures, a total number of 20 convictions took place since 2011. As shown in figure 3, the number fell in 2016.

Figure 3 Convictions for attacks against trade unionists (incl. 10 assassinations)



Source: Fiscalía 2017 (Tabla 9: Sentencias condenatorias por agresiones contra sindicalistas)

## Impunity for other forms of violence against trade unionists

There is less information available by the Fiscalía regarding other forms of violence against trade unionists than assassination. As shown in table 5, a total of 673 cases were filed during the 2011-2016 period, of which 432 are closed as of today. No information is available regarding the outcome of these closed cases and whether any effective redress of violation did occur or not. Regarding the remaining cases that are pending (244), the vast majority of them are still at the preliminary inquiry stage (233).

Table 4: Judiciary treatment of other forms of violence

	<b>Total</b>	<b>Case pending</b>				<b>Closed cases</b>
		<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>

Source: Fiscalía 2017 (Tabla No 10: Noticias Criminales de Otros Delitos-Activos y terminados)

In our previous submission to the PGC, and based on information drawn from the ENS, we reported levels of impunity above 70% for kidnapping, torture, forced displacement and disappearance and death threats as shown in table 5. Regarding the above figures provided by the Fiscalía, it is not possible to measure the level of impunity in the absence of information on the outcome of the 432 closed cases. At best we can provide the ratio between closed and pending cases as shown in table 5.

Table 5: Impunity rates for violence against trade unions

<b>Type of Violence</b>	<b>Impunity rate reported by ENS (April 2016)</b>	<b>Ratio between closed and pending cases reported by Fiscalía (February 2017)</b>
<b>Period covered</b>	<b>2011-2015</b>	<b>2011-2016</b>
Death threat	99.9%	
Threat		36%
Forced Displacement	98.1%	78%
Forced Disappearances	91%	71%
Torture	83.3%	
Kidnapping	70.8%	17%
Arbitrary detention		54%
Gun shooting at a car		67%
Extortion		33%
Attack with injuries		20%
Assassination attempt		100%

Source: ENS & Fiscalía 2017 (Tabla No 11: Otras conductas punibles por etapas)

## Impunity for violation of trade union rights and collective bargaining

Labour law enforcement is also failing in Colombia. No employers have been prosecuted for anti-union discrimination despite 364 complaints filed since 2011 and only 5 employers have been sanctioned for violating the law on collective bargaining (abuse of “collective pacts”), despite the filing of hundreds of complaints.

In its report, the Fiscalía delivers figures on the judicial treatment of violations of Article 200 of the Penal Code (Law 599, of 2000) covering freedom of association, freedom of assembly, rights to collective bargaining. As shown in table 6, 1844 cases were reported during the period, of which 530 are still pending, a proportion of 29% over the 2011-2016 period.

Table 6: Judiciary treatment of violation to art. 200 (labour rights)

	Total	Pending cases	Of which:			Closed cases	% of pending cases
			Actionable (Querellable)	Preliminary inquiry	Formal investigation		
2011	69	5	1	4	0	64	7%
2012	106	20	9	10	1	86	19%
2013	293	50	27	23	0	243	17%
2014	453	91	60	31	0	362	20%
2015	485	135	93	42	0	350	28%
2016	438	229	182	47	0	209	52%
<b>2011-2016</b>	<b>1844</b>	<b>530</b>	<b>372</b>	<b>157</b>	<b>1</b>	<b>1314</b>	<b>29%</b>

Source: Fiscalía 2017 (Tabla 2: Procesos activos y procesos terminados art. 200 - desagregados por año 2011-2016 & Tabla 3: Procesos activos art. 200 - Desagregados por etapa 2011 -2016).

More worryingly, in 95% of the closed cases (1314 since 2011) the outcome has led to no form of redress for the violation as shown in table 7. In 55% of the cases, the case is closed “without further action”, and in 20% of cases the plaintiff has withdrawn the complaint. Settlement via mediation represents only 5% of the cases. No cases since 2011 are reported to have led to a conviction or effective sanction for violations of Article 200.

Table 7: Outcome of the closed cases on violation to art. 200 (labour rights)

Closed without further action (archivo)	722	55%
<b>Settlement through mediation process</b>	<b>69</b>	<b>5%</b>
Withdrawal of the complaint by the plaintiff	258	20%
Expiration of the judicial process or the complaint	124	9%
Cancellation due to connections with other cases or conflicts of jurisdictions	84	6%
Non-attendance by the plaintiff or by the plaintiff and the defendant	47	4%
Preclusion	8	1%
Miscellaneous	2	0%
<b>Total</b>	<b>1314</b>	<b>100%</b>

Source: Fiscalía 2017 (Tabla 4: Actuaciones para la terminación de casos)

## Protection for trade unionists under threat of violence

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. The government has taken significant measures to protect trade unionists. But structural problems remain: slow administration; refusal/reduction of protection (trade unionists refused protection have been killed); sub-contracting of body guards. Serious

concerns remain about the integrity of the leadership in charge of the protection unit. The former head of the Protection Unit fled the country following the launch of corruption investigation against him.

### **Recommendation to the PGC**

In our previous submission to the PGC we wrote: “considering the continued violence against trade unionists, the evidence of ineffective enforcement and the shockingly high impunity rates [...] 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”.

In light of the above updated figures on impunity in Colombia, we stand by our recommendation. The PGC should not agree on a formal opinion at this stage and should not endorse any formal opinion at the upcoming 55<sup>th</sup> Session.

The level of violence against trade unionists did not decrease in 2016. The PGC should be concerned by the effectiveness of the judiciary system in Colombia. The Committee should form a judgement based on facts and figures and not on political announcements and commitments. The figures provided by the Fiscalía and as reported in this submission clearly show that there is no improvement in the judicial treatment of cases. High levels of impunity persist for the assassination of trade unionists, for other forms of violence against trade unionists, and for violation of Art. 200 on labour rights.

OECD membership would expect Colombian workers and citizens at large to benefit from fair, impartial, efficient and timely justice regardless of where they live in the country and their origins, of their political opinion, and regardless of whether they belong to a union or not.

We are not there yet.

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<sup>i</sup> [http://www.tuac.org/en/public/e-docs/00/00/0C/BB/document\\_doc.phtml](http://www.tuac.org/en/public/e-docs/00/00/0C/BB/document_doc.phtml)

<sup>ii</sup> [http://www.tuac.org/en/public/e-docs/00/00/11/F3/document\\_doc.phtml](http://www.tuac.org/en/public/e-docs/00/00/11/F3/document_doc.phtml)

<sup>iii</sup> [http://www.tuac.org/en/public/e-docs/00/00/12/6B/document\\_doc.phtml](http://www.tuac.org/en/public/e-docs/00/00/12/6B/document_doc.phtml)

<sup>iv</sup> INFORMACIÓN SINDICALISTAS ENERO 2011 – DICIEMBRE 2016, Fiscalía General de la Nación [www.fiscalia.gov.co](http://www.fiscalia.gov.co)

<sup>v</sup> <http://www.justiceforcolombia.org/news/article/2133/534-political-activists-murdered-in-five-years-in-colombia>

<sup>vi</sup> <http://www.ohchr.org>

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

<sup>viii</sup> <http://www.uniglobalunion.org/news/uni-strongly-condemns-death-threat-made-against-colombian-union-leader-eric-amador-toro-and>