



**OECD Reviews of Labour Market and Social
Policies**

Colombia 2022



OECD Reviews of Labour Market and Social Policies: Colombia 2022

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Foreword

In 2020, Colombia joined the OECD as the 37th Member of the Organisation, bringing to a successful conclusion an accession process that began in 2013. During the accession process, Colombia made important reforms and progress in the area of labour market and social policies, converging towards OECD best policies and practices. However, OECD member countries invited the Colombian Government to reinforce its reform agenda in four areas in particular: (1) labour informality and subcontracting; (2) labour law enforcement; (3) collective bargaining; and (4) crimes against trade unionists. Members also requested regular progress reports by the Colombian authorities and the OECD Secretariat on these four specific areas. This report is the first post-accession progress report by the OECD Secretariat since Colombia's accession. The Colombian authorities have released two reports so far, one in 2021 and another one in 2022.

The assessment provided in this report benefitted from input from a wide range of stakeholders in Colombia, including the Ministry of Labour, the National Training Service, the Prosecutor General's Office, the National Protection Unit, the National Planning Department, trade union and employer federations, the National Trade Union School and other civil society organisations; as well as international actors, including the U.S. Department of Labor, Employment and Social Development Canada, and the International Labour Organization. A draft version of the report was shared with the Trade Union Advisory Committee (TUAC) to the OECD and Business at OECD (BIAC) for comments.

This report was written by Veerle Miranda and Juliana González Rodríguez (independent consultant), under the senior leadership of Monika Queisser, Head of Social Policy Division. Stefano Scarpetta, Director for Employment, Labour and Social Affairs, reviewed and commented on the report. Valuable input and support throughout the evaluation process was provided by the U.S. Department of Labor and Employment and Social Development Canada. The OECD also received comments from the Colombian Ministry of Labour on the report. Lucy Hulett prepared the report for publication.

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Executive summary

The COVID-19 pandemic has hit Colombia hard and exacerbated many long-standing social challenges, pushing up already high rates of income inequality and informality. A significant policy response has cushioned many of the economic effects of the pandemic, but ambitious policy reforms are needed to heal the scars of the pandemic.

Over the past two years, the government has undertaken a wide range of measures to encourage and facilitate the formalisation of workers. In particular, two digital platforms have been launched to simplify the registration of companies and the affiliation of workers to social security. The government also introduced a “Social Protection Floor” to offer (minimal) social protection to workers earning less than the minimum wage and established a National Network for Labour Formalisation to promote the advantages of formalisation in rural areas. Finally, the government introduced financial incentives to stimulate job creation and implemented a strategy to train young people to join tertiary education, find a job or become entrepreneurs.

While these measures are all welcome and innovative, they have not yet had an impact on informality. The informality rate, measured as the share of workers who are not affiliated to social security, hovered around 60.6-60.8% between 2016 and 2019. Similar to several other Latin American countries, the informality rate in Colombia initially declined during the pandemic as a result of a larger outflow of informal workers than formal workers, but rose again afterwards, to 61.6% in 2021. To reduce informality and improve social protection in a sustainable way, major labour market and social policy reforms are needed, as discussed in detail in *OECD Reviews of Labour Market and Social Policies: Colombia 2016* and *OECD Economic Surveys: Colombia 2022*. Reducing the cost of formal employment, while ensuring basic social protection for all is particularly important.

It is noticeable, however, that the number of associated work co-operatives has been brought down successfully through an improved legal framework and clear guidelines for labour inspectors. At the same time, the persistent misuse of other types of civil law contracts remains problematic in Colombia. For instance, union service contracts are frequently used in the health sector, instead of regular labour contracts, to formalise a working relationship between a worker and a trade union/company. The pandemic caused a surge in the number of such contracts for the hiring of administrative and medical staff, whose labour and trade union rights cannot be guaranteed through this type of contract. A similar problem exists in the public sector, where service contracts are used for regular labour relations. Despite repeated commitments to reduce administrative law contracts in collective bargaining agreements, the number of workers contracted in the public sector through such contracts doubled between 2014 and 2021, reaching nearly a third of the total public sector workforce.

As pointed out in previous OECD reports on this matter, the Colombian Government should improve its efforts to protect the labour rights of subcontracted workers and prohibit union service contracts and other forms of abusive (sub)contracting through a stronger legal framework. In the interim, monitoring and assessing the use of such contracts remains crucial to ensure that they do not undermine the labour and trade union rights of the involved workers.

Over the past few years, the Colombian Government has taken major steps to improve the labour inspection system, including a three-fold increase in the labour inspectorate's budget in 2018; the opening of civil service positions for labour inspectors (instead of provisional appointments); a commitment to considerably increasing the total number of labour inspectors in the coming years; improved training programmes for inspectors; an innovative software for effective case tracking in labour inspections; and a mobile labour inspection to help promote labour law compliance in rural areas.

Nevertheless, several challenges continue to affect the effectiveness of the labour inspection system. In particular, the budget remains volatile and dependant on broader government decisions. Inspection efforts have largely shifted towards preventive inspections, whereas reactive visits following a complaint or indication of abuse have become rare. As a result, the number of sanctioning procedures and imposed sanctions decreased considerably. Finally, the times needed to conduct investigations continue to exceed the legally mandated duration, and 30-40% of fines remain uncollected each year.

To ensure the enforcement of labour regulations and workers' rights, it is crucial to continue reinforcing the labour inspectorate's functioning. The transfer of fines collection from the National Training Service to the Ministry of Labour and the increase in the total number of labour inspectors are both highly welcome, but continued efforts are needed to improve inspections, sanctioning procedures and collection of fines. A more balanced use of reactive versus preventive inspections would improve the deterrence effect of labour inspections more broadly and encourage employers to comply with the labour regulations voluntarily.

While a major new collective agreement has been signed in the public sector in 2021, the modest improvements that had been made in the private sector up to the end of the 2010s have been reversed by the pandemic, with the total number of collective agreements in the private sector dropping to the lowest number in a decade. More worryingly, there have not been any regulatory reforms to improve the collective bargaining framework, and there are no reforms foreseen. As discussed in previous OECD reports, significant obstacles to constructive social dialogue and collective bargaining persist in Colombia. In particular, collective agreements are not automatically extended within firms; collective pacts continue to undermine the power of trade unions; trade union fragmentation complicates the bargaining process; there is currently no framework to allow for sectoral bargaining; and conditions on the right to strike are sometimes overly strict. On a positive note, an electronic trade union registration system has been set up to register statutes, pacts, agreements, contracts and other actions of the trade union organisations and will provide reports and statistics on the subject, to monitor their developments.

Significant efforts are required to build a constructive framework for social dialogue in Colombia, including: (1) the promotion of a two-tier system of sectoral and firm-level bargaining, by elaborating the regulations on sectoral bargaining in the Labour Code; (2) the elimination of the option to negotiate collective pacts; (3) the automatic extension of collective agreements to all employees of a company, and not only to the members of the signatory trade unions (the *erga omnes* principle); (4) the requirement for multiple trade unions in the same company to form a bargaining team to ensure a single collective agreement; and (5) the right to strike to higher-level trade union organisations. With better social dialogue and reinforced collective bargaining, Colombia could consider a gradual adjustment of the very high minimum wage to bring it back to its original role of wage floor instead of wage norm.

Despite efforts to eliminate violence against members of trade unions, Colombia continues to be the deadliest country for trade unionists in the world (ITUC, 2021^[3]), with a rather stable number of homicides of trade unionists per year, around 19 between 2017 and 2021. While the collective protection mechanism for groups and communities is now in place and requests are being evaluated, both the number of trade unionists receiving protection and the budget of the National Protection Unit has decreased over the past five years. Part of the decrease reflects the drop in the number of requests for protection, but delays and ineffectiveness in evaluating the requests and implementing the protection measures may also play a role. The normative measures that have been implemented to improve the response time in the evaluation procedure could, in practice, undermine the protection of trade unionists.

The Colombian national authorities reported tangible progress in the prosecution of crimes against trade unionists based on strategies that were particularly designed to investigate such crimes. At 43.2%, the rate of advance in the investigations of homicides against trade unionists between 2017 and 2021 is higher than for other cases of intentional homicide (29.7% for 2020). Nevertheless, only 13 of the 98 cases with trade unionists that occurred between 2017 and 2021 had a sentence at the time of writing, and the intellectual authors responsible for these crimes are rarely identified.

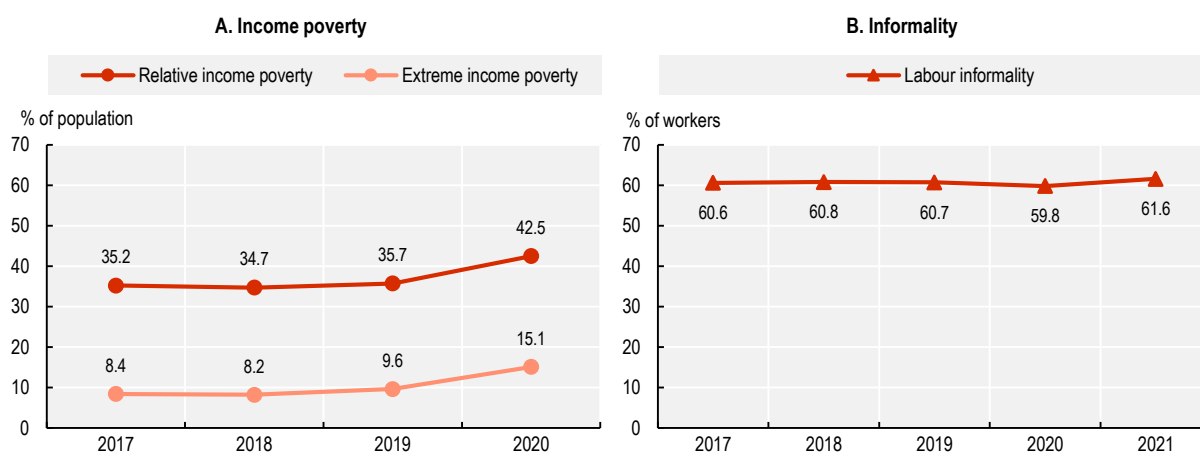
With respect to investigations of violations of rights of assembly and association under Article 200 of the Criminal Code, only a low number of cases are brought to trial. Most cases are archived or withdrawn by the complainant, and not one case has resulted in a conviction so far. Conciliation is also a common way to close the investigations under Article 200. Yet, there is no follow-up mechanism under the Criminal Code to ensure compliance with the conciliation agreement. The only option for employees is to present a new lawsuit before a Civil Court to force the execution of the conciliation agreement, thus potentially making the legal procedure even more difficult.

1 Recent poverty and informality trends

The COVID-19 pandemic has hit Colombia hard, destroying millions of jobs and pushing millions of people (back) into poverty. A significant policy response has cushioned the economic effects of the pandemic through an expansion of existing as well as new social benefits, wage subsidies, tax deferrals and credit measures (OECD, 2022^[2]). However, the pandemic has exacerbated many long-standing social challenges, pushing up already high rates of income inequality and informality (Figure 1.1). Employment and income losses were concentrated among households with the lowest incomes, whose labour incomes declined by up to 30% (OECD, 2022^[2]). Especially informal workers, women and young people have been hit hard during the pandemic.

Figure 1.1. The pandemic has pushed up poverty and labour informality in Colombia

Income poverty and informality indicators for Colombia, 2017-21



Note: Relative income poverty is measured using the OECD definition of 50% or less of average household income. Extreme income poverty is computed by Colombia's National Department of Statistics (DANE) based on the price of a basket of food goods using data from a household budget survey. Labour informality is measured as the share of workers who are not affiliated to social security in total employment.

Source: Data provided by the Ministry of Labour.

Initially, the share of informal workers dropped in 2020, but the change was largely due to a drop in the number of informally employed workers as a result of the pandemic. Although the labour market “improved” in terms of formality, in reality, there was a larger outflow of informal workers than among formal workers. By 2021, the share of workers who are not affiliated to social security reached 61.6%, reverting years of slow progress in informality reduction. Similar trends are observed in other Latin American countries, where informality also declined initially and rose again afterwards (Acevedo et al., 2021^[4]).

2 Labour informality and subcontracting

New measures to tackle informality

The Colombian Government has been taking a wide range of measures to encourage and facilitate the formalisation of workers. In particular, through the Business Formalisation Policy established in the Conpes 3956 of 2019, the government aims to (1) reduce to zero the indirect costs for formalisation; (2) support companies in the formalisation process; and (3) strengthen inspection, surveillance and control actions within the informal sectors of the population.

To start, two digital platforms have been launched to reduce the complex procedures for the registration of companies and the affiliation of workers to social security. Decree 1875 of 2017 created a one-stop-shop called “*Ventanilla Única Empresarial*” (VUE), which has been operational since 2018. The VUE aims to integrate tax, commercial and social security administrative procedures to facilitate company openings. By February 2022, the VUE had been successfully linked with 38 chambers of commerce, and it is expected to integrate 19 new chambers by the end of the year, reaching the goal of 57 chambers. Between June 2018 and December 2021, nearly 116 000 new companies have been created through the VUE platform. The social security module within the VUE platform is not available yet, but is expected for May 2022.

The government also started a process of digitalisation and integration of all the social security subsystems in a single Transactional Affiliation System (SAT). The system was launched in March 2020 and will eventually connect with the VUE. Currently, the social security procedures related to health, labour risks and family subsidies are available through the platform, and it is expected to include the registration and affiliation procedures for pensions in May 2022. By January 2022, the SAT system had around 4.9 million users, which is over half the 9 million workers who are actively affiliated to social security. While the SAT system is a key tool to facilitate administrative procedures, it has not increased social security affiliation over all.

In addition to these administrative measures, the government also introduced a “Social Protection Floor” (*Piso de Protección Social*) through Decree 1174 of 2020, in order to provide some social protection for workers who earn less than the minimum legal monthly wage.¹ This Social Protection Floor includes access to health insurance, basic pension (i.e. the Complementary Social Service of Periodic Economic Benefits, BEPS) and occupational risk insurance, albeit with a considerably lower level of protection than for workers whose earnings are equal to or higher than the minimum wage. By December 2021, 540 employers made contributions to the social protection floor for a total of 4 981 dependent workers, raising around EUR 394 771.

The Decree has been heavily criticised for a number of reasons, including the lack of consultation with trade union organisations, the limited social protection coverage it provides for a rather high contribution rate and the incentive it could create for employers to contract part-time workers for less than the minimum wage (CUT, CTC and CGT, 2021^[5]).

The constitutionality of the Social Protection Floor was also challenged in the Colombian Constitutional Court, which published two judgments in August 2021. In the first decision (C-276/2021), the Court studied the legal procedure that had been followed to introduce the Social Protection Floor, and ruled that it was unconstitutional because this matter should have been regulated through an ordinary legislative procedure (Constitutional Court, 2021^[6]). However, in order not to affect the rights of citizens who had already registered through the mechanism, the judgement will take effect after 20 June 2023. With the second decision (C-277/2021), the Court analysed whether the Social Protection Floor is a discriminatory instrument (Constitutional Court, 2021^[7]). The Court concluded that, even though it brings a differentiated treatment, the Social Protection Floor has a constitutional justification because it ensures minimum social protection for people who were previously in the informal economy. As a result, even though the objective and content of the Social Protection Floor were declared constitutional, the procedure to introduce it was not, and the government now has two years to adopt it through an ordinary legislative procedure.

In addition, a National Network for Labour Formalisation (RNFL) was established to promote the advantages of formalisation. In line with the commitments made in the Final Peace Agreement, the Ministry of Labour also implemented a Rural Progressive Plan to train agricultural workers and companies in matters of fundamental labour rights and obligations in 171 municipalities prioritised by the national government under the PDET (*Programas de Desarrollo con Enfoque Territorial*).² By the end of 2021, trainings had been organised in three-quarters of all priority municipalities (131 out of 171 municipalities).

Furthermore, in July 2020, the government created an “Employment Mission” (*Misión Empleo*) – a technical and impartial council in charge of analysing the Colombian labour market and providing policy recommendations to improve it. In January 2022, the Mission finalised its research and presented five policy briefs on key topics, including the challenge of a social protection system in a labour market with a high rate of informality and fragmentation; labour law enforcement; active and passive policies for quality jobs; and the future of training for the labour market (Misión Empleo, 2021^[8]). The Employment Mission expects that these policy briefs open interesting discussions about labour policies in the country.

In parallel, a group of academics formed the “Alternative Employment and Income Mission” (*Misión Alternativa de Empleo e Ingresos*). They published their own independent analysis in June 2021, studying other, more specific issues, like youth and employment, the impact of the pandemic on the labour market in rural areas and on workers’ health, elements for a reform to the pension system, informality in the labour market, etc. (Misión Alternativa de Empleo e Ingresos, 2021^[9]). The studies of both “Missions” can be seen as complementary as they cover different topics.

Finally, in order to promote employment creation during the pandemic, the government issued a number of decrees and resolutions in 2021. These include: (1) Decree 392 of April 2021, to offer a tax incentive to firms creating new job positions for young workers (under 28 years of age); (2) Decree 688 of June 2021, to implement the strategy “*Sacúdete*”, which aims to train young people to join tertiary education, find a job or become entrepreneurs; and (3) Law 2 155 of September 2021, which temporarily (until August 2023) provide incentives for job creation by subsidising a percentage of the salary for each new employee (25% of the minimum wage for young workers between 18 and 28 years, 15% for female workers over 28 years old and 10% for male workers over 28 years old). According to the Ministry of Labour, around 274 142 new jobs have been created between June and December 2021 thanks to the implementation of these measures.

These reforms, policy tools and broader initiatives are all well-intended and innovative. However, so far, they lack effectiveness in reducing informality. To bring down informality and improve social protection coverage in a sustainable way, major labour market and social policy reforms are needed, as discussed in detail in the OECD’s accession review of Colombia (OECD, 2016^[1]) and the latest OECD Economic Survey on Colombia (OECD, 2022^[2]). Reducing the cost of formal employment, while ensuring basic social protection for all is particularly important.

The use of formalisation agreements

The Labour Formalization Agreement programme is an important tool for the labour inspectorate to formalise workers, and the programme appears to be effective. Between 2017 and 2021, a total of 207 formalisation agreements have been signed benefiting 13 847 workers.

However, the number of beneficiaries has been declining since 2017. In 2020, only 931 workers were covered by 30 new agreements, compared to more than 6 000 beneficiaries of the 49 agreements signed in 2017. For 2021, the number of formalisation agreements increased again, reaching 53 new agreements covering 2 564 workers, but it is far from the number of workers covered by new agreements in 2013 (9 571) or 2014 (9 532). Most of the formalisation agreements during the period 2018-21 were signed to benefit workers linked through temporary service companies (56 agreements covering 5 861 workers).

It is also worth noting that the prevailing form of formalisation contracts remains short term. Since a full fine waiver requires that workers remain employed for a period of at least five years, regular monitoring is therefore necessary to ensure that companies effectively keep these workers on their payroll.³ However, the misuse of such short-term contracts could also have other effects and, in some instances, contribute to deteriorating workers' rights such as freedom of association and collective bargaining.

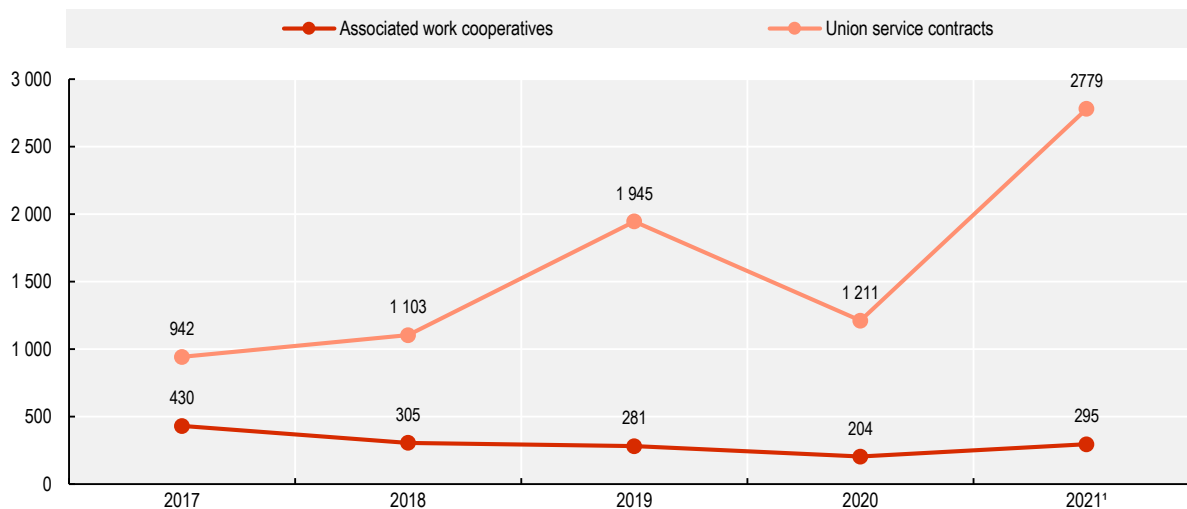
For verification of compliance with the terms of the signed formalisation agreements, a total of 837 follow-up and verification visits have been made between 2017 and 2021. However, the number of visits declined (prior to the pandemic) from 220 in 2017 to 69 in 2019, and increased again from 148 in 2020 to 279 in 2021. The recent increase is the result of a change in strategy, as such verifications can now be done virtually, via the electronic mechanism Integrated Contribution Settlement Form (*Planilla Integrada de Liquidación de Aportes – PILA*). These online verifications considerably facilitate the work of labour inspectors who can now easily verify whether formalised workers remain on the payroll of the company.

Misuse of civil-law contracts for employment relations

The misuse of contracts regulated under civil-law provisions remains problematic in Colombia, as they tend to undermine the labour rights of the workers involved.⁴ In order to improve the legal framework and avoid illegal labour informality, the government implemented two main reforms between 2017 and 2019. First, the government repealed the Decree 583 of 2016, which had been highly criticised because it allowed for labour intermediation through associated work co-operatives, simplified joint stock companies, union service contracts, etc. Second, the Resolution 2021 of 2018 was issued to establish guidelines on Inspection, Surveillance and Control in labour intermediation processes. The resolution clarifies the differences between outsourcing and labour intermediation,⁵ and reiterates that only temporary services companies are allowed to intermediate labour services under a specific regulation respectful of workers' rights. Overall, thanks to the actions carried by the Ministry of Labour, the number of associated work co-operatives dropped from 430 co-operatives with 36 000 associates in 2017 to 204 co-operatives with 11 000 associates in 2020, and 295 co-operatives with 12 000 associates by June 2021 (Figure 2.1).

Figure 2.1. The use of civil-law contracts for labour relations in Colombia

Number of associated work co-operatives and union service contracts, 2017-21



1. The data on associate work co-operatives for 2021 have a cut-off date of June 2021.

Source: Data provided by the Ministry of Labour, based on data from the Superintendency of Solidarity and the Ministry's Directorate of Inspection, Surveillance and Control.

The same resolution also allowed for the monitoring of the misuse of union service contracts. However, the legal framework to control union service contracts is insufficient and several challenges remain in practice.⁶ These challenges include: (1) businesses can set up fake unions to contract workers; (2) a civil contract instead of a labour contract is used to formalise a working relationship; (3) a trade union can be created for the sole purpose of entering into a union contract; (2) workers are required to affiliate to the trade union if they want the job; and (4) employers interfere in the trade union that owns the contract. The number of union service contracts nearly tripled from 942 in 2017 to 2 779 in 2021, covering 331 510 workers (Figure 2.1).⁷ As 99% of the union service contracts are signed in the health sector, the growth in union service contracts is largely the result of the expansion of the public and private network of health service providers during the pandemic.

For this reason, the OECD has recommended to prohibit union service contracts in previous reports on Colombia. In the same way, the Government of Canada recommended the elimination of union service contracts under the Canada-Colombia Action Plan and, in the interim, is monitoring the use of these contracts in trading sectors (Employment and Social Development Canada, 2018^[10]). The Committee of Experts on the Application of Conventions and Recommendations of the International Labour Organization (ILO) requested the government to plan and conduct a detailed assessment of the use of union service contracts, in particular in the health sector; and take the necessary measures, including legislative measures, to ensure that union service contracts do not undermine the trade union rights of workers (ILO, 2021^[11]). The ILO is also following the union service contracts closely in view of a complaint under the Case No. 3137 (ILO, 2015^[12]). Finally, the Appeal Chamber for Labour Cases of the Supreme Court of Justice issued two decisions in June and August 2021, pointing out its concerns regarding the permanent use of illegal labour intermediation to contract administrative and medical staff in the health sector (Supreme Court of Justice, 2021^[13]; 2021^[14]).

Also in the public sector, there is a persistent misuse of administrative law contracts for regular labour relations (*contrato de prestación de servicios*). This practice was already reported in the OECD's Public Governance Review of Colombia in 2013 (OECD, 2013^[15]), which recommended additional controls to

reduce the reliance on off-payroll staff and contractors. The collective agreements signed with the public sector in 2013, 2015, 2017 and 2021 also included a commitment to reduce the misuse of this type of contracts. However, the number of off-payroll staff increased from 189 357 in 2014 to 243 427 in 2016 (Sanabria, González and Becerra, 2019^[16]). By October 2020, the national and local government had contracted 392 648 people as self-employed or off-payroll staff through contracts for the provision of professional services, which represents 31% of the total number of public sector workers (Procuraduría General de la Nación, 2021^[17]). In September 2021, the Council of State ordered measures to avoid the use of such contracts, by establishing rules to identify when the contracts for the provision of services are covering real labour relations (Council of State, 2021^[18]).

As pointed out in previous OECD reports on this matter, the Colombian Government should improve its efforts to protect the labour rights of subcontracted workers, both in the public and private sector, by: (1) strengthening the legal framework, as appropriate, to prohibit all forms of abusive subcontracting, including through the use of co-operatives, union service contracts and simplified stock companies; (2) ensuring investigations of all abusive subcontracting, especially in rural areas, and publishing on an ongoing basis notifications of complaints, investigations, and outcomes; (3) resolving existing investigations regarding abusive subcontracting in a timely manner, imposing fines where appropriate, and publishing the results on an ongoing basis; (4) collecting all outstanding fines for subcontracting violations within the legally mandated time frames; and (5) requiring firms to formalise employees working under abusive subcontracting through regular employment contracts that provide access to all basic labour rights.

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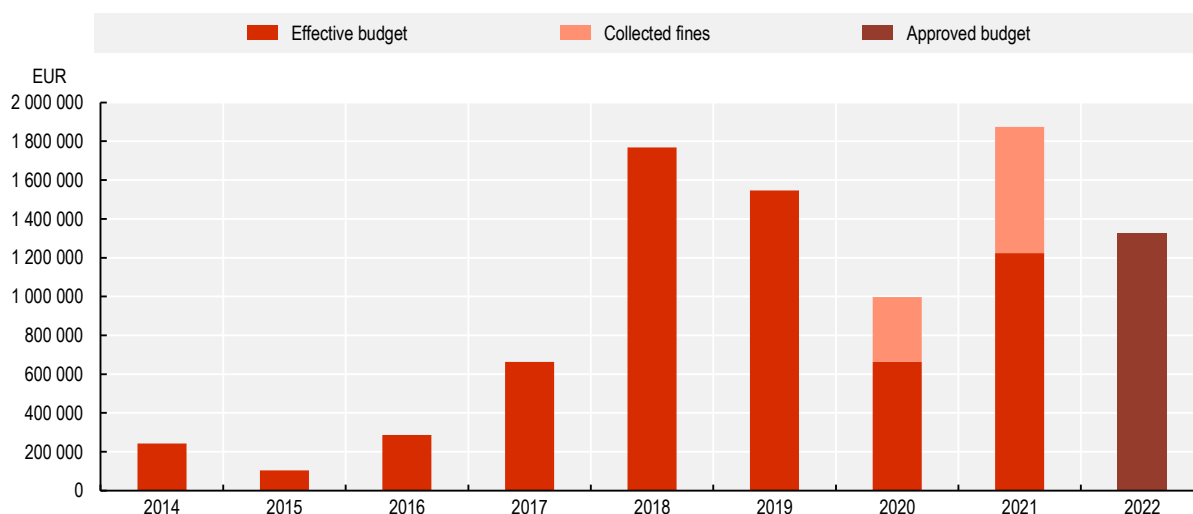
Labour law enforcement

The Colombian Government has undertaken several measures to improve the labour inspection system over the past years, including an increase in the number of inspectors with a career civil service status and a commitment to considerably increase the total number of labour inspectors in the coming years; improved training programmes for inspectors; an innovative software for effective case tracking in labour inspections; and a mobile labour inspection to help promote labour law compliance in rural areas. Nevertheless, significant challenges remain to guarantee the effectiveness of the labour inspection system, in particular with budget stability, inspection strategy and fines collection.

Budget for labour inspection

The total budget for labour inspection, surveillance and control has been fluctuating considerably over the past few years. While the budget nearly tripled in 2018 from EUR 663 000 in 2017 to EUR 1.77 million in 2018, the government reduced the budget again in 2020 to the 2017-level to free up resources to deal with the COVID-19 pandemic (Figure 3.1). The budget has been gradually augmented again since then, but remains below the 2018-19 levels, at EUR 1.22 million in 2021 and a foreseen EUR 1.33 million for 2022.⁸

Figure 3.1. The labour inspection budget remains volatile



Source: OECD calculations based on data provided by the Ministry of Labour.

However, as part of the National Development Plan 2018-22, it was decided to move the responsibility of the fines collection from the National Training Service (SENA, *Servicio Nacional de Aprendizaje*) to the Ministry of Labour. As such, since 2020, the proceeds from fines collection are generating additional

resources for the inspectorate to strengthen labour inspection, amounting to EUR 333 861 in 2020 and EUR 650 263 in 2021 (Figure 3.1). With these proceeds included, the total budget of the labour inspectorate in 2021 exceeded the budget for 2018 and 2019.

In addition, the Colombian Government recently approved an additional budget of EUR 6.6 million to increase the number of labour inspectors over the coming years (see below), demonstrating their commitment to further strengthen labour inspection.

Labour inspectors: Numbers, compensation and training

At the end of 2021, there were 882 active labour inspectors, of which 66% have the status of civil servants, and 22 vacancies. The share of civil service inspectors has been increasing since 2018, thanks to the selection process and the exam held by the National Civil Service Commission. As a result, the proportion of the labour inspectors in permanent civil service positions grew from 68 in 2017 to 581 in 2021.

Hiring labour inspectors as civil servants is a remarkable improvement for the labour inspection system as it provides career stability for the inspectors and reduces turnover for the inspectorate. However, only 351 of the 778 inspectors in provisional appointments participated in the civil service exam and, as the exam was a general civil service competition and not one for labour inspection specifically, only 179 of them passed the exam. As a result, there was a clear brain-drain of most of the inspectors trained from 2011 to 2019 by the ILO with the support of the US Government (CUT, CTC and CGT, 2021^[5]). For instance, data from the Ministry of Labour illustrate that 340 inspectors resigned in 2019 while 540 have been appointed that year.

In addition, the Ministry of Labour aims to reach 2000 labour inspectors by 2024 to improve labour law enforcement nationwide. Reaching this goal would ensure approximately 1 inspector per 10 000 workers, in line with the ILO benchmark for industrial market economies (ILO, 2006^[19]). In January 2022, the Ministry of Labour issued Decree 144 to increase their corps of labour inspectors by 355 new positions in the first phase – a nearly 40% increase – for which EUR 6.6 million has been approved by the government. While the Ministry of Labour continues to hire career inspectors from the list of eligible candidates, it is expected that filling the new positions will also require hiring on a provisional basis, until a new civil service exam can be held.

That said, the government continues to face challenges in the retention of inspectors, mainly because their salary is not competitive in the labour market (around EUR 885 per month), and the location in certain regions seems less attractive for professionals. For instance, in 2021, 37 labour inspectors presented their resignation to the Ministry of Labour, 5 in the central level and 32 in the territorial directorates. To improve the situation a number of measures have been agreed in the collective bargaining agreement with inspectors' unions for 2021-23. In particular, the agreement includes a special administrative bonus, a bonus for relocation and a few other benefits to make labour inspector work more attractive. The Ministry of Labour also created more hierarchy in the positions so that inspectors have career prospects.

The implementation of training programmes for labour inspectors continues to be a priority for the Colombian Government. After creating an internal working group to organise training programmes for labour inspectors through Resolution 3783 of 2017, the government has implemented several training programmes for new inspectors, as well as permanent training to enhance the competencies of experienced labour inspectors, including courses on labour intermediation, administrative procedures, job stability and collective bargaining. Similar courses have also been offered in the Virtual Campus for the Training of Labour Inspection, which was launched and implemented in 2019 with the accompaniment of the ILO and prioritised under the Memorandum of Understanding signed between the Governments of Colombia and the United States.⁹ In 2019, 1 164 inspectors participated in face-to-face trainings and 6 726 inspectors participated in virtual trainings. By December 2019, approximately 80% of all inspectors

completed the core courses in the Virtual Campus (USDOL, 2021_[20]). Additionally, between 2019 and 2021, the ILO and the European Union have been organising training sessions to enhance labour inspections and promote labour law enforcement in rural areas in Colombia, with a focus on Antioquia, Cauca and Nariño.

Electronic case management and mobile inspection

The electronic inspection case management system of the labour inspectorate (SISINFO), which has been gradually put in place since 2018, allows for effective case tracking in labour inspections. Today, the system is fully operational in all 33 Territorial Offices, 3 Special Work Offices (Barrancabermeja, Urabá and Buenaventura) and all Municipal Inspection Offices. The SISINFO system has up-to-date information on 92 088 files (of which 35 182 active and 56 906 completed). However, further improvements are needed in the correct application of the system among labour inspectors, to improve its use and ensure that cases are adjudicated within legally mandated timeframes.

Additionally, under the Canada-Colombia Action Plan (Employment and Social Development Canada, 2018_[10]), a mobile labour inspection has been created to reach rural areas where there are no on-site labour inspections – in particular the 171 municipalities prioritised by the national government under the PDET. Even though the mobile labour inspection was not primarily established to conduct preventive or reactive inspections, 149 inspections were conducted between 2018 and 2021. In addition, the mobile inspection trained 2 258 labour monitors in 2018, 3 460 in 2019, 921 in 2020, and 1 077 in 2021.

Inspections and investigations

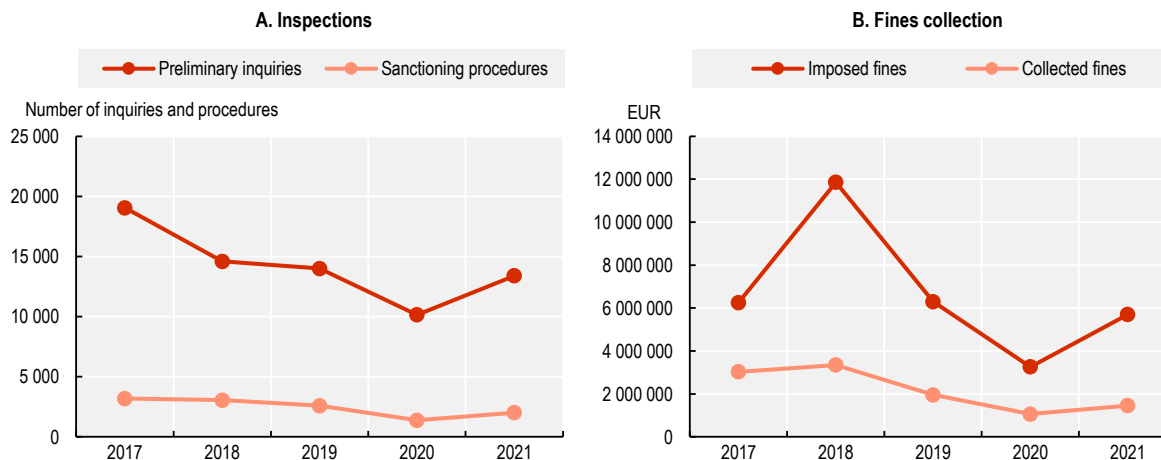
The number of labour inspections and investigations declined considerably over the past five years. Whereas labour inspectors conducted around 19 000 investigations per year in 2017, the number dropped to 14 000 in 2019 and 10 000 in 2020 (Figure 3.2, Panel A). The drop in 2019 was related to the changes in staff as a result of the civil career exam, whereas, in 2020, labour inspectors had to adapt to COVID-19 restrictions and shifted to general inspection actions using virtual means and technological tools. Investigations picked up again in 2021, but only reached 70% of the 2017 numbers and a significant share of these inspections remained virtual. In addition, with the aim to reduce the number of cases that end up in resource-consuming litigation and in the end have little impact on the rights of the workers involved, the inspectorate has shifted its focus from reactive visits to mainly preventive visits, which now account for roughly 80% of all inspections.

As a result of this shift, the number of sanctioning procedures decreased from 3 177 in 2017 to 1 376 in 2020, and 2006 in 2021 (Figure 3.2, Panel A). There are also major concerns regarding the real timeframes to conclude these administrative investigations, which was 18 months on average for 2021, exceeding substantially the legally mandated duration (up to 219 days, or 9.7 months). By March 2021, SISINFO registered more than 83 000 cases, of which 48% active and 43% of those exceeding the legal timeframes (USDOL, 2021_[20]).¹⁰ As a consequence of the decrease in sanctioning procedures, the number of fines imposed by labour inspectors has been reduced as well, from an average of 3 300 fines per year between 2017 and 2019, to less than half in 2020 (1 639 fines). In 2021, the number of fines imposed rose again to 3 400.

The total amount of fines imposed and executed has been fluctuating over the past years, increasing from EUR 6.2 million in 2017 to EUR 11.7 million in 2018, then decreasing to EUR 3.2 million in 2020 and EUR 5.6 million in 2021 (Figure 3.2, Panel B).

Figure 3.2. Inspections and fines collection dropped

Number of inspections and amount of fines imposed and collected, 2017-21



Source: Data provided by the Ministry of Labour.

The collection of fines

As mentioned above, the responsibility of the fines collection has been moved from SENA (the National Training Service) to the Ministry of Labour to strengthen labour inspection. All fines assessed prior to 1 January 2020, remain under the purview of SENA, while all fines assessed after this date are collected by the Ministry of Labour.

In 2020, SENA collected EUR 728 000 in fines whereas the Ministry of Labour collected EUR 333 861 under FIVICOT, together reaching EUR 1.06 million (Figure 3.2, Panel B). In 2021, they jointly collected EUR 1.45 million. These amounts for 2020 and 2021 are considerably lower than the amounts collected in 2017 and 2018, when respectively EUR 3 million and EUR 3.3 million fines had been collected. The COVID-19 pandemic certainly complicated the complication of fines, but the decrease in fine collection already started in 2019 when only EUR 1.95 million fines had been collected. Overall, SENA has failed to collect between 30% and 40% of fines since 2018. By the end of 2021, SENA accumulated 3 600 uncollected fines for a total amount of EUR 16 million. It is unclear whether the shift of the fines collection to the Ministry of Labour will improve the situation.

In sum, to ensure the enforcement of labour regulations and workers' rights, it is crucial to continue reinforcing the labour inspectorate's functioning. The transfer of the fines collection from the National Training Service to the Ministry of Labour and the increase in the total number of labour inspectors are both highly welcome, but continued efforts are needed to improve inspections, sanctioning procedures and collection of fines. A more balanced use of reactive versus preventive inspections would improve the deterrence effect of labour inspections more broadly and encourage employers to comply with the labour regulations voluntarily.

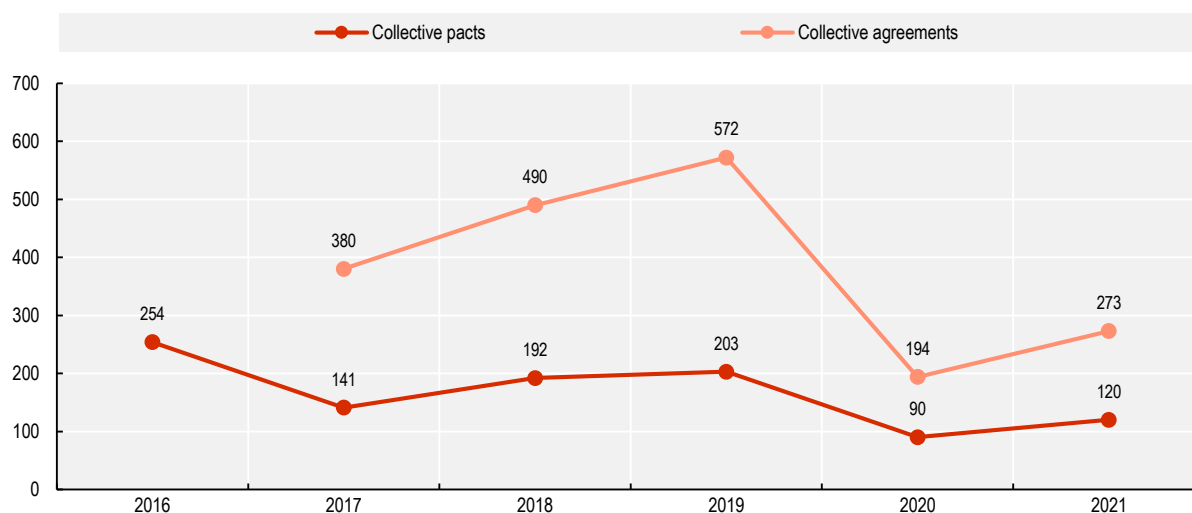
4 Collective bargaining

Progress in collective bargaining

Modest improvements in collective bargaining in Colombia that had been made up to the end of the 2010s have been reversed by the COVID-19 pandemic. Prior to the pandemic, the number of collective agreements signed in the private sector increased steadily, from 380 agreements in 2017 to 572 in 2019 (Figure 4.1). However, the pandemic complicated the negotiation process and there has been a significant drop in agreements in 2020 (only 194 collective agreements were signed that year) and 2021 (273 agreements).

Figure 4.1. The COVID-19 pandemic reversed progress made in collective bargaining

Number of collective agreements and collective pacts in Colombia, 2016-21



Source: Data provided by the Ministry of Labour.

In contrast, a major collective bargaining process with all trade union confederations has been completed in the public sector. On August 2021, the government signed a new agreement that will benefit around 1.2 million workers in the public sector, for a period of two years.

The Ministry of Labour has also been developing an electronic trade union registration system (*Sistema de Información de Archivo Sindical*, SIAS) with the support of the Government of Canada and in collaboration with the ILO. The system will register statutes, collective pacts and agreements, union service contracts and other actions of the trade union organisations and will provide reports and statistics on the subject, including on the number of workers covered, to monitor their developments. The system was launched in November 2021, but is still being fine-tuned.

In contrast, there have not been any regulatory reforms in the past few years to improve the collective bargaining framework, and there are no reforms foreseen. As discussed in OECD (2016), significant obstacles to the free association of workers in trade unions and to union recognition by employers persist. In addition, legislative restrictions, such as, the full prohibition of strikes organised by higher-level trade union organisations or in companies providing essential services, continue to weaken trade unions and their bargaining possibilities.

The use of collective pacts

Unlike most OECD countries, but similar to Chile and Mexico, the Colombian legal framework allows employers to negotiate and reach collective pacts with non-unionised workers as long as trade unions represent less than one-third of the company's workforce. According to the Article 200 of the Criminal Code, employers are not allowed to offer better conditions in the collective pacts than those already agreed upon in the collective agreements with the trade unions in their company. This prohibition aims to avoid the use of collective pacts to discourage the affiliation of workers to the trade unions. However, the option of signing collective pacts brings several risks for the exercise of collective bargaining, including the imposition of pacts drawn up directly by the company or their trusted staff, and a reduction in unionised workers when the collective pact is promoted to prevent the independent organisation of workers in a union.

The draft decree to prohibit the conclusion of collective pacts in companies with a trade union that had been discussed during Colombia's accession process [DELSA/ELSA/ACS(2017)2] was never published. Instead, the Ministry of Labour strengthened inspection of collective pacts and set up a Special Investigative Unit in 2017 to investigate complaints related to the misuse of collective pacts. The Unit received 12 complaints in 2017, only 1 in 2019 and none over the other years. The Special Investigation Unit examined 11 claims between January 2020 and 15 June 2021 (ILO, 2022^[21]). In 2020, six fines were imposed for the misuse of collective pacts, for a total value of EUR 168 000, and in 2021 another four fines for a total value of EUR 41 000. However, the pandemic has complicated inspections and visits to firms have been suspended.

Despite improved inspections prior to the pandemic, the number of collective pacts steadily rose from 141 to 203 pacts between 2017 and 2019 (Figure 5.1). It fell to 90 pacts in 2020 due to the crisis, but started to pick up again in 2021 (114 collective pacts). Trade union federations confirm that misuse of collective pacts has become rare, but the fact that they are still allowed continues to weaken the work of trade unions in companies and prevents the emergence of new unions. They also claim that: (1) companies prefer to conclude first a collective pact with non-unionised workers and then to use it as a ceiling on benefits for the collective bargaining with the trade union; (2) the Ministry of Labour only verifies whether the content of a collective pact is more favourable than the collective agreement, and not the impact of a collective pact on trade union formation; and (3) the reduction of the number of the collective pacts deposited per year in 2020 is a direct consequence of the COVID-19 pandemic, and not of the government actions to control it (ILO, 2022^[21]).

Lack of regulatory reforms

The Ministry of Labour has been working on a draft Decree (amending Decree 089 of 2014) to allow multiple trade unions in the same company establish a joint negotiating committee and submit a unified statement of petitions. The aim of this initiative is to address union fragmentation, which negatively affects the collective negotiation process in Colombian firms, as sometimes five or more trade unions sit at the negotiation table within the same company, each with their own requests. It is not clear, though, whether

it would become mandatory for existing unions in the same company to establish a joint negotiation committee and submit a unified statement of conditions.

The initiative was well received by the trade union organisations, but they requested a multilevel collective bargaining framework in return, including collective bargaining at the company, sectoral, regional and national level, to encourage companies to establish a joint negotiating committee as well, for unified bargaining with a representative union (CUT, CTC and CGT, 2021^[5]). Negotiations on the draft Decree have since stalled and it is unclear whether an agreement can be reached.

There are no improvements in the legal framework for the strikes in Colombia either. Despite recommendations of different international actors to give the right to strike to higher-level trade union organisations, the Colombian Government is not responsive to this proposal. In its 2021 post-accession report, the Ministry of Labour recalled that the prohibition of the strike for the Federations and Confederation was declared constitutional by judgment C-797 of 2000 of the National Constitutional Court (Mintrabajo, 2021^[22]). In the same way, on the proposal to review the full prohibition of strike in essential services, the government provided information regarding the judgment 1 680 of 2020 issued by the Labour Chamber of the Supreme Court of Justice, which supported their position to limit strikes of essential public services defined by the legislator.

Regarding the proposal to ensure that all workers, irrespective of the legal status under which they work, can join trade unions in practice, the government states that there is no limitation for workers to constitute or join trade unions of any kind, except for members of the National Army and police forces. However, the trade union organisations pointed out that some workers, like subcontracted workers and apprentices, are unable join trade unions organisations in the company where they execute their work (CUT, CTC and CGT, 2021^[5]).

Finally, the Colombian Government is not considering a gradual adjustment of the very high minimum wage to bring it back to its original role of wage floor instead of wage norm. On the contrary, the minimum wage has been raised by 10% in January 2022, while inflation was only 5.6% in 2021. At 90% of the median wage of full-time formal employees, the ratio is the highest among OECD countries. Moreover, evidence clearly shows that the minimum wage has a negative effect on employment, especially for workers earning close to the minimum wage, and induces informality (OECD, 2022^[2]).

Significant efforts are required to build a constructive framework for social dialogue in Colombia, including: (1) the promotion of a two-tier system of sectoral and firm-level bargaining, by elaborating the regulations on sectoral bargaining in the Labour Code; (2) the elimination of the option to negotiate collective pacts; (3) the automatic extension of collective agreements to all employees of a company, and not only to the members of the signatory trade unions (the *erga omnes* principle); (4) the requirement for multiple trade unions in the same company to form a bargaining team to ensure a single collective agreement; and (5) the right to strike to higher-level trade union organisations. With better social dialogue and reinforced collective bargaining, Colombia could consider a gradual adjustment of the very high minimum wage to bring it back to its original role of wage floor instead of wage norm.

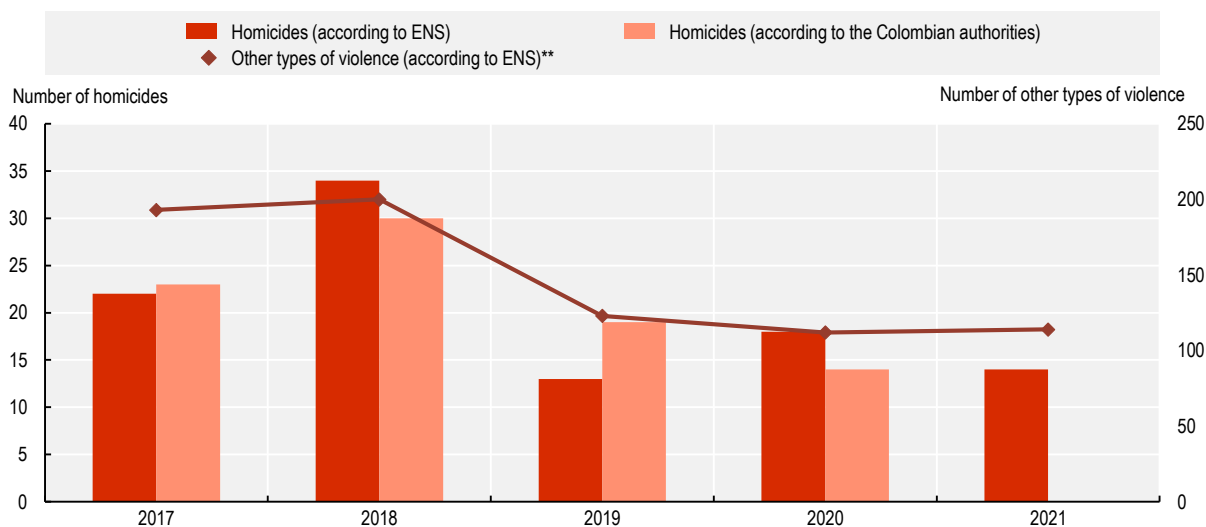
5 Crimes against trade unionists

Recent statistics on violence against trade unionists

Violence continues to affect trade union leaders and members in Colombia, in particular in the rural areas formerly occupied by the Revolutionary Armed Forces of Colombia – People’s Army (FARC-EP or FARC). As stated in the report of the Committee of Experts on the Application of Conventions and Recommendations (ILO, 2021^[11]), this phenomenon particularly affects trade unions in agriculture, education, energy and mining. In 2021, the National Trade Union School (*Escuela Nacional Sindical*, ENS) reported 14 cases of homicides of members of trade unions, three more than the number reported by the Prosecutor General’s Office (Figure 5.1).¹¹ According to ITUC (2021^[3]), Colombia remains the deadliest country for trade union members. The number of homicides was particularly high in 2018, when ENS recorded 34 homicides and the authorities 30 homicides. Even so, the cases for both 2019 and 2021 were below the homicides observed between 2010 and 2017 (with an average of 27/29 homicides according to the authorities/ENS respectively), and only a fraction of the cases in previous decades.

Figure 5.1. Violence continues to affect trade unionists in Colombia

Number of homicides and other types of violence against trade unionists, 2017-21



Note: The ENS data for 2021 refer to the period January-November 2021. **Other types of violence include forced displacement, disappearance, torture, harassment, arbitrary detentions, illegal searches, threats, and other attempts against life.

Source: Information system on human rights (SINDERH) of the National Trade Union School (ENS) and the Prosecutor General’s Office.

Based on ENS data, other types of violence (such as threats, forced displacement, disappearance, torture, etc.) significantly dropped in recent years, from 202 cases in 2018 to 116 in 2020. Especially

threats saw a considerable decrease, from 175 in 2018 to 86 in 2020. In 2021, the number of other types of violence cases increased again slightly.

The role of the Colombian Mobile Anti-Disturbances Squadron (ESMAD)

During Colombia's accession process to the OECD, concerns were expressed about the excessive use of force of the Colombian Mobile Anti-Disturbances Squadron (*Escuadrón Móvil Antidisturbios*, ESMAD), which is the Unit of the National Police that carries out specific procedures in attention, management and control of crowds (including strikes and demonstrations). Meanwhile, the government has been taking measures to improve their function, including educating ESMAD members on the respect of human rights and adherence to operational procedures; incorporating more female agents (3% of the total agents by 2021); and reducing their participation in labour demonstrations (13.1% of the ESMAD's interventions were in demonstrations for labour issues in 2019 compared to 26.9% in 2018).

However, ESMAD's role remains problematic. On 22 September 2020, in judgment STC 7641-2020, studying a particular case under the mechanism of *tutela* (a constitutional action for immediate legal protection of human rights), the Civil Cassation Chamber of the Supreme Court of Justice stated that the security forces, especially the ESMAD, are a serious and present threat to the participants on peaceful demonstrations, and that their agents harboured deep-seated stereotypes about the protest.

According to the information provided by the government to the Inter-American Commission of Human Rights (IACHR) within the framework of the national strike of 2021 (28 April to 4 June), the ESMAD intervened in 1 418 of 12 478 protests, in order to counter acts of violence (IACHR, 2021^[23]). However, civil society and international actors reported unnecessary or disproportionate use of force during the protests by ESMAD members. According to the Office of the UN High Commissioner for Human Rights (OHCHR, 2021^[24]), there are reasonable grounds to believe that ESMAD members were responsible for at least 10 of the deaths reported during the protests.¹² Furthermore, the IACHR received accounts from civil society, describing ESMAD officers using physical, sexual, and verbal aggression to break up demonstrations, points of resistance, and other peaceful gatherings.

In compliance with the decision of the Supreme Court of Justice (2020^[25]), the government issued the "Statute of reaction, use and verification of legitimate force of the State and protection of the right to peaceful citizen protest" by the Decree 003 of 1 March 2021. Additionally, the National Police presented the Directive 05 of 2021 with institutional parameters to provide guarantees for those who exercise the right of assembly and public and peaceful demonstration; as well as guarantee the rights of other citizens who do not participate in these activities. The Resolutions 1682 and 1716 of 2021 issued by the National Police also strengthened the guarantees for the protection of the right to protest. Nevertheless, a statutory law is still required to regulate the exercise of the right of protest as is stated by the Political Constitution. Furthermore, there is a general call from different stakeholders for a broad national debate on police reform, including the possibility of transferring the police from the Ministry of Defence to civilian control, and improving internal oversight and accountability mechanisms (OHCHR, 2021^[24]). Colombia also committed to examine, critically and independently, the role of the ESMAD and their use of excessive force under the Canada-Colombia Action Plan (Employment and Social Development Canada, 2018^[10]).

Protection of trade unionists

Over the past years, the number of trade unionists covered by the protection programme for trade unionist decreased, from 677 in 2014 to 296 in 2020 and 255 in 2021. The decrease reflected the drop in the number of requests for protections presented by trade unionists, from 2010 in 2017 to 726 in 2021. The overall approval rates of protection requests vary over the years, ranging from about 12% in 2017 and

2020 to 18% in 2018 and 29% in 2021. The main reasons to reject protection requests include: (1) devolution of the file because the subject of protection is presenting new facts for a request that is already under study; (2) the request must be attended by other entity; and (3) incomplete paperwork to present the request.

In trade unions' comments to the first post-accession report of the Colombian Government to the ELSAC (CUT, CTC and CGT, 2021^[5]) and in the Report of the Committee of Experts on the Application of Conventions and Recommendations of the ILO (2021^[11]), delays and ineffectiveness in implementing the protection measures by the National Protection Unit (*Unidad Nacional de Protección*, UNP) were reported. According to their information, only 38% of the requests presented in 2019 and 2020 were evaluated and around 50% of the measures implemented for trade unionists were discontinued.

Even though the total budget of the UNP, the entity in charge of the programme, has increased over the years, the resources assigned to the protection of trade unionists have been gradually declining since 2014 (in line with the reduced number of trade unionists in the programme). The protection budget nearly halved from EUR 13.6 million in 2014 to EUR 7.6 million in 2020 and EUR 7.5 million in 2021.

The government adopted two reforms to improve protection measures implementation by the UNP. First, Decree 2078 was issued in December 2017 to establish a procedure for collective protection mechanisms for groups and communities. Six trade union organisations requested such collective protection mechanisms; only one, the CUT (*Central Unitaria de Trabajadores de Colombia*) is now covered by a collective protection mechanism, two cases remain under evaluation by the UNP, two organisations withdrew their case, and one case is closed.

Second, on 23 September 2021, Decree 1139 modified several rules regarding the programmes to protect the rights to life, freedom, integrity and security of people, groups and communities. Decree 1139 aims to cut in half the time to evaluate the risk of the victims of threats, from 62 calendar days to 30 business days. To do so, (1) it removed the Group of Preliminary Evaluation, distributing its functions between the CTAR (*Cuerpo Técnico de Análisis de Riesgo*) and the CERREM (*Comité de Evaluación de Riesgo y Recomendación de Medidas*); and (2) it included high-level officials in the CERREM, to be able to take prompt decisions, keeping the participation of delegates from vulnerable populations. For the evaluation of cases where the victim is a trade unionist, Decree 1139 included specific activities for the CTAR, such as consulting on their status and risk information in the "Archivo Sindical", labour inspections, trade union organisations, firms, control agencies, etc. However, according with researchers from Human Rights Watch, this decree could undermine the protection of social leaders because: (1) removing the Group of Preliminary Evaluation diminishes the participation of stakeholders from civil society in practice; (2) the protection measures will have a time limit of one year if there are no new facts that change the risk; and (3) the applicant has to present a motivation to establish the risk of their family members and adopt measures in their favour, whereas previously that risk was presumed.

Prosecution of violence against trade unionists

The Colombian national authorities reported progress in the prosecution of crimes against trade unionists based on strategies that were particularly designed to investigate such crimes. Nevertheless, the number of cases solved remains low and the intellectual authors responsible for these crimes are very rarely identified. Even so, at 43.2% the rate of advance in the investigations of homicides against trade unionists between 2017 and 2021 is higher than for other cases of intentional homicide (29.7% for 2020). Of the 98 cases with 100 unionised victims of homicides that occurred between 1 January 2017 and 31 December 2021, 41 cases showed progress: 13 cases have sentences, 16 cases are in trial, 3 cases have formulation of charges, 8 cases are under investigation with arrest warrants in force, and in 1 case the investigation ended as a result of the preclusion of the criminal proceeding.¹³ The other 54 cases that are investigated under the ordinary jurisdiction remained without progress under preliminary investigation,

and 3 cases are investigated under the indigenous jurisdiction. In other words, only 13.3% for cases occurred between 2017 and 2021 had a sentence at the time of writing.

The Prosecutor General's Office is using two strategies to investigate the crimes against unionised persons. First, the investigation and prosecution follows the parameters of a crime against human rights defenders, in case the victim was not only unionist but also worked in defence of human rights. Second, the investigation and prosecution is developed as an intentional homicide against any unionised person. Also, some measures have been taken to investigate cases of threats against human rights defenders, such as: (1) the creation of a National Working Group made up of 10 specialised regional offices attached to the National Specialised Directorate against Human Rights Violations to follow up these cases; (2) the availability of a hotline, contact centre and an email to receive complaints; and (3) the creation of the specific criminal type of threats against human rights defenders, including labour leaders.

However, the Committee of Experts on the Application of Conventions and Recommendations of the ILO (2021^[11]) and the U.S. Department of Labor (USDOL, 2021^[20]) recommended to continue strengthen efforts to reduce impunity for these crimes, and investigate and prosecute the intellectual authors. In addition, the ENS (2021) stated some problems, including: (1) the omission of a context analysis in the investigation to identify criminal patterns; (2) the lack of compensation measures to ensure the violations are not repeated; and (3) the reduction of the capacity of the judicial power to deal with cases against trade unionists.

Investigations of violations of rights of assembly and association

The investigations of violations of rights of assembly and association, under Article 200 of the Colombian Criminal Code are not resulting in sanctions. In the period between 2017 and 2021 (until 13 December), the Prosecutor General's Office received 1 094 complaints. Of these, 209 cases (19.1%) are active and 885 (80.9%) have been terminated, as follows: 512 cases have been archived, because the criminal conduct did not exist (55.9%) or the plaintiff was illegitimate (28.9%); 107 cases have been withdrawn by the complainant; 75 have been subsumed under other criminal cases; 73 cases have been conciliated; and 115 cases have been closed due to termination of the criminal action, preclusion, extinction of the complaint, among others. Overall, despite the high number of complaints for the violation of the right of assembly and association, not even one of the complaints received between 2017 and 2021 finished with a sentence. Of the 209 active cases, only 5 cases are in trial stage.

However, Colombian national authorities reported to the U.S. Government additional progress in processing a backlog of Article 200 cases received between 2011 and 2016 (USDOL, 2021^[20]). Of the 1 840 cases under review in 2016, 98.5% were concluded by December 2020. However, only 9 out of the 2 705 complaints filed since 2011 have reached the trial phase. By the end of 2021, of these 5 cases remain in trial; 2 cases resulted in the absolution of the defendant; 1 case was dismissed; and only 1 case resulted in a conviction against the employer in August 2020, the first since the implementation of criminal penalties under Article 200 in 2011 (USDOL, 2021^[20]). However, this conviction was appealed before the Colombian Supreme Court, and as a result of the expiration of the case, the Court decided to confirm the judgement of the first instance that exonerated the employer's responsibility.

As it has been noted, conciliation remains a common way to close the investigations under Article 200. For the government, "it is an effective mechanism to guarantee the right of access to justice and to solve legal disputes in an expeditious manner, guaranteeing a timely restoration of the rights of the affected persons" (Mintrabajo, 2021^[22]). According to the information provided by the Colombian national authorities to the Government of Canada, as a part of their strategy to manage these cases, the Prosecutor General's Office has: (1) designated specialised prosecutors in seven regional directorates where the largest number of cases are located; (2) held conciliatory sessions to facilitate dialogue between the parties and, if no agreement was reached, ensured that the investigation moved to the next procedural phase; (3) fostered

professional linkages between labour inspectors and local prosecutors in charge of processes under Article 200; and (4) trained 18 prosecutors on the right of freedom of association with the support of the Colombian Ministry of Labour and the ILO (Employment and Social Development Canada, 2018^[10]).

Nevertheless, the ILO and the U.S. Government expressed concerns regarding the extent to which the access to justice for victims of violations under Article 200 is effective as there are no convictions (ILO, 2021^[11]; USDOL, 2021^[20]). There is also no follow-up mechanism to ensure the compliance of the conciliation agreement that usually ends the legal procedure under the criminal law. The regulation does not establish a term to follow up on the compliance of such cases nor does it allow for additional legal recourses under the same criminal procedure to argue the breach of the agreement. As a result, the only option for employees is to present a new lawsuit before a Civil Court to force the execution of the conciliation agreement, thus potentially making the legal procedure even more difficult.

In sum, the prioritising of investigations of crimes against trade unionists and the introduction of a dedicated investigation strategy and specialised teams have resulted in tangible progress in the fight against impunity over the past couple of years. Nevertheless, the number of sentences for both violence and violations of rights of assembly and association remain low and homicide rates remain high. Further efforts will be needed to bring down violence against trade unionists and investigate crimes.

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Notes

¹ The minimum social security contributions in the regular system are calculated based on the minimum wage and thus too expensive for workers earning less than that.

² These municipalities are the territories most affected by the armed conflict, poverty, illicit economies and institutional weakness.

³ Decree 2025 of 2011 foresees a reduction of 20% for each year that the formalised workers remain with the firm, implying a full fine waiver after five years.

⁴ Through union service contracts, associated work co-operatives, simplified joint stock companies, and dependent self-employment, people work under similar conditions as regular employees, but they do not benefit from the same rights stipulated in the labour code, like an equal economic compensation, the employers' contribution to the social security scheme of the worker, the right to join trade unions and collective bargaining in the firm where they are providing their services.

⁵ In outsourcing, goods and services are provided to a third party, but not personnel. In labour intermediation, personnel are supplied through companies authorised for this purpose and in specific circumstances that the law has established.

⁶ Union service contracts (*contratos sindicales*) were established in the Labour Law Code as a legal tool to contract works or services directly with trade unions. While union service contracts have been in place for a long time, misuse for employment relations was facilitated in 2010 when the authority of signing a service contract was transferred from the union's general assembly to the union's president. This change in the law implied that it was no longer necessary to obtain the workers' agreement, allowing businesses to construct fake unions and contract out their services.

⁷ Union service contracts can be traceable, but not the number of workers covered under those contracts. As the government cannot interfere in internal matters of trade unions, the real number of workers under union contracts is beyond government reach. However, the government presented an estimate of the number of workers under union contracts for 2021.

⁸ Exchange rates of 18 January 2022 have been used to convert Colombian pesos into Euros.

⁹ The Virtual Campus included a first set of 10 courses related to core competencies for inspectors, including fundamental rights at work, individual and collective labour law, occupational safety and health, social security, and labour formalisation. The Ministry of Labour developed a second version of the Virtual Campus by the end of 2020, offering a set of nine specialised courses that deepened training in these and other areas, including substantiating complaints through testimony and administrative sanctioning procedures (USDOL, 2021^[20]).

¹⁰ According to the Second Periodic Review of the U.S. Department of Labor (USDOL, 2021^[20]), the electronic case tracking may not reflect the actual legal status of case adjudication in all cases because, under Colombian administrative law, only original, hard copy documents have legal effect and there are sometimes delays in labour inspectors' updates to the ECMS following the processing of hard copy fine resolutions or other administrative actions. ECMS data nevertheless suggest serious challenges in the timely resolution of cases.

¹¹ The divergence in cases is related to differences in the methodology of recording and counting of events, selection of variables, inclusion criteria and sources (OECD, 2016^[1]).

¹² This number has also been mentioned by the Prosecutor General in an interview for the newspaper *El Tiempo*: <https://www.eltiempo.com/amp/justicia/delitos/entrevista-fiscal-francisco-barbosa-hace-balance-de-2021-y-habla-de-casos-639973>.

¹³ Preclusion is a procedural mechanism to finish a criminal process when the prosecutor deems there is no basis to continue the investigation under one of the circumstances expressly indicated in the Criminal Procedure Code (Article 332). These circumstances include the inexistence of the investigated fact, the impossibility to undermine the presumption of innocence, and the expiration of the maximum term for the judgment, among others.

OECD Reviews of Labour Market and Social Policies

Colombia 2022

In 2020, Colombia joined the OECD as the 37th Member of the Organisation, bringing to a successful conclusion an accession process that began in 2013. During the accession process, Colombia made important reforms and progress in the area of labour market and social policies, converging towards OECD best policies and practices. However, the OECD invited the Colombian government to continue its reform agenda in four areas in particular: (1) labour informality and subcontracting; (2) labour law enforcement; (3) collective bargaining; and (4) crimes against trade unionists. This report is the first assessment since Colombia's accession to the OECD.



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