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**DIRECTORATE FOR EMPLOYMENT, LABOUR AND SOCIAL AFFAIRS
EMPLOYMENT, LABOUR AND SOCIAL AFFAIRS COMMITTEE**

Colombia Post Accession Reporting

Report by the OECD Secretariat

145th Session of the Employment, Labour and Social Affairs Committee (ELSAC)
10-11 April 2024

This report is the Secretariat's second post-accession progress report on Colombia. As requested in the Formal Opinion [[DELSA/ELSA/ACS\(2018\)1/FINAL](#)], the report provides an overview of progress made in the four areas identified in the accession reports [[DELSA/ELSA/ACS\(2015\)1](#) and [DELSA/ELSA/ACS\(2017\)2](#)], including: 1. Labour informality and subcontracting; 2. Labour law enforcement; 3. Collective bargaining; and 4. Crimes against trade unionists.

Action: The Committee is invited to discuss this item, highlight any further action that Colombia should take to address the Committee's recommendations, and agree with the declassification of the report to allow for publication.

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Note by the Secretariat

1. On 28 April 2020, Colombia joined the OECD as the 37th Member of the Organisation, bringing to a successful conclusion an accession process that began in 2013.
2. As requested in the Formal Opinion [[DELSA/ELSA/ACS\(2018\)1/FINAL](#)], the Colombian authorities present a yearly update report at the ELSA Committee meeting and the Secretariat prepares a report prepared two, four, six and eight years after accession to the Organisation and thereafter as required.
3. This report is the Secretariat's second post-accession progress report. As requested in the Formal Opinion [[DELSA/ELSA/ACS\(2018\)1/FINAL](#)], the report provides an overview of progress made in the four areas identified in the accession reports [[DELSA/ELSA/ACS\(2015\)1](#) and [DELSA/ELSA/ACS\(2017\)2](#)], including: (1) labour informality and subcontracting; (2) labour law enforcement; (3) collective bargaining; and (4) crimes against trade unionists.
4. Delegates are invited to:
 - DISCUSS this item.
 - HIGHLIGHT any further action that Colombia should take to address the Committee's recommendations.
 - AGREE with the declassification of the report to allow for publication.

Executive Summary

5. Colombia has made major advances over the past decade in lowering labour informality and improving social security coverage among workers through improved education, a reduction in non-wage labour costs, and a series of measures to facilitate the formalisation of workers and companies. When measured as the share of workers who are not contributing to the pension system, informality decreased from about 70% at the beginning of the 2010s to 57.8% in the last quarter of 2023. Even so, Colombia's informality rate remains higher than in many other large countries in the region, where on average 49.4% of workers are not contributing to the pension system. Significant additional efforts are thus needed to reduce labour informality in the country. As discussed in detail in the 2022 OECD Economic Survey of Colombia (OECD, 2022^[1]), a major reform of Colombia's social security system is required to further reduce non-wage labour costs and improve social protection for all.

6. Since the beginning of its presidential term in August 2022, the current government of Colombia has presented three major social reforms to Congress, on healthcare, pensions, and labour. The labour market reform, which aims to foster decent work and strengthen guarantees of job stability and formal employment with social justice, was submitted to Congress in August 2023 and is currently under discussion in the Seventh Commission of the Chamber of Representatives (which is responsible for labour issues). If the reform is approved by the Commission before the end of June 2024, three more debates are required to finalise the discussion in Congress. The most contentious issues in the debates appear to be around social dialogue and collective bargaining, such as modifications to the right to strike and the introduction of a framework for sectoral bargaining. If the reform is rejected in any of the four discussions, other means would have to be sought to introduce (some of) the reforms.

7. The potential impact of the reform on informality is key element in the debate. Some stakeholders argue that informality will increase due to higher labour costs, while others suggest that there might be room for employers to absorb an increase in costs. In the second version of the reform proposal, several provisions were therefore added to facilitate the formalisation of small businesses and certain occupations. In line with Colombia's commitments to the OECD, the government also included a ban on new union service contracts (which undermine labour rights and access to social security of the workers involved) in the proposal and continues to strengthen the one-stop shops that facilitate the registration of companies and workers. Generous hiring subsidies that were introduced during the pandemic to promote the creation of formal jobs were also extended. Nevertheless, careful attention should be paid to potential deadweight losses (which arise when subsidies support the hiring of workers that would have been hired even without the subsidy) and a more targeted use of subsidies for vulnerable groups should be considered. Finally, and as highlighted during the accession process, further efforts are required to address the persistent misuse of administrative law contracts for regular labour relations, in particular in the public sector.

8. To strengthen labour law enforcement and in line with OECD recommendations, Colombia made major improvements over the past years in the budget and staff allocated to labour inspection. The Ministry also continued training labour inspectors and improving mobile labour inspection in rural areas. However, turnover among labour inspectors remains a significant problem, leading to a continuous loss of knowledge and complicating the functioning of labour inspection. The improvements in staff and budget did not translate in additional investigations or sanctions, on the contrary. The number of investigations and sanctioning procedures plummeted over the past seven years, and nearly half of all investigations last

longer than the legally mandated timeframe. As both the number and value of imposed fines dropped, so did the amount of collected fines in the years thereafter. To ensure the enforcement of labour regulations and workers' rights, it is crucial to reduce turnover among labour inspectors, ensure investigations are concluded within the legally mandated duration, and continue training inspectors.

9. Colombia has ratified all fundamental ILO conventions and recognises freedom of association in the Constitution and Labour Code. However, as pointed out in previous OECD reports on this matter, significant obstacles to constructive social dialogue and collective bargaining persist in Colombia. The labour reform proposal that is currently under discussion in Colombia's Congress incorporates several provisions in line with Colombia's commitments to the OECD, in particular the establishment of a framework for sectoral bargaining, the removal of prohibitions on the right to strike, the promotion of single collective agreements to counteract the adverse effects of trade union fragmentation, and the prohibition of collective pacts. Colombia is encouraged to advance in the approval of the reform and explore ways to address other recommendations made during its OECD accession process. In particular, Colombia is invited to automatically extend collective agreements within companies, eliminate multi-affiliation, and reassess the role of the minimum wage. Furthermore, additional mechanisms for mediating industrial disputes are needed to effectively address collective conflicts.

10. As discussed in the last chapter of this report, there has been a decline in the number of reported homicides and other forms of violence towards trade unionists in recent years. Even so, trade union leaders and members in Colombia continue to be victims of violence. Depending on the source and the classification of trade unionists as social leaders, 8 to 16 homicides cases of trade unionists have been reported for 2023. The discrepancy between reported cases from different sources underscores the complexity of accurately capturing the extent and reasons of violence against trade unionists versus social leaders more generally.

11. Some efforts have been made to address the persisting use of violence against trade unionists in public demonstrations, offer them protection, and prosecute crimes against trade unionists. However, the low rate of convictions for crimes against trade unionists remains a concern, indicating the need for continued efforts to combat impunity. Recent strategies implemented by the Prosecutor General's Office demonstrate a commitment to improving investigations and addressing violations of rights of assembly and association. Nevertheless, there is no follow-up mechanism to ensure the compliance of conciliation agreements, which is the most common way to close investigations of violations of rights of assembly and association.

1 Introduction

The economic context in Colombia

12. After a remarkably fast recovery from the global pandemic, economic growth slowed down substantially to 0.6% in 2023. The slowdown is slowly passing through to the labour market, with the unemployment rate rising to two digits at the beginning of 2024 (10.6% for the three-month period November 2023-January 2024). High interest rates and policy uncertainty are weighing on domestic demand, and both consumer and business confidence remain relatively weak. Nevertheless, headline inflation has started to fall, and growth is expected to pick up again in 2025 (OECD, 2023^[2]).

13. Over the past decade, Colombia experienced a considerable reduction in multidimensional poverty, reaching 12.9% in 2022 in the country overall and 27.3% in rural areas (Figure 1.1, Panel A). Despite a significant policy response to cushion the economic effects of the global pandemic (OECD, 2022^[1]), there was a temporary setback. In 2021, multidimensional poverty started to decrease again. For other poverty measures, like monetary and extreme monetary poverty, the impact of the pandemic has been stronger and is lasting longer. Monetary poverty in 2022 was still higher than in 2019, at 36.6% of the total population and 45.9% in populated and rural areas (Figure 1.1, Panel B). In 2022, extreme monetary poverty was even at its highest point in the past decade, affecting 13.8% of the population (Figure 1.1, Panel C).

Labour market reform proposal

14. One of the priorities of the Colombian Government during this presidential term (2022-2026) is to promote significant social transformations within the country. Currently, the Government is advocating for three reforms in Congress, aiming to modify the healthcare and pension systems, along with major changes in labour market regulations. Focusing on the latter, the primary aim of the labour market reform is to foster decent work and strengthen guarantees of job stability and formal employment with social justice.

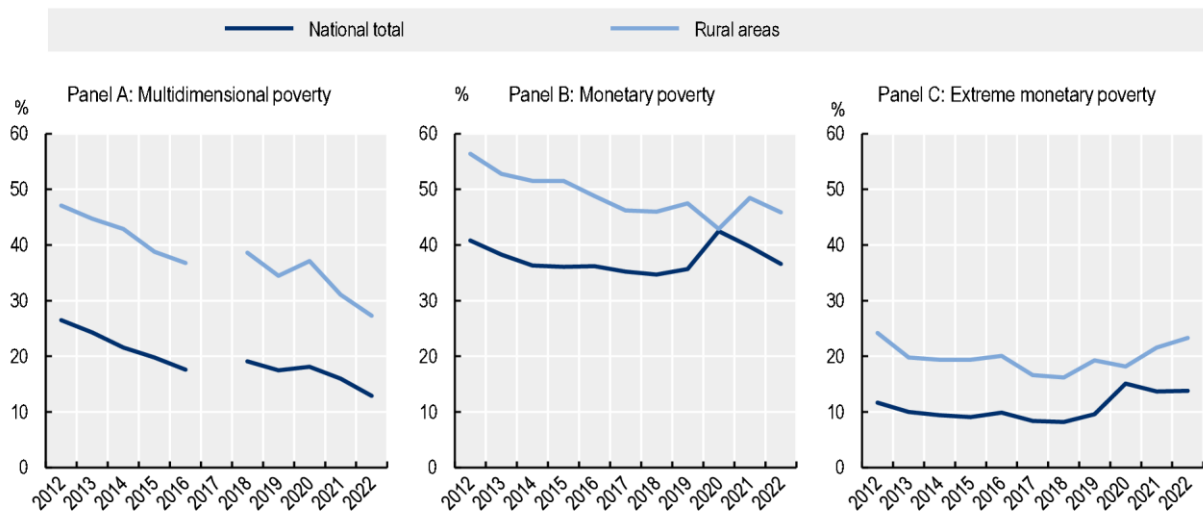
15. The labour market reform identified four main challenges to address:

- **Labour flexibilisation and labour precariousness.** Among other measures, the reform proposal includes provisions to tackle informality and subcontracting, and limit labour intermediation. It reassesses the compensation for unjustified dismissals, night shift bonuses, and bonuses for work on Sundays and holidays. It also proposes to expand labour protection of apprenticeship contracts.
- **New forms of employment contracts.** The reform proposes to create a legal framework for labour contracts for workers in digital platforms, remote workers, agricultural workers, professional athletes, arts and culture workers, migrant workers, and for green and blue jobs.
- **Historic weakening of trade unions and their collective bargaining capacity.** The reform proposal contains a series of provisions to strengthen the legal framework for collective bargaining, to recognise the right to strike, and to improve social dialogue.

- **Inequalities.** The reform proposes provisions to address gender gaps, unpaid domestic work, violence, discrimination, and harassment in the workplace, and to promote a social inclusion approach for people with disabilities.

Figure 1.1. Multidimensional poverty declined over the past decade, but not extreme poverty

Monetary poverty, extreme monetary poverty, and multidimensional poverty in Colombia, 2012-2022



Note: Colombia's Statistical Office, DANE, distinguishes between municipal capitals, populated centres in rural areas, and dispersed rural areas. "Rural areas" in the figures cover both the populated centres in rural areas and the dispersed rural areas. Monetary poverty and extreme monetary poverty represents the percentage of the Colombian population whose per capita household income is below the (extreme) poverty line. Multidimensional poverty evaluates the satisfaction (or non-deprivation) that an individual has with respect to certain characteristics that are considered vital, such as educational conditions of the household, conditions of childhood and youth, health, work, access to public services at home, and housing conditions. The 5 dimensions of the index include 15 indicators. Households are considered multidimensionally poor when they are deprived in at least 33% of the indicators. A weighting of each indicator is taken into account.

Source: Colombia's Statistical Office, DANE.

16. The initial version of the labour market reform was presented by the Government in March 2023 but was archived in June 2023 due to the absence of the required quorum in Congress for its discussion. Subsequently, the Government submitted a second version of the reform in August 2023. The Seventh Commission of the Chamber of Representatives, responsible for labour issues, appointed a group of Congress members to review the government proposal, which delivered a favourable assessment of the labour reform in November 2023 and prepared an updated version for discussion.¹ Sixteen articles were approved in the first debate in the Commission.² However, to continue the legislative process during the second half of the year, the entire reform should be approved by the Commission before 20 June 2024. After that, three more debates are required to finalise the discussion on the labour market reform in

¹ Available here: <https://www.camara.gov.co/reforma-laboral-1>

² Art. 2 Relationships regulated by the Substantive Labour Code, Art. 3 Restriction of inapplicability, Art. 11 Publication of work regulations, Art. 15 Daytime and nighttime work, Art. 19 Remuneration for overtime work, Art. 21 Limits of subordination, Art. 23 Measures for the elimination of violence, harassment, and discrimination in the workplace, Art. 30 Social security and occupational hazards in digital delivery platforms, Art. 33 Quotas for apprentices in companies, Art. 37 Training program for rural employment, Art. 42 Migrant workers, Art. 45 Participation for decent work in ethnic communities, Art. 56 Labour agreement program for victims of armed conflict, Art. 57 Guidelines for Public Policy on Decent Work for a just transition and green and blue employment, Art. 58 Incentives for Green and Blue Employment, and Art. 59 Training for the promotion of green and blue jobs.

Congress: one in the plenary session of the Chamber of Representatives, one in the Commission of the Senate, and one in the plenary session of the Senate. The most contentious issues appear to be around social dialogue and collective bargaining, such as modifications to the right to strike and the introduction of a framework for sectoral bargaining.

17. The purpose of this report is not to evaluate in full the labour market reform proposal that is currently under discussion in Colombia. Instead, this report is prepared in the context of Colombia's post-accession process, where the Secretariat monitors progress in four areas for which the Employment, Labour and Social Affairs Committee (ELSAC) requested further efforts from the Colombian government (OECD, 2018^[3]). These four areas are: (1) labour informality and subcontracting; (2) labour law enforcement; (3) collective bargaining; and (4) crimes against trade unionists. As such, this report evaluates to what extent the labour market reform proposal contains provisions that improve alignment with Colombia's commitments to the OECD.

2 Labour informality and subcontracting

Recommendations in the Formal Opinion of ELSAC

18. The OECD accession review of labour market, social and migration policies in Colombia (OECD, 2016^[4]) noted that profound dualism in the labour market resulting from widespread informality and a strong reliance of non-regular employment contracts created large economic and social costs. The Employment, Labour and Social Affairs Committee of the OECD made a series of recommendations in its 2018 Formal Opinion on Colombia's accession to the OECD to tackle labour informality and protect the labour rights of subcontracted workers; see Box 1.1.

Box 1.1. Recommendations to tackle labour informality and misuse of subcontracting

Continue tackling labour informality by:

- Implementing a one-stop-shop for the registration of companies that unifies procedures for the registration of new companies (*Ventanilla Única Empresarial*);
- Designing and implementing a single affiliation system for the different social security systems (including health, pensions, family subsidies and accident insurance);
- Improving the link between what workers and employers are required to contribute to social insurance and the benefits and services they receive in return;
- Launching a citizen awareness programme, especially in rural areas, on the importance of formal employment, benefits of social insurance and workers' rights.

Protect labour rights of subcontracted workers by:

- 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;
- Ensuring investigations of all abusive subcontracting, especially in rural areas, and publishing on an ongoing basis notifications of complaints, investigations, and outcomes;
- Resolving existing investigations regarding abusive subcontracting in a timely manner, imposing fines where appropriate and publishing the results on an ongoing basis;
- Collecting all outstanding fines for subcontracting violations within the legally mandated time frames;
- Requiring firms to formalise employees working under abusive subcontracting through regular employment contracts that provide access to all basic labour rights.

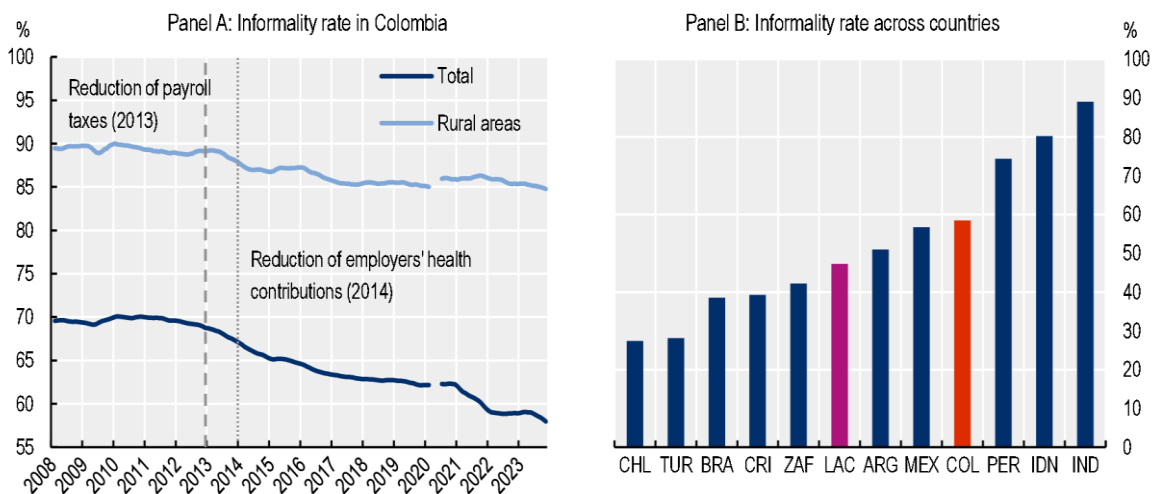
Source: OECD (2018^[3]), Accession of Colombia to the OECD: Formal Opinion of the Employment, Labour and Social Affairs Committee, unpublished report.

Recent trends in informality

19. Labour informality in Colombia, when measured as the share of workers who are not contributing to the pension system, has decreased considerably over the past decade (Figure 2.1, Panel A). As a result of improved education, a reduction in non-wage labour costs, and a series of measures to facilitate the formalisation of workers and companies, informality declined from about 70% at the beginning of the 2010s to 57.8% in the last quarter of 2023.³ Informality in rural areas has also declined, though at a much slower pace, and remains very high, reaching 84.7% of rural employment at the end of 2023 (Figure 2.1, Panel A). According to the OECD Latin American Economic Outlook 2023, more than 50% of Colombia’s population lives in a household that depends solely on informal employment while 30% lives in completely formal households, the rest in mixed households (OECD et al., 2023^[5]). Overall, Colombia’s informality rate remains higher than in many other large countries in the region, where on average 49.4% of workers are not contributing to the pension system, leaving only Peru behind (Figure 2.1, Panel B).

Figure 2.1. Labour informality in Colombia decreased considerably over the past decade

Labour informality in Colombia for the period 2008-2023 and latest year available for selected OECD countries



Note: Informality is defined as the percentage of workers not contributing to the pension system. Panel A: Data from April to August 2020 are missing because of the pandemic, as some questions were not asked in household surveys during this period. Panel B: LAC represents Argentina, Brazil, Chile, Colombia, Costa Rica, Mexico, and Peru.

³ Colombia’s National Department of Statistics (DANE) reports a slightly lower rate, at 55.5% in the last quarter of 2023. DANE defines informally employed people as follows: all wage earners or domestic workers who do not contribute to the health or pension system. DANE’s definition includes own-account workers and employers who have been classified in the informal sector, as well as all unpaid family workers and other persons for whom there is insufficient information on their occupational status to be classified in the above categories. Government workers and employees are excluded.

Source: OECD calculations based on the Integrated Household Survey (*Gran Encuesta Integrada de Hogares*, GEIH) of Colombia's Statistical Office (DANE) for Panel A and ILOSTAT for Panel B.

Labour market reform and other proposals

20. A key element in the debates around the currently proposed labour market reform (see Chapter 1) is its potential impact on labour informality. On the one hand, a study by the Central Bank of Colombia (2023^[6]) on the first version of the reform proposal (submitted in March 2023 and archived in June 2023, see Chapter 1) argued that the labour reform would lead to an increase in labour costs by 3.2% to 10.7% through a rise in wage costs and an additional 1.2% to 1.9% due to higher severance payments.⁴ According to a paper by Fedesarrollo, an independent research institute in Colombia, (the first version of) the reform would raise non-wage labour costs by 4 percentage points, increasing labour informality by up to 2.1 percentage points (Mejia, 2023^[7]). On the other hand, Amodio and Roux (2023^[8]) provide evidence of labour market power among Colombian manufacturers, suggesting that there might be room to absorb an increase in labour costs.

21. Notwithstanding these discussions, some of the elements in the labour reform that would directly increase the cost of labour did not generate major controversy and have already been accepted in the first debate of the Seventh Commission of the Chamber of Representatives. One of these articles brings forward the start of the night shift from 9pm to 7pm while another article raises the extra payment for work on Sundays and public holidays from 75% to 100% by 2026. These changes overturn partially changes that were put in place during a labour reform in 2002 (Observatorio del Mercado de Trabajo y la Seguridad Social, 2004^[9]). In 2022, the government also introduced a new law that will gradually reduce the weekly working hours from 48 hours in 2022 to 42 hours by 2026, a change that will bring Colombia closer to OECD standards, where three quarter of the countries have a working week of 40 hours or less (OECD, 2021^[10]).

22. The labour market reform proposes a series of articles to facilitate the formalisation of small businesses and certain occupations. For instance, the proposal would allow small businesses to contribute to social security on a part-time basis (which is not possible currently) and improve their access to credit. The reform also defines a new agricultural labour contract and daily salary for agricultural workers that would not only include a payment for daily work but also social benefits (e.g., a Christmas bonus and transport subsidy) and contributions to the pension system. For delivery app workers, the reform proposes, among other things, a fixed division of social security contributions between firms (60%) and workers (40%).

23. In addition to the labour market reform, the current government in Colombia places a strong focus on the so-called "Economía Popular", which encompasses a diverse array of grassroot economic organisations, both individual and communal, often informal and relying on kinship and neighbourhood networks. Authorities recognise the persistence and significance of these economic structures, which have often developed over decades of violent conflict with limited state presence. The National Planning Department is working on an Action Plan that will outline the measures to be taken by Ministries and agencies to strengthen the "Economía Popular" and promote their growth and (partial) formalisation; this Plan is expected to be released by the end of 2024. Conceptually, the "Economía Popular" project is seen as an extension of the commitments agreed upon Colombia's Peace Agreement, which aims to promote the social and solidarity economy as a tool for reintegration and peacebuilding (Government of Colombia, 2016^[11]).

⁴ The large range in the estimates is related to the uncertainty (at the time the report was published) about the start of the night shift and the additional remuneration that would be imposed on night work.

24. To better support the part of the population not covered by pension insurance, the government of Colombia developed a pension reform proposal with the aim of extending coverage of the pension system to all workers and enabling everyone to contribute according to their capacity to pay contributions. The reform would end the dual system of the co-existing public and private pension systems, which has been found to be inefficient and overly costly, and merge the defined-benefit system and the individual pension accounts in one system.

25. The new pension system would consist of 4 different tiers:

- **Solidarity pensions** for low-income individuals aged 65 or older with little to no accrued pension rights. These benefits would be equal to the “extreme poverty line” (as published by the National Statistics Office), currently estimated to be around COP 223 000 per month, almost three times higher than the current solidarity pension of COP 80 000 per month (around EUR 18.79).
- **Semi-contributory pensions** for individuals who have contributed between 300 and 1 000 weeks but who do not have the minimum 1 300 weeks’ insured employment to retire at normal retirement age (62 for men / 57 for women); they would be able to claim partial contributory benefits, possibly supplemented by solidarity pension benefits.
- **Contributory pensions:** Employees would contribute to a state pension fund on earnings up to three times the monthly minimum wage and contribute on earnings above this threshold (if any) to individual defined contribution accounts managed by private pension funds. Benefits would be combined as a single pension at retirement. Normal retirement age and most existing eligibility requirements would not change except for shorter contribution periods required for women with children. Employer and employee contribution rates on earnings up to four times the monthly minimum wage would not change from current rates (12% for employers and 4% for employees), but the employee contribution rate on earnings in excess (if any) would increase from 6% to 7% on pay up to 25 times the monthly minimum wage (the current earnings ceiling) to fund the solidarity pension.
- **Voluntary pensions:** Optional individual or collective savings plans would be introduced to complement the public pension.

26. Individuals with 1 000 or more weeks of insured employment would continue to receive a pension based on the existing dual pension system. Death and long-term disability pensions would be largely unchanged in terms of eligibility and benefits provided. The government is also developing legislation in response to a recent Constitutional Court ruling that the requirement for women to have 1 300 of weeks of insured employment (the same as men) in order to claim a defined-benefit pension is a form of indirect discrimination.

27. Other measures to strengthen the formalisation of workers that had already been initiated by previous governments remain in place, some of which have been further strengthened:

- The **one-stop-shop called “Ventanilla Única Empresarial” (VUE)** (Decree 1875 of 2017) has been operational since 2018. The VUE integrates tax, commercial and social security administrative procedures to facilitate company openings. Currently, it integrates 35 procedures, including the insurance of workers in health and occupational risks, and the affiliation and registration in Family Compensation Funds and Pensions. By January 2024, the VUE reached its goal to link with 57 chambers of commerce in 72 cities and municipalities. Since the introduction of the one-stop-shop, nearly 245 000 new companies have been created through the VUE platform.
- **The single Transactional Affiliation System (SAT)** (Decree 780 of 2016) aims to digitalise and integrate all social security subsystems. The SAT 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, as well as the procedure to change pension administrator. 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 overall.

- 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*).⁵ By the end of 2021, training had been organised in three-quarters of all priority municipalities (131 out of 171 municipalities).

28. Despite the apparent effectiveness of the Labour Formalisation Agreement programme in formalising workers, the agreements have been less used in recent years. While close to 10 000 workers were formalised through the Labour Formalisation Agreement programme in the mid-2010s, the numbers decreased to an average of 2 800 workers per year between 2017 and 2021, and barely 1 290 workers in 2023. The number of compliance visits remained stable, however, at 224 visits in 2023, similar to the number of visits during the period 2017-2021 (200 visits on average).

29. Finally, hiring subsidies to promote formal employment creation introduced during the pandemic have been extended, though careful attention should be paid to possible deadweight losses. Companies can receive monthly subsidies for maximum 12 months equal to 25% of the minimum wage for the creation of a new job for young workers between 18 and 28 years; 15% for female workers over 28 years old earning less than three times the minimum wage; and 10% for male workers over 28 years old earning less than three times the minimum wage. Only new contracts of minimum six months qualify for subsidies. However, international evidence has shown that general hiring subsidies can generate considerable deadweight losses, which arise when subsidies support the hiring of workers that would have been hired even without the subsidy (OECD, 2021^[10]). To minimise costs, hiring subsidies should therefore only be used in the case of temporary weak demand (like during the pandemic) or targeted at more disadvantaged groups (for instance, for people with disabilities, as the Colombian government is currently considering). Evidence from Chile and Türkiye shows that targeted employment subsidies (e.g., women of the 40% most vulnerable population, young people, or small companies) have been successful in reducing informality (Aşık et al., 2022^[12]) (SENCE, 2022^[13]) (SENCE, 2022^[14]).

Recent trends in subcontracting

30. As discussed in OECD reports, there is a tendency among employers in Colombia to rely on contracts regulated under civil-law provisions for their employment relations, such as dependent self-employment and third-party contracting through associated work co-operatives, simplified joint stock companies and union service contracts. These different forms of contracts have in common that the workers involved do not benefit from the rights stipulated in the labour code (such as minimum wage, hiring and firing rules, affiliation to trade union, and collective bargaining rights and social security rights), even though working conditions are often similar to those of regular employees.

31. Thanks to an improved legal framework and clear guidelines for labour inspectors, the number of associated work co-operatives has been brought down successfully in the past decade. However, the persistent misuse of other types of civil law contracts remains problematic in Colombia (OECD, 2022^[15]).

⁵ These municipalities are the territories most affected by the armed conflict, poverty, illicit economies, and institutional weakness.

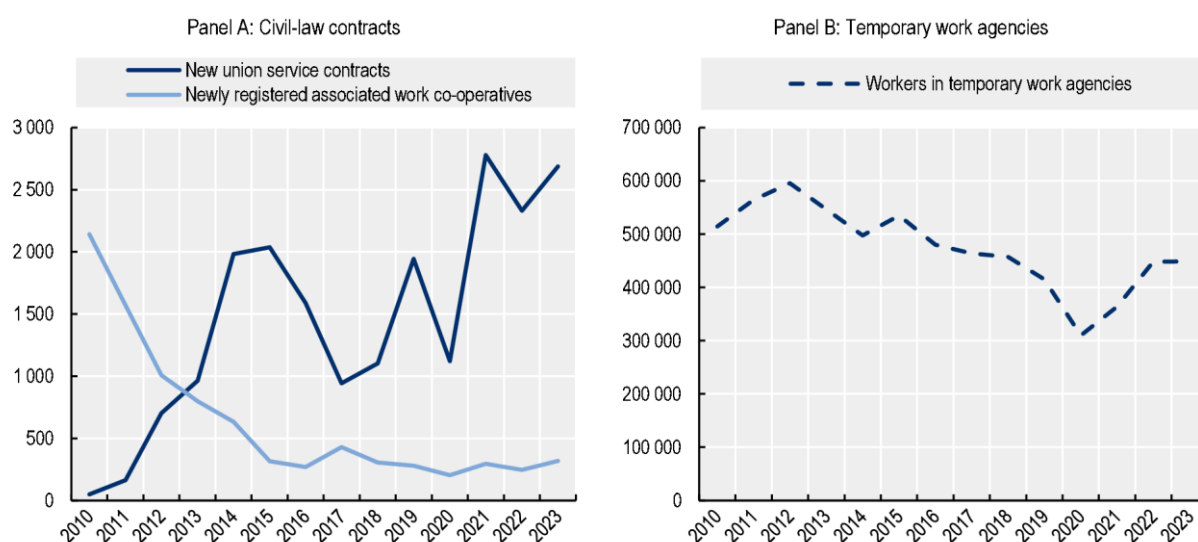
Also in the public sector, service contracts are frequently used for regular labour relations, in particular in the health sector. In contrast, temporary agency work in Colombia is strictly regulated.

Civil-law contracts for labour relations

32. The number of associated work cooperatives drastically declined over the past decade, as a result of an improved legal framework and clear guidelines for labour inspectors (OECD, 2022^[15]). From over 2 000 new associated work cooperatives per year in 2010, the number of registrations declined to 200-300 per year over the last five years (Figure 2.2). Estimates provided by the Ministry of Labour suggest that the total number of workers covered by such contracts dropped from more than 600 000 in 2010 to 36 000 in the first half of 2023.

Figure 2.2. The use of union service contracts has seen rapid growth over the past decade

Number of newly registered associated work co-operatives and new union service contracts, and number of workers in temporary work agencies, 2010-2023



Note: Data for 2023 in Panel B represent the average of the first three trimesters of the year.

Source: Data provided by the Ministry of Labour based on data from the Superintendency of the Solidarity Economy and the Ministry's Directorate of Inspection, Surveillance and Control (Panel A) and ACOSSET, the Colombian Association of Temporary Work Agencies, taken from <https://www.acoset.org/informe-estadistico> (Panel B).

33. A recent OECD paper discusses how associated work co-operatives could potentially offer a model for informal workers to transit towards formalisation, on the condition that co-operatives are used for their main purpose, i.e., non-profit ventures owned and managed by workers who united voluntarily to meet their common economic, social and cultural needs and aspirations through a jointly owned and democratically controlled enterprise (OECD, 2022^[15]). Building on the experience of other developing countries, cooperatives could provide an opportunity for informal workers to organise and formalise their activity and integrate into formal value chains. To unleash the full potential of cooperatives, the sector could benefit from a stronger focus on capacity building and provide access to training and education for groups in vulnerable situations in particular. However, the misuse of this legal entity in the past in Colombia calls for very close attention to compliance with the legal framework and a better collection of data, including on their registration in the social security system and/or contribution to the pension system.

34. Union service contracts (*contratos sindicales*) are another type of civil-law contracts that are frequently used in Colombia. Under these contracts, trade unions agree to supply their members' labour to employers for certain activities. While in theory these contracts allow unions to ensure good working conditions for their members, they are misused to circumvent the labour law (OECD, 2016^[4]). Nearly non-existent in 2010, an average of 2 600 new union service contracts per year were signed over the period 2021-23 (Figure 2.2). According to data provided by the Ministry of Labour, 332 000 workers were covered by such contracts in 2021, with 99% of the contracts signed in the health sector.

35. The labour market reform proposed by the current government includes a provision to ban the union service contracts, in line with the recommendations in the Formal Opinion of ELSAC (OECD, 2018^[3]), as well as those of other international stakeholders, including the Government of Canada (Employment and Social Development Canada, 2018^[16]) and the Committee of Experts on the Application of Conventions and Recommendations of the International Labour Organization (ILO, 2021^[17]). Existing union contracts can remain in place, but their members are encouraged to switch to regular employment contracts.

Administrative law contracts in the public sector

36. The first OECD post-accession review of Colombia noted a persistent misuse of administrative law contracts (*contrato de prestación de servicios*) for regular labour relations in the public sector (OECD, 2022^[15]). Over the years, the issue has been recognised and there have been many promises to limit the use of such contracts. However, little has changed so far. For instance, all collective agreements signed with the public sector since 2013 include a commitment to reduce the misuse of this type of contracts and the Council of State established rules in 2021 to identify when the contracts for the provision of services are covering real labour relations (Council of State, 2021^[18]). However, the number of off-payroll staff in national and local governments increased from 190 000 in the mid-2010s to 393 000 by the early 2020s, representing 31% of the total number of public sector workers (Procuraduría General de la Nación, 2021^[19]).

37. The current government issued additional decisions and guidelines to limit the use of such contracts in public entities to cases where the workload exceeds the capacity of the institution's staff, with a requirement for justification of the need. However, these are only administrative regulations, and their effectiveness in reducing the use of administrative law contracts in the public sector remains to be seen.

The role of temporary work agencies

38. Temporary work agencies (TWA) in Colombia are heavily regulated since the 1990s, stricter than in any OECD country except for Turkey (OECD, 2016^[4]). Employment through TWA is a specific type of contractual relationship in which workers are hired by an agency and temporarily assigned for work into a user firm, typically to perform temporary tasks outside the core business of the user firm or to enable the user firm to cope with short-term increases in the workload.

39. To limit potential misuse of subcontracting through TWA, the Colombian law determines: 1) the type of work for which TWA employment is legal is severely restricted; 2) the maximum cumulated duration of assignments is limited to only 30 days for occasional services and six months renewable once for production increases; 3) temporary work agencies have authorisation, registration and reporting obligations to the Ministry of Labour; and 4) the law requires equal treatment, including remuneration, of agency workers and regular workers at the user firm. The labour market reform proposes to restrict the use of TWA employment in Colombia even further, which would affect the sector greatly.

40. The number of workers hired by TWAs in Colombia fluctuates over the years but reached around 450 000 workers in 2023 (Figure 2.2, Panel B), accounting for about 2% of the total workforce. While no recent estimates are available, half of all TWA employees in Colombia had a permanent contract with a

temporary work agency in the early 2010s (OECD, 2016^[4]), in line with the situation in many European OECD countries at the time. Sectors using TWA employment most frequently in Colombia are the industrial and commercial sector, accounting together for more than half of all TWA employment in Colombia.

Conclusion

41. Colombia has made major progress over the past decade in lowering labour informality thanks to improved education, a reduction in non-wage labour costs, and a series of measures to facilitate the formalisation of workers and companies. However, informality remains high compared with other large countries in the region and additional efforts are needed to improve social security coverage among workers. As discussed in the 2022 OECD Economic Survey on Colombia (OECD, 2022^[1]), a significant re-design of Colombia's social protection system could facilitate a reduction in the cost of formal employment and strengthen social protection for all.

42. The impact of the labour market reform proposal on informality is uncertain: while some stakeholders argue that informality will increase due to higher labour costs, others suggest that there might be room for employers to absorb an increase in costs. In the second version of the reform proposal, several provisions were therefore added to facilitate the formalisation of small businesses and certain occupations. In line with Colombia's commitments to the OECD, the government included in the reform proposal a ban on new union service contracts (which undermine labour rights and access to social security of the workers involved) and continues strengthening the one-stop shops that facilitate the registration of companies and workers. Generous hiring subsidies that were introduced during the pandemic to promote the creation of formal jobs were also extended. Nevertheless, careful attention should be paid to potential deadweight losses (which arise when subsidies support the hiring of workers that would have been hired even without the subsidy) and a more targeted use of subsidies for vulnerable groups should be considered.

43. Finally, the persistent misuse of administrative law contracts for regular labour relations remains problematic in Colombia, not only in the private sector but also in the public sector. While the number of associated work cooperatives drastically declined over the past decade as a result of an improved legal framework and clear guidelines for labour inspectors, the number of union service contracts exploded and nearly a third of public sector workers have a service contract. As recommended in the Formal Opinion of ELSAC, a strengthening of the legal framework is necessary, to prohibit all forms of abusive subcontracting.

3 Labour law enforcement

Recommendations in the Formal Opinion of ELSAC

44. The OECD accession review of labour market, social and migration policies in Colombia (OECD, 2016^[4]) noted a high frequency of labour law violations in the country and areas for improvement in the labour inspection system. Despite considerable advances in the functioning of labour inspection in the 2010s, further improvements were considered necessary. Box 3.1 provides an overview of the recommendations made by the Employment, Labour and Social Affairs Committee of the OECD in its Formal Opinion on Colombia's accession to the OECD (OECD, 2018^[3]).

Box 3.1. OECD recommendations to strengthen labour inspection in Colombia

Ensuring the adequacy of resources and enabling policy initiatives for the labour inspectorate to:

- Allow labour inspectors to properly execute their tasks;
- Continue offering regular training programmes for all labour inspectors (irrespective of their contract type);
- Ensure investigations in rural areas.

Finalising the permanent hiring process for labour inspectors who passed the career exam and maintaining the number of labour inspectors in line with international standards.

Using the new electronic case management system nationwide and connecting it to the electronic fine collection system.

Strengthening the deterrence effect of labour inspection by:

- Increasing the number of inspections and investigations per year, and making this information available to the public on a yearly basis;
- Completing labour inspections within the established timeframes;
- Improving the collection of fines;
- Developing and implementing a national inspection strategy.

Source: OECD (2018^[3]), Accession of Colombia to the OECD: Formal Opinion of the Employment, Labour and Social Affairs Committee, *unpublished report*.

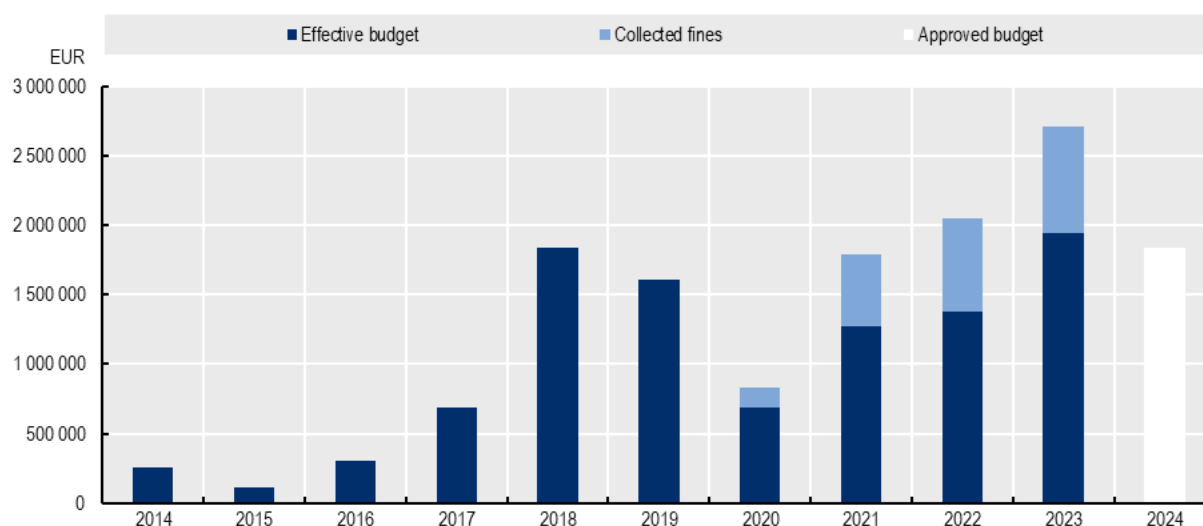
Budget for labour inspection

45. The budget for labour inspection, surveillance and control in Colombia has been rising steadily since its low point in 2020, exceeding the budget prior to the global pandemic. Proceeds from collected

finances, which have been used to strengthen labour inspection since 2020,⁶ further increased the resources of the Ministry of Labour. In 2023, the total budget for labour inspection reached EUR 2.7 million, compared to EUR 1.6 million in 2019 (Figure 3.1).⁷ Fine proceeds accounted for a bit more than one quarter of the total budget in 2023.

Figure 3.1. The budget for labour inspection has been rising steadily since its low point in 2020

Budget allocated to labour inspection, surveillance, and control, 2014-2024



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

Functioning of labour inspectorate

46. The number of labour inspectors also rose notably over the past two years, from 882 active labour inspectors at the end of 2021 to 1 159 inspectors at the beginning of 2024. The increase was the result of a new hiring process issued by the Ministry of Labour at the beginning of 2022, with the aim to increase the number of inspectors to the ILO benchmark for developing countries – i.e., 15 000 workers per labour inspectors (ILO, 2006^[20]). At the beginning of 2024, 108 vacancies for labour inspectors remained to be filled.

47. About half of all active labour inspectors held a civil servant status at the end of 2023, following a career exam organised by the National Civil Service Commission in 2018. The hiring of labour inspectors as civil servants was a remarkable improvement at the end-2010s, aimed at providing career stability for inspectors. A new civil service exam will be organised later this year to ensure continuity. Contrary to the general career exam in 2018, the new exam will be organised specifically for the Ministry of Labour, allowing for better targeting to the needs of the Ministry and the Labour Inspectorate.

48. Nevertheless, turnover continues to be high among labour inspectors, due to the low remuneration compared to the private sector and difficult working conditions. As a result, institutional knowledge that had

⁶ Prior to 2020, revenues from fines collection remained at the disposal of the National Training Service (SENA, *Servicio Nacional de Aprendizaje*), the institution attached to the Ministry of Labour that was responsible for collecting the fines at that time.

⁷ Exchange rates of 31 January 2024 have been used to convert Colombian pesos into Euros.

been accumulated over the past decade through intensive training provided by the ILO and financed by both the US Government and Canadian government, has been gradually lost again (USDOL, 2021^[21]).

49. The Ministry of Labour therefore requested a study on the composition of the staff of the Ministry and the Labour Inspectorate, aiming to gain a better understanding of the skill needs, remuneration, and regional distribution. Following the outcomes of this study, the Ministry is currently considering the creation of different salary scales for labour inspectors to bring remuneration in line with similar posts in other Ministries and the private sector and to allow for career progression.

50. The Ministry continues to invest both in virtual and in-person training programmes for labour inspectors. In 2023, a 1 150 inspectors participated in trainings (inspectors could participate in several trainings), slightly less than in 2021 (1 376 participants) and in 2022 (1 911 participants) [DELSA/ELSA/ACS(2024)3]. Upon request of labour inspectors and with support from the ILO, 10 in-person training days were organised in different regions across the country. The Labour Inspectorate also continues to offer courses through the Virtual Campus (currently there are 26 courses available in the platform), which was launched and implemented in 2019 with the support of the ILO.

51. Finally, the mobile labour inspection system established under the Canada-Colombia Action Plan (Employment and Social Development Canada, 2018^[16]) to reach rural areas continues to operate under two models. First, the “Integral Operation Cycle” (*Ciclo de Operación Integral*) aims to raise public awareness about labour law rights through (1) sensibilisation and training campaigns targeted at students, workers and employers in rural areas, and (2) a mobile inspection office offering labour counselling and inspection services during two days in each location. Under this model, 53 municipalities and 2 785 people have been reached between 2021 and 2023, an average of 18 municipalities per year. Second, the “Inspection Brigade” (*Brigada de Inspección*) focuses on providing information about the procedures to access labour inspections and set up meetings between firms, communities, and government representatives to discuss labour issues. Under this model, the mobile labour inspection visited 129 municipalities between 2020 and 2023, reaching 6 436 people.

Inspections and fine collection

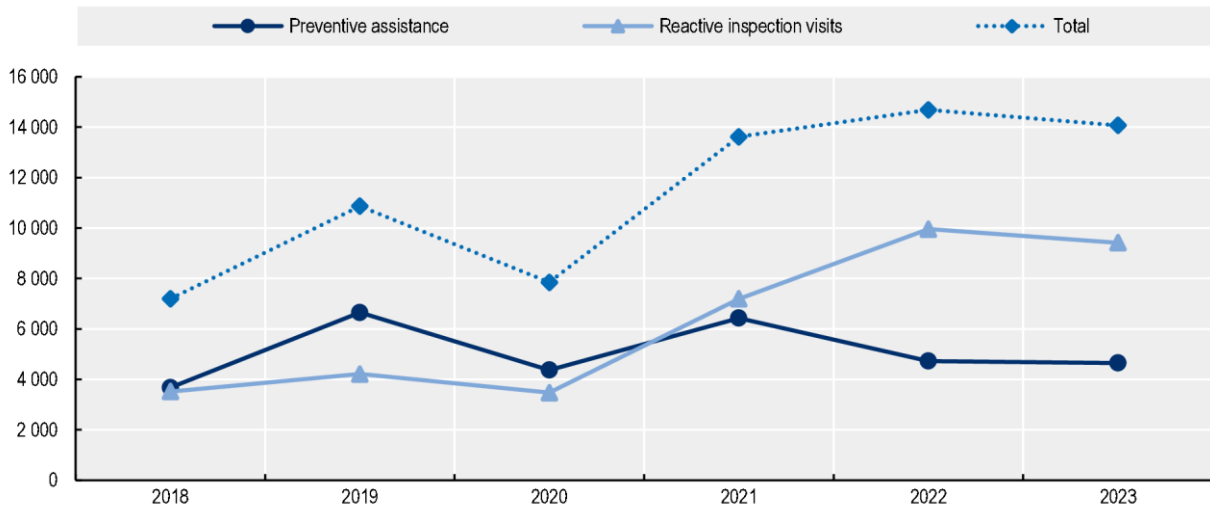
52. So far, the improvements in the Labour Inspectorate’s staff and budget have resulted in an increase in company visits, but not in additional investigations or sanctions. Labour inspectors provide preventive assistance to companies but also undertake reactive inspection visits in line with pre-determined yearly goals defined by the Ministry of Labour. The past three years, there has been a considerable increase in the number of reactive inspections (Figure 3.2), which accounted for 67% of all company visits in 2023. Preventive assistance has seen a less stable trend, with considerable fluctuations between 2018 and 2023 (Figure 3.2).

53. Contrary to the increase in company visits, investigations, and sanctioning procedures both declined radically over the past seven years. In 2017, labour inspectors still conducted around 19 000 preliminary inquiries per year, dropping initially to 14 000 in 2019 and then further to 7 200 by 2023. There was a similarly large reduction in the number of sanctioning procedures, from 3 177 in 2017 to 433 in 2023 (Figure 3.3, Panel A).

54. The same observation holds for the number of fines imposed by labour inspectors, which declined from around 3 400 per year between 2017-2019 to 1 100 fines by 2023 [DELSA/ELSA/ACS(2024)3]. The value of imposed fines also decreased from considerably, as did the amount of collected fines as a result (Figure 3.3, Panel B).

Figure 3.2. There has been an increase in inspection visits in recent years

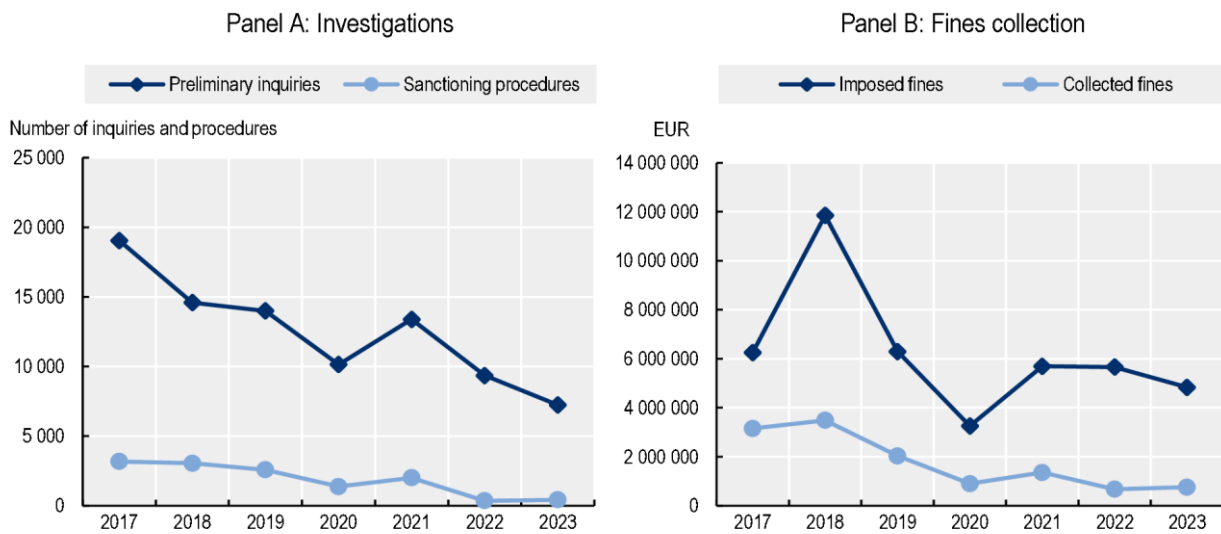
Number of preventive assistance and reactive inspection visits, 2018-2023



Source: Data provided by the Ministry of Labour.

Figure 3.3. Inspections and fines collection have dropped considerably over the past seven years

Number of inspections and value of fines imposed and collected, 2017-23



Notes: Panel A: Preliminary inquiries (*averiguaciones preliminares iniciadas*) are discretionary actions taken by public servants from the Ministry of Labour to assess the likelihood of the occurrence of an infringement or misconduct, identify alleged perpetrators and gather evidence to allow a clear, precise, and detailed summons. Sanctioning procedures are administrative procedures (*investigaciones administrativas iniciadas*) that establish whether the employer effectively incurred in violation of labour law. Panel B: The data on collected fines provided for 2022 and 2023 do not provide the value of fines collected by the National Training Service (SENA, *Servicio Nacional de Aprendizaje*), the institution attached to the Ministry of Labour that is responsible for collecting the fines that were imposed prior to 2020. However, their share in fines collection declined rapidly after 2010.

Source: Data provided by the Ministry of Labour.

55. Finally, the time labour inspectors need to conclude investigations continues to exceed the legally mandated duration of 219 days (9.7 months), lasting on average 15.8 months in 2023. There are large regional differences, with investigations lasting on average 8.8 months in Bogota (one of only two territories where investigations stay within the legally mandated timeframe), compared to 30 months in the Amazon territory [DELSA/ELSA/ACS(2024)3]. In March 2021, 43% of the open cases registered in the electronic inspection case management system of the labour inspectorate SISINFO exceeded the legal timeframes (USDOL, 2021^[21]).

Conclusion

56. The primary improvements in labour law enforcement over the last two years have been in the overall budget allocated to labour inspection as well as an increase in the number of labour inspectors and company visits. The government also continued training labour inspectors and improving mobile labour inspection in rural areas. However, turnover among labour inspectors remains a major challenge, leading to a continuous loss of knowledge, which complicates the functioning of labour inspection. The increases in staff and budget did not translate in additional investigations or sanctions, on the contrary. The number of investigations and sanctioning procedures plummeted over the past seven years, and nearly half of all investigations last longer than the legally mandated timeframe. As both the number and value of imposed fines dropped, so did the amount of collected fines in the years thereafter. To ensure the enforcement of labour regulations and workers' rights, it is crucial to reduce turnover among labour inspectors, ensure investigations are concluded within the legally mandated duration, and continue training inspectors.

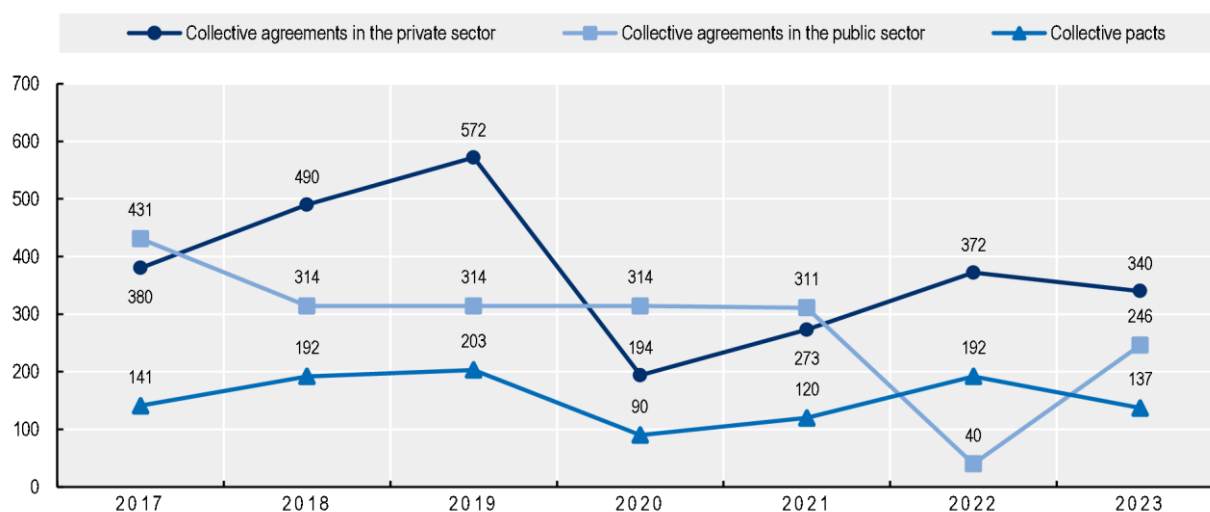
4 Collective bargaining

Recommendations in the Formal Opinion of ELSAC

57. As discussed in the OECD accession review of labour market, social and migration policies in Colombia (OECD, 2016^[4]), trade union density and collective bargaining coverage are very low compared to OECD standards. In addition, collective bargaining in the private sector was substantially affected by the global pandemic and has still not fully recovered. Only 340 new collective agreements were signed in 2023, which is barely 60% of the agreements in 2019 and fewer than in 2017 when 380 agreements were concluded (Figure 4.1). In the public sector, the number of collective agreements remained stable at around 314 agreements between 2018 and 2021 but declined drastically in 2022 and has not fully recovered by 2023, when 246 agreements were signed (Figure 4.1).⁸

Figure 4.1. Collective bargaining has not fully recovered from the impact of the pandemic

Number of collective agreements in the private and public sector and number of collective pacts, 2017-2023



Source: Data provided by the Ministry of Labour.

58. Colombia has ratified all fundamental ILO conventions and recognises freedom of association in the Constitution and Labour Code. However, significant obstacles remain to the free association of workers in trade unions and the recognition of unions by employers. The Employment, Labour and Social Affairs

⁸ The very low number for 2022 may be explained by a major collective bargaining process with all trade union confederations that was completed in August 2021, benefiting around 1.2 million workers in the public sector for two years (OECD, 2022^[22]).

Committee of the OECD made a series of recommendations in its 2018 Formal Opinion on Colombia's accession to the OECD to strengthen collective bargaining in the country. See Box 4.1 for an overview.

Box 4.1. Recommendations on collective bargaining

Build a constructive framework for social dialogue, by:

- Promoting a two-tier system of sectoral and firm-level bargaining, by elaborating the regulations on sectoral bargaining in the Labour Code;
- Eliminating the option to negotiate collective pacts;
- Extending collective agreements automatically to all employees of a company, not only to the members of the signatory trade unions (*erga omnes*);
- Requiring multiple trade unions in the same company to form a bargaining team to ensure a single collective agreement;
- Giving the right to strike to higher-level trade union organisations;
- Ensuring that all workers, irrespective of the legal status under which they work, can join trade unions in practice;
- Systematically collecting data on collective bargaining to track evolution.

In addition, Colombia should reflect on alternatives to the full prohibition of strikes in essential services (e.g., strikes conditioned on a minimum-service requirement) and consider reintroducing mediation in the collective dispute resolution process.

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.

Source: OECD (2018^[3]), Accession of Colombia to the OECD: Formal Opinion of the Employment, Labour and Social Affairs Committee, unpublished report.

Reform proposal to the Labour Code

59. In August 2023, the Colombian government presented a wide-reaching labour market reform proposal, which is currently under discussion (see Chapter 1). The proposal prominently features OECD recommendations in this area. The following sections discuss the key elements of the reform proposal.

Framework for sectoral bargaining

60. The 2016 OECD Review of Colombia identified a regulatory vacuum concerning sectoral bargaining in the country (OECD, 2016^[4]). Even though the labour code allows higher-level trade union organisations (such as industrial unions, federations, and confederations) to sign collective agreements, in practice, sectoral or regional bargaining hardly occurs. The OECD suggested promoting a two-tier system of sectoral and firm-level bargaining, by elaborating the regulations on sectoral bargaining in the Labour Code (Box 4.1). This recommendation was reiterated in the post-accession review carried out in 2022 (OECD, 2022^[22]).

61. The labour reform proposal currently under discussion includes a provision to promote and guarantee the free exercise of collective bargaining at all levels. The proposal would allow the Ministry of

Labour to develop a legal framework for collective bargaining according to the international standards and ILO criteria. It also proposes that collective bargaining would not be hindered due to the absence of specific rules. Finally, the proposed article recognises the special circumstances of small firms participating in sectoral bargaining, aiming to guarantee the effective participation of their representatives and the inclusion of special clauses for them.

62. Some stakeholders in Colombia are concerned about the potential impact of a two-tier bargaining structure on small firms, who may not be able to achieve the standards agreed upon at the higher level. As outlined in the OECD report *Negotiating Our Way Up: Collective Bargaining in a Changing World of Work* (OECD, 2019^[23]), this issue has been addressed in different ways by OECD countries, from which the Colombian government could take inspiration. For instance, some OECD countries do not include the favourability principle in their legal frameworks – which states that a lower-level agreement can only take precedence over a higher level agreement if it improves the terms of employment for workers– or leave it up to the negotiators), thus allowing unions and firms to negotiate agreements that set lower standards than the sector-level agreement. OECD countries that do adopt the favourability principle, include the possibility for small firms to use either derogations, opening clauses or opt-out clauses from the terms set by collective agreements they have not negotiated.

63. The OECD report *Negotiating Our Way Up* divides deviations from higher level agreements into general opening clauses and temporary opt-out clauses (also called hardship clauses, or inability-to-pay clauses) (OECD, 2019^[23]). General opening clauses allow firm-level agreements to deviate from the minima or the standards set in higher level agreements (for instance, to lower collectively agreed wage floors, increase working time, or change work organisation). Temporary opt-out clauses allow the suspension (or renegotiation) of the terms of agreement (even firm-level agreements) in cases of economic difficulties.

Right to strike

64. The 2016 OECD Review of Labour Market and Social Policies in Colombia noted that the right to strike in Colombia is overly strict due to the existence of two legal prohibitions (OECD, 2016^[4]). First, in contrast to most OECD countries, the Colombian Labour Code forbids federations and confederations to organise strikes. Second, Colombia falls into the group of the more restrictive OECD Member countries that consider the strikes are illegal when the dispute arises in services considered essential. In 2016, the OECD suggested: (1) giving the right to strike to higher-level trade union organisations, and (2) reflecting on alternatives to the outright prohibition of strikes in public and essential services, such as introducing a requirement of minimum service (OECD, 2016^[4]).

65. The recent reform proposal to the Labour Code would tackle both issues. On the one hand, the reform would eliminate the restriction for the federations and confederations to organise strikes, giving them the same rights as the firm-level unions. On the other hand, the proposal defines the strike as the legal right of workers to stop work in defence of their rights and removes the prohibition of strikes in public and essential services, including: (1) a definition of essential services, (2) the requirement to guarantee a minimum service to avoid the complete interruption of service provision, and (3) a procedure to reach an agreement between employers and workers on the required minimum service provision. These proposed measures would meet the OECD recommendations made in previous reviews.

66. An additional obstacle for the strike in Colombia is the clause stipulating compulsory arbitration after 60 days of strike action (OECD, 2016^[4]). The reform proposal also addresses this issue, abolishing this condition and recognising the trade union's autonomy to decide when to end the strike or whether arbitration is required.

Trade union fragmentation

67. As described in the OECD Reviews of Labour Market and Social Policies in Colombia (2016^[4]; 2022^[22]), trade union fragmentation complicates the bargaining process in the country. To avoid the adverse effects of having multiple collective bargaining processes, the OECD recommended building a constructive framework for social dialogue in Colombia, including a requirement for multiple trade unions in the same company to form a bargaining team to ensure a single collective agreement (OECD, 2016^[4]; 2022^[22]). This approach has been included in the reform proposal to the Labour Code, which proposes collective bargaining at all levels to start with a single list of demands, led by a single bargaining team, at a single negotiation table, and end with a single collective agreement.

Collective pacts

68. 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. This particular provision is not widespread among OECD countries, with exceptions found in Chile and Mexico (OECD, 2016^[4]; 2022^[22]). The potential misuse of collective pacts with non-unionised workers poses a concern, as it can undermine the work of trade unions in companies and prevent the emergence of new unions (OECD, 2022^[22]).

69. In 2017, the Ministry of Labour strengthened the inspection of collective pacts and set up a Special Investigative Unit to investigate complaints related to the misuse of collective pacts (OECD, 2022^[22]). In February 2024, the Special Investigative Unit formally accused a large dairy products company of promoting a collective pact with non-unionised workers without compliance with the existing legal requirements⁹. However, both the number of complaints and the number and value of fines have been declining over the years, with just one fine imposed in 2023 for a value of EUR 2 000. In the meanwhile, the number of collective pacts signed each year has been fluctuating between a low of 90 pacts in 2020 and a high of 203 pacts in 2019, eventually returning to the 2017 level by 2023 (Figure 4.1).

70. The labour market reform proposal presented by the government in August 2023 includes a prohibition of collective pacts, though only when trade unions already exist in the company. The proposed article would thus not address the risk of misuse of collective pacts to discourage the emergence of new trade unions; trade union federations have agreed to the current proposal.

Remaining challenges

Extensions within firms

71. Unlikely most OECD countries, collective agreements in Colombia are only extended to all employees of a company if the trade union that negotiated the contract represents more than one-third of the company's workforce. This issue was highlighted in the OECD Review of Labour Market and Social Policies in Colombia in 2016 (OECD, 2016^[4]), and reiterated in the post-accession review in 2022 (OECD, 2022^[22]). The OECD suggests to automatically extend the collective agreements to all employees of a company, and not only to the members of the signatory trade unions (the *erga omnes* principle), irrespective of the size of the trade union and even if there is no statutory regulation on the subject. This measure was not included in the labour market reform proposal.

⁹ <https://www.portafolio.co/negocios/empresas/mintrabajo-formulo-pliego-de-cargos-contra-alpina-por-promover-pacto-colectivo-599376>

Multi-affiliation

72. Colombia allows employees to affiliate to multiple trade unions, even within the same firm. Researchers from the University of Ottawa found that “the increased multi-affiliation rate among union members in Colombia has weakened collective negotiation bargaining power and caused hyper-fragmentation within labour organizations” (Le Bouthillier, Torres and Ovalle Díaz, 2022^[24]). The reform proposal includes a provision to allow trade unions to ban the multi-affiliation in the same level or firm, however, but does not prohibit multi-affiliation by law.

Mediation in industrial disputes

73. The Colombian Labour Code does not include provisions for mediation of industrial disputes in the private sector. Even though OECD countries have positive experiences with conciliation and mediation (OECD, 2016^[4]), the reform proposal that is currently under discussion in the Colombian Congress does not incorporate such provisions. As recommended in the first Review of Labour Market and Social Policies in Colombia (OECD, 2016^[4]), the government may consider reintroducing mediation in the collective dispute resolution process, ideally organised by an autonomous body that is respected by both the trade unions and the employers.

74. That said, disputes in the areas of freedom of association and collective bargaining that cannot be solved by any other instance can be submitted to the Special Committee for the Handling of Conflicts referred to the ILO (CETCOIT). The Committee has allowed the discussion of cases between employers' organisations, workers and a conciliation body. Of the 285 cases that were closed between 2012 and 2022, an agreement was reached in 67% [\[DELSA/ELSA/ACS\(2024\)3\]](#). Over the past year, however, the process has stalled due to the delay in the appointment of a new facilitator. Of the 50 cases covered by CETCOIT in 2023, 45 cases remain open, only 4 were closed reaching an agreement and 1 without agreement [\[DELSA/ELSA/ACS\(2024\)3\]](#).

75. As identified by researchers from the University of Ottawa, there is a need to create or strengthen a broader dispute resolution system beyond CETCOIT that is effective and fast (Le Bouthillier, Torres and Ovalle Díaz, 2022^[24]). Inspiration on mediation and arbitration procedures in other OECD countries can be found in the OECD report on *Negotiating Our Way Up: Collective Bargaining in a Changing World of Work* (OECD, 2019^[23]).

Minimum wage

76. As described in the OECD Review of Labour Market and Social Policies in Colombia (OECD, 2016^[4]), the minimum wage in Colombia has become the wage norm for many formal, and even for half of all informal employees. At 90% of the median wage and 62% of the mean wage of full-time formal employees, the minimum wage is much higher in relative terms than in any other OECD country and a substantial barrier to the formal labour market for many workers (OECD, 2022^[11]). In January 2024, the minimum wage was further raised by 12%, close to the annual inflation rate for 2023 (11.7%). However, the difference between the minimum wage increase in January 2023 (16%) and annual inflation in 2022 (10.2%) was much larger.

77. While the OECD recognises in a recent publication on *Minimum wages in times of rising inflation* (OECD, 2023^[25]) that the most direct way to limit the impact of inflation on workers is via an increase in their wages, minimum wage increases in Colombia should be used with great caution, to avoid pricing low-skilled workers out of the formal labour market. In line with the recommendations in the Formal Opinion of the Employment, Labour and Social Affairs Committee on Colombia's accession to the OECD (OECD, 2018^[3]), the OECD encourages the government to consider a gradual adjustment of the very high minimum wage compared to the median and mean wage levels, and bring it back to its original role of wage floor instead of wage norm. Improved social dialogue and collective bargaining would help to ensure decent

working conditions for workers and ultimately higher median and mean wages, through other means than a high minimum wage.

Conclusion

78. Colombia has ratified all fundamental ILO conventions and recognises freedom of association in the Constitution and Labour Code. However, significant obstacles to constructive social dialogue and collective bargaining persist. The labour reform proposal that is currently under discussion in Colombia's Congress incorporates several provisions in line with Colombia's commitments to the OECD, in particular the establishment of a framework for sectoral bargaining, the removal of prohibitions on the right to strike, the promotion of single collective agreements to counteract the adverse effects of trade union fragmentation, and the prohibition of collective pacts.

79. Colombia is encouraged to advance in the approval of the reform and explore ways to address other recommendations made during its OECD accession process. In particular, Colombia is invited to automatically extend collective agreements within companies, eliminate multi-affiliation, or reassess the role of the minimum wage. Furthermore, additional mechanisms for mediating industrial disputes are needed to effectively address collective conflicts.

5 Crimes against trade unionists

Recommendations in the Formal Opinion of ELSAC

80. The OECD accession review of labour market, social and migration policies in Colombia (OECD, 2016^[4]) highlighted significant concerns regarding the prevalence of violence against trade unions and the levels of impunity for such incidents and criminal violations of workers' rights. Five key recommendations were made by the Employment, Labour and Social Affairs Committee of the OECD in its Formal Opinion on Colombia's accession to the OECD (OECD, 2018^[3]), aimed at eradicating violence against trade unionists, ensuring their protection, decreasing impunity, and preventing the excessive use of force by the police against them (Box 5.1).

Box 5.1. OECD recommendations to tackle crimes against trade unionists in Colombia

Draw up a zero vision for violence and homicides against trade unionists through an adequate plan of further reforms and actions in line with ratified ILO-conventions.

Further strengthen the protection programme for trade union members and leaders by:

- Maintaining adequate financial resources for the National Protection Unit;
- Implementing, in close collaboration with trade unions, the recently developed collective protection mechanism for at-risk trade unionists.

Demonstrate progress in reducing impunity rates for both violence and threats against trade unionists and crimes against the right to freedom of association and collective bargaining by:

- Ensuring that investigations of crimes against trade unionists are a priority for the government and maintaining the Elite Group responsible for the investigation of crimes against trade unionists in the Prosecutor General's Office;
- Demonstrating tangible progress in the resolution of all crimes against trade unionists, securing convictions where appropriate;
- Ensuring the timely resolution of cases of violence and threats against unionists, including by hiring a third labour judge;
- Publicly releasing on a yearly basis statistics on the investigation and prosecution of crimes, as well as the case timelines.

Evaluate the effectiveness of the mandatory conciliation phase as required by the criminal proceedings for Article 200 of the Criminal Code.

Critically and independently examine the role of the Mobile Anti-Disturbances Squadron (*Escuadrón Móvil Antidisturbios*, ESMAD) and their use of excessive force. In cooperation with the social partners, taking measures to address the pending recommendations on serious and urgent cases at the ILO Committee of Freedom of Association regarding violence against trade unions.

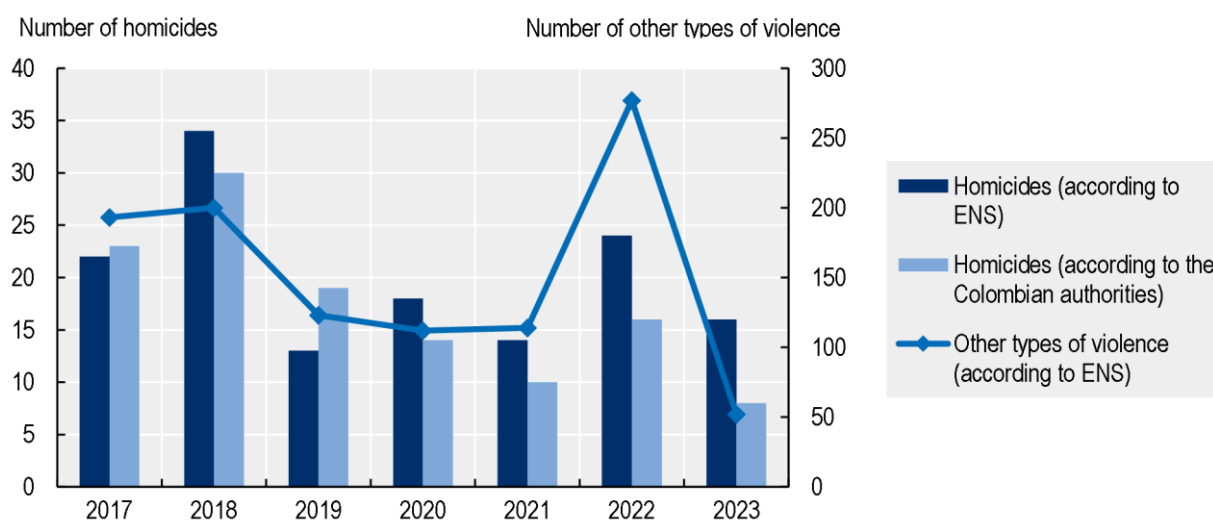
Source: OECD (2018^[3]), Accession of Colombia to the OECD: Formal Opinion of the Employment, Labour and Social Affairs Committee, unpublished report.

Statistics on violence against trade unionists

81. In 2023, the Prosecutor General's Office (*Fiscalía*) reported 8 cases of homicides of trade unionists (9 victims), while the National Trade Union School (*Escuela Nacional Sindical, ENS*) reported 16 cases (Figure 5.1). The large difference between both sources in the past two years is mostly a difference in classification, where the Prosecutor General's Office records victims according to the function they were practicing at the time of the homicide, and many trade unionists are also social leaders in their community. The data provided by the Prosecutor General's Office suggest a declining trend of trade union homicides since 2018 (with the exception of the year 2022), while the data provided by ENS suggest a relatively stable number of homicides of around 17 cases per year. Taken together, there seems to be a shift in violence against trade unionists towards violence against social leaders more general, an observation that is confirmed by data from the Public Prosecutor's Office (Defensoría del Pueblo, 2024^[26]) and the Inter-American Commission on Human Rights (IACHR, 2024^[27]).

Figure 5.1. Violence continues to affect trade unionists in Colombia

Number of homicides and other types of violence against trade unionists, 2017-23



Note: Other types of violence include forced displacement, disappearance, torture, harassment, arbitrary detentions, illegal searches, threats, and other attempts against life.

Source: Data provided by the Prosecutor General's Office and the National Trade Union School (ENS) based on the Information system on human rights (SINDERH).

82. A similar observation can be made for other forms of violence against trade unionists. ENS reported a significant decline in threats, forced displacement, disappearances, and torture from 2022 to 2023 (*Escuela Nacional Sindical, 2023^[28]*). While in 2022 there were 277 reported cases of violence (of which 221 cases of threats), by 2023, the number of reported cases dropped to just 52 (Figure 5.1).

83. According to data reported by the Ministry of Labour, a total of 3 323 members of trade unions were victims of homicides between 1971 and 2023, 449 experienced attacks on their lives, 254 were

victims of disappearance, 7 884 received threats, and 1 987 were victims of forced displacement.¹⁰ Acknowledging the historic context of a civil war and an overall climate of violence including crimes against trade unionists, the Unit for the Victims (*Unidad para las Víctimas*) included a group of workers affiliated with trade unions as victims in the Unique Register of Victims (*Registro Único de Víctimas*) and made them eligible for collective reparations (*Unidad para las Víctimas*, 2023^[29]).

Violence during demonstrations and strikes

84. Previous OECD accession and post-accession reviews of Colombia express concerns about the excessive use of force against trade union leaders and members by the Colombian Mobile Anti-Disturbances Squadron (*Escuadrón Móvil Antidisturbios*, ESMAD), a unit within the Colombian National Police in charge of securing demonstrations and controlling riots, including strikes.

85. In the last two years, the National Police in Colombia underwent a major transformation. First, the name of the ESMAD was changed into the Unit of Dialogue and Maintenance of Order (UNDMO). Second, a manual for the Attention to Meetings and Peaceful Public Demonstrations and Control of Disturbances, was issued by the National Police in March 2023. This manual fosters the dialogue as a mechanism to facilitate the right of assembly and demonstration and includes a provision banning the use of firearms by the members of the Police acting in a social demonstration. Third, a new position for a Commissioner of Human Rights in the National Police was created in 2022, who is in charge of leading the promotion, respect, guarantee and protection of Human Rights in the work of the institution.

86. Since the creation of the UNDMO and the issuance of guidelines, there has been a reduction in violence committed by the unit, but recent cases reported in the media suggest that it has not ceased entirely.¹¹ In addition, civil society organisations expressed their concerns, as in their opinion the internal transformation process of the National Police remains superficial, with important areas for improvement to foster comprehensive changes and genuine discussions about the role of the police within Colombian democracy and in the context of peacebuilding.¹²

Protection of trade unionists

87. Over the past three years, the number of trade unionists enrolled in the protection programme of the National Protection Unit (*Unidad Nacional de Protección*, UNP) has seen a slight decline, from 256 in 2021 to 231 in 2023.¹³ At the same time, there has been a marked increase in the number of protection requests filed by trade unionists, rising from 727 in 2021 to 1 439 in 2023. The number of risk assessments have remained steady in this period, around 400. 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 (for instance, UNP only provides protection when the request is related to the armed conflict, otherwise it is the National police that is in charge of providing protection); and (3) incomplete paperwork to present the request.

¹⁰ <https://www.mintrabajo.gov.co/comunicados/2023/septiembre/el-63-de-los-casos-de-sindicalistas-asesinados-en-el-mundo-fueron-en-colombia>

¹¹ <https://www.elespectador.com/politica/petro-pide-a-policia-investigar-operacion-de-antiguo-esmad-en-marchas-del-8-de-marzo-en-bogota-8m-noticias-colombia/>

¹² <https://www.colectivodeabogados.org/mesa-por-la-reforma-policia-transformacion-del-esmad-en-undmo-no-fue-estructural-ni-conto-con-verdadera-participacion/>

¹³ Cut-off for the 2023 data is December 10.

88. The UNP usually takes around 3 months to evaluate the risk of threats and offer protection to victims. In case of emergency, the UNP can react in 3 days, which happens in around 20% of the cases. However, some recent corruption scandals have prevented the UNP from offering protection within the usual time frame due to a lack of protection elements (armoured cars in particular). For instance, some vehicles designated for beneficiaries of the protection programme were discovered transporting cocaine and 38 vehicles were stolen in 2023.¹⁴ To overcome these issues, the UNP intends to buy the cars needed for its operation and provide them directly to the beneficiaries enrolled in the protection programme.

89. Even though the government adopted a reform to establish a procedure for collective protection mechanisms for groups and communities in 2021, currently only one trade union, the *Sindicato Nacional de Trabajadores de la Industria Agropecuaria* (Sintrainagro) is covered through that mechanism. As part of the programme, Sintrainagro receives protection from 20 bodyguards and has 10 armoured vehicles at their disposal. In the past, another trade union federation (*Central Unitaria de Trabajadores de Colombia*, CUT) also received collective protection from the UNP, which consisted of the installation of protection for their office, including security cameras and safety doors.

90. Overall, the protection budget for the UNP has remained stable from 2020 to 2023, between EUR 7.6 million and EUR 7.5 million. While this budget is just half of the protection budget for trade unionist in 2014 (EUR 13.6 million), the drop can be explained by a significant reduction in the number of protected persons (from 677 in 2014 to 231 in 2023).

Prosecution of violence against trade unionists

91. Of the 116 cases with 120 unionised victims of homicides that occurred between 2017 and 2023, progress was made in 70 cases: 21 cases have sentences, 24 cases are in trial, 7 cases have a formulation of charges, 14 cases are under investigation with arrest warrants in force, and in 4 cases the investigation ended as a result of the death of the alleged suspect. While the progress rate of these investigations has risen from 43% in 2021 to 60% in 2023, so far only 18% of the cases that occurred between 2017 and 2023 have a sentence. One quarter (32) of the cases under investigation were homicides committed against trade union leaders.

92. Regarding investigations into threats against trade unionists, the Prosecutor General's Office has been strengthening the specialised group established for this purpose. Ten prosecutors were assigned to the Sectional Offices with the highest caseloads, a 24/7 hotline was made available, and specific guidelines were issued for investigating threats against human rights defenders. Among the activities conducted in 2023, the Prosecutor General's Office emphasised the successful conviction of an individual responsible for threatening leaders of the SINALTRAINAL (National Union of Food Industry Workers).

Investigations of violations of rights of assembly and association

93. As reported in the OECD's first post-accession review of Colombia (OECD, 2022^[1]), 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 2023 (until 7 December), the Prosecutor General's Office received 1 410 complaints. Of these, 251 cases (17.8%) are active and 1 159 (82.2%) have been terminated, as follows: 692 cases have been archived, because there was no criminal

¹⁴ <https://www.elespectador.com/judicial/capturan-a-tres-personas-que-movian-cocaina-en-una-camioneta-de-la-unp/> and <https://www.eltiempo.com/justicia/investigacion/unidad-nacional-de-proteccion-el-preocupante-incremento-de-robos-de-carros-841436>

conduct (56%) or the plaintiff did not have legitimacy (29%); 133 cases have been withdrawn by the complainant; 107 cases have been conciliated; 223 cases have been closed due to termination of the criminal action, preclusion, extinction of the complaint, among others; and in 4 cases, acquittal judgments were issued. Overall, despite the high number of complaints for the violation of the right of assembly and association, not one of the complaints received between 2017 and 2021 finished with a conviction.

94. In the last two years, three new strategies were implemented by the Prosecutor General's Office to improve the investigations of violations of rights of assembly and association. First, a "Handbook for the Investigation and Prosecution of the Crime of Violation of the Rights of Assembly and Association" has been adopted and shared during conciliation sessions between trade unions and employers. The Handbook presents the legal foundations of the right of association and trade union association, explains collective bargaining issues, the strike, collective labour agreements, and union contracts, among other topics, and clarifies the concepts and mechanisms of legal protection for trade unions. The Handbook was also distributed to the prosecutors, particularly in regions with the highest concentration of cases.

95. Second, two specialised prosecutors were appointed in 2023 with the aim of reinforcing the investigation of active cases of violations of rights of assembly and association. Third, special sessions were organised in the Sectional Offices with the highest number of cases. In the Sectional Office of Bogotá, complainants were called to analyse each case in detail. This collaboration facilitated a joint understanding of the cases, resulting in better investigative actions.

96. Conciliation remains a common way to close the investigations under Article 200. While this mechanism could be seen as a successful way to guarantee the right of access to justice and to solve legal disputes in an expeditious manner (Mintrabajo, 2021^[30]), concerns persist. For instance, it is not clear to what extent the access to justice for victims of violations under Article 200 is effective, as of 2021, no judicial sentences were reported (ILO, 2021^[17]; USDOL, 2021^[21]). Furthermore, over the past two years, the few cases that advanced to trial concluded with decisions in favour of the accused.

97. As already noted in the OECD's first post-accession review report (OECD, 2022^[22]), there is no follow-up mechanism to ensure the compliance of the conciliation agreement. It is up to the prosecutor to verify the agreement has been fulfilled and to archive the case. The regulation does not establish a term to follow up on the compliance of such cases nor does it allow for additional legal recourse 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 enforce the execution of the conciliation agreement, thus potentially making the legal procedure even more difficult.

Conclusion

98. Although there has been a decline in the number of reported homicides and other forms of violence towards trade unionists in recent years, trade union leaders and members continue to be targeted. The discrepancy between reported cases from different sources also underscores the complexity of accurately capturing the extent and reasons of violence against trade unionists versus social leaders more generally.

99. Some efforts have been made to address the persisting use of violence against the trade unionists in public demonstrations, offer them protection, and prosecute crimes against trade unionists. However, the low rate of convictions remains a concern, indicating the need for continued efforts to combat impunity. Recent strategies implemented by the Prosecutor General's Office demonstrate a commitment to improving investigations and addressing violations of rights of assembly and association. Nevertheless, there is no follow-up mechanism to ensure the compliance of conciliation agreements, which remains the most common way to close investigations of violations of rights of assembly and association.

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