

Second Periodic Review of Progress
to Address Issues Identified in the U.S. Department of Labor’s Public Report of Review of
Submission 2016-02 (Colombia)
October 7, 2021

Summary

This Second Periodic Review of Progress constitutes a review of the status of the Government of Colombia’s (GOC) implementation of four broad areas of recommendations related to the labor concerns identified in the Public Report of Review of U.S. Submission 2016-02 (Submission Report) under the United States – Colombia Trade Promotion Agreement (CTPA). This Second Periodic Review finds that the GOC has taken several steps toward implementing many of the Submission Report’s recommendations, but that further and sustained progress is critical to making sufficient progress in each of the four broad areas of recommendations and to ensuring that labor rights are fully protected in Colombia. The U.S. Department of Labor (USDOL), together with the Office of the U.S. Trade Representative and the U.S. Department of State, will continue to monitor and assess the GOC’s progress on satisfying these recommendations and addressing longstanding labor challenges in Colombia.

Background

Since the passage of the Colombian Action Plan Related to Labor Rights (Labor Action Plan) in 2011, Colombia and the United States have cooperated closely on labor rights and worker protections in Colombia. Bilateral engagement on labor issues intensified following a 2016 submission filed under Chapter 17 (the Labor Chapter) of the CTPA. On January 11, 2017, USDOL issued a Submission Report in which USDOL recognized meaningful progress made by the GOC but also identified concerns related to the GOC’s enforcement of laws on freedom of association and collective bargaining, investigations and prosecutions in cases of anti-union threats and violence, and criminal cases of infringement on workers’ fundamental rights.¹ The Submission Report recommended to the Secretary of Labor that the U.S. government (USG) initiate consultations through the contact points designated in Article 17.5 of the CTPA Labor Chapter. To date, the USG and GOC have conducted six rounds of contact point consultations, with the most recent round held virtually in two sessions: one in November 2020 and the other in March 2021.

To help guide this engagement, the Submission Report provided 19 detailed recommendations grouped under four broad areas for the GOC: (1) improve the labor law inspection system to ensure inspections comply with legal procedures and timelines and are carried out in accordance with a national inspection strategy targeting at-risk sectors; (2) improve fine application and collection to ensure that employers who violate labor laws are sanctioned and that applied fines are collected in a timely manner; (3) take additional effective measures to combat abusive

¹ The USDOL report is available in full at:
https://www.dol.gov/sites/dolgov/files/ILAB/legacy/files/PublicReportofReviewofUSSubmission2016-02_Final.pdf

subcontracting and the misuse of collective pacts,² including improving application of existing laws and adopting and implementing new legal instruments where necessary; and (4) improve the investigation and prosecution of cases of violence and threats against unionists, prioritize recent cases, and ensure the swift resolution of cases involving criminal infringement on rights to freedom of association and collective bargaining under Criminal Code Article 200. The Submission Report also stated the USG's commitment to assess any progress made by Colombia within nine months, and thereafter as appropriate.

On January 8, 2018, USDOL published the First Periodic Review of Progress to address issues identified in the Submission Report and reported that the GOC had taken several steps toward implementing many of the report's recommendations.³ Meaningful efforts included installing a labor inspection electronic case management system (ECMS) in all of the Ministry of Labor's (MOL) regional offices and in two special administrative offices; working to combat high turnover among labor inspectors employed on a provisional basis through the option to participate in a public competition enabling inspectors to compete for permanent civil service positions; improving labor inspector training, including through updated curricula; and committing to improve fine collection by electronically linking the fine-collecting division of the National Training Agency (*Servicio Nacional de Aprendizaje*) (SENA) to the ECMS to track fines from imposition to collection.

USDOL reported that despite this progress, multiple recommendations had not been fully addressed. USDOL raised concerns that the MOL lacked a national inspection strategy that would enable it to strategically direct limited resources and prioritize investigations, needed to improve investigations and sanctions on all forms of abusive subcontracting and the misuse of collective pacts in accordance with established timeframes, and needed to ensure that preventive inspections were not used as a substitute for administrative sanctions. Regarding fine collection, USDOL reported that SENA's timelines for persuasive and coercive fine collection lacked clarity and had not been published. Regarding criminal prosecutions of cases of infringement on workers' rights and unionist homicides, USDOL reported concern about the length of time the Office of the Attorney General (*Fiscalía*) took to undertake prosecutions and stressed the need to further prioritize cases of threats against unionists.

Since the publication of the First Periodic Review of Progress, the USG and GOC conducted the fourth and fifth rounds of contact point consultations in Bogotá in February and December 2018, respectively, and the aforementioned sixth round via video conference on November 18-19, 2020 and March 23, 2021. In these meetings, the USG and GOC discussed the issues identified in the Submission Report and Colombia's progress on implementing the report's recommendations. During this time, the USG and GOC also cooperated closely on key activities to strengthen the

² According to the Labor Code Article 481, employers may offer collective pacts (workplace benefits packages) to non-union workers in workplaces without unions and in workplaces where unions represent fewer than one-third of workers. As stated in the Submission Report, some employers reportedly offer better conditions through collective pacts than those included in existing collective bargaining agreements. The Labor Code Article 354, prohibits employers from interfering with workers' freedom of association; therefore, employers may not use a collective pact that interferes with or undermines legitimate union activity.

³ The USDOL review is available in full at:
<https://www.dol.gov/sites/dolgov/files/ILAB/legacy/files/2018-01-08%20Colombia%20Review%20Statement%20FINAL.pdf>

capacity of the MOL to enforce labor laws under a Memorandum of Understanding (MOU) that specified \$2 million or equivalent contributions from each government toward implementation. Principal areas of cooperation included strengthening the ECMS and fine collection mechanisms, developing and implementing a Virtual Training Campus for labor inspectors, and developing strategic compliance planning with the labor inspectorate. USG-funded activities were implemented by the International Labor Organization (ILO). Activities under the MOU, which was signed in 2018, concluded in March 2021. USDOL oversees a number of other technical cooperation programs in Colombia that help workers and workers' organizations exercise their labor rights in Labor Action Plan priority sectors⁴ and address other fundamental labor rights issues outside of the Submission Report that relate to CTPA labor commitments more broadly.⁵

Findings

This Second Periodic Review of Progress constitutes a review of the status of the GOC's implementation of the Submission Report's recommendations since the publication of the First Periodic Review of Progress. The GOC's efforts, including those taken in close collaboration with USDOL, have resulted in progress in a number of key areas. However, challenges remain for the fulfillment of several important recommendations, and the GOC must continue to strengthen efforts to make sufficient progress across each of the four broad areas of recommendations in order to address the issues identified in the Submission Report.

Key Areas of Progress

The GOC has made efforts to address issues raised in the Submission Report and the First Periodic Review, including by making incremental progress on improving labor law enforcement capacity and addressing crimes against unionists. Though challenges remain, the GOC has made meaningful accomplishments, and can continue to make further progress, in the following areas.

- **MOL strengthened technological implementation of the labor inspection ECMS.** By January 2018, the MOL had installed a first version of the ECMS in all 33 regional offices and in two special administrative offices. Since that time, the MOL has worked with and independently of USG-funded technical cooperation to install a third-generation version of the system in all regional offices and all three of its special administrative offices. The MOL has also expanded ECMS implementation at the municipal level. By December 2020, the MOL had installed the system in 101 of 119 municipal offices, up from 24 offices in 2018. Implementation of this third version incorporated both legal and technological updates and required significant investment in technological infrastructure. Internet bandwidth remains a challenge in some regional and municipal offices. In 2020, the MOL added a new module to the ECMS for registering directed and complaint-driven inspection visits. In early 2021, the MOL designed and began implementing a new dashboard for the ECMS that facilitates the

⁴ The five sectors identified in the Labor Action Plan for improved labor law enforcement are palm oil, flowers, sugar, mines, and ports.

⁵ Information on USDOL-funded technical cooperation programs is available at: <https://www.dol.gov/agencies/ilab/country/ilab-colombia>

system's report generation functions, including through graphic visualizations, that will increase accountability and inform inspection planning and resource allocation. The MOL has expressed an overall aim to further expand the number of labor inspector functions incorporated into the ECMS to further facilitate inspectors' efforts.

- **The MOL increased its number of labor inspectors in the career civil service.** To combat high turnover among labor inspectors and fill all of the MOL's 904 labor inspector positions with career hires in the civil service, the MOL participated in a selection process and exam held in April 2018 by the National Civil Service Commission for more than a dozen government agencies through which labor inspectors in provisional appointments could compete for permanent, career positions. At the time of the exam, the MOL had 68 career labor inspectors. Of the approximately 778 inspectors employed in provisional appointments, 351 took the exam, of which only 179 passed for inclusion on a list of candidates eligible for permanent hiring that included other successful candidates. Following a March 2019 resolution by the Council of State of a legal action filed by the National Association of Labor Inspectors, through which appointments under the selection process had been suspended, the MOL hired hundreds of career inspectors. As of March 15, 2021, the MOL had filled 854 of its 904 positions with inspectors in the following status: 595 inspectors were in career positions and had completed their probationary period; 24 inspectors were in career positions in their probationary period; 8 inspectors had been promoted to inspector positions from other positions in the MOL; and 227 inspectors were in provisional appointments. The MOL reported it continues to hire career inspectors from the list of eligible candidates to fill its remaining labor inspector positions but continues to face challenges in retention of inspectors. The MOL has expressed an aim to reach 2,000 labor inspectors by 2024, contingent on government resources, to improve labor law enforcement nationwide.
- **The MOL launched and expanded a labor inspector Virtual Training Campus.** To train and further professionalize labor inspectors, the MOL has worked with and independently of USG-funded technical cooperation to develop a Virtual Training Campus, which it adopted in May 2019 via Resolution 1160 following a public launch by Colombian President Iván Duque Márquez. At the end of 2019, the campus included a first set of 10 courses related to core competencies for inspectors, including fundamental rights at work, individual and collective labor law, occupational safety and health, social security, and labor formalization. Approximately 80 percent of inspectors completed these courses by December 2019. By the end of 2020, the MOL had developed and begun piloting a second set of nine specialized courses that deepened training in these and other areas, including substantiating complaints through testimony and administrative sanctioning procedures. The MOL continues to develop additional courses for inclusion in the campus. Content related to certain Submission Report recommendations, for example regarding abusive subcontracting, should be further strengthened.

- **The Office of the Attorney General (*Fiscalía*) reported increased resolution of Criminal Code Article 200⁶ cases regarding violations of freedom of association and collective bargaining.** The Deputy Attorney General reported the *Fiscalía* received 865 complaints under Article 200 between January 2017 and December 2020. Of these, 714 cases (82.5 percent) had been concluded by December 2020 with the following outcomes: 59 cases had been conciliated, with workers and employers agreeing to a mediated settlement of the case; 95 cases had been withdrawn by the complainant (in some cases because a private settlement was reached); 68 cases were subsumed under other criminal cases; and 407 cases were dismissed, including 233 cases for not meeting the requirements of Article 200 and 122 cases for having an ineligible complainant. The remaining 85 cases were concluded through other measures. Through increased information-sharing with USDOL, the Deputy Attorney General provided yearly breakdowns of case outcomes. The *Fiscalía* reported additional advancement in processing a backlog of Article 200 cases received between 2011 and 2016. Of 1,840 cases under review in 2016, the *Fiscalía* had concluded 1,812 cases (98.5 percent) by December 2020. Of the 2,705 total cases filed since 2011, however, only nine have reached the trial phase. Of these, five cases remain in trial; two cases resulted in the absolution of the defendant; and one case was dismissed. The remaining case resulted in a conviction against the employer in August 2020, the first since the GOC strengthened criminal penalties under Article 200 in 2011.⁷ Despite progress in concluding cases, USDOL remains concerned over the low number of cases brought to trial and resulting in convictions.
- **The *Fiscalía* reported higher rates of advancement in cases of homicides of trade unionists and other social actors engaged in defense of fundamental rights.** The *Fiscalía* has shown increased cooperation and improved information-sharing with USDOL on crimes of violence against trade unionists. The Deputy Attorney General reported that as of December 2020, the *Fiscalía* had investigated 232 cases of homicides of unionists killed between January 2011 and December 2020. The *Fiscalía* reported advancements in 43 percent of these cases: 65 sentences against defendants had been handed down in 43 cases; 38 cases had reached the trial phase; 7 cases had charges filed; and 9 cases had warrants for arrest. However, a high number of cases (116) remained under preliminary investigation, without warrants issued or charges filed.⁸ Of these 232 cases, 86 occurred between January 2017 and December 2020. The *Fiscalía* reported advancements in 43 percent of these cases as well: 11 sentences had been handed down in 9 cases; 20 cases had reached the trial phase; 2 cases had charges filed; and 6 cases had warrants for arrest. However, a similarly high number of

⁶ In 2011, the Colombian Congress reformed Criminal Code Article 200, as specified in the Labor Action Plan, to increase criminal sanctions for employers who undermine workers' rights to freedom of association and collective bargaining and criminalize the use of collective pacts to offer better conditions to non-union workers. The reform established prison time and increased fines for violators. Under Colombian law, the victim has to file the case (*querrela*) directly with the *Fiscalía* in order for a prosecutor to investigate a possible crime.

⁷ The case, which involves a suspended sentence of 12 months imprisonment and a fine of 100 times the legally mandated minimum monthly wage, has been appealed before the Colombian Supreme Court, where it is under review.

⁸ Of the remaining 19 cases, three cases did not meet the legal requirements for prosecution and 16 cases were closed (*archivado*).

cases for this period (48) remained under preliminary investigation and, importantly, there were no convictions reached in 2019 or 2020. USDOL remains concerned at the high number of trade unionists killed per year and that impunity remains high, including for those who would be considered the “intellectual authors” of these crimes under Colombian law. Compared with the recent prosecutorial advancements in cases of homicides of trade unionists mentioned above (43 percent of cases), the *Fiscalía* reported lower rates of advancement in cases of homicides where victims were not engaged in the defense of fundamental rights – i.e. in 30 percent and 27 percent of these cases for 2020 and 2019, respectively – indicating that the GOC has the political will to prosecute homicides of unionists and social actors who are engaged in the defense of fundamental rights. The *Fiscalía* reported that it presumes union membership is a motive in cases of homicides and violence against unionists.

- **The GOC strengthened its legal framework for criminalizing threats against human rights defenders, including trade union leaders.** In July 2018, the GOC passed Law 1908, which added Article 188E to the Criminal Code. This provision made any threats against individual persons who exercise activities in defense of human rights, including, *inter alia*, human rights defenders, public servants, and trade union leaders, a separate criminal offense, and increased the minimum prison sentence for this violation to six years. Article 188E also expanded the scope of conduct that constitutes a criminal threat because the Criminal Code, under Article 347, criminalizes threats made against members of trade unions and journalists, with a minimum of five and one-third years of prison, in circumstances where the threats are intended to instill fear in the population or a sector therein. The *Fiscalía* reported carrying out research into patterns and geographies of threats made against unionists between 2018 and 2020, including in the Valle del Cauca department where threats have been high, for strategic and targeted enforcement. However, during this time, there was only one case of threatened unionists in Colombia in which charges were filed, and there were no convictions in cases under Article 188E or 347.

Sustained efforts in these and related areas are critical to ensuring that labor laws are adequately enforced and the rights of workers and union members are fully protected in Colombia.

Remaining Challenges

USDOL has identified a number of important areas where improvements must be made for the GOC to satisfactorily address key recommendations in the Submission Report.

- **Strengthening the Labor Law Inspection System:**

Following progress made in the technological implementation of the ECMS, the MOL must improve labor inspectors’ adoption and use of the ECMS for effective case tracking, including as a way to ensure cases are adjudicated within legally mandated timeframes, which itself is a longstanding problem. As of March 2021, the ECMS registered more than 83,000 cases, 48 percent of which were active. Of these, 43 percent were shown to

have exceeded legal timeframes.⁹ The effective adoption and use of the ECMS in the Bogotá directorate, which addresses approximately 40 percent of the country's labor cases, is particularly important given deep challenges in managing a significant backlog and ensuring timely resolution of cases.¹⁰ Nationally, a high percentage of labor cases remains in the preliminary inquiry phase. The MOL must also ensure that labor inspectors' required use of the ECMS is included in performance appraisals, as stipulated in Resolution 3599 of 2017.

The MOL's budget in 2018 and 2019 included significant resources to finance the modernization of technological infrastructure to support multiple information systems, including the ECMS. However, there are concerns over the sufficiency of the labor inspectorate's budget, which includes funding for conducting inspection visits. In 2018, the inspectorate's budget totaled \$2.4 million,¹¹ a 166 percent increase over the previous year. In 2019, the budget fell to \$2.1 million. In 2020, the MOL reported an effective budget of \$800,000. The projected budget for 2020 (\$1.5 million) included \$700,000 in expected revenues from fine collection under a new fund created under Article 201 of the National Development Plan (NDP), which was passed into law in May 2019. Article 201 stipulates that fines assessed prior to January 1, 2020, remain under the purview of SENA, while fines assessed after this date are collected by the MOL's Office of Legal Affairs (*Asesoría Jurídica*). Proceeds from these fines, unlike those from SENA, are deposited into an MOL-administered fund (FIVICOT) and designated to strengthen the labor inspectorate. Longstanding challenges in fine collection discussed in USDOL's Submission Report nevertheless remain, and the MOL's partial suspension of activities in 2020 related to the COVID-19 pandemic and lockdown contributed to a lack of fines collected during the year, accounting for the aforementioned budget shortfall. As a result, there are concerns over the extent to which the inspectorate's budget should be tied to fine collection.

Additionally, NDP Article 200 stipulates that the MOL may suspend sanctioning procedures for violations, other than those related to labor formalization, if an employer acknowledges non-compliance of labor or social security laws and consents to an MOL-approved corrective action plan to remedy the non-compliance within one year. Although the implementing regulations of this article have not been finalized, a prioritization of corrective action plans would appear to undermine the strategy of funding the inspectorate's budget from monetary sanctions.

⁹ 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 labor 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.

¹⁰ The MOL and the ILO signed a letter of understanding on June 16, 2021 specifying activities to further implement and update cases in the ECMS in the Bogotá directorate, including through capacity-building technical cooperation provided by ILO advisors. The letter establishes activities will be implemented from July 1 to December 31, 2021 and will be supported by MOL resources and ILO advisory services each valued at \$168,000 for a total of \$336,000.

¹¹ Throughout this statement, budgets and other amounts (e.g. fines) valued in Colombian pesos (COP) are converted to US dollars (USD) using average yearly exchange rates. Relative to USD, the value of the Colombian peso decreased by approximately 25 percent between 2018 and 2020. USD amounts are approximate.

It is essential that the Colombian government ensure the labor inspectorate has adequate resources for operations, including for conducting inspection visits to identify and remedy violations. In 2020 (pre-pandemic), the labor inspectorate appears to have budgeted just \$43,000 for inspection visits, five times less than the \$230,000 budgeted to implement their mobile outreach to rural areas, which focuses primarily on MOL services, labor rights awareness, and compliance assistance. There are concerns over the number of administrative inspections conducted to adequately address longstanding labor challenges, such as abusive subcontracting, with respect to a labor force of approximately 23 million (pre-pandemic). The MOL's quarterly, public inspection reports do not provide information on complaint-driven and directed inspection visits, including their number, sector, or result, making a comprehensive analysis of the relation of administrative inspections to compliance assistance inspections difficult.

- **Improving Fine Collection:**

The MOL must improve fine collection to ensure defense of workers' rights and to deter violators, as well as to finance improvements in its labor law inspection system. The MOL faces a number of challenges in this effort. In 2018, the MOL referred to SENA a total of \$8.5 million in fines for collection, of which SENA collected \$5.1 million (60 percent). In 2019, the MOL referred to SENA \$3.7 million, of which SENA collected \$2.7 million (72 percent). By the end of 2020, the amount of uncollected fines within SENA's purview was \$21.9 million. The MOL must work with SENA and other authorities to implement effective remedies to this problem. The MOL has reported challenges in collecting fines from employers and contractors that have filed for liquidation, underscoring a lack of information exchange with the Superintendencia of Enterprises (*Superintendencia de Sociedades*) that could provide information on employers' assets that may be distributed to fine collectors and other claimants in liquidation.

In 2020, SENA collected \$547,000 in fines assessed prior to January 1, 2020, and the MOL collected \$402,000 under FIVICOT. The total for 2020 – \$949,000 – was less than one quarter of the total collected in 2018. Although underlying challenges remain, fine collection in 2020 lagged in part due to the MOL's six-month suspension of certain activities to comply with national public health mandates related to the COVID-19 pandemic and lockdown. From March 17 to September 8, 2020, the MOL suspended the review and adjudication of labor cases, including investigations and the adjudication of fines and appeals, for violations not directly related to the pandemic and economic closure. During this time, field-based labor inspections also were suspended, impacting the number of new fines imposed for potential future collection, which are designated under the NDP to strengthen the labor inspectorate.

Redundancies in fine collection also remain. Despite having electronically "bridged" the ECMS with SENA's fine collection system in 2019 to facilitate and track fine collection, not all fines assessed since that time and prior to January 1, 2020 have been sent via this bridge. In addition, the creation of the MOL-administered FIVICOT necessitated a separate "bridge" to the ECMS, which continued to undergo pilot-testing as of July 2021

and through which fines have not yet been sent.¹² These electronic connections, when fully implemented, can help expedite the initial stage of fine collection – i.e., persuasive collection – which does not require original, hard-copy fine resolutions for completion. However, the subsequent, coercive stage of fine collection does require, per Colombian administrative law, original and signed, hard copy documents, which in the case of SENA, must be sent via courier.

- **Combating Abusive Subcontracting and the Misuse of Collective Pacts:**

The MOL must improve efforts to inspect for and impose adequate sanctions on abusive subcontracting and the misuse of collective pacts, including in Labor Action Plan priority sectors. In 2018 and 2019, prior to the pandemic, the MOL reported imposing only two fines for abusive subcontracting in the priority sectors – one each in the palm and mining sectors – totaling \$40,000. During this time, only two fines for abusive subcontracting in the flower sector were upheld following appeal, totaling \$552,000. SENA did not appear to collect any fines for this violation in the priority sectors in 2018 or 2019. USDOL remains concerned over the low numbers of fines assessed and collected for this violation in the priority sectors, as well as over the low number of directed (*de officio*) inspections conducted to proactively identify and sanction this violation, with this number of inspections clearly specified in a robust national inspection strategy. Notwithstanding the six-month, COVID 19-related suspension of field inspections in 2020, in the remaining part of the year, the MOL did not impose any fines for this violation in the priority sectors. The number of workers covered in new formalization agreements has declined significantly since 2017. The number of workers formalized through new agreements in 2019 (all sectors) was 1,513 workers, which was 25 percent of the number covered in new agreements in 2017 (6,148 workers). In Labor Action Plan priority sectors, only three new formalization agreements were signed in 2019, one in the port sector covering 149 workers and two in the flower sector covering 76 workers. The GOC must work to increase formalization, including in the priority sectors, where labor contracting is often irregular and full enrollment in all aspects of the social security system remains low.

Regarding efforts to address the misuse of collective pacts, the MOL reported that in 2019, its Special Investigative Unit made advancements in six cases, including issuing a sanction in one case. In its Regional Directorates, the MOL reported 36 cases, all of which remained in the preliminary inquiry phase. The MOL, particularly its Regional Directorates, must ensure cases related to the misuse of collective pacts are investigated and concluded according to legal timeframes. Of these 36 cases under review in the Regional Directorates, six were in Labor Action Plan priority sectors. In 2018 and 2019, the MOL did not impose any fines for the misuse of collective pacts in the priority sectors, and no fines were upheld following appeal during this time. Despite committing to increase inspections of firms where collective pacts obtained in 2020, inspections were limited in 2020, including because of the pandemic. The MOL's quarterly, public inspection reports do not provide information on enforcement efforts related to collective

¹² The MOL reported a goal of national-level implementation of the FIVICOT bridge in August 2021. The MOL also adopted Resolution 2628 specifying MOL procedures for fine collection through FIVICOT. The resolution, dated December 2, 2020, includes timelines for persuasive and coercive fine collection.

pacts. The GOC does not appear to have reviewed its legislation on collective pacts since 2017.¹³

It is important to acknowledge the February 2018 Council of State decision that affects enforcement of Decree 2025 of 2011, a key law regarding abusive subcontracting. The decision nullified various sections of the decree, including its prohibition on contracting with cooperatives for permanent core functions, and caused confusion on the improper use of cooperatives and the legal grounding for sanctions imposed before and after the Council's ruling. In addition, while the Council of State's decision did not affect the maximum fine for employers who engage in illegal labor intermediation through cooperatives (5,000 times the legal minimum monthly wage, as stipulated in Law 1429), the Council's decision struck down the provision of Decree 2025 that set the maximum fine for cooperatives at 5,000 times the minimum monthly wage, thereby significantly lowering the maximum fine and weakening the deterrent for this violation by cooperatives. Finally, the Council's decision eliminated a schedule of fine forgiveness, as established in Decree 2025, for employers who entered into formalization agreements following sanctions for the misuse of cooperatives, potentially reducing incentives to enter into formalization agreements. The MOL passed Resolution 2021 in May 2018 that established illegal intermediation criteria for labor inspectors to follow during investigations. USDOL continues to engage the GOC on these issues.

- **Improving investigation and prosecution of cases of violence and threats against unionists and enforcement of Criminal Code Article 200:**

As noted above, the *Fiscalía* has made efforts to prioritize the investigation and prosecution of cases of unionist homicides. These crimes, however, remain a serious concern in Colombia. Although the number of unionist homicides has declined since 2018 – with the *Fiscalía* reporting 30 cases in 2018, 19 cases in 2019, and 14 cases in 2020¹⁴ – the GOC must continue to strengthen efforts to reduce impunity for these crimes, which remains high, and investigate and prosecute intellectual authors. The GOC must also improve efforts to investigate and prosecute threats against unionists which, according to the *Fiscalía*, totaled 840 cases from 2018 through 2020,¹⁵ and for which there have been no convictions, including under Article 188E of the Criminal Code. The GOC must ensure there is a sufficient number of prosecutors and resources dedicated to addressing cases of violence against trade unionists. The GOC must also ensure the National Protection Unit (NPU) has sufficient resources to protect threatened unionists with adequate and timely protection. As of August 2020, the NPU was providing protection to 301 trade union leaders or members. Regarding Criminal Code Article 200 complaints, despite progress in concluding cases, including processing an important

¹³ As stated in the Submission Report, the ILO's Committee of Experts on the Application of Conventions and Recommendations (CEACR) has examined the use of "collective accords [collective pacts]" and found that "collective accords with non-unionized workers should only be possible in the absence of trade unions" (pg. 6). The CEACR reiterated their finding on collective pacts at the International Labor Conference, 109th Session (2021): http://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID:4058028

¹⁴ The National Union School (*Escuela Nacional Sindical*) reported 19 cases of unionist homicides in 2020.

¹⁵ The *Fiscalía* reported that under Criminal Code Articles 347 and 188E, there was a total of 184 cases of threats in 2018, 376 cases of threats in 2019, and 280 cases of threats in 2020.

backlog of cases, the *Fiscalía* must ensure swift resolution of cases and increase the number of cases brought to trial as well as the number of convictions.

The USDOL believes that real progress in these and related areas is critical to successfully addressing all four areas of recommendations in the Submission Report and to ensuring labor rights are fully protected in Colombia.

Conclusion

The USG is committed to continuing its productive engagement with the GOC to address the issues raised in this report and ensure that the rights and protections enshrined in the CTPA Labor Chapter and Labor Action Plan are upheld in Colombia. While some unanticipated hurdles have hindered progress in key areas, the GOC must address the challenges discussed above to fully satisfy the 2017 Submission Report recommendations. USDOL, in consultation with the Office of the U.S. Trade Representative and U.S. Department of State, will continue to closely monitor and assess progress by the GOC on critical labor rights issues in Colombia, including addressing the recommendations.