

First 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)

January 8, 2018

On January 11, 2017, the U.S. Department of Labor (USDOL) issued Public Report of Review of Submission 2016-02 in response to a submission filed under Chapter 17 (the Labor Chapter) of the United States-Colombia Trade Promotion Agreement (CTPA). The USDOL report is available in full at <https://www.dol.gov/sites/default/files/documents/ilab/ColombiaReport.pdf>. In the report, USDOL recognized meaningful recent progress made by the Colombian government (GOC) but also identified concerns regarding the GOC's labor inspectorate and collection of fines that affect Colombian enforcement of labor laws on freedom of association and collective bargaining. The report detailed USDOL's ongoing concerns with subcontracting schemes and collective pacts in Colombia, which affect the rights to freedom of association and collective bargaining. It also included concerns about the adequacy of investigations and prosecutions in cases of anti-union threats and violence, as well as criminal cases of infringement on workers' fundamental rights. The 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 help guide this engagement between the USG and GOC, the report provided 19 detailed recommendations grouped under four broad recommendations for the GOC to: (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 subcontracting and collective pacts, 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 under Criminal Code Article 200. The report also stated the USG's commitment to assess any progress made by Colombia within nine months, and thereafter as appropriate.

In this regard, the following is an assessment of the GOC's actions to address the concerns raised in the report and steps taken to achieve the report's recommendations. Since publication of USDOL's report, the USG and the GOC have held three meetings of the contact points to discuss the issues identified in the report, the recommendations provided by the USG to address those issues, and progress toward implementing the recommendations. The first meeting, via videoconference, took place in April 2017; the second meeting was held in Washington, D.C. in July; and the third meeting occurred in Bogota in September. As of the publication of this review statement, the USG continues to engage with the GOC and to encourage Colombia to make additional progress on the recommendations included in the January 2017 USDOL report.

The GOC has taken several steps toward implementing many of the report's recommendations. The Ministry of Labor (MOL) installed an electronic case management system in all the regional

offices and in two special administrative offices. On September 19, the Minister of Labor issued a Ministerial Resolution making it mandatory for labor inspectors and their managers to use and update the system, upon system installation in each MOL office. On October 10, the MOL published a bulletin with various inspection statistics comparing data from the third quarter of 2017 to the third quarter of 2016, including the number of investigations initiated and the number of fines imposed. The bulletin also lists the total amount of fines collected in Colombian pesos over all four quarters of 2016 and the first three quarters of 2017. To combat high turnover among labor inspectors who are currently employed only on a provisional basis, the MOL joined other government agencies participating in a public competition for permanent civil service positions. The MOL aims to convert 804 of its 904 existing inspector positions to career civil service positions (the other 100 positions are already held by career civil servants). By the end of 2018, the GOC plans to replace the inspectors who currently hold the 804 positions on a provisional basis with labor inspectors who pass the competition. All inspectors currently in provisional status can opt to take part in the competition, and if they pass, can be hired as permanent civil service employees. In the meantime, the provisional inspectors will continue in their positions and will continue carrying out the normal duties of labor inspectors.

In addition, the GOC has committed to actions that, if fully implemented, would represent additional progress towards addressing the concerns and questions identified in the USDOL report. The MOL has committed to improve the training that all labor inspectors receive, including refresher trainings. On November 1, the MOL launched an internal group that will manage and ensure the relevance of trainings and is working with a USDOL-funded project being implemented by the International Labor Organization to design updated training curricula. To reduce redundancies in the fine collection process, the fine-collecting division of the *Servicio Nacional de Aprendizaje* (SENA, the National Training Agency) opted not to renew the contract it had with *Central de Inversiones, S.A. (CISA)*, a publicly owned, for-profit agency connected to the Ministry of Finance and specializing in collecting debts owed the GOC. SENA is now solely responsible for both persuasive and coercive collection. The GOC has committed to link SENA's fine collection system with the labor inspectorate's information system so that the MOL can track a fine from its imposition to its collection. To improve labor inspections in rural areas, the MOL is piloting mobile inspection "fairs" in eight municipalities to test the concept of stationing labor inspectors in remote communities for short periods of time to give workers and employers a chance for direct engagement with a labor authority. In addition, the Colombian Congress approved the MOL's request to increase the 2018 budget allocation for the labor inspectorate by 67 percent to a total of 5 billion Colombian pesos (approximately USD 1.6 million).

Despite this progress, there are a number of key recommendations from USDOL's report that Colombia has not yet fully addressed. The MOL still appears to lack a national inspection strategy, which would help it strategically direct its limited resources and prioritize investigations. In addition, the MOL has yet to ensure that preventive inspections are not used as a substitute for administrative sanctions. Although SENA indicates that timelines for persuasive and coercive fine collection are contained in Resolution 1235 of 2014, these timelines are not clear and are spread across various additional regulations and laws. SENA should produce a comprehensive chart that gathers all of the timeframes from the various regulations and that refers directly to persuasive and coercive collection of fines imposed by the MOL. Further, the MOL still needs to improve investigations and sanctions on all forms of abusive subcontracting

and the misuse of collective pacts in accordance with established timeframes. The GOC has shown evidence of increased overall investigation into illegal collective pacts; however, it is unclear that such efforts are addressing the undermining of associational rights of workers where representational unions exist.

Although the GOC has made progress on the underlying issues that generated USDOL's recommendations on criminal prosecutions, the recommendations have not yet been fully addressed. The *Fiscalía* (Office of the Prosecutor General) reports 92 conciliations in criminal cases of infringement of workers' rights and 32 guilty verdicts in 22 cases of unionist homicides that have occurred between 2011 and 2017. The number of total criminal cases resolved over the past year is unprecedented in the history of Colombia, according to the *Fiscalía*, and the Deputy Prosecutor General has reaffirmed the *Fiscalía's* commitment to making progress on the backlog. Nevertheless, USDOL remains concerned about the length of time it takes to undertake prosecutions. USDOL also acknowledges the prioritization of recent cases of killings of unionists and social activists under the *Fiscalía's* "Plan Esperanza" but encourages the GOC to adopt a system for prioritizing cases of threats against unionists.

USDOL is committed to engaging with the GOC through consultations of the contact points to identify a path forward on these issues and to support further progress by the GOC. USDOL, together with the Office of the U.S. Trade Representative and the U.S. Department of State, will continue to monitor and assess progress by the GOC in addressing these issues over the next year.