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# 1<sup>st</sup> Post-accession report to the *Employment, Labour and Social Affairs Committee of the OECD*





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## I. EXECUTIVE SUMMARY

Since the beginning of Colombia's entry into the OECD, the Colombian Ministry of Labour has strengthened its actions and developed policies and strategies for the benefit of Colombian workers. This has implied a joint work between different government entities, to respond to the recommendations given by the Employment, Labour and Social Affairs Committee (ELSAC) in labour matters. Now, this report presents the specific progresses of Colombia in each of the post-accession recommendations on labour issues, which were delivered by ELSAC to the Ministry of Labour of Colombia in the formal opinion. The information provided in the present report is part of the inter-institutional effort and joint work with the Prosecutor General's Office of the Nation, the Ministry of the Interior, the Ministry of Defense, the Ministry of Commerce, Industry and Tourism, the Ministry of Health and Social Protection, the National Protection Unit and the entities attached to the Ministry of Labor.

### 1. Labour informality and subcontracting.

This first recommendation will present Colombia's actions to reduce labour informality in line with the indications of the ELSAC accession report, understanding the respect for labour rights as a critical component of formalisation. Colombia has seen a reduction in informality since the beginning of the OECD accession process, passing from 60.6% in 2017 to 59.9% in 2020, this figure improved substantially considering that it stood at 68.5% at the beginning of the decade. The preliminary figure for 2020 shows a reduction compared to 2019, however, it is worth mentioning that, with the pandemic situation, this is a relative improvement due to the drop in the number of informally employed people. In other words, the labour market is improving in terms of formality due to a large number of informal workers leaving the labour market in greater proportion than the fall in formal employment.

In addition, progress has been made in the construction of the one-stop-shop for the registration of companies (VUE by its acronym in Spanish) to facilitate the creation of formal companies. 84,724 new companies have been created since its launch in 2018 until September 2020. Similarly, the process of creating the Single Affiliation System (*Mi Seguridad Social*) is being consolidated in order to unify the affiliation portal for all social security systems. As of February 2021, it has 3,515,156 registered users. This report will present the training campaigns on labour rights of the National Labour Formalisation Network, during which more than 82,913 people have been impacted between 2016-2020 through direct training and more than 4,389,342 people have been made aware of their labour rights, through the Network's media strategy between 2019 and 2020. Finally, the progress and monitoring of labour formalisation agreements, the effectiveness and progress in the collection of fines and the fight against forms of subcontracting that violate labour rights will be presented.

### 2. Labour law enforcement.

This section will address the efforts made by the Ministry of Labour aimed at guaranteeing adequate resources, capacities, and instruments to strengthen the Labour Inspection System. It will also be stated the progress and achievements in the allocation of resources to facilitate the performance of labour inspectors, achieving an allocation of 5.8 billion Colombian pesos for the year 2020. It is also mentioned the ongoing training and qualification processes that have been given to officials who are part of the missionary process of Inspection, Surveillance and Control at work (IVC, by its acronym in Spanish) presenting a sustained increase in the number of training quotas from 2017 to 2019 with the incorporation of 6,726 virtual quotas for this last period. Similarly, the launch of the Virtual Campus



stands out, for which in 2019 an item of \$ 1,150,000,000 of Colombian pesos was appropriated, with which new virtual training courses were financed for both 2019 and 2020. Likewise, highlights the permanent hiring for labour inspectors within the framework of the administrative career contest carried out through the National Civil Service Commission, achieving by December 2020, 744 appointments in probationary period and the possession of 635 applicants.

On the other hand, the achievements in linking the SENA fine collection system with the IVC Information System of the Ministry of Labour (SISINFO) are mentioned, whose integration model is at 100%, as well as the creation of the Fund for the Strengthening of Labour Inspection, Surveillance and Control and Social Security (FIVICOT). In addition, it is highlighted the implementation process of the Mobile Labour Inspection, whose number of Inspection Brigades in 2019 grew by 45% compared to 2018. Also, the development of a national inspection strategy through Annual Inspection Plans aiming at increasing inspections and investigations per year and its effectiveness. Regarding this last point, it is worth highlighting the impact of the Covid-19 emergency and the suspension of procedural terms on the effectiveness of the plan established for 2020, whose impact will be expanded in the development of the report.

### **3. Collective Bargaining.**

Colombia recognises the importance of the exercise of social dialogue as a mechanism for discussion and agreement among the actors in the world of work. In this sense, and following the recommendations given by ELSAC, the Government has worked actively to guarantee the right of association of workers and to allow them to act through their organisations to improve their working conditions through collective bargaining processes. This section will present the evolution of collective agreements in the public and private sector. It has increased between 2017 and 2019 in the private sector, but in 2020 showed a decrease due to the Covid-19 pandemic.

The actions and measures taken to strengthen social dialogue in the country, to promote collective bargaining and to monitor the use of legally authorised but sometimes misused schemes such as "collective agreements" and "union contracts", will be presented. Thanks to the measures taken by the Ministry of Labour, Collective Agreements were reduced by 44%, from 253 deposits in 2016 to 90 in December 2020. Additionally, the effectiveness of the Special Commission for the Treatment of Disputes before the ILO (CETCOIT), which reaches agreements between the parties in at least 70% of cases, will also be presented. Finally, the regulations and jurisprudence that allow the free exercise of trade union activity and guarantee their autonomy will be presented. It is also important to highlight the collective bargaining in the public sector with all the country's central organisations, which has benefited nearly 1,200,000 public servants.

### **4. Crimes against trade unionist.**

Finally, in the fourth point, we will point out to the committee the important progress in the fight against impunity; today the country has a total of more than 960 convictions, and the number of acts of violence against trade unionists has been reduced. Since 2001 and until 2020, the reduction of homicides of trade unionists has been 94%, going from 205 cases in 2001 to 14 cases in 2020. However, we would like to reiterate that we reject all acts of violence against union leaders and that we will continue to fight until the number is zero.



Additionally, during the year 2020, the two specialized circuits jointly issued 70 sentences, contributing to the progress and clarification of the investigations of the acts committed against trade unionists.

Mention will also be made of the strategies for the investigation and prosecution of crimes against human rights defenders and the strategy for the investigation and prosecution of crimes against union members that the Attorney General's Office has been developing. Precisely, and in reference to the crime contemplated in Art. 200, the FGN in the period between 2017 and 2020, received a total of 865 complaints for the crime of violation of the rights of assembly and association, 714 cases have been terminated and 151 are active, that is, only 17.45%, of the cases are still active. In relation to homicides against trade unionists and progress in investigative matters, it is important to mention that, during these four years, in addition to the 11 sentences handed down for events that occurred during the period 2017-2020, the judges of the Republic have issued 131 sentences for homicides that occurred prior to the baseline established in the formal opinion, that is, events that occurred before 2017.

Finally, the strengthening of the protection program for union members and leaders is mentioned, as well as the role of the Mobile Anti-Riot Squad (ESMAD) and the excessive use of force. A greater participation of female personnel within the ESMAD schemes is highlighted, as well as a significant reduction in the number of interventions in labour demonstrations compared to the 2018 report (26.9 in 2018 versus 13.10 in 2019).

Although the fight against union violence continues to be a great challenge, the data contained herein demonstrate Colombia's firm commitment to this issue, achieving significant progress in recent years for the protection of union leaders and closing the impunity gap.

## II. RECOMENDATIONS

This report aims to present the actions, regulations and strategies that the Government of Colombia has carried out to comply with the recommendations given by the Labour, Employment and Social Affairs Committee (ELSAC) of the OECD, during the entrance process of the country into the organization. In accordance with the formal opinion issued by ELSAC, the actions in each of the recommendations are described below:

### 1. Labour informality and subcontracting:

Considering the need of the country to have an offer of strategies and policy instruments, the government established the “Employment Mission”. Its objective is to improve the performance of the labour market in the short, medium and long term in a financially and legally viable approach. The Mission must meet at least the following four specific objectives:

- Comprehensively understand the behaviour of the various phenomena and indicators that have direct and indirect impact on the Colombian labour market, emphasizing the last 10 years.
- Comprehensively diagnose and analyse the different public policies (norms, programs) and the institutions that have affected the labour market since the 1990s.
- Propose strategies and policy instruments that are implementable.
- Design mechanisms for monitoring the recommendations, strategies, as well as the legal and policy instruments proposed in the Mission.

This route demands an offer of strategies and instruments that make it possible to resolve the challenges associated with the sustained increase in the unemployment rate since 2015 and the prevalence of labour informality rates above 60%, added to the challenges resulted from the COVID-19 crisis. It must also respond to the phenomena of Venezuelan migration, new forms of hiring, the emergence of new economic sectors, among others.

There are four reasons identified for organising an Employment Mission to address labour issues. These are: a) recent deterioration of the main labour indicators that will be accentuated by the COVID-19 shock, a deterioration that may be structural; b) the phenomenon of Venezuelan immigration in recent years; c) changes in the structure of employment and the emergence of new sectors and forms of contracting and d) the lack of an overall balance of public interventions in labour issues and new institutions.

Initially, the mission proposes as its analytical structure an approach based on five elements: a) training for work and human development; b) labour insertion, employment management and productivity; c) regulatory framework and labour institutions; d) population and regional aspects; and e) macroeconomic aspects of the labour market. It is important to note that the number and scope of the themes may change as the Mission contemplates participatory spaces with various actors to define the final themes or problems to be developed.

### Logistical and Organisational Aspects of the Mission

The Mission started on the 30<sup>th</sup> of July 2020 and will have a duration of one or one and a half year. Given the current situation and the need to obtain results in the short term, it is proposed that the products be developed in a step-by-step manner.

It was proposed that the mission should have an institutional architecture that meets the following criteria to guarantee the fulfilment of the mission's objectives, its legitimacy and the quality of its recommendations: 1) *technical quality*: recommendations that follow the mission's objectives and that are realistic and feasible; always adjusted to the expenditure framework and regulations; 2) *impartiality*: guarantee the independence of criteria of experts and third parties that participate in the mission and the impartiality of the mission's results; 3) *participation and consensus*: an architecture that guarantees the socialisation and participation of the different actors involved. To this end, the following spaces and the participation of the following actors are proposed:



1. Head of Mission: he/she will be mainly in charge of leading the Council of Advisors and the thematic roundtables and will be the one to give direction to the themes of these roundtables and of the mission in general. As head of the Council, he/she will be responsible for proposing the discussion of issues, settling discussions, organising research, etc.
2. Advisory Council (5 independent national and international labour market experts, Presidency of the Republic, Ministry of Labour, Trade unions, business associations, Congressmen, etc.): will be responsible mainly for endorsing and providing feedback on the recommendations that emerge from the thematic roundtables. The political role of this space is important because the involvement of key stakeholders is necessary to legitimise the mission's recommendations. Some relevant actors are the following:
  - The Presidency of the Republic: its participation guarantees the commitment of the sectors, while it can provide support in the subsequent follow-up to the recommendations. For the Technical Secretariat, this support will be important in order to comply with timetables, encourage the commitment of all actors and bring successful outcomes.
  - Ministry of Labour: its representatives will participate in all spaces, including the Council of Advisors. The Ministry of Labour, The Planning Department and the Presidency are the only entities that have a permanent seat in this Council.
  - Trade unions, business associations, and other relevant third parties: these actors are relevant because they provide an outsider vision and give legitimacy to the recommendations. Their constant participation strengthens the legitimacy of the Mission; this is important considering the political scenario (pre-COVID) of protest in the national territory. The option of having a sub-commission of the Permanent Dialogue Commission that gives greater legitimacy to the participation of trade unions and business associations is proposed.
  - Members of Congress: their participation is strategic in several aspects. Their feedback is useful and the participation of Congressmen/Congresswomen from the beginning can contribute to the future legislative reforms that will have to cover thereafter.
3. Technical Secretariat: The National Planning Department (DNP) and the Ministry of Labour will exercise it. It will be in charge of defining the rules of the game, convening the sessions of the Council of Advisors and expert roundtables, preparing minutes and reports, administering the contracts of experts and consultants, managing logistical aspects, handling cooperation resources and donations, coordinating the technical directorates within the DNP and government sectors that participate in the mission, defining the mission's timetable and following up on its development and recommendations.
4. Expert roundtables by theme: an expert will lead each roundtable and its outcomes will be built among the actors of the roundtable (DNP, Ministry of Labour, universities, think tanks, etc.). The DNP and the Ministry of Labour will participate in all the roundtables, articulating sectors, constructing the documents together with the other actors and guaranteeing the viability of the recommendations. Each lead expert will define in concert with the Technical Secretariat the specific conformation of the roundtable. Some relevant actors are the following:
  - DNP: will oversee the articulation of the work with the sectors and participating in the elaboration of the documents, following the line of the roundtable leader.



- Ministry of Labour: will participate in all the roundtables, supporting, together with the DNP, the elaboration of these recommendation documents.
- Universities, think tanks, international organisations and consultants: will support the production of documents and recommendations as defined at each roundtable.

### Products of the Employment Mission

1. *General background papers (5-6)*: at least one paper per thematic roundtable leading by the expert leader of the roundtable. These documents should have an academic component but be oriented towards public policy recommendations. They are the general diagnostics of each thematic roundtable.
2. *Jobs diagnostics (World Bank)*: this product is a comprehensive diagnosis of the labour issue in the country. It will be an input for the preparation of background papers and policy briefs.

10 policy briefs: based on the background papers, the jobs diagnostic and other consultancies, policy recommendations will be elaborated in these policy briefs. Their objective will be to serve as the main input for the different policy instruments that will follow (CONPES document, legal reforms). All recommendations in these documents must have a financial and legal feasibility.

For further information regarding the progresses of the Employment mission, please consult the following link: <https://www.misionempleo.gov.co/>

### Continue tackling labour informality by:

#### 1.1. Implementing a one-stop-shop for the registration of companies that unifies procedures for the registration of new companies (Ventanilla Única Empresarial);

The National Government has continued with actions to tackle labour informality in the country, and together with the Ministry of Trade, Industry and Tourism, has made progress in the implementation of the one-stop-shop (VUE) in accordance with the recommendation of the OECD. This long-term public-private articulation strategy promotes and facilitates business activity in the country by automating procedures through a web platform. The VUE web platform, available at [www.vue.gov.co](http://www.vue.gov.co), channels commercial and tax procedures and will integrate social security procedures for company openings, and will progressively incorporate different procedures related to business activity.

The VUE was created through Decree 1875 of 17 November 2017. Since 2018, it has been operating with the Bogota Chamber of Commerce and since 2019 with the chambers of commerce of Armenia, Manizales, Pereira and Valledupar, allowing the virtual creation of companies in the modalities of natural person registration and Simplified Joint Stock Company (SAS).

As of September 30<sup>th</sup> 2020, and since its launch on the 26<sup>th</sup> June 2018, **84,724** new companies have been created through the VUE platform.

The services currently available at the VUE are:

- Obtaining the Commercial Registry (natural person and SAS).

- i) Integration of the departmental registration tax in the commercial registration process.
  - ii) Obtaining the Unique Tax Registry (DIAN).
  - iii) Tax Information Register of the District RIT (tax office).
  - iv) Facilitates social security procedures (employer health registration, Labour Risks affiliation, report of new employment relationship starts through My Social Security portal).
  - v) Consultation of ISIC Code, which is a uniform classification of economic activities by production processes.
- “Preliquidador”, with this tool you can find out the approximate costs to be considered when starting your company registration process.
  - Consultation of land use.
  - Consultation of Security and Coexistence Code fines, to establish whether or not the entrepreneur can move forward in the process of creating a company, as in the case of fines in arrears for more than six months, he/she will not be able to do so.
  - Consultation of brand, name and type of company.

### 1. Expansion Plan of the VUE

The roadmap established to advance in the expansion plan of the VUE, focuses on two work axes, in accordance with the objectives outlined in the Conpes 3956 about Business Formalisation Policy and the National Development Plan 2018 - 2022: (i) Regional expansion of the VUE to more cities and (ii) Expansion of services.

- i) **Regional expansion:** This includes the linking of the country's 57 chambers of commerce to the VUE during the period 2018-2022, and the business creation goals through the VUE:

Year	Chambers of Commerce to be linked to the VUE*
2019	5
2020	11
2021	37
2022	57

\* Cumulative goals

In 2020, 6 new cities were linked to the operation of the One-Stop Business Shop and thus achieve the 11 chambers goal, planned for this period. Likewise, the Ministry of Commerce is working on the preparation of 26 chambers of commerce to achieve the linkage goal for 2021.

#### ii) Expansion Services:

##### a. Integration of Social Security Entities - ESS:

In March 2020, the memorandum of understanding (MoU) between the Ministry of Trade, Industry and Tourism, the Ministry of Health and Social Protection and the Ministry of Labour was updated. This MoU defines the work plan for



the virtualisation and integration of all the social security subsystems in a single portal ([www.miseguridadsocial.gov.co](http://www.miseguridadsocial.gov.co)), which is interoperable with the VUE. Currently, the social security procedures related to health and Labour Risks are integrated. By 2021, the registration and affiliation procedures before pensions and family compensation funds are expected to be enabled.

**b. Other procedures and services related to business activity:**

- **Interoperability with DIAN:** The Government is working to implement a tool that will help entrepreneurs to have information about their tax responsibilities and facilitate the issuance of the Single Tax Register (RUT), which is administered by the National Tax and Customs Directorate (DIAN) which allows for the identification, location and classification of individuals and entities that are taxpayers filing income tax returns and non-taxpayers filing income and wealth tax returns.
- **Inventory of procedures:** With the aim of providing entrepreneurs with information on the formalities and requirements for the development of their formal economic activity, the Ministry of Commerce, Industry and Tourism, has been carrying out an inventory of formalities for the creation and operation of companies for prioritised economic sectors, based on the economic activities according to the ISIC classification. To date, there is an inventory of procedures for 11 cities: Bogotá, Ibagué, Dosquebradas, Pereira, Armenia, Ipiales, Valledupar, Santa Marta, Buga, Palmira and Manizales.

In 2020, progress was made in the validation of the information gathered and the technological developments required to visualise the inventory of procedures from the official state portals (SUIT and GOV.CO). This is a work plan coordinated between the entities involved (Ministry of Commerce, Industry and Tourism, Administrative Department of the Public Service, and the Ministry of Information and Communications Technology), which is scheduled to be completed by 2021, in accordance with the programming of the Conpes. The integration of additional formalities/procedures related to business activity, especially those associated with operation and closure, is also envisaged.

**1.2. Designing and implementing a single affiliation system for the different social security systems (including health, pensions, family subsidies and accident insurance).**

In response to the need to implement technological tools to make it easier for citizens to enrol in the General Comprehensive Social Security System and for affiliates to report their updates, the Ministry of Labour is working jointly with the Ministry of Health and Social Protection to link Pensions and Family Subsidies to the Transactional Affiliation System (SAT), a portal created for these purposes. This software is especially aimed at empowering citizens in terms of affiliation and management of new developments. It can be accessed through: [www.miseguridadsocial.gov.co](http://www.miseguridadsocial.gov.co), and will integrate the different social security systems gradually, with their respective components. As of February 2021, this system has 3,515,156 registered users.

The strategy aims to comply with the strategic lines of government in a digital transformation of the country, articulated with the lines set out in the Conpes 3856 of 8 January 2019. It was proposed as an obligation of the National Government to reduce to zero the indirect costs of the formalisation requirements that allow the employer to



register with the social security entities and be able to enrol, transfer and carry out other transactions related to the social security of their employees through the Single Affiliation Portal.

The regulations that support the development and implementation of the Transactional Affiliation System - SAT is Decree 780 of 2016, Sole Regulatory Decree of the Health and Social Protection Sector, specifically in Title 2 of Part 1 of Book 2 of Decree 780 of 2016, and Decree 1818 of 2019, amending Decree 780 of 2016, about the inclusion in the SAT of the General Pension and the Family Subsidy System. The progress in the analysis, development and implementation in the SAT of systems such as health, labour risks, family subsidy and pensions to date is as follows:

### Health:

The Health system allows the citizen who is a contributor or head of household to carry out the novelties of inclusion of beneficiaries, inclusion/exclusion of partner or spouse, transfer, acquisition of payment capacity, mobility to the subsidised regime, loss of payment capacity, report of hospitalisation, among others. In addition, from 2020 onwards the Health Institutions - IPS and territorial entities can automatically affiliate minors, new-borns from the day they are born and/or any person who do not have social security in health or is in a withdrawn state and meets the conditions for affiliation to any scheme. There are also several queries to other information systems, including the Integrated Contribution Settlement Form (Planilla Integrada de Liquidación de Aportes - PILA), Family Compensation Funds (Cajas de Compensación Familiar -CCF), Pension, Individual Health Service Provision Records (Registros Individuales de Prestación de Servicios de Salud -RIPS), among others.

The regulations established for the development of the SAT are Decree 2353 of 2015, Decree 780 of 2016, Resolution 768 of 2018, Decree 064 of 2020 and Resolution 1128 of 2020.

### Accident Insurance, only the subject of Occupational Risks

The transactional affiliation system for occupational risks currently has the information provided by the Occupational Risk Management Entities (ARL), of the data of both the employers and the dependent workers.

To date, the following new features are in operation: Employer Affiliation to an ARL, Consultation of companies transferred from one ARL to another, Consultation of company structure, beginning of an employment relationship or training practice, Modification of contribution base income, Work Centre News (Creation, Inactivation and Updating), Headquarters News (Creation, Inactivation and Updating), Reclassification of the risk of a work centre, Report of arrears in the payment of contributions to the General System of Labour Risks, payment agreements and breach of payment agreement, retraction of the employer's transfer from one ARL to another, Termination of an employment relationship or training practice, Transfer of the ARL Employer, Variation of the work centre, among others.

Among the rules established for Occupational Risks are Resolutions 2389 of 2019, 2945 of 2019 and 906 of 2020.

### Family Subsidy

The Family Subsidy System was included in the SAT through Resolution 1126 of 2020 in which the general conditions for its operation in the SAT were defined. The resolution was modified by Resolution 025 of 2021; and the draft Resolution "Whereby the guidelines are defined for the incorporation of the information and interoperability of the Family Subsidy System in the SAT regarding the roles of employer legal entity and employer natural person" is currently being reviewed by the Legal Directorate.



The process of incorporating the information into the SAT, with the implementation of test pilots, is expected to begin in the first half of 2021 and the implementation of the functionalities, gradually, from the second half of 2021.

## Pensions

For the incorporation of the General Pension System in the SAT, Resolution 1734 of 2020 was issued and a draft amendment to Article 9 of the aforementioned resolution is being processed regarding the deadline for the implementation of the functionalities in the SAT. Currently, the draft resolution *"whereby the procedure is established for the incorporation and implementation of the General Pension System in the Transactional Affiliation System – SAT, and its interoperability with the Pension Administrators"* is being reviewed.

During the first half of the year 2021, will be carried out the process of validation and purging of the information on members of the General Pension System contained in the Single Registry of Members - RUAF for its incorporation in the SAT. From the second half of the year 2021, the functionalities will gradually come into operation, starting with the functionality of "Affiliation to the General Pension System".

As an additional strategy, Decree 1813 of 31 December 2020 updated the regulations in order to make way for new technologies and streamline enrolment in such a way that interested parties (members and potential members) no longer have to travel to the different service centres, but can do everything from the comfort of their home or office through virtual means.

The Decree includes the provisions relating to the result of the presentation of the form signed physically or electronically, adds the option of information to the potential member, indicating that the minimum advice may be provided in person or virtually, incorporates the possibility of exercising the right of withdrawal by electronic means and defines the procedure for the reporting of information by the Pension Administrators with regard to affiliations or transfers of scheme or administrator. It also enables Colpensiones and the Pension Fund Administrators to upload their procedures on their entity's web pages. These affiliation processes, in accordance with the aforementioned Decree, must be endorsed by the Financial Superintendence of Colombia.

### 1.3. Improving the link between what workers and employers are required to contribute to social insurance and the benefits and services they receive in return.

The priority of extending comprehensive social security coverage, both in terms of covered individuals and benefits, was made more acute by the effects of the pandemic. Institutionally, Colombia has made enormous progress by consolidating a universal health care regime that includes a very broad space for the subsidised component, and by creating the scheme of periodic economic benefits (BEPS) to encourage savings with state incentives for informal populations.

The response to the covid-19 pandemic highlighted the need to move in this direction. The government has generated similar subsidies and has implemented the solidarity income programme during the pandemic, which effects will have to be assessed with a comprehensive vision of the most relevant social protection model for the country's present and future conditions.



The national development plan 2018-2022 defined the obligation to expand the coverage of social protection and social security for workers, with the implementation of a Social Protection Floor. It consists of subsidised health affiliation, the linkage to the complementary social service programme of Periodic Economic Benefits (BEPS), and access to inclusive insurance for people who earn less than one (1) Minimum Monthly Wage as a result of their partial dedication to a job or trade or economic activity.

The components of the Social Protection Floor were legally established in Colombia beforehand and had been operating previously. In fact, the affiliation to the subsidised health scheme is one of Colombia's greatest achievements in terms of social inclusion and social policy. However, the coverage of the BEPS has been precarious so far.

Through regulatory decree No. 1174 of 27<sup>th</sup> August 2020, the National Government regulated the provisions of the National Development Plan, Law 1955 of 2019, in terms of the Social Protection Floor, integrating the above-mentioned coverage.

Decree 1174 of 2020 regulates the Social Protection Floor for those people who receive monthly incomes of less than one Minimum Legal Monthly Wage as a result of their partial dedication to a job or trade or economic activity, will now have a social protection mechanism. The Social Protection Floor includes the Subsidised Scheme of the General System of Social Security in Health, the Complementary Social Service of Periodic Economic Benefits (BEPS), as a mechanism of protection in old age, and the Inclusive Insurance. It will cover the worker from the risks derived from the work activity and the illnesses that will be covered by the BEPS. Likewise, dependent workers who join the Social Protection Floor will have access to the Family Subsidy System, once it is regulated.

The mechanism will have mandatory and voluntary affiliates. In the first case, there will be workers and contractors who, as a result of their part-time work, receive an income of less than one (1) minimum wage monthly salary per month. In the second case, there are those who have no employment or contractual relationship and receive an income of less than one (1) minimum wage monthly salary per month, including producers in the agricultural and livestock sector.

The contribution must be made monthly by the employer or contractor, as regulated by law, and may be made at any time during the month in which the activity is carried out. It is necessary for the contribution to be monthly, because the Basic Contribution Income, IBC, is calculated on a monthly basis and depending on the income, the person must be affiliated to the Social Security System - if he/she earns income equal to or higher than 1 minimum wage monthly salary; or linked to the Social Protection Floor, - if he/she earns less than 1 minimum wage monthly salary- in order to establish the coexistence between the Systems.

The amount to be paid by the employer or contractor shall be equivalent to 15% of the monthly income of the beneficiary in the period in which the contribution is made, which shall be additional to the amount agreed for the development of the activity. The distribution of the contributions of 14 points will be credited to the individual savings account of the BEPS member and the remaining point will be used to pay the Inclusive Insurance.

The Special Administrative Unit for Pension Management and Parafiscal Contributions of the Social Protection (UGPP) will be in charge of monitoring employers who have workers affiliated to the social security system in the contributory regime, and who with the purpose of taking advantage of the reduction of their social security



contributions from one year to the next, worsen the economic conditions of these workers, by implementing artificial acts or businesses or any other irregularity against the General Social Security System.

Most Latin American and Caribbean countries have been affected by the Covid-19 crisis in a context of low potential growth, high inequalities and growing social discontent. To mitigate the crisis, the Colombian government adopted the following measures:

### **Mechanism for the Protection of the Unemployed (MPC):**

It is the subsidy to the unemployed that is granted through the Family Compensation Funds (Cajas de Compensación Familiar). It consists of coverage of social security contributions, access to the monetary transfer granted by the funds and an economic transfer of 2 minimum legal monthly wage<sup>1</sup>, divided into 3 monthly payments. At this stage, 235,872 people benefited with resources amounting to COP \$537,490 million.

For this subsidy, a contribution of COP \$55billion was made by the Nation, in accordance with Decree 553 of 2020, charged to the FOME, which allowed the expansion of coverage of the MPC and its transfers to 21,173 people.

In this sense, the MPC approved monetary transfers for 257,000 people, thereby exhausting the resources available for this economic transfer.

### **Assistance to unemployed people on the waiting list:**

With Decree 801 of 2020, the National Government creates an aid for workers on the waiting list of the MPC, this will allow granting people a transfer of COP\$160.000 (EUR 37<sup>2</sup>) per month, for a maximum of 3 months, COP \$77,088 million were allocated, to benefit 162,602 people.

### **Exceptional withdrawal of severance payments**

Created within the framework of the emergency by Decree 488 of 2020, this measure allows the partial withdrawal of severance payments due to a decrease in income. As of 31 December 2020, it has benefited 395,167 people who have withdrawn COP\$355,821 million, from their severance savings accounts in private entities.

### **Programme of assistance to workers in contractual suspension**

Created by Decree 770 of 2020, it seeks to support, with a solidarity income, workers who are under suspension of their labour contract or on unpaid leave.

The programme provides a direct income to the workers' account, which is granted to dependent workers of Formal Employment Support Programme (PAEF) applicants, with salaries up to four (4) minimum legal monthly wage. They cannot be part of another state programme and have been on contractual suspension or unpaid leave in the months of April, May and June. This income, of COP \$160,000 (EUR 37) per month, will provide support to families who are becoming vulnerable as a result of these circumstances arising from COVID-19.

A total of 233,739 people were identified as beneficiaries of the subsidy. To date, COP \$48,194 million have been disbursed, corresponding to 301,218 transfers made to nearly 197,000 people; 50,498 transfers are pending, corresponding to 36,000 people who must register on the Movii S.A. platform.

<sup>1</sup> The minimum legal monthly wage in Colombia for 2021 es COP 908.526 (EUR 208)

<sup>2</sup> Exchange rate of 22nd February 2020: EUR 1 = COP 4334,31. This exchange rate is applied in all conversions in this document.



MONTH	BENEFICIARIES	SUCCESSFUL TRANSFERS	PENDING TRANSFERS
APRIL	123.027	103.667	19.360
MAY	133.129	114.198	18.931
JUNE	95.560	83.353	12.207
<b>TOTAL</b>	<b>351.716</b>	<b>301.218</b>	<b>50.498</b>

### Colombia Mayor Programme

The government has made nine additional payments to beneficiaries of Colombia Mayor of COP\$80,000 (EUR 18) each, corresponding to the April to December payrolls. Thus, providing a monthly subsidy of COP \$160,000 (EUR 37) in total. On average, 1,669,000 beneficiaries have been assisted per month. The investment made by the National Government through the Emergency Mitigation Fund (FOME), for the delivery of the additional transfer until December, is equivalent to COP \$1.2 billion.

Assistance to older adults on the waiting list: resources amounting to COP \$10,497million were appropriated, the payment process began on the 22<sup>nd</sup> October 2020, and will benefit 27,029 adults over 70 years of age who have not yet entered the Colombia Mayor programme and are registered in the prioritisation lists.

Additionally, through Decree 553 of 2020, it authorised the delivery of two economic transfers of COP\$80,000 (EUR 18) per month to adults over 70 years of age who were on the waiting list of the programme, for the months of October and November. This measure benefited 27,029 older adults with an appropriation of COP\$10,497 million who were permanently admitted to the programme in the month of December 2020 through a Resolution. With an expansion of coverage of the Colombia Mayor programme, it could reach 26,268 older adults who were not beneficiaries of the programme. This means that the programme achieved 100% coverage of older adults over 70 years of age registered in the prioritisation lists.

A relevant aspect requested by the Committee in this recommendation is to ensure that people receive concrete benefits, as is the case with the family compensation funds. As we have explained to the members of the Committee, social security is a compulsory public service, whose direction, coordination and control is the responsibility of the State and is provided by public and private entities.

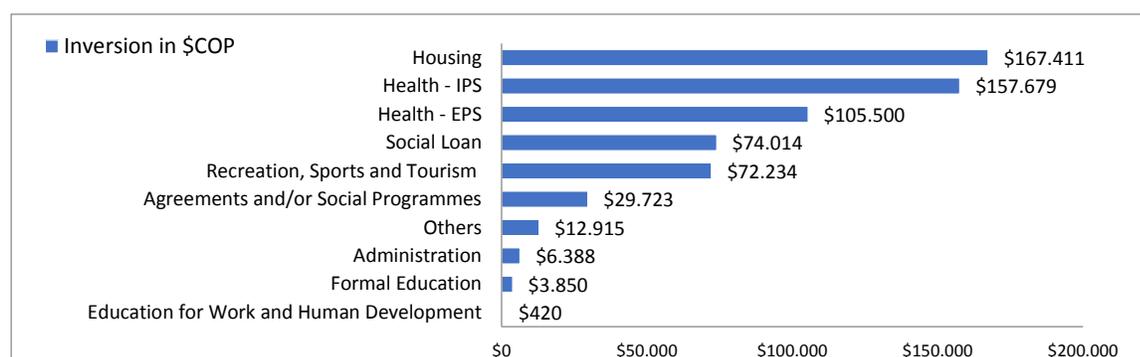
In accordance with Law 100 of 1993, the Comprehensive Social Security System in Colombia is composed by the pension, health, occupational risk and complementary social services systems. In addition to the provisions of Law 100, there are other systems that are part of the Social Security System in Colombia, including: Severance payments (*Cesantías*), Periodic Economic Benefits (BEPS) and Family Allowance.

The Family Subsidy System is the set of institutions, policies and regulations aimed at the comprehensive protection of both the worker and his or her family, from which, through the family compensation funds, social services are recognised for members, such as: recreation, culture, education, health prevention, housing subsidies, credit and protection for the unemployed. From this point of view, the family subsidy is not a salary, but a latent right that is

realised when the worker, for reasons of kinship, cohabitation or economic dependence, enjoys the benefits offered by the institutions responsible for the administration of the family subsidy. The family subsidy is provided to workers in the form of goods, services and monetary aid and is administered by the family compensation funds. Because of its importance, the family allowance is protected by the Constitution, and is considered a social benefit of the first order. For this reason, the family compensation funds play a fundamental role in this system, and in this sense the importance of the Superintendence of Family Subsidies as a body of inspection, surveillance and control of the family compensation funds, organisations and entities that collect and pay the family subsidy is framed, in order to preserve the stability, security and confidence of the family subsidy system so that the social services under its responsibility reach the population of affiliated workers and their families under the principles of efficiency, efficacy, effectiveness and solidarity in the terms indicated in the law (Decree 2595 of 2012, Article 1).

The employer pays 4% of the value of the payroll for each worker to one of the 43 Family Compensation Funds (CCF) chosen by the employer. Employers' contributions are destined to each of the funds and programs of the law and to investment of the social services offered by the savings banks, these benefits are delivered to affiliated workers who earn up to 4 legal minimum wages in force and for each of the people who are in charge, and they are given in money, species and social services such as education, health, housing, recreation, tourism, credits, among others. As of May 30<sup>th</sup>, 2020, the result of the management of the 43 family compensation funds in Colombia for the year 2020 is reflected in:

### Family Compensation Funds Actions



(Source: Superintendency of Family Subsidy, Values in COP)

In 2020, due to the COVID-19 pandemic, the following benefits are granted to people who are part of the family allowance system:

- Aid for unemployed people doubled, going from COP \$430.000.000 pesos invested in 2019 to COP \$884.000.000 for the benefits of the unemployment protection mechanism, benefiting 414.650 people in 2020. This mechanism guarantees the social protection of workers in case of becoming unemployed, maintaining access to health care, savings for pensions, family allowance and access to intermediation services and job training.
- Inspection, surveillance and control processes were strengthened by monitoring investment projects, presented by Family Compensation Funds, for the benefit of the affiliated population with lower incomes.



- Tutorials and interactive guides were created to disseminate the rights of citizens and the obligations of Family Compensation Funds.
- The Family Compensation Funds are active actors that help the less favoured population, implementing the following measures:
  - An economic aid corresponding to two minimum salaries that will be paid in three instalments within three months. In addition to this subsidy, the unemployed person who earned less than four minimum wages will continue to receive the monetary contribution for each of his beneficiaries accredited in the Family Compensation Funds, as well as the payment to social security (health and pensions), during the term of the emergency.
  - The Family Compensation Funds have provided their affiliated workers and contributing companies with soft loans regarding rates and terms, portfolio purchase, interest forgiveness, among other strategies.

#### 1.4. Launching a citizen awareness programme, especially in rural areas, on the importance of formal employment, benefits of social insurance and workers' rights.

Through CONPES 3956 of "Business Formalization Policy", approved on January 8<sup>th</sup>, 2019, three strategies were established to improve the cost-benefit ratio of contributing to formal social security systems:

- Reducing costs for formal companies.
- More effectively support companies in the formalization process.
- Strengthening inspection, surveillance and control actions within the informal sectors of the population.

The Ministry of Labour has two strategies to facilitate labour formalization, the promotion of labour rights and the benefits of social security in Colombia:

**The National Network for Labour Formalization (RNFL)**, by its acronym in Spanish) seeks to consolidate decent work, social security and the development of active employment generation policies, through promotion, training, orientation, support, intervention in affiliation, monitoring and control of projects, plans and activities aimed at the labour formalization of workers in Colombia.

The National Network for Labour Formalization, created by Decree 567 of 2014, carried out the following actions in the period from 2017 to 2020, related to the request for information:

##### Training and / or awareness actions:

**Training:** The training sessions are carried out on issues related to the advantages of labour formalization and social security benefits aimed at the informal employed population, micro-entrepreneurs and entrepreneurs from different territories at the national level and guidance and support in the affiliation of social security to the participants.

Between 2016 and 2018, 38.609 people were trained, during 2019, 11.903 people, and in 2020 a total of 32.401 people were trained in 182 training and awareness days, creating awareness and explaining the rights of workers in sectors and populations with high rates of informality such as self-employed workers such as stationary or street



vendors, recyclers, taxi drivers, merchants, people linked to the beauty sector, artisans, workers and domestic service workers. Likewise, the Commerce, Tourism, Culture, Transportation and Rural sectors have been worked in alliance with other Ministries, such as the Ministry of Commerce, Industry and Tourism, the Ministry Transportation, the Ministry of Environment and Sustainable Development, among others.

The RNFL managed to expand its coverage nationwide, going from 8 territories in 2015 to 32 departments in 2019, and it continued to do so throughout 2020.

**Media strategy:** During 2019 Within the framework of contract No. 369 of 2019, the purpose of which is to “advertise and disseminate in the different mass media, including digital, alternative, outdoor and new media (multiplatform) of a national, regional order, local and community, the promotion campaigns of the offer ”and in coordination with the communications area, it was determined by the Sub-Directorate of Formalization and Protection of Employment to handle the digital pattern and social networks, as well as the national and regional pattern on the radio, as a strategy to improve the coverage of awareness-raising actions regarding job formalization, social security, income generation and entrepreneurship.

As a result of this strategy, the RNFL raised awareness among 2.563.019 people as of December 23<sup>rd</sup>, 2019 in labour rights. Also, taking into account the data obtained through the use of social networks and official channels of the Ministry as well as the radio strategy as of December 31<sup>st</sup> 2020, a total of 4.398.342 people were impacted by the RNFL. It should be noted that radio broadcasting and through social networks is not exclusive for PDET (Development Programs with a Territorial Approach, by its acronym in Spanish) and rural municipalities but applies to all municipalities in the country.

**Progressive Plan Achievements:** Regarding the peace agreements, the Ministry of Labour implemented the Rural Progressive Plan to comply with the commitments, in terms of labour formalization, what was established in the sixth criterion of numeral 1.3.3.5 of the Final Agreement must be taken into account for the Termination of the Conflict and the Construction of a Stable and Lasting Peace, namely:

"Training agricultural workers and companies in matters of labour rights and obligations, and the promotion of a culture of labour formalization."

Therefore, two objectives were established, which are in charge of the Directorate of Fundamental Rights and the Sub-Directorate of Formalization and Protection of Employment.

a) To make aware and train agricultural workers and companies in matters of fundamental labour rights and obligations with a decent work approach.

b) To promote the culture of labour formalization in the rural sector.

This last objective has been consolidated through the National Labour Formalization Network, a national articulation strategy that promotes decent work and should cover the 170 PDET municipalities, in which at least one training and / or awareness programme has been carried out with their respective attendance record, with the aim of increasing the coverage of promotion and training in labour formalization and social security issues and that the population in these municipalities, workers and companies, have knowledge of their rights and duties in labour matters, the risks of the lack of social insurance and access to different programs in favour of labour formalization.



Of which, 68 PDET and rural municipalities have been reached between the years 2016 to 2018, in 2019 six PDET municipalities were met out of the ten goal for 2019 and during 2020 1.714 people were trained, reaching ten municipalities and two PDET areas such as Urabá Antioqueño and Montes de María.

Likewise, the Ministry of Labour is carrying out important awareness campaigns for the implementation of Decree 1174 of August 27, 2020, so that those who earn less than a minimum wage can have subsidized health affiliation, linking to the program called Periodic Economic Benefits (BEPS, by its acronym in Spanish) which includes old-age savings and the right to inclusive insurance for professional risks.

### **Protect labour rights of subcontracted workers by:**

#### **1.5. 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.**

As already explained to the ELSA Committee regarding subcontracting, in Colombia, the legal framework that is considered in all the actions of the Ministry of Labour mainly obeys what is contemplated in Law 1429 of 2010 “By which the Law is issued of Formalization and Employment Generation” and Law 50 of 1990 article 71 of Law 50 of 1990 and Decree 4369 of 2006 today incorporated into the Sole Regulatory Decree No. 1072 of 2015. It is important to note that or, this activity is not allowed to any natural or legal person that is not duly accredited as a Temporary Services Company through an authorization granted by this Ministry and will only be advanced in cases where the Law has authorized it.

The intermediation service in the management and placement of employment contained in Article 95 of Law 50 of 1990 and developed through Article 2.2.6.1.2.17 of Decree 1072 of 2015, whose objective is to register applicants and offerors of the hand of work and vacancies, do occupational orientation, pre-select and refer the bidders to the labour applicants and thus generate a working relationship with the third party that hires the service, without the intermediary acquiring any labour responsibility. The companies that provide this type of service must comply with the provisions of the legal and regulatory standards on the matter. This service is currently provided by public and private employment management and placement agencies and those who are not accredited as such violate the Law. In any case, the agency does not have the quality of an employer, since said quality will be held by the applicant from workforce.

Regarding what was indicated in front of the Associated Work Cooperatives, the regulatory Decree No. 2025 of 2011 was issued, said decree by means of Sentence No. 11001-03-25-000-2011-00390-00 of February 19, 2018 were declared Articles 2, first and third subparagraphs of articles 4, 5 9 and 10 are null and void, such a situation does not prevent the proper execution of the Labour Inspection in matters of labour intermediation. Regarding Decree 583 of 2016, which addressed the figure of labour outsourcing, through ruling No. 11001-03-25-000-2016-00485-00 of July 6, 2017, numerals 4 and 6 were declared null. Article 1 °. In this sense, the National Government decides, by Decree 683 of April 18, 2018, to repeal Decree 583 of 2016.



Under the above circumstances, on May 9th, 2018, Resolution 2021 of 2018 is issued, which establishes guidelines on Inspection, Surveillance and Control in labour intermediation processes in light of article 63 of Law 1429 of 2010 and other regulations previously mentioned. This resolution since its issuance has allowed Colombia to have a unity of matter against the concept of labour intermediation between all tripartite actors and has allowed the effective development of Labour Inspection processes in matters of Labour Intermediation, both in the case of Cooperatives of Associated Labour, Union Contracts and other forms such as Simplified Corporations.

On the other hand, the figure of Labour Formalization Agreements continues to be developed, as a tool to promote labour formality and normalize the labour relations of those who may be affected by anomalous situations.

### **1.6. Ensuring investigations of all abusive subcontracting, especially in rural areas, and publishing on an ongoing basis notification of complaints, investigations, and outcomes.**

The Ministry of Labour, through the Directorate of Inspection, Surveillance, Control and Territorial Management, carries out the corresponding investigations through its Territorial Directorates in order to protect the rights of workers and the Labour Inspectors have been trained to conduct such investigations properly.

In order to ensure that all complaints received regarding the issue of abusive subcontracting are advanced correctly, taking into account the different parameters established by Colombian Laws, the Ministry of Labour initially issued Resolution 5670 of December 29th, 2016, *“By which guidelines are established regarding the Inspection, Surveillance and Control that is carried out against the content of Articles 7 4 of Law 1753 of 2015 and 63 of Law 1429 of 2010, as well as its Regulatory Decrees”*, through of which hermeneutical guidelines were established, by the central level of the Ministry of Labour for the application of labour standards that guide labour inspection in Colombia, which is exercised by the Directorate of Inspection, Surveillance, Control and Territorial Management of this Ministry, through the Territorial Labour Directorates, the Special Investigations Unit and therefore, all the Labour inspectors and other officials that comprise them, in order to harmonize legal criteria and guarantee the rights of workers in Colombia.

Subsequently, and given certain regulatory changes presented, the Ministry of Labour issued Resolution 2021 of 2018, which in the same way, establishes guidelines on Inspection, Surveillance and Control in labour intermediation processes in light of article 63 of Law 1429 2010 and other regulations previously mentioned. Said resolution since its issuance has allowed Colombia to have a unity of matter against the concept of labour intermediation between all tripartite actors and has allowed the effective development of Labour Inspection processes in matters of Labour Intermediation, both in the case of Cooperatives of Associated Labour, Union Contracts and other forms such as Simplified Corporations. This Resolution remains in force as of the date of this report.

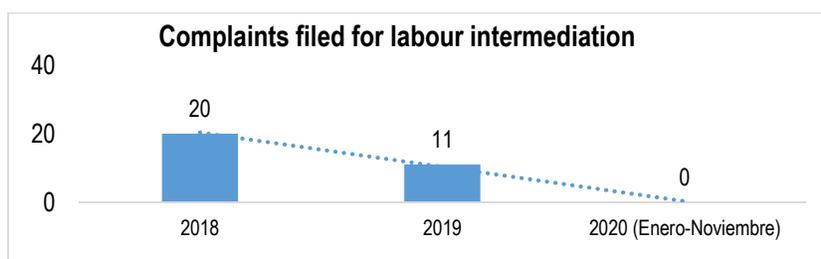
The regulatory changes that led to this update in the guidelines were mainly generated by Judgment No. 11001-03-25-000-2011-00390-00 of February 19th, 2018, which declared articles 2, first and third paragraph of the Article 4, 5, 9 and 10, of Decree 2025 of 2010 and Judgment No. 11001-03-25-000-2016-00485-00 of July 6th, 2017, which declared the 4th and 6th numerals of Article 1 invalid of Decree 583 of 2016, reason that led the National Government to decide, through Decree 683 of April 18, 2018, to repeal Decree 583 of 2016.

The importance of this Resolution of guidelines lies in the clarity that it allows you to obtain from the Labour and Social Security Inspector regarding the matter to be investigated, since it is precise when we are faced with a situation of authorized labour intermediation, when a situation of illegal labour intermediation (abusive

subcontracting), also establishes how the figure of outsourcing or subcontracting is conceptualized in Colombia, and points out the difference between the indicated figures, by determining that “*outsourcing and labour intermediation are totally different figures , but in the execution of both, the constitutional, legal and benefits rights enshrined in the current labour regulations of the workers must always be guaranteed. In outsourcing, goods and services are provided to a third party, but not personnel. In Labour Intermediation, personnel are supplied through companies authorized for this purpose and in specific circumstances that the Law has established.*”

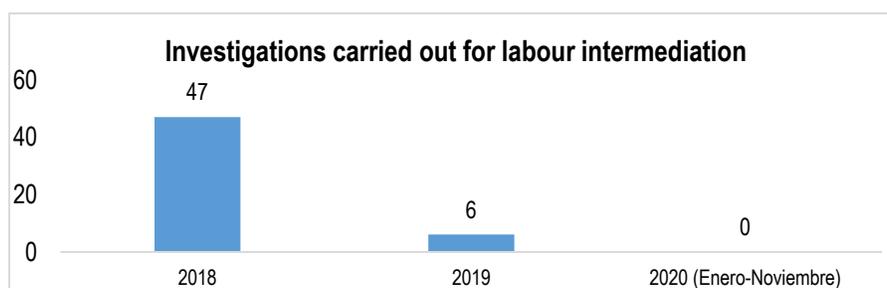
In addition, the guidelines establish the step by step that the Labour Inspector must carry out to identify in which situations an illegal Labour Intermediation actually occurs, the procedure to be followed and the types of sanctions to which those responsible for committing such infraction will be credited.

Thanks to the actions carried out by the Ministry of Labour, especially in the years 2015 - 2017, the problem associated with the misuse of these figures has notably decreased in our country, without this implying that it has effectively been eradicated in its entirety and that no complaints have yet been received regarding this matter. But evidently in the last three years, the number of complaints received decreased notably as seen in the following chart:



Source: Direction of Inspection, Surveillance and Control

Even so, it is important that the complaints that are required are not necessarily the only ones that are brought forward with respect to the figures, because the analysis made of them may result in an administrative sanctioning process, or archived, or failing that, the authority may informally order the initiation of such procedures, as seen in the following chart:



Source: Direction of Inspection, Surveillance and Control

It is important to mention that the results of the sanctions for this issue will be discussed in the next point of this report.

Likewise, the strategies associated with the approach to rurality by the Labour Inspection are explained in greater detail at a later point.

Finally, with regard to the dissemination of the advances in the investigations initiated at the national level, the Ministry of Labour, through the Directorate of Inspection, Surveillance and Control, has been issuing a quarterly bulletin in which labour statistics are evidenced and the data disaggregated by sector and where the actions and results of the investigations carried out by the improper or illegal use of Labour Intermediation are also detailed.

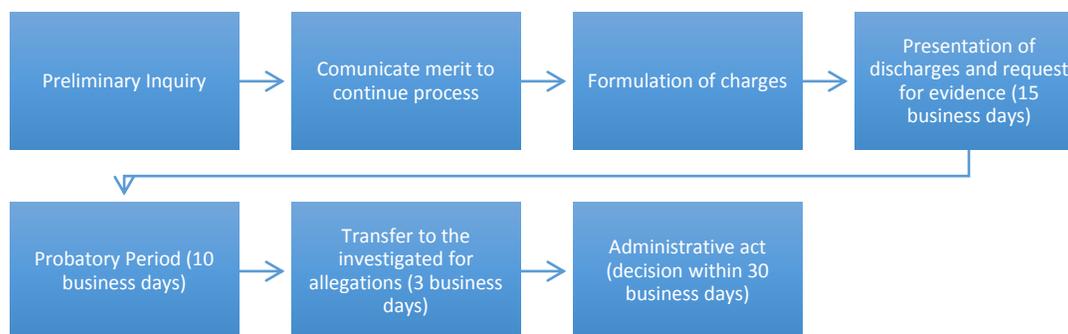
The first statistical bulletin was published on October 10th, 2017 and since that date it has been published periodically. All statistical bulletins issued to date have been arranged on the Entity's website on the page, through the following link:

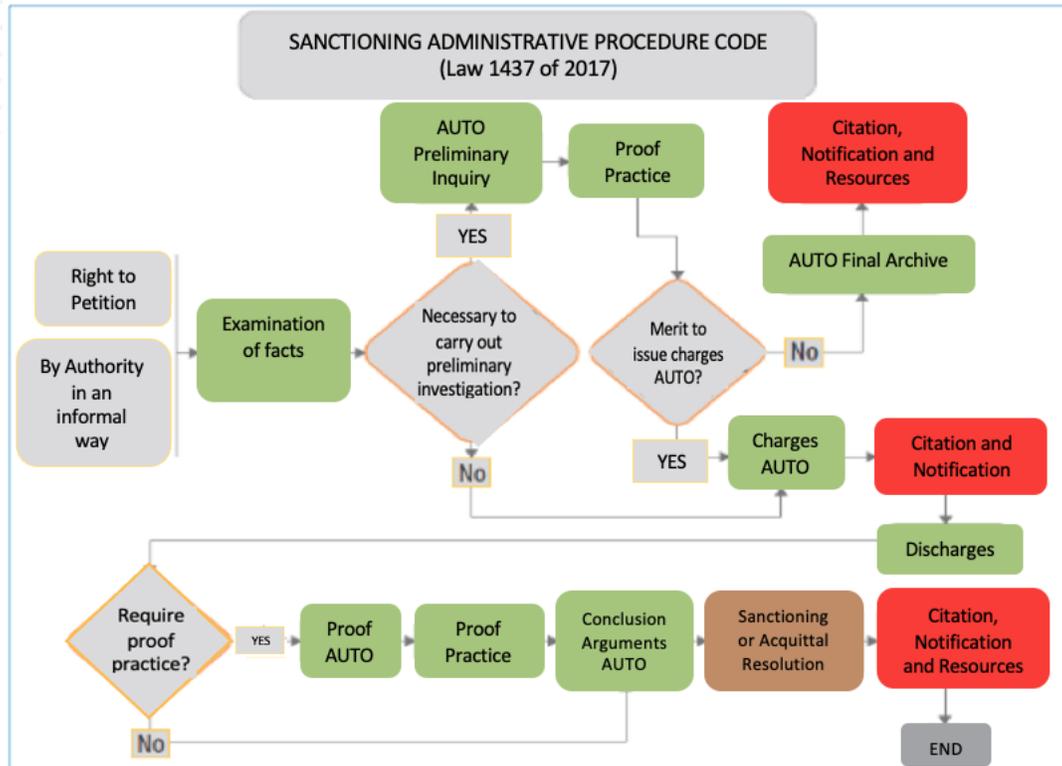
<http://www.mintrabajo.gov.co/web/quest/relaciones-laborales/inspeccion-vigilancia-y-control/inspectores-regionales>

### 1.7. Resolving existing investigations regarding abusive subcontracting in a timely manner, imposing fines where appropriate and publishing the results on an ongoing basis.

It is important to point out that the administrative actions carried out by the Labour Inspection, regardless of the matter or infraction they deal with, are carried out following the same procedure regulated by the Law, in particular by the Code of Administrative Procedure and the Administrative Litigation - Law 1437 of 2011 - and Law 1610 of 2013, Labour Inspection Law.

The advanced procedure is summarized for better compression in the following two charts:

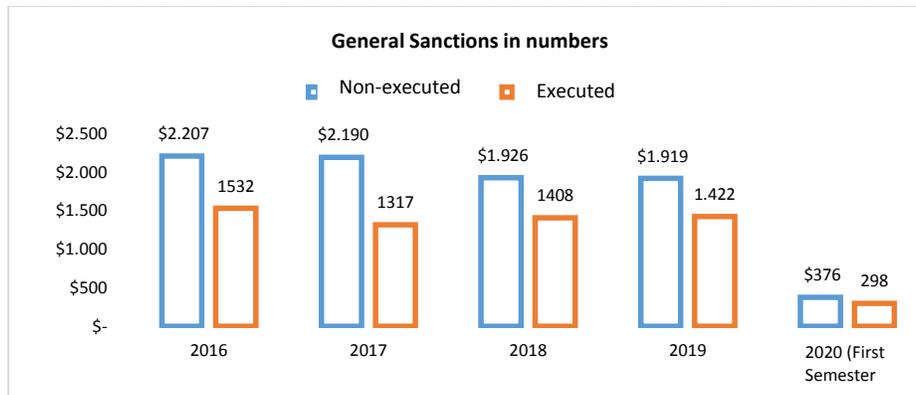




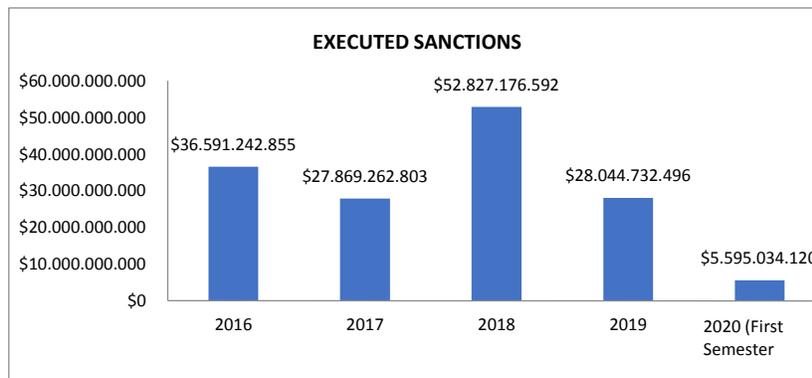
In any case, the Labour Inspection has a strong commitment to comply with the terms indicated by Colombian regulations regarding its administrative procedures and has been adjusting its processes and structures for this purpose. However, it is necessary to point out that the last two years (2019 and 2020) have been particularly complex for the Labour Inspection, since in 2019, there was a change in the staff of Labour Inspectors as a result of the Contest for the Provision of Positions held, which made the execution of the sanctioning procedures quite difficult until all the positions were filled; In 2020, the situation of the Pandemic caused by COVID-19 impacted the development of administrative sanctioning procedures, since due to the isolations ordered in effect of quarantine it became necessary to suspend the procedural terms of the administrative actions in charge of the Ministry of Labour in general.

In sanctioning matters, it is important to point out the behaviour of the fines imposed in a general way and then the results will be presented in matters of improper labour intermediation.

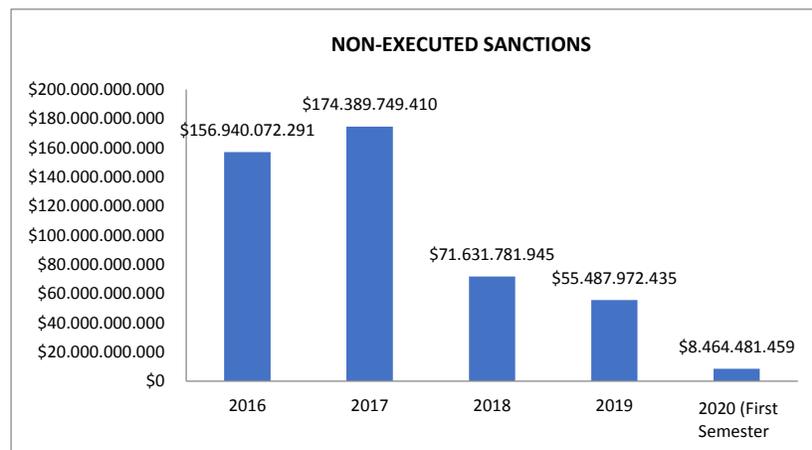
In the first place, it is proceeded to detail the general statistical behaviour of the sanctions with respect to all the infractions imposed by the Ministry of Labour, comparative by years:



Source: Direction of Inspection, Surveillance and Control



Source: Direction of Inspection, Surveillance and Control



Source: Direction of Inspection, Surveillance and Control

Regarding investigations through labour intermediation, the following results have been obtained:

<b>NON-ENFORCEABLE</b>	<b>ENFORCEABLE</b>
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YEAR	NUMBER	VALUE (COP)	NUMBER	VALUE (COP)
2014	73	\$ 28.099.474.000	70	\$ 14.236.295.200
2015	140	\$ 61.822.365.150	77	\$ 21.065.067.000
2016	198	\$ 81.292.520.803	71	\$ 17.245.714.035
2017	183	\$107.333.804.961	51	\$ 6.470.713.828
2018	63	\$ 8.235.740.059	79	\$ 15.709.041.638
2019	48	\$8.641.624.960	32	\$ 1.622.723.454
2020(As of Nov)	14	\$ 2.141.839.320	7	\$ 146.422.070

Source: Direction of Inspection, Surveillance and Control

Finally, as indicated in the previous point, the dissemination of the sanctions regarding this specific matter has been carried out through a quarterly bulletin in which labour statistics are evidenced and the data disaggregated by sector is displayed and where, in addition, they detail the actions and results of the investigations carried out for the improper or illegal use of Labour Intermediation.

### 1.8. Collecting all outstanding fines for subcontracting violations within the legally mandated time frames.

In order to improve the processes associated with the collection of fines in general, as well as those related to illegal labour intermediation, the Inter-Administrative Agreement No. 0054 of 2019 was signed between SENA (National Service of Learning, for its acronym in Spanish) and the Ministry of Labour (Numbering Ministry 332), which aims to "unite administrative and technical efforts between the parties, so that both SENA and the Ministry of Labour, can monitor the information on the fines imposed by it in favour of SENA." Said Agreement was the subject of an Addendum No. 01 of Extension to the Inter-administrative Agreement, taking into account the need to continue monitoring the information on the fines imposed by the Ministry of Labour in favour of SENA in 2020 and subsequent years, given that this entity will continue to collect the fines imposed as of 31 December 2019, given that, as of 01 January 2020, the fines have a specific destination to the Fund for the Strengthening of Inspection, Surveillance and Control of Labour and Social Security FIVICOT, which will be addressed with more information in recommendation No. 2 of this report.

Similarly, under the responsibility of the Coercive Collection Management Group of the General Directorate of SENA, the Coercive Collection Administrative Manual was designed, aimed at the Coercive Collection offices of the Regional and the General Directorate of SENA, a useful tool in the work of collecting the portfolio owed to the Entity. The Manual includes the stages of preliminary study of executive titles, persuasive collection, payment order, notifications, processing of exceptions, appeals against the decision to proceed with the execution, decree and practice of the precautionary measures of seizure and kidnapping. of goods, liquidation of credit and costs, appraisal and income of goods, termination of the coercive collection process, as well as the application of judicial deposit titles, prescription of the collection action and granting of payment possibilities.

The location of the coercive collection manual was modified in its web address, being those that are detailed below:



[http://normograma.sena.edu.co/normograma/docs/resolucion\\_sena\\_1235\\_2014.htm](http://normograma.sena.edu.co/normograma/docs/resolucion_sena_1235_2014.htm)

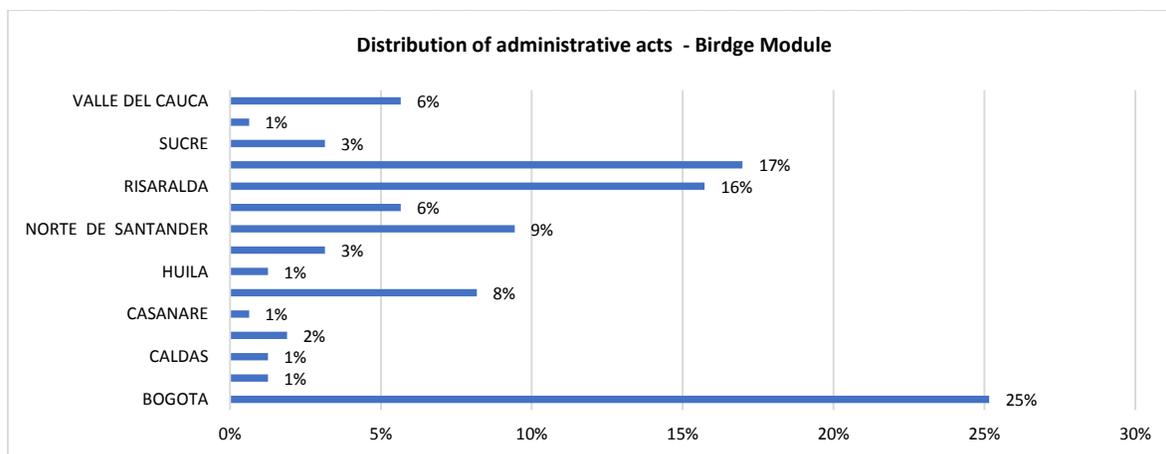
[http://normograma.sena.edu.co/normograma/docs/resolucion\\_sena\\_0088\\_2018.htm](http://normograma.sena.edu.co/normograma/docs/resolucion_sena_0088_2018.htm)

It is also important to note that the Ministry of Labour has just adopted its own portfolio regulation, which includes the entire process and times required for the persuasive and coercive collection of fines in favour of the different funds of the Ministry, which includes FIVICOT. The regulation was issued through Resolution 2628 of December 2nd, 2020.

In addition, the integration between the Inspection and Surveillance Information System (SISINFO) with the Collection and Portfolio Information System (SIREC, by its acronym in Spanish) of SENA was implemented in 100% of the Territorial Directorates of the Ministry of Labour and for the output to production, the next activities were carried out:

- Operational meetings between functional areas.
- Training of officials of the Bogotá Territorial Directorate.
- Pilot test, monitoring and verifying the management of fines sent to SENA, the sample of 32 files was sent satisfactorily.
- Training of 72 officials from Territorial Directorates to whom SENA correspondence executing profile was assigned, for sending sanctions through the bridge module, in interaction with the IVC information systems: SISINFO and Collection and SIREC portfolio of SENA.
- Between the Ministry of Labour and SENA functional and technical improvements were carried out, which are:
  - The Ministry of Labour added in the resolution field, the territorial code and the consecutive one associated with each complainant, to identify the resolutions that have more than one defendant.
  - On the part of SENA, it modified the validation with respect to the registered number, it will allow to enter repeated numbers, since each Territorial Directorate manages its own consecutive number.
  - The behaviour during the second semester of 2019 reflected compliance in executive reports and shipments with PDF supports of 77%, as follows:

As for 2020, during the first semester (data until June 30), 162 sanctions have been sent to the National Learning Service (SENA) through the bridge module. For the second semester the information will be consolidated at the end of January 2021.



Source: Direction of Inspection, Surveillance and Control

From the functional working groups of the SENA and the Ministry of Labour, monitoring is being carried out on the progress of the files and the management of the fines that were recorded.

### 1.9. Require companies to formalize employees working under abusive outsourcing through regular employment contracts that provide access to all basic labour rights;

Article 200 (Law 1955 of 2019) of the National Development Plan establishes:

**Article 200.** Termination of the employment penalty procedure. The Ministry of Labour may, by mutual agreement, suspend or terminate an administrative procedure punishable by violation of labour rules, other than those relating to labour formalization.

Termination by mutual agreement shall be conditional on the investigated recognizing non-compliance with labour or comprehensive social security standards and ensuring the implementation by the employers investigated of measures aimed at correcting the reasons for the initiation of administrative action.

The procedure shall be suspended where the investigated acknowledge non-compliance with the rules and undertake to implement corrective measures through an improvement plan containing reasonable time limits not more than one (1) year, which shall be approved by the Ministry of Labour. Once the improvement plan is implemented in its entirety, the procedure will be terminated.

If the suspension by mutual agreement is signed at the preliminary investigation stage, there will be no sanction; if it is subscribed between the pressing of charges and the filing of disclaimers, the penalty will have a reduction of half; and if it is subscribed between the probationary period and the filing of pleadings, the penalty will have a reduction of one third. If the improvement plan is not implemented, the suspension will be lifted and the remaining stages of the procedure continued, without any reduction in the penalty. **This benefit shall not proceed in the event of repeated infringement of the same infractions.**



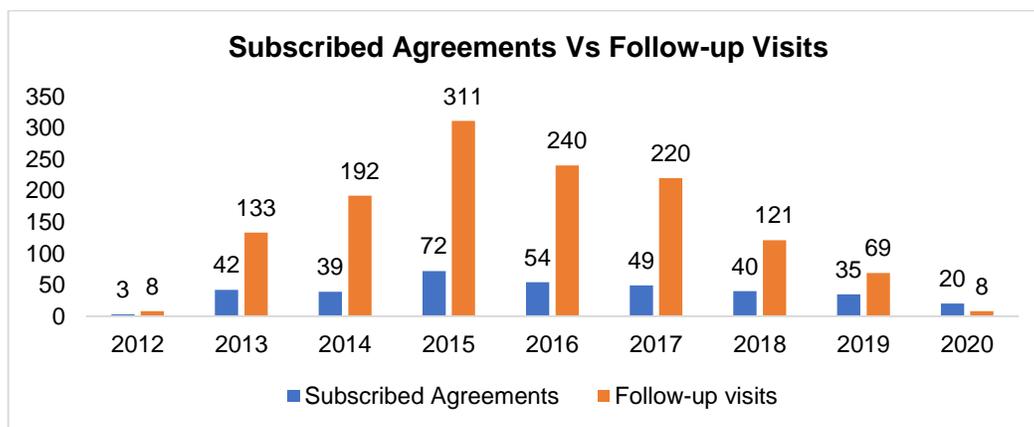
The Ministry of Labour shall regulate the provisions of this Article.

The Ministry of Labour developed a draft Decree to enable a strategy based on the reduction of fines, when the employer agrees on an improvement plan to ensure compliance with the Labour Law.

However, this Ministry continues to develop formalization agreements. From 2014 to 2020, 354 formalization agreements have been signed benefiting 40,489 workers. For verification of compliance with the terms of the formalization agreements signed, 1,302 follow-up and verification visits have been made.

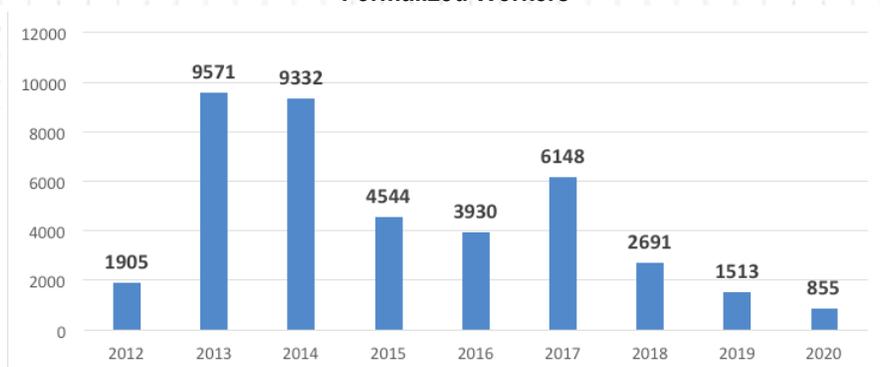
Year	Agreements Signed	Follow-up visits
2012	3	8
2013	42	133
2014	39	192
2015	72	311
2016	54	240
2017	49	220
2018	40	121
2019	35	69
2020	20	8

Source: Direction of Inspection, Surveillance and Control



Source: Direction of Inspection, Surveillance and Control

### Formalized Workers



In 2018, the number of people in charge of socializing and training employers in the standards and benefits of formalization increased. Similarly, through a territorialisation strategy (division of the country into three zones), more formalization agreements have been promoted and managed.

The current status of the subscribed Labour Formalization Agreements is summarized in the following table:

	NUMBER OF AGREEMENTS	Effect
<b>Agreements terminated with compliance</b>	151	Sanction forgiveness or file of the administrative action
<b>Agreements terminated with non-compliance</b>	24	No reduction of the sanction, partial reduction of the sanction, resumption of administrative action or start of new administrative action.
<b>Completed agreements pending verification compliance</b>	18	N/A
<b>Agreements in force</b>	164	Periodic monitoring to verify compliance with commitments by the Employer and the conditions under which AFL beneficiary workers are located

Source: Direction of Inspection, Surveillance and Control

Within the policies of the new government is the formalization of work from different scenarios, including labour formalization agreements that are within the competence of the inspection, monitoring and control Directorate. A strategy is being proposed to strengthen the work of the Directorate on this issue, with support for each of the territorial directorates and the follow-up to existing agreements.

The analysis of Resolution 321 of 2013 issued by the Ministry of Labour to regulate labour formalization agreements, article 2 of which refers to the conditions and requirements for their completion, number 7, establishes that a



subscription is viable when "during the processing of sanctioning administrative action or before or after the realization". This means that this figure is not exclusive within an administrative process and that as has been the case, both employers investigated and others of their own intention and management of territorial directors formalize their workers with the application of this figure.

## Indicators of informality and subcontracting

### 1. Overview of recently adopted regulations and legislation, including combating extreme forms of poverty;

#### Summary of Regulations and Legislation 2017

- Decree 1875 of 17 November 2017 creating the One-stop-shop for the registration of companies (VUE).
- Resolution 1399 of 2017, Whereby the employability route with a gender focus is adopted within the framework of the Mechanism for the Protection of the Unemployed.

#### Summary of Regulations and Legislation 2018

- Law 1929 of 2018, "Whereby the allocation of a percentage of the resources of the solidarity fund for the promotion of employment and protection of the unemployed, defined in Article 6 of Law 1636 of 2013, is temporarily and partially modified; and family compensation funds are empowered to allocate resources for the settlement of health liabilities and/or compliance with financial conditions applicable to EPSs."
- Resolution 1196 of 2018, By means of which guidelines are given for the allocation of the balances of the resources of 2015 and accumulated 2017 of the Solidarity Fund for the Promotion of Employment and Protection of the Unemployed - FOSFEC and other provisions are issued.

#### Summary of Regulations and Legislation 2019

- The regulations that support the development and implementation of the Transactional Affiliation System - SAT are Decree 780 of 2016, Sole Regulatory Decree of the Health and Social Protection Sector, specifically in Title 2 of Part 1 of Book 2 of Decree 780 of 2016, and Decree 1818 of 2019, amending Decree 780/16, in relation to the inclusion in the Transactional Affiliation System (SAT) of the General Pension System and the Family Subsidy System.
- Conpes 3956 of 2019 "Business Formalisation Policy": establishes a conceptual framework on formality. It defines it as a multidimensional process, and clarifies its relationship with productivity, both at macroeconomic and firm level. It also recognises the great heterogeneity that exists among informal firms and their incentives to increase or decrease their level of formality. This policy proposes an action plan to improve the benefit-cost ratio of an enterprise to become formal. These actions seek to decrease the regulatory burden for firms to become formal, support firms to realise the benefits of formalisation and strengthen DVI activities to comply with regulations. While these actions are aimed at enterprises with high

levels of informality, they are not aimed at subsistence productive units, which should be addressed by a complementary policy of productive inclusion.

## Summary of Regulations and Legislation 2020

- Decree 1813 of 31 December 2020, "Whereby articles 2.2.2.2.1.16, 2.2.2.2.1.17, 2.2.2.2.1.18, 2.2.2.2.1.19, and 2.2.2.2.1.20 are added to Chapter 1 of Title 2, Part 2, of Book 2, and articles 2.2.2.2.2.1 and 2.2.14.1 are amended. 21 of Decree 1833 of 2016 compiling the rules of the General Pension System", by means of which both the Administrators and the General Pension System were enabled to carry out the aforementioned electronic affiliation, given that Decree 1833 of 2016 did not contemplate this possibility, that is to say, what was done was a regulatory update of the rules of the General Pension System, what was done was to update the regulations in order to make way for new technologies and streamline enrolment in such a way that the interested parties (members and potential members) no longer have to travel to the different attention centres, but can do everything from the comfort of their home or office through virtual means.
- Decree 1174 of 27 August regulates the Social Protection Floor for those who earn less than one Minimum Legal Monthly Wage per month as a result of their partial dedication to a job or trade or economic activity.

### 2. Informality:

#### a. Share of informal workers in total employment (measured by affiliation to social security);

This indicator shows a slight increase of 0.1 p.p. from 60.6% to 60.7% between 2017 and 2019. It should be noted that between 2010 and 2017 this percentage improved substantially considering that it was at 68.5% at the beginning of the decade.

The preliminary figure for 2020 shows a reduction compared to 2019, however, it is worth mentioning that, with the pandemic situation, it is a relative improvement due to the large drop in the number of informally employed people that has occurred. In other words, the labour market is improving in terms of formality due to a large outflow of informal workers in greater proportion than the fall in formal workers.

Year	To. Proportion of informal workers employed (measured by social security affiliation)
2017	60,6
2018	60,8
2019	60,7
2020	59,9*

Source: DANE-GEIH Calculations: Ministry of Labour

\*Average preliminary figure between Jan Oct 2020

### 3. Subcontracting:

#### a. Total number of partner labour cooperatives and covered workers;

2017	2018	2019	2020*
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Cooperatives: 430 Associated: 35,768	Cooperatives: 305 Associated: 30,626	Cooperatives: 281 Associated: 21,044	Cooperatives: 204 Associated: 11,112
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\*Figures for 2020 are cut as of June 2020. Source: Superintendency of Solidarity

**b. Total number of union service contracts and covered workers;**

2017	2018	2019	2020
Contracts: 942 Workers: N/D	Contracts: 1103 Workers: N/D	Contracts: 1945 Workers: N/D	Contracts: 1121 Workers: N/D

Source: Directorate of Inspection, Surveillance and Control

The figure of the Union Service Contract has been consolidated in Colombia as a means of generating synergies between employers and trade union organisations, mainly in the Colombian health sector, where 99% of these contracts are subscribed. The dynamics of growth is associated with the demand for health services; the larger the public and private network of health service providers, the greater the subscription of such union contracts.

The period reported in the 2020 covers all year.

**c. Total number of temporary work agencies and covered workers;**

2017	2018	2019	2020
ATT: N/D Workers: 463,880	ATT: 538 Workers: 457,524	ATT: 581 Workers: 415,059	ATT: 615 Workers: 416,269*

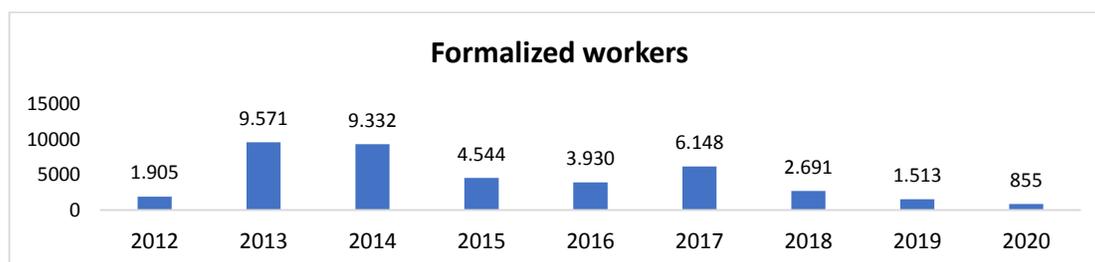
\*The 2020 figures are up to April 2020. Figures as of December 2020 are delivered in the second quarter of 2021.

Source: ACOSSET and Directorate of Inspection, Surveillance and Control.

**4. Formalisation agreements**

**a. Number of formalisation agreements and covered workers;**

From 2014 to 2020, 354 formalization agreements have been signed benefiting 40,489 workers. In order to verify compliance with the terms of the formalisation agreements signed, 1,302 monitoring and verification visits have been carried out.



Source: Directorate of Inspection, Surveillance and Control

**b. Number of verification visits for formalization agreements;**

From 2014 to 2020, 354 formalization agreements have been signed benefiting 40,489 workers. In order to verify compliance with the terms of the formalisation agreements signed, 1,302 monitoring and verification visits have been carried out.

Year	Agreements Signed	Follow-up visits
2017	49	220
2018	40	121
2019	35	69
2020	20	8

Source: Directorate of Inspection, Surveillance and Control

## 5. Poverty and income inequality

### a. Indicator of relative income poverty (using the OECD definition of 50% or less of median household income);

This indicator measures the proportion of people who have incomes below the median household income. This indicator shows a decline between 2017 and 2019 from 33.7% to 35.3%, i.e. the proportion of people earning less than the median income has increased.

Year	To. Relative income poverty indicator (using OECD definition of 50% or less of average household income).
2017	33,7
2018	33,5
2019	35,3
2020	Not available yet

Source: DANE-GEIH

Calculations: Ministry of Labour

### b. Indicator of extreme income poverty.

According to the National Administrative Department of Statistics (DANE), the extreme poverty indicator in the country measures the percentage of the population with a per capita household income below the extreme poverty line by geographic domain. In 2019, the percentage of people classified as extremely poor out of the total national population was 9.6%. It is observed that for all geographical areas, the profiles of the head of household with the highest incidence of extreme poverty are related to: unemployment, the occupational position of employer and self-employed, having a low level of education and not being affiliated to social security.

Extreme monetary poverty between 2017 and 2019 showed an increase of 1.2 p.p., the worsening in this indicator is also associated with the decline in the unemployment rate that affects household income.

Year	B. Indicator of extreme income poverty.
2017	8,4
2018	8,2



2019	9,6
2020	Not available yet

Source: DANE-GEIH

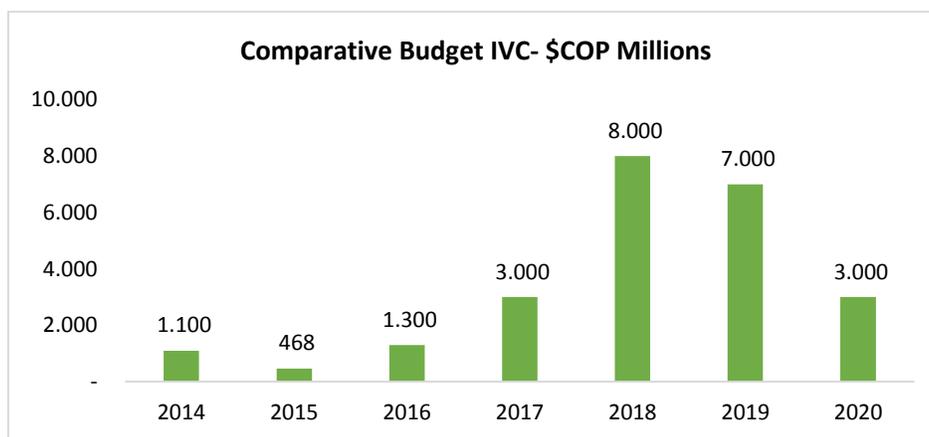
## 2. Labour Law Enforcement:

Further strengthen the labour inspection system by:

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

#### 2.1.1. Allow labour inspectors to properly execute their tasks;

Despite the budgetary restrictions currently faced by the national government, the Ministry's budget for its tasks was increased. In this regard, the Directorate of Inspection, Surveillance, Control and Territorial Management (IVC) was allocated COP \$8 billion for 2018, COP \$7 billion for 2019 and COP \$5.8 billion for 2020 so that the Labour Inspectorate can carry out its tasks properly. It is worth noting that the Colombian Government, understanding the importance of the Ministry of Labour's Labour Inspection System, has significantly increased the resources allocated to the IVC Directorate, as shown in the following graph:



It is important to point out that the 2020 budget was COP\$5,800,000,000, of which two thousand eight hundred million pesos (COP\$2,800,000,000) were the result of the collection obtained in the Fund for the Strengthening of Inspection, Surveillance and Control of Labour and Social Security Standards (FIVICOT). The current situation due to the Pandemic of COVID-19, has hindered such collection, therefore the Directorate of Inspection, Surveillance, Control and Territorial Management only had COP\$3,000,000,000,000 in 2020. The generalities of FIVICOT will be dealt with later in this recommendation.

On the other hand, the salary of labour inspectors has increased by 77% between 2009 and 2016 (vs. 32.7% for all public employees, 39.8% for the minimum wage, and 26.1% for the CPI in the same period).

### 2.1.2. Continue offering regular training programmes for all labour inspectors (irrespective of their contract type);

Within the IVC Directorate, the Internal Working Group for the Management of Training and Analysis of Labour Inspection was established through Resolution 3783 of September 29, 2017. The Main Objective of the Group, but not the only one, is to train Labour Inspectors and prioritize virtual training in 2019.

During 2018, the following training activities were carried out, all of which were face-to-face training:

- [Development of the 2018 Training Plan](#): The Plan determined the following courses for induction and reinduction to the different agents of the Labour Inspection.

INTEGRATED IVC TRAINING PLAN 2018	TRAINER	COURSES	QUOTAS
Labour Intermediation	Universidad Nacional	13	465
Administrative Procedure	Universidad Nacional	13	465
Job Stability	Universidad Nacional	13	465

A Similarly, training processes and events were held in Labour Intermediation, some offered by the ILO.

In addition, institutional courses and those related to induction and reduction processes were worked in conjunction between the IVC Directorate with the Ministry of Labour's Welfare and Training Group based on the institutional training plan for 2018.

Training was provided to territorial managers as part of the Mobile Labour Inspection implementation strategy, which are multipliers in the intervention territories. In addition, the Labour Rights Card for Labour Rights Watches was designed to facilitate their training work for communities.

A Training Plan for the Labour Inspectorate has been designed and delivered, which seeks to reorganise the way in which it is carried out, to provide initial training to new officials, as well as the establishment of a permanent training or professionalisation system that allows for the enhancement of the competencies of the Labour Inspectors and their specialisation in the areas relevant to their function.

- [Development of the Virtual Campus](#): In compliance with what is stated in the Memorandum of Understanding signed with the US (MU: MOL Funds – numeral ii, literal c), with the accompaniment of the ILO the construction (2018) and implementation (2019) of a Virtual Campus for the Training of Labour Inspection has been carried out. Guidelines have been provided on the minimum structure that the Virtual Campus should contain, and a set of steps have been taken, for this purpose:

- Recovery of ILO-generated virtual courses.



- Achieving a server that allows the establishment of a virtual training model.
- Establishment of access channels from various devices and anywhere.
- Establishment of the online training platform that supports pre-designed courses. MOODLE was chosen.
- The authorizations required for the start-up of a test server are managed to determine compatibility and operation in general. The ILO still needs to link to these servers and generate confidentiality agreements regarding the use of information, since it is a third party implementing the development.
- Lifting of virtual training needs with respect to Labour Inspectors and level of acceptance of e-learning.
- Selection of best e-learning model based on the various validated conditions and thematic axes.
- Review of virtual training best practices for Labour Inspectors. Other virtual school models were verified.
- However, within the activities proposed by the ILO is to identify good practices at the national level.
- Establishment of both face-to-face and online training structure, levels, conditions, participants, targeted training or self-training, from the perspective of the Ministry of Labour.
- Verification of current material with which the Ministry of Labour has based on the training structure.
- Three permanent Labour Inspectors were available to the ILO for the advancement of activities.
- A methodological design for content construction was proposed to the ILO.
- ILO-designed content was reviewed and fed back.
- Content was delivered to the ILO for virtualization.
- Definition of forms of evaluation and valuation.

The defined training methodologies for the construction of virtual content were Microlearning and Gamification.

Regarding the activities carried out by the Ministry of Labour resulting from the Memorandum of Understanding (MoU: MOL Funds – numeral ii, literal d, numerals i and ii) the "Update Courses" strategy was designed, which will allow officials of the Ministry of Labour to always find up-to-date information on the Virtual Campus regarding regulatory and procedural changes affecting the work of the Labour Inspection. Likewise, this strategy includes the possibility to answer questions that officials have regarding the virtual campus and its contents. The development of the strategy is 100% and will be fully compatible with the development expected by the ILO.

In addition, for ensuring the updating of the material that is developed for the Virtual Campus, expedited update spaces will be generated that allow the official to know these contents without having to wait for the structure of an existing course to fit, through training videos and support material.

Its implementation happens in 2019, which is explained below.

- [Development of the Training Plan 2019 and 2020:](#) The Plan determined the following courses for induction and re-production to the different agents of the Labour Inspection.

With the aim of developing the Institutional Training Plan 2019, the Directorate of Inspection, Surveillance, Control and Territorial Management signed the letter agreement No. 523 of 2018, between the Ministry of Labour and the International Labour Organization ILO, for the conduct of the Training Workshop "Strengthening Inspection, Surveillance and Control, Collective Negotiation and Conflict Resolution". 264 officials were trained in face-to-face modality.



An Inter-Administrative Contract was subscribed with the Military University of Colombia No. 345 of 2019, the purpose of which is "the development of training programmes aimed at the public servants of the Ministry of Labour for the strengthening of institutional and inspection, surveillance and control processes", which allows the development in 2019 of face-to-face training activities, as well as the development of virtual courses to be developed in 2019 and 2020. On July 19, 2019, the Contract was signed, worth One COP \$1,695,541,627, to be executed within (05) FIVE MONTHS and (15) FIFTEEN DAYS, as amended on December 24, 2019 and extended again until July 31, 2020.

The purpose of this Contract was the development of training programmes for public servants of the Ministry of Labour for the strengthening of institutional and inspection, surveillance and control processes, including face-to-face and virtual training processes, the Ministry established its implementation in twenty-five (25) training items, which involves the following thematic axes corresponding to the Directorate of Inspection Control and Territorial Management:

1. Deepening in Individual and Collective Labour Law.
2. General Administrative Procedure.
3. Procedures in charge of labour inspection.
4. Visit of the Labour Inspection – administrative eye inspection.
5. Acts against the law of Trade Union Association.
6. Sanctions to be imposed by the Labour Inspection.
7. Declaration of party and third parties within evidentiary law and its application by labour inspection.
8. Structuring administrative acts within the administrative sanctioning procedure.

By Resolution No. 1160 of 3 May 2019, the Virtual Campus was adopted as a training and training tool for strengthening the knowledge and competences of Ministry of Labour officials.

The Virtual Campus was launched by the President of the Republic on April 30, 2019. The Directorate of Inspection, Surveillance, Control and Territorial Management forwarded requests for adjustments to the ILO, both in operation and in content after verification of the platform.

In the period from 21 to 27 May 2019, pilot tests were carried out on the operation of the Virtual Campus with the help of the ILO, subject to analysis the observations made by the Inspectors of Labour and Social Security, attached to the Territorial Directorate of Risaralda, a pilot territorial body taken to carry out this validation.

Memorandum SI20193303000000010148 dated 11 June 2019 addressed to the Sub-Direction of Human Talent, calls upon, to inform the Territorial Directors, for the granting of two (02) hours per week, to the Inspectors of Labour and Social Security, within their working day, for the access and development of training on the virtual campus.

With memorandums SI20193303000000010412 and SI20193303000000010414, dated 14 June, all Territorial Directions and Special Offices were forwarded to the Labour Inspectors, the contentive of the Virtual Campus Implementation Protocol and tool development schedule, with the courses being opened.

The initial courses of the virtual field correspond to the following topics: (1) Generalities of the Ministry of Labour and introduction to the Labour Inspection System; (2) Fundamental labour rights; (3) Basic elements of constitutional and administrative law; (3) Basic elements of Individual and Collective Labour Law; (4) Introduction to Social Security; (5) Generalities of the Prevention and Protection of Occupational Risks; (6) Procedures in charge of Labour Inspection;

(7) General aspects of Labour Conciliation and Dispute Resolution; (8) Introduction to Labour Formalization and Labour Intermediation; (10) Information system.

The Internal Working Group for the Management of Training and Analysis of Labour Inspection, monitors and monitors the behaviour of the participation of officials in this pedagogical space, in order to continuously monitor, control access and develop the activities of each course, provide support, legal and technical support, to the concerns presented by officials entering the campus platform, who can send suggestions or concerns through the "comments" option. As well as the generation of reports and reports that are requested by the different areas of the Ministry.

In 2020, a majority virtual training development was required given the situation presented by the COVID pandemic – 19, however, at the beginning of 2020, a face-to-face training course of the new version of the SISINFO Version 3.0 Inspection, Surveillance and Control Information System was chosen for a total of one hundred and thirty-three (133) staff, seventy-four (74) are Inspectors of Labour and Social Security. The main objective of assistance and participation was practical learning in the IVC Information System (SISINFO). The relationship of the pedagogical processes carried out is the following:

#### Consolidated SISINFO V3.0 2020 training

Events - training	Number of people	Date
Technical Assistance Day in articulation with ILO	133	February 12, 2020
SISINFO monitors working with Territorial Addresses	69	May 27 to June 15, 2020
Timely training at the request of territorial directors	9	February 1 to August 4, 2020
Training of Labour and Social Security Inspectors Boyacá Territorial Directorate because they were recently appointed.	33	June 24, 2020
Training to IT and SS of Bolivar Territorial Directorate aimed at new and former officials	10	May 28, 2020
<b>Total</b>	<b>254</b>	-

Source: IVC Directorate

Regarding the development of virtual courses for the years 2019 and 2020, the following is the relationship of the courses with the number of participants to each of the thematic areas based on the officials who carried out the evaluation in each of the courses of the virtual campus:

#### Consolidated participation Officials in the 10 initial ILO Virtual Campus courses. Year 2019 - 2020

No. of course	Name of the course	2019	2020
		No. of inspectors trained	No. of inspectors trained
1	Ministry of Labour Overview and Introduction to the Labour Inspection System	761	136



No. of course	Name of the course	2019	2020
		No. of inspectors trained	No. of inspectors trained
2	Fundamental labour rights	733	107
3	Basic elements of Constitutional and Administrative Law	705	69
4	Basic elements of Individual and Collective Labour Law	692	57
5	Introduction to Social Security	679	85
6	General aspects of Occupational Risk Prevention and Protection	667	58
7	Labour Inspection Procedures	649	62
8	General aspects of Labour Conciliation and Conflict Resolution	640	58
9	Introduction to Labour Formalisation and Labour Intermediation	607	57
10	Information system	593	72

Source: IVC Directorate

The information in the previous table was taken from the event log of the system the officials that carried out and approved all the oriented activities of the ILO courses.

It is important to clarify that the officials listed in the previous chart began to develop the courses as of July of this year; likewise, these officials are new Ministry workers, who had not been trained in 2019, neither in the first semester of this year.

As part of the implementation of the Agreement with the Nueva Granada University, the courses that are illustrated below were developed and hosted on the virtual campus and were taken by the Entity's officials as follows:

#### Consolidated participation of officials in the courses developed within the Agreement with the New Granada Military University - Year 2020

Course	Trained Officials
Teleworking	34
Deepening in Fundamental Rights	104
Induction and re-induction of institutional processes	323

Course	Trained Officials
Strengthening of Unions Leaders	32
Deepening in Social Security and Social Protection	171
Deepening in Occupational Safety and Health Management System	198
Deepening General Administrative Procedure	225
The declaration of part and third parties within evidentiary law and its application by the labour inspection	164
Structuring administrative acts within the administrative sanctioning procedure	249

Source: IVC Directorate

As said before, the officials listed in this chart began to develop the courses as of July of this year; likewise, these officials are new Ministry workers, who had not been trained in 2019, neither in the first semester of this year.

### Training Resources:

The Directorate of IVC allocated in 2018 COP\$1,944,000,000, which were used to finance the training provided by the National University, the costs of transfer and maintenance of the officials, the co-financing of the Virtual Campus, contractor for training evaluation, as well as other activities related to the training processes. For 2019 were allocated COP\$1,150,000,000 which financed new virtual training courses through the Virtual Campus for both 2019 and 2020, as detailed above.

### 2.1.3. Ensuring investigations in rural areas

The Government has been developing a process to implement the Mobile Labour Inspection, which purpose is to take the Labour Inspection System to all regions of the country where labour relations exist. It has an emphasis on the rural sector and in municipalities that have been called PDET that have been beneficiaries of the 10-year subregional program for the comprehensive transformation of the rural environment, through which the instruments of the Comprehensive Rural Reform are implemented more quickly in the territories most affected by the armed conflict, poverty, illicit economies and institutional weakness. This is stipulate in the Progressive Plan for Social Protection of the Colombian State.

The Directorate of Inspection, Surveillance, Control and Territorial Management, organized intervention plans under two models of operation, which will allow constant rapprochement between: employers, workers and rural communities in general with the Ministry of Labour.

### Operation Model - Comprehensive Intervention Cycle:

This model is developed through intervention cycles that last approximately 5 weeks and has territorial management teams that with the Territorial Directorate and/or Special Office will lead the presence in the territory. The model proposed for its duration and focus will be taken to the 171 PDET municipalities prioritized by the Presidency of the Republic and according to the Progressive Plan, its goals are distributed as is shown in the following chart:

INTEGRAL INTERVENTION									
	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9	Year 10
	2018	2019	2020	2021	2022	2023	2024	2025	2026
<b>Percentage</b>	12%	18%	10%	10%	10%	10%	10%	10%	10%
<b>Sum of Percentages</b>	12%	30%	40%	50%	60%	70%	80%	90%	100%
<b>Total of Municipalities</b>	21	51	68	85	102	119	136	153	171
<b>Municipalities Per Year</b>	21	30	17	17	17	17	17	17	18

Source: IVC Directorate

The activities developed in the Integral Intervention model are specified as follows:

**Prior coordination:** the team of Managers and officials of the Ministry of Labour, headed by the Territorial Director lead the call for meetings with the authorities of the municipality, in order to present the Mobile Inspection Program, and its scope and opportunities in the municipality. All meetings are documented by minutes with commitments made by the parties for the perfect development of the activities.

**Awareness and training of high school students in grades 10 and 11 - Community Action Boards, Workers and Employers** according to a methodological proposal from a territorial and community approach, related to the guarantee of the right to decent and decent work.

This process is implemented with a group of territorial managers, who work with Labour Inspectors, helping to stimulate the adoption processes of the sensitized and trained population. These communities are recognized as **Labour Rights Guards**. This stage lasts 4 weeks and has attendance records.

The Labour Rights Guards are trained in general labour rights issues and respond to the implementation of “the trainers of trainers model”, that allows training topics of interest to be replicated at the territorial level in an appropriate and rapid manner.

Rural communities are made aware and trained, 10th and 11th grade students, members of Community Action Boards, workers and employers in general, based on a special training process (trainers of trainers' model), trained in general topics that allows knowledge can be replicated at the territorial level in an appropriate and rapid manner. Also, that allows the immersion of communities and the assimilation of issues related to Labour Rights and the ways in which citizens can interact with the Ministry of Labour for the protection of said rights. This disclosure process is included in the framework of the Mobile Inspection.

This process will be implemented with a group of professionals (Territorial Coordinator and Community Manager), who will be accompanied by Labour Inspectors, who can stimulate the adoption processes by citizens. The intervened communities directly by the program will be recognized as Labour Rights Guards. In those cases, where the figure of the Territorial Coordinator and the Community Manager is not available, these trainings will be developed by the Group for the Management of Training and Analysis of the Work Inspection of the Directorate of Territorial Inspection, Surveillance, Control and Management.



The implementation of this strategy is under the concept of highly participatory learning and dialogue of knowledge, which allows strengthening the knowledge management and institutional and territorial development of the different labour and work actors, as well as those of safety and health in the workplace, over which the Ministry has jurisdiction.

Both strategies of Mobile Inspection and Disclosure of Labour Rights interact in order to guarantee the rural workers. Subsequently, the possibility of developing the Labour Rights Guards program in areas with a higher concentration of population and in urban areas will be evaluated.

For the implementation of the program, the territorial coordinators and the community managers focus the population that will be the object of the intervention in the territories, who will receive training based on a guidebook designed by the Directorate of Inspection, Surveillance, Control and Territorial Management. This guidebook addresses main labour rights of workers, both individually and collectively, in a general, simple and accessible way, this with a training of trainer's approach, that is, a simple language that allows it to be retransmitted.

The disclosure of mentioned labour rights to this target population will be done through workshops coordinated by the Territorial Directorates and the Coordinators and Managers, in such a way that the selected topics and contained in the guidebook are obtained in appropriate environments for diffusion.

Once the disclosure process finish, the participating citizens are recognized as Labour Rights Guards within of the job fair held in their community where the rest of the public are also informed of the support that these Guards can provide regarding the knowledge of your Labour Rights.

### **Labour rights guards**

- 3 groups (Colleges, Communal Action Boards, working community).
- 16 hours in 8 sessions = 2 per week (Labour rights and obligations)

**Holding Fairs of Inspection, Surveillance and Control Services in the company of the Labour Sector**, where the comprehensive offer of Labour Sector services is made known to all the citizens of the intervened municipality. At this stage the mobile Inspection office is installed. The planning of the fair may last one week, and the fair takes place in one (1) day. In the development of the fair forms are filled to demonstrate the participation of citizens, and the reasons for their inquiries.

The day of the fair will be attended by the territorial management team, officials from the central level, officials and Labour Inspectors of the Territorial Directorates, who will be available throughout the day providing employment guidance and preventive assistance. The purpose of the development of the labour fairs is to achieve a strategic articulation in the labour sector to establish models of protocols, agreements, routes and/or strategies for promotion and prevention within the framework of decent work.

The strategy can again be applied in urban and rural areas and may develop general components for the promotion of labour rights or may contain a particular focus on a special issue of said rights that needs to be promote with greater emphasis in the area where the fair is carried out.

**Attention of the Mobile Labour Inspection Office.** This is carried out in a term between 2 and 4 days, providing services of Labour Orientation, Preventive Assistance and Inspection Procedures to citizens with a characterization and monitoring of their complaints (if any) from the Central Level of the Ministry of Labour.

### Operation Model - Inspection Brigades

The Inspection Brigade model is a session of promotion and information of attention routes of Inspection, Surveillance and Control by the Ministry of Labour. Also, the model consists in organization of worktables with employers and/or communities and/or local authorities to deal with problems of labour issues.

This also includes to lead the call for entities of the labour sector and other entities of national, departmental and municipal order to achieve state presence in the municipalities. For this, it is necessary that the chosen municipalities are under the following criteria:

- Do not have Municipal Inspection.
- Not being within the municipalities characterized by the Presidency of the Republic as Prioritized.
- To be municipalities with rural features that may present high labour conflict.

According to the Progressive Social Protection Plan, the goals specified in the following table will be developed for this model:

		Percentage	Sum of Percentages	Municipalities Per Year	Total Municipalities to Intervene
Year 1	2017				
Year 2	2018	5%	5%	25	25
Year 3	2019	9%	14%	45	70
Year 4	2020	7%	21%	35	105
Year 5	2021	7%	28%	35	140
Year 6	2022	7%	35%	35	175
Year 7	2023	7%	42%	35	210
Year 8	2024	7%	49%	35	245
Year 9	2025	7%	56%	35	280
Year 10	2026	7%	63%	35	315
Year 11	2027	7%	70%	35	350
Year 12	2028	7%	77%	35	385
Year 13	2029	7%	84%	35	420
Year 14	2030	7%	91%	35	455
Year 15	2031	9%	100%	45	500

Source: IVC Directorate

There are several results of the implementation of these Mobile Inspection models in the Colombian territory to highlight, however, the statistical summary of the intervention achieved is presented below:

Year	Number of Inspection Brigades	Number of Comprehensive Interventions	Number of trained Labour Guards
2017	0	6	0
2018	35	21	2258
2019	51	33	3460
2020	25	18	921
<b>Total</b>	<b>111</b>	<b>78</b>	<b>6639</b>

Source: IVC Directorate

Since the intervention process in rural areas of the Labour Inspection through this scheme begins, intervention has been achieved in 189 municipalities of the Colombian territory. It is important to specify that the activities of the Mobile Labour Inspection were affected by the COVID-19 pandemic in 2020, because the intervention scheme is on-site in the territories and considering the mandatory isolation measures it was not possible to transfer to rural municipalities in the country, however, it was decided to develop a basic intervention model through virtual processes.

## 2.2. 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;

The Ministry of Labour, through the Sub-directorate of Human Talent Management, made the administrative career appointments according to the lists of eligible candidates for Contest No. 428 of 2016, and in compliance with articles 24 and 25 of Act 909 of 2004, Provisional Appointments have been made, in order the service needs of the Directorate of Inspection, Surveillance and Control and in the Territorial Directorates in accordance with the distribution of the staff positions of the Ministry of Labour.

Similarly, 804 vacancies for Inspector of Labour and Social Security Code 2003 Grade 13 (Currently 14) were reported to the National Civil Service Commission - CNSC, which were held by officials of the Ministry of Labour, appointed provisionally and commissioned, in these mentioned positions. The CNSC proceeded to offer the 804 vacant positions with the denomination Labour and Social Security Inspector belonging to the Ministry of Labour, through the Call 428 of 2016, and it has been issuing lists of eligible since August 2018.

Through the Order O-261-2018, August 23, 2018, the Council of State suspended all the effects of Call 428 of 2016. However, on March 14, 2019, the National Civil Service Commission reported through of its website, that the Second Section of the Council of State, in an order of March 7, 2019, resolved to reverse the Order of August 23, 2018, by which the provisional suspension of Call No. 428 of 2016 was decreed - Group of Entities of the National Order.



It should be mentioned that as of December 2020, **744** trial period appointments have been made, and **635** candidates have been appointed to the administrative career position of Labour and Social Security Inspector Code 2003 Grade 14.

### **2.3. Using the new management system for cases throughout the national territory and connecting the system with the electronic system for collecting fines.**

The IVC Information System (SISINFO) was implemented in 33 Territorial Offices, 3 Special Work Offices (Barrancabermeja, Urabá and Buenaventura) and in all the Municipal Inspections.

As of December 2020, the IVC Information System (SISINFO) is 100% implemented. This is result of the joint work done during the periods of November and December 2018 and 2019. Aspects such as human talent, financial resources and incorporation of a specific task in the action plan of the Directorate of Inspection, Surveillance, Control and Territorial Management, made possible to carry out technical visits and train the new municipal inspectors appointed by the contest.

Similarly, the Ministry of Labour has taken the tool made by the ILO and has been making improvements in the operation of the platform, introducing SISINFO V. 3.0 in mid-2020, which allows Labour Inspectors can develop your activities on the system in a simple way.

In addition, through Resolution 3599 of 2017, the mandatory use of the SISINFO Information System was established, and specifically in its article 4 indicates that all administrative actions related to preliminary investigations and administrative sanctioning procedures will be advanced and processed in the Inspection, Surveillance and Control Information System, without any distinction. The General Directors, the Territorial Directors and the Coordinators of working groups are responsible for verifying that the administrative actions that are of their administration being registered in the Inspection, Surveillance and Control Information System, for which they must attend the instructions given by the Directorate of Inspection, Surveillance, Control and Territorial Management.

Currently, the SISINFO system has the upload of information that records a total of 76,577 files, of which 37,892 correspond to active inspections and 38,685 completed.

In addition, the integration between the Inspection, Surveillance Information System SISINFO with the Collection and Portfolio Information System (SIREC) of the National Learning Service (SENA) was implemented in 100% of the Territorial Directorates of the Ministry of Labour and for its release, the following activities were implemented:

- Operational meetings between functional areas.
- Training of officials of the Bogotá Territorial Directorate.
- Pilot test, we monitor and verify the management of fines sent to SENA, the sample of 32 files was sent satisfactorily.
- Training for 72 officials from Territorial Directorates to whom SENA correspondence executing profile was assigned to send sanctions through the bridge module. This in interaction with the IVC information systems: SISINFO and the Collection and Portfolio Information System, from SENA.
- Between the Ministry of Labour and SENA we carry out functional and technical improvements, such as:

- The Ministry of Labour added in the resolution field the territorial code and the consecutive number associated with each claimant, to identify the resolutions that have more than one claimant.
- SENA modified the validation with respect to the registered number. It will allow the entry of repeated numbers, because each Territorial Directorate manages its own consecutive number.
- The behaviour during the second semester of 2019 shows a 77% compliance in enforceable reports and deliveries with PDF supports, 300 sent to SENA out of a total of 390 enforceable sanctions for a final value of \$ 6,624,291,170 (COP).

Regarding the year 2020, as June 30, 2020, 162 sanctions have been sent to SENA through the bridge module. The information corresponding to the second semester will be consolidated at the end of January 2021. Functional working groups of SENA and the Ministry of Labour have monitored the progress of the files and the management of the registered fines.

## 2.4. Strengthen the deterrent effect of labour inspection by:

### 2.4.1. Increasing the number of inspections and investigations per year, and making this information available to the public on a yearly basis;

With reference to the number of annual Inspections and their increase, it is important to specify that with each Annual Inspection Plan that is prepared by the Directorate of Inspection, Surveillance, Control and Territorial Management and whose specific content is explained later in this report, the established activities and goals are specifically defined. For the years 2018 and 2019, these goals were exceeded with the following results:

#### 2018 Report:

The Sub-Directorate of Inspection presented a monitoring report to the Comprehensive Intervention Plan in which the implementation and degree of compliance of the established goal in relation to preventive and reactive inspection visits is detailed, showing the following results:

According to memorandum 2230 and 2235 of January 31, 2018, referring to: **Preventive Assistance and Reactive Inspections**, that specify the guidelines that each territorial directorate must achieve to reach the stipulated goal and comply with all commitments, Percentages of compliance and progress are presented.

Considering that the date of the mentioned memoranda and that the Comprehensive Intervention Plan for critical sectors began on March 1, the following results have been obtained as December 10, 2018.

#### Preventive Assistance

In terms of preventive assistance, we obtained as results at the indicated cut-off date:

Scheduled	Done	% Fulfilment
3480	3675	105.6%

Source: IVC Directorate

## Reactive Inspections

In terms of reactive inspections, we obtained as a result:

Scheduled	Done	% Fulfilment
3480	3519	101.1%

Source: IVC Directorate

As can be seen, even the general planning establishes both reactive and preventive actions, preventive actions do not affect the normal development of Labour Inspection processes that have sanctioning purposes.

### 2019 Report:

According to the 1956 and 1958 memoranda of February 8, 2019, making reference to: **Preventive Assistance and Reactive Inspections**, which specify the guidelines that each Territorial Directorate must comply with to reach the stipulated goal and comply with all commitments, Percentages of compliance and progress are presented.

Considering that the date of the mentioned memoranda and that the Comprehensive Intervention Plan for critical sectors began on March 1, 2019, the following are the figures for the period from July 1 to December 31, 2019 .

## Preventive Assistance

In terms of preventive assistance, the following results were obtained in 2019:

Scheduled Visits 2019	Visits Made in The I Semester 2019	Visits Made in The II Semester 2019
4.622	1.944	4.622

Source: IVC Directorate

Scheduled Visits 2019	Accumulated Visits In 2019	% Fulfilment
4.622	6.209	134 %

Source: IVC Directorate

It is necessary to specify that the Sub-Directorate of Inspection annually issues a memorandum with the goal of visits in the prioritized sectors for each territory, called the Comprehensive Visits Plan, which is monitored monthly and which finally finished with 6,209 in 2019. Additionally, the Sub-directorate of Territorial Management has a quantitative control of all the visits carried out, either within the framework of the Comprehensive Visits Plan and those that do not correspond to it, but are additional. For this reason, in the bulletin for the fourth quarter of 2020, 6,653 visits were reported, this is 574 more than those of the Comprehensive Visits Plan."

Total Preventive Assistance 2019	Total Preventive Visits Implementing the Comprehensive Visit Plan 2019	Visits Made in Addition to The 2019 Comprehensive Visit Plan
<b>6.653</b>	<b>6.209</b>	<b>574</b>

Source: IVC Directorate

### Reactive Inspections

In terms of reactive inspections, we obtained as results in the second half of 2019:

Scheduled Year 2019	Accumulated Year 2019	% Fulfilment
<b>3.079</b>	<b>4.214</b>	<b>136,86%</b>

Source: IVC Directorate

The Reactive Inspection Visits carried out at the national level in the priority economic sectors are shown:

Reactive Inspections as of December 31, 2019			
Priority Economic Sector	Scheduled	Accumulated	% Fulfilment
<b>Mines And Quarries (Includes Hydrocarbons)</b>	214	304	142,05%
<b>Flowers</b>	30	34	113,33%
<b>Harbours</b>	40	46	115,00%
<b>Palms</b>	49	52	106,12%
<b>Sugar</b>	16	16	100,00%
<b>TOTAL</b>	<b>349</b>	<b>452</b>	<b>129,51%</b>

Source: IVC Directorate

### 2020 Report:

Regarding the year 2020, it is important to specify that even the effective programming was carried out aiming to achieve a greater increase in the actions, the situation presented when the COVID-19 pandemic significantly affected the advance of the inspection visits due to the mobility restrictions and biosecurity conditions that must be considered. Moreover, it should not be forgotten, as previously explained, that the Labour Inspection also had the procedural terms suspended, which affected the effectiveness of the plan established for 2020.

Within the activities of preventive inspection visits in compliance of labour regulation, the Sub-Directorate of Inspection in the first quarter of 2020, issued the guideline memorandum No. 08SI202033100000003181 of February 18, 2020, specifying the implementation of the number of visits, which includes the export economic sectors, under the standards of the methodological guide of USAID and the Government of Canada. In the prior planning, the goal of a total of 3,064 preventive inspection visits for the year 2020 was established.



However, the preventive inspection visits determined by the Sub-directorate of Inspection for 2020 have been affected by the contingency presented by the COVID-19 pandemic; by the measures adopted by the national government of distancing and work at home, which do not allow physical interaction or transfers. Given this situation, an additional guideline was prepared, under the memorandum 08SI2020331000000008698 of July 8, 2020, in order to resume preventive inspection activities adding the important modification to use digital and virtual facilities and technological tools, for their development, with in order to complete the proposed goals.

Regarding the reactive inspection visits, when the nature and objective were review, it was established that these are evidence that can be decreed and practiced through preliminary inquiries or administrative sanctioning procedures. For this reason, for the term of 2020, a goal of reactive inspection visits was not established. These will be implemented according to the demand for complaints and/or grievances related to a preliminary investigation and/or administrative sanctioning process in the year 2020, at the national territory level, which will be reported through the IVC SISINFO information system for the second semester of 2020.

In the guidelines provided, the visits for the inspection on compliance with labour regulation in 2020, visits were included in the General Inspection, under Memorandum No. 08SI20203310000000031816 of February 18, 2020, in the which specifies the inspection function from a general point of view, under the three scopes: territorial, sectoral and functional. The initial planning estimates a goal of 9,192 general inspection visits for the year 2020.

However, the general inspection visits determined by the Inspection Sub-Directorate for the year 2020, have been affected by the contingency presented by the COVID-19 pandemic; given the measures adopted by the national government of distancing and work at home, which do not allow physical interaction or travel. In view of this situation, the initial inspection plan is modified in order to not limit it to face-to-face actions but to determine General Inspection actions and an additional guideline is issued, under memorandum 08SI202033100000000008700 of July 8, 2020, in order to resume activities, using digital, virtual means and technological tools, for their development based on documentary supports under the following guidelines:

- Verify the prioritized sectors and establish if it is necessary to include or replace some other sectors due to the impact of COVID-19 containment measures.
- Establish the functional topics of monitoring and inspection set forth in the Memorandum of February 18, 2020 (temporary service companies, cooperatives, companies with collective bargaining agreements in force, union contracts in force, companies in which children and adolescents are authorized to work, companies with overtime authorization, employers that use the labour of vulnerable population, among others).
- Send the general inspection request to the employer,
- Analysis and evaluation of the responses and documentation provided by the employer.
- To transfer the employer's response to the trade union organization or, failing that, to selected workers.
- Preparing the respective general inspection report, to close the action, if the documentary supports and the response from the employee and employer are consistent.



Therefore, for the year 2020, as regards the general inspection plan, new goals are planned under the previous guidelines, establishing that 2,837 general inspections will be carried out and 110 inspections will be carried out for the period from January to June 2020.

Now in order to comply with the purposes of the 2020 Inspection Plan regarding the number of inspections and investigations and taking into account the circumstances of the pandemic, a general type of inspection was designed based on the requirement of formal documents that support compliance with labour standards. The answers given by the employer are validated with the workers, particularly those organized in unions or with the coexistence committee, or with randomly selected workers in their absence.

Based on the information reported and feedback from the workers, the commissioned Labour Inspector prepares a closure report of the inspection action.

The report may recommend any of the following actions: (1) File for not having detected the infringement of a labour standard; (2) Advance a preventive inspection to agree on a compliance and improvement plan; (3) Initiate a preliminary inquiry; (4) Advance a conciliation hearing; (5) Formulate charges in an administrative sanctioning process.

Under this scheme, 3,464 inspection actions of a general nature were carried out, i.e., in which compliance with the main obligations of employers is monitored, according to the risk of violation of labour regulations, according to the data of sanctions, inquiries and administrative procedures carried out in 2019. Finally, the number of inspection actions programmed was 6,438 and executed was 7,832 for a compliance of 122% of the goal.

#### **2.4.2. Completing labour inspections within the established timeframes;**

It is important to point out that the administrative actions carried out by the Labour Inspection, regardless of the matter or infraction they deal with, are developed following the same procedure regulated by law, by the Code of Administrative Procedure and Administrative Disputes - Law 1437 of 2011- and Law 1610 of 2013, the Labour Inspection Law. The procedure followed was detailed in the responses to Recommendation No. 1.

In any case, the Labour Inspectorate has a strong commitment to comply with the terms set forth by the Colombian regulations regarding its administrative procedures and has been adjusting its processes and structures for such purpose. However, it is necessary to point out that the last two years (2019 and 2020) have been particularly complex for the Labour Inspectorate, since in 2019, there was a change in the personnel of the Labour Inspectors' staff as a result of the Job Provision Competition held, which made the execution of the sanctioning procedures quite difficult until all the positions were filled; In 2020, the Pandemic situation caused by COVID-19 impacted the development of the administrative sanctioning procedures, since the isolations ordered as a quarantine effect made it necessary to suspend the procedural terms of the administrative proceedings in charge of the Ministry of Labour in general

The aim is to improve the labour law inspection system in order to ensure that inspections comply with legal procedures and deadlines and are carried out in accordance with a national inspection strategy targeting at-risk sectors.

The commitment of the Ministry of Labour through the DVI Directorate has been reflected in the preparation, publication and compliance with each one of the manuals that have been issued for use by labour inspectors in the performance of their duties.

To date we have 4 inspection guides for inclusion in the inspection manual, whose use is mandatory according to Resolution 1309 of 2013 which are: dosage of sanctions, administrative sanctioning procedure, ambiguous and disguised labour relations and acts that violate union rights.

So far, the first two guides developed by the ILO have been incorporated into the Labour and Social Security Inspector's Manual. The two remaining guides will be included in the update of the Manual that is currently underway. The ILO committed to update the guide called "Ambiguous and disguised employment relationships" as well as the checklist associated with it, these will be included in the manual in the first quarter of 2019.

To date, the Labour Inspector's Manual is 100% up to date; however, we are in the process of correcting the style and layout, so the new version will be ready in the first quarter of 2021.

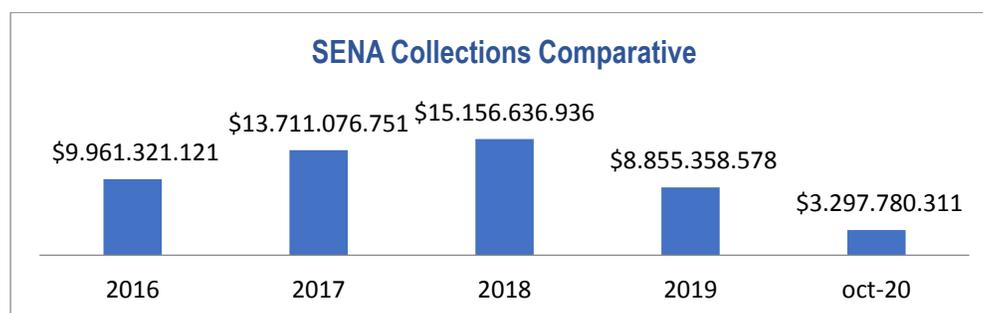
### 2.4.3. Improving the collection of fines.

Linking SENA's fine collection system (SIREC) with the Ministry of Labour's inspection system ensures the referral of cases from the Ministry of Labour to SENA in which a fine is imposed, allowing the Ministry of Labour to follow up on the collection of fines in these cases by SENA.

The creation of the IVC-SENA Working Group (sponsored by the Presidency) in February 2017, to address the linkage of the IVC's Information System (SISINFO) with SENA's SIREC, and the Ministry's progress in this task. The integration model is at 100%, under the following work activities defined for the entry into operation of the "Bridge Module - Web Service" between the Information System (SISINFO) of the IVC and the SIREC of SENA.

In addition to the above, SENA has been making better efforts so that the coercive collection processes are developed in a more expeditious manner. However, the year 2020 has been particularly complex with respect to the collection of sanctions, mainly due to the circumstances caused by the COVID - 19 pandemic, which has strongly affected the economic capacity of the companies and therefore makes it difficult for them to pay the debts in favour of SENA immediately, generating that the processes are extended in time.

The following is a detail of SENA's collections from 2016 to October 2020:



Source: SENA - IVC Directorate



It should be mentioned that the collection of fines is not presented as a percentage of outstanding fines because the dynamics of the collection does not allow this direct correlation, since what is collected does not necessarily correspond to fines from the same year, but also from previous periods.

On the other hand, through Law 1955 of May 25, 2019, by which the National Development Plan 2018 - 2022, "Pact for Colombia, Pact for Equity" is issued, which outlines as one of its primary objectives, to lay the foundations of legality, entrepreneurship and equity, which, in the long term, allow achieving equal opportunities for all Colombians, to achieve compliance with Sustainable Development by the year 2030, through its Article 201, the legislator created the Fund for the Strengthening of the Inspection, Surveillance and Control of Labour and Social Security FIVICOT, as a special account of the Nation, without legal personality, attached to the Ministry of Labour, whose resources will be used to strengthen the Inspection, Surveillance and Control of Labour and Social Security.

The creation of FIVICOT is due to the need to strengthen the functions of Inspection, Surveillance and Control carried out by the Ministry of Labour; however, there are other reasons, such as international commitments derived from the free trade agreements signed by the country or the labour commitments assumed due to the entry into the Organization for Economic Cooperation and Development (OECD); Therefore, as of January 1 of this year, the National Development Plan assigned to the Ministry of Labour the powers of collection and collection of fines imposed on employers sanctioned for the violation of provisions related to working conditions, as well as the protection of workers in the exercise of their profession and the right to free union association.

Similarly, and in compliance with the provisions of the Law, the National Government, through the Ministry of Labour, issued Decree 120 of January 28, 2020, whereby Chapter 2 is added to Title 3 of Part 2 of Book 2 of Decree 1072 of 2015, Sole Regulatory Decree of the Labour Sector, in relation to the general regulation of FIVICOT.

With respect to the process of Collection Management and Portfolio Collection, it should be noted that the coercive collection is a special administrative procedure contained in articles 823 and following of the Tax Statute, which empowers certain entities to directly enforce the credits in their favour, without the need to resort to the ordinary jurisdiction. Its purpose is to obtain the forced payment of the obligations in its favour, when the debtor has been reluctant to voluntarily pay its obligations.

Law 1066 of 2006 establishes that public entities that are permanently in charge of the exercise of administrative activities and functions or the provision of State services and that within these have to collect public revenues or funds from the national or territorial level, must: *"1. Establish through general regulations, by the highest authority or legal representative of the public entity, the Internal Regulations for the Collection of the Portfolio, subject to the provisions of this law, which must include the conditions related to the execution of payment agreements"*.

In view of the above, the functions of the Internal Coactive Collection Working Group of the Legal Advisory Office of the Ministry of Labour (Resolution No., 02530 of June 20, 2014) consist of *"Executing the procedures for persuasive collection, coactive collection and other procedures established in the law and regulations to manage the collection of obligations whose collection is assigned to the Ministry of Labour."*

### Strategies to improve fine collection

- Issuance of guidelines for the management of the Territorial Directorates regarding their activities in the process of collection of fines imposed.
  - **FIVICOT:** Instructive Memorandum 12208 of September 30, 2020
  - **Labour Risks:** Circular 065 of October 07, 2020
- Issuance of the Ministry of Labour's Internal Regulations for Portfolio Collection, unified and standardized for all Funds. December 2020.
- Acquisition of software solution for Persuasive and Coercive Collection Management by the Ministry of Labour, its adaptation and implementation - December 2020.
- Development of a functional requirements document for the integration between the Information Systems of Coactive Collection and SISINFO - November 2020.
- Development and implementation of a web service that allows interoperability between the Coactive Collection Information Systems and SISINFO. - December 2020 and 2021.

#### 2.4.4. Developing and implementing a national inspection strategy.

Annually, the Inspection, Surveillance and Control Directorate, through the Inspection Sub-Directorate, prepares a comprehensive inspection plan, through which it plans the development of reactive inspection and preventive assistance for the corresponding year, focusing its activities on the priority sectors identified in the action plan and in sectors with high labour conflicts detected by the territorial directorates through their labour risk analysis. For this work, bimonthly goals are set, which must be reported to the Territorial Management Sub-Directorate.

For the strategic plan for inspections, an integration procedure was carried out containing the following:

**Objective:** The DVI system carries out reactive inspection visits and preventive assistance actions in the different companies whose economic activity is framed within the critical or priority sectors at the national level (Palm, Sugar, Ports, Mining and Flowers). Likewise, it is carried out in the sectors of the economy with the greatest labour conflicts in the area of influence of each of the Territorial Directorates.

**Background:** The Labour Action Plan, the Tripartite Agreement, the OECD recommendations, in addition to the ILO's decent work developments, are fundamental axes that have directed the Colombian Government's action when advancing in the guarantees and protection of labour rights, obliging it to establish as priority sectors for reactive and preventive labour inspection the palm, sugar, mining, port and flower growing sectors and to promote compliance with labour rights by companies, developing plans and mechanisms for monitoring Temporary Service Companies E.S.T., Cooperatives and Pre-cooperatives of Associated Work, Employment Placement Agencies and companies that have deposited collective bargaining agreements and union contracts.

The main purpose of the Labour Inspection System (SIT) is to influence compliance with labour obligations in companies and, as a consequence, achieve a significant effect in reducing the risks of conflict and labour insecurity,



For this purpose, it uses the Information System that allows the construction of a labour risk analysis whose objective is to detect the sectors of the working population that are more likely to have their labour rights or working conditions violated, identify the sectors and indicate the companies with which information, training and coordination strategies will be developed to create, reinforce and facilitate the consolidation of a culture of compliance with labour standards.

– **Comprehensive Annual Inspection Plan:**

The comprehensive annual inspection plan applicable to critical or priority sectors at the national level and to sectors of the economy with the greatest labour conflicts in the area of influence of each of the Territorial Directorates, comprises a set of actions aimed at achieving results of the highest efficiency and quality, taking advantage of existing inspection, surveillance and control practices and tools, but modifying those that need to be updated for better operation and adding new initiatives that contribute to providing better services to users. To this end, two strategies are developed as follows:

– **Reactive:**

- It originates with the filing of a complaint or intervention decision.
- Can be done at any time.
- It is carried out with a checklist of labour obligations.
- Documentation is required to prove compliance.
- Minutes are taken.
- A possible sanction procedure is initiated.

– **Preventive (Assistance)**

- It is based on the analysis of risks, conflicts and non-compliance.
- The visit is agreed with the company.
- It is done with an explanatory letter and/or minutes, with the assistance of the parties and in order to make a collaborative process.
- Issues of interest and problems of the company are raised.
- If applicable, the process to build an Agreement between the parties is initiated.
- It is concluded with the signing of the letter of visit or the Agreement formulated.

– **Variables for the Elaboration of the Comprehensive Inspection Plan**

The following information is considered for the purposes of preparing the plan and setting the goals of the Territorial Directorates:

- Number of inspectors (provided) that in compliance with their functions are authorized to carry out inspection visits. (Human Talent Office Report).
- Economic sectors prioritized by the Territorial Directors. (Occupational Risk Analysis).

- Percentage of incidence of economic sector. (Occupational Risk Analysis).
- Critical sectors covered by Free Trade Agreements.

On the other hand, and in order to continue strengthening the national inspection strategy, the DVI and Territorial Management Directorate with the accompaniment of the Military University carried out during 2019, developed three documents necessary to harmonize the DVI system of the Labour sector, which are:

- Interinstitutional Action Plan for the implementation of the DVI public policy on labour matters, including: External Bodies, Matrix of functions, goals and results, Value Chain and PIVC Internal Organizational Unit.
- National and Regional Labour Risk Map including the result for each of the 36-territorial headquarters with the document of labour conflict indexes by sectors of the economy.
- National Inspection Plan, structured in three basic pillars: Promotion, Protection and Prevention.

All this strategy definition concluded with the formulation of the Public Policy for Labour Inspection, Surveillance and Control "Committed to Decent Work 2020 -2030", developing diagnostic activities, compiling information and building lines of action to consolidate a reliable, timely, strategic, preventive and proactive action Prevention, Inspection, Surveillance and Labour Control System with territorial relevance. This Policy was adopted by Resolution 345 of February 11, 2020, "Whereby the Public Policy for Labour Inspection, Surveillance and Control "Committed to Decent Work 2020 -2030" is adopted.

The comprehensiveness of the public action is supported by the follow-up of the principles of the public policy; therefore, the main lines of action to be deployed in the execution of the Public Policy are the following:

1. **LINE 1.** Towards a System of Prevention, Inspection, Surveillance and Labour Control: Reliable, timely, strategic, autonomous, with territorial relevance.
2. **LINE 2.** Generation of a new normative support for the regulation of the world of work and especially the development of the Labour Inspection and its functions.
3. **LINE 3.** Generation of management and governance mechanisms for the Prevention, Inspection, Surveillance and Control System.
4. **LINE 4.** Cultural transformation oriented towards respecting and guaranteeing workers' rights.
5. **LINE 5.** Promotion and strengthening of trade union freedoms and the right of association.
6. **LINE 6.** Strengthening of formalization and employment policies.

## Indicators of Labour law enforcement

### 1) Overview of newly adopted regulations and legislation

#### Summary of Regulations and Legislation 2017

- Resolution 3783 of 2017, whereby investigations for abusive use of collective bargaining agreements will be under the jurisdiction of the Special Investigations Unit.



- Resolution 3599 of September 19, 2017, whereby the Inspection, Surveillance and Control Information System (SISINFO) was adopted in the Ministry of Labour, a set of provisions were issued that must be considered by users of the system and its use was made mandatory.
- Resolution 3783 of September 29, 2017, by which was created, within the Directorate of Inspection, Surveillance and Control, the Internal Working Group for the Management of Training and Analysis of the Labour Inspection, among others, has the function of advancing the necessary steps for the training to the different actors that make up the system of inspection, surveillance and control. By means of the same Resolution, also the investigations for abusive use of collective bargaining agreements will be under the competence of the Special Investigations Unit and in its article 2, it establishes to the same Unit the functions of knowing, initiating, advancing and culminating any of the administrative actions that by general competence correspond to the offices of the Territorial Directorates and Special Offices, as well as their Working Groups, provided that such knowledge is assigned to it, by virtue of the exercise of the preferential power, in the terms established in article 32 of Law 1562 of 2012 and Decree 1072 of 2015, articles 2.2.3.1.1 et seq.

### Summary of Regulations and Legislation 2018

- Memorandums 2230 and 2235 of January 31, 2018, referring to: Preventive Assistances and Reactive Inspections, where the guidelines that each territorial direction must comply with to reach the stipulated goal and give them compliance with all commitments are specified, percentages of compliance and progress are presented.
- Ministerial Resolution 2021 of May 9, 2018, addresses the issue of cooperatives in such a way that sufficient guidelines are established so that the phenomenon of labour intermediation through cooperatives does not reappear. It integrates the decision of the Council of State and is in line with the legal framework.

### Summary of Regulations and Legislation 2019

- Memorandums 1956 and 1958 dated February 8, 2019, in reference to Preventive Assistance and Reactive Inspections, where the guidelines that each Territorial Directorate must comply with in order to reach the stipulated goal and comply with all commitments are specified, percentages of compliance and progress are presented.
- Resolution No 1160 of May 3, 2019, adopted the Virtual Campus, as a training and education tool for strengthening the knowledge and competencies of Ministry of Labour officials.
- Law 1955 of May 25, 2019, which enacts the National Development Plan 2018 - 2022, "Pact for Colombia, Pact for Equity", which outlines as one of its primary objectives, to lay the foundations of legality, entrepreneurship and equity, which, in the long term, allow achieving equal opportunities for all Colombians, to achieve compliance with Sustainable Development by the year 2030, through its Article 201, the legislator created the Fund for the Strengthening of the Inspection, Surveillance and Control of Labour and Social Security FIVICOT, as a special account of the Nation, without legal personality, attached to the Ministry of



Labour, whose resources will be used to strengthen the Inspection, Surveillance and Control of Labour and Social Security.

- By memorandum SI201933030000000010148 dated June 11, 2019 addressed to the Deputy Directorate of Human Talent, it is urged, to bring to the attention of the Territorial Directors, for the granting of two (02) hours per week, to the Labour and Social Security Inspectors, within their working day, for access and development of training on the virtual campus.
- Memorandums SI201933030000000000010412 and SI201933030000000000010414, dated June 14, were sent to all the Territorial Directorates and Special Offices, and to the Labour Inspectors, containing the Protocol for the implementation of the Virtual Campus and the schedule for the development of the tool.

### Summary of Regulations and Legislation 2020

- Decree 120 of January 28, 2020, whereby Chapter 2 is added to Title 3 of Part 2 of Part 2 of Book 2 of Decree 1072 of 2015, Sole Regulatory Decree of the Labour Sector, as related to the general regulation of FIVICOT.
- Decree 120 of January 28, 2020, whereby Chapter 2 is added to Title 3 of Part 2 of Part 2 of Book 2 of Decree 1072 of 2015, Sole Regulatory Decree of the Labour Sector, as related to the general regulation of FIVICOT.
- Resolution 345 of February 11, 2020, "Whereby the Public Policy on Labour Inspection, Surveillance and Control "Committed to Decent Work 2020 -2030" is adopted, developing diagnostic activities, compiling information and building lines of action to consolidate a reliable, timely, strategic, preventive and proactive action Prevention, Inspection, Surveillance and Control System with territorial relevance.
- In the guidelines given, the visits for the inspection of compliance with labour standards, in the year 2020, included the General Inspection visits, under Memorandum No. 08SI20203310000000031816 of February 18, 2020, which specifies the inspection function in general, under the three scopes: territorial, sectorial and functional.
- Decree No. 417 of March 17, 2020; in this framework, it adopts preventive sanitary measures of isolation and quarantine of persons such as "Ordering the heads, legal representatives, administrators or those acting in their stead to adopt, in public and private workplaces".
- The Ministry of Labour issued Circular 021 of March 17, 2020 and Circular 022 of March 19, 2020, by means of which it presents the employer sector with guidelines that may be considered by this sector, in order to protect employment, sustain jobs, income generation and productive activity, regardless of their direct employment or on mission, and adopts the figure of rigorous labour oversight, on the decisions taken by employers with employment contracts, to protect the rights of workers during the social emergency declared in Colombia.

- Resolution 784 of March 17, 2020, amended by Resolution 876 of April 1, 2020, administrative provisions were adopted in the Ministry of Labour, establishing the suspension of procedural terms in all actions and procedures under the jurisdiction of the Territorial Directorates, Special Offices and Labour Inspections, focusing the work of Inspection, Surveillance and Control through the figure of Rigorous Labour Inspection (Circular 022 of 2020), to the knowledge of the complaints directly related to the situation caused by the pandemic and to the attention of three specific procedures: (i) Verification of the fact constituting force majeure or fortuitous event for which the employment contract was suspended (Art 51 No. 1 CST), (ii) Request for authorization to the employer for the temporary suspension of activities for up to 120 days (Art 51 No. 3 CST), and (iii) Request for authorization of collective dismissal (Art 67 Law 50 of 1990).
- Decree 491 of 2020 of March 28, 2020, whereby emergency measures are adopted to guarantee the attention and rendering of services by public authorities and private individuals who perform public functions and measures are taken for the protection of labour and service contractors of public entities, within the framework of the State of Economic, Social and Ecological Emergency. With the purpose of protecting and guaranteeing the rights of workers, as well as promoting social distancing, the alternative of carrying out inspection actions using information technologies -TICS- is established.
- Memorandums 08SI202033131000000000008698 and 08SI20203310000000000008700 dated July 8, 2020, in order to resume the preventive inspection activities with the important modification using digital and virtual media and technological tools for its development, in order to complete the proposed goals, of a total of 3,064 visits in preventive inspection for the year 2020.
- Resolution 1590 of September 8, 2020, whereby the suspension of terms indicated in Resolution number 784 of March 17, 2020, modified by Resolution number 0876 of April 1, 2020, regarding administrative proceedings, investigations and disciplinary processes in the Ministry of labour, is lifted.
- Guidelines for the management of the Territorial Directorates regarding their activities in the process of collection of fines imposed.
  - FIVICOT: Instructive Memorandum 12208 of September 30, 2020.
  - Labour Risks: Circular 065 of October 07, 2020.

## 2) Labour inspectorate

### a. Number of inspectors and their contract type.

2017	2018	2019	2020
68 Career	68 Career	206 Career	600 Career
22 Acting	22 Acting	20 Acting	8 Acting
766 Provisional	6 Trial period 751 Provisional	404 Trial period 239 Provisional	19 Trial period 205 Provisional

Source: Human Talent Sub-Directorate

### b. Number of inspectors participated in training.

2017	2018	2019	2020
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869 face-to-face quotas	1.395 face-to-face quotas	1.164 face-to-face quotas 6.726 Virtual Quotas	254 face-to-face quotas 2.261 Virtual Quotas
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Source: IVC Directorate

**c. Number of inspections and investigations (total and separately for abusive subcontracting and misuse of collective pacts)**

2017	2018	2019	2020
Preliminary Inquiries: 19.052	Preliminary Inquiries: 14.592	Preliminary Inquiries: 13.999	Preliminary Inquiries: 10.146
Sanctioning Proceedings: 3.177	Sanctioning Proceedings: 3.056	Sanctioning Proceedings: 2.584	Sanctioning Proceedings: 1.376

Source: IVC Directorate

**d. Average timespan for concluding investigations<sup>3</sup>.**

2017	2018	2019	2020
Up to 291 days by legal provision in sanctioning procedures where no preliminary investigation has been carried out.	Up to 291 days by legal provision in sanctioning procedures where no preliminary investigation has been carried out.	Up to 291 days by legal provision in sanctioning procedures where no preliminary investigation has been carried out.	Up to 291 days by legal provision in sanctioning procedures where no preliminary investigation has been carried out.

Source: IVC Directorate

**3) Fines Collection**

**a. Number and amount of fines imposed (total and separately for abusive subcontracting and misuse of collective pacts)**

2017	2018	2019	2020
Number: 3.507	Number: 3.334	Number: 3.341	Number: 1.639
Executed Amount: \$27.869.262.803*	Executed Amount: \$52.827.176.592*	Executed Amount: \$28.044.732.496*	Executed Amount: \$14.523.595.570*
Non-Executed Amount: \$174.389.749.410*	Non-Executed Amount: \$71.631.781.945*	Non-Executed Amount: \$55.487.972.435*	Non-Executed Amount: \$18.251.686.493*
Labour Intermediation Amount: \$113.804.518.789	Labour Intermediation Amount: \$23.944.781.697*	Labour Intermediation Amount: \$10.264.348.414*	Labour Intermediation Amount: \$2.406.185.110*
Executed Labour Intermediation Amount: N/A	Executed Labour Intermediation Amount: \$15.709.041.638*	Executed Labour Intermediation Amount: \$1.622.723.454*	Executed Labour Intermediation Amount: \$146.422.070*
Collective Pacts Amount: N/A	Collective Pacts Amount: N/A	Collective Pacts Amount: N/A	Collective Pacts Amount: N/A

Source: IVC Directorate

\* values in Colombian Pesos (COP)

<sup>3</sup> The average time shown in the indicator corresponds to the average value calculated on the standard defined in the Law, this is so, because the processes are subject to terms that are beyond the control of the Labour Inspection. However, if it wanted to know, the real average time that the files are resolved from the start of the action until its completion, the average value as of the date of this report is estimated at 547 days.

**b. Number and amount of fines collected (total and separately for abusive subcontracting and misuse of collective pacts)**

2017	2018	2019	2020
\$ 13.711.076.751*	\$ 15.156.636.936*	\$ 8.855.358.578*	\$ 3.297.780.311*

Source: IVC Directorate

\* values in Colombian Pesos (COP)

Regarding the disaggregation of these data, the Ministry of Labour does not have the number of sanctions collected since the Collecting Agency (SENA) provides only the absolute value of the collection for each year.

**c. Average timespan for fines collection.**

Resolution 1235 of 2014 updated the collection procedure, reducing the terms in 67 business days, the average time that applies to 2017, 2018 and 2019.

For 2020, it is worth mentioning that according to the process of creation and implementation of FIVICOT, there is still no estimate of an average time for the collection of fines. Additionally, it should be mentioned that due to the restrictions posed by the Covid-19 pandemic and the suspension of procedural terms, commented previously in the report, there is a high impact on the process of collecting fines for the year in question.

## 3. Collective bargaining

### 3.1. Build a constructive framework for social dialogue by:

#### 3.1.1. Promoting a two-tier system of sectoral and firm-level negotiation, by elaborating the regulations on sectoral bargaining in the Labour Code;

In Colombia it is possible to extend a collective convention when it comprises more than two-thirds of the workers of the enterprise, whether they are affiliated or not, art. 471 of the Labour Code.

The Colombian legislation provides that collective conventions cover:

- The members of the trade union that has held it and to those who accede to the collective convention or subsequently enter the union.
- To all workers in the company when the number of union members is greater than one-third of the total number of workers
- Where the collective convention comprises more than two-thirds of an industrial branch, it may be extended to other enterprises in the same industry in a region that are of equal or such technical and economic capacity.

While there is no exclusive rule governing collective bargaining by branch, an important example of a collective bargaining process is in the banana sector in Colombia. Of the 344 farms in the banana sector in Urabá, 90% are collectively organized. These farms have 17,600 workers, of whom 85% are conventions. Most of the workers are mostly grouped in Sintrainagro (CUT), which is also based in Magdalena, Santander, Risaralda and Medellín.

In addition, the Colombian Farmers Association - Augura - which is the guild that brings together Colombian banana exporters. In addition to the trade union functions, it acts, for the purposes of collective bargaining, as coordinator and facilitator of the negotiation process by bananas. According to an ILO study, over a period of 15 years banana workers and entrepreneurs went from highly conflicting relationships to a situation of permanent dialogue and great benefits for workers, industry and the region.

### 3.1.2. Eliminating the option to negotiate collective agreements;

It is essential for the Ministry of Labour to ensure social dialogue between tripartite actors, so a number of regulatory measures have been taken to improve the effectiveness of social dialogue and labour negotiations in the country.

Similarly, it should be noted that collective agreements are also a form of concretization of social dialogue. Thus, any attempt at agreement, regardless of the label it receives or who promotes it, should be celebrated in a society built on consensus" (manual on collective labor relations, CESLA, 2019).

In this sense, Convention 98 does not oblige collective bargaining to be carried out only through unions, on the contrary, it determines that the affiliation of workers to a union is voluntary. On the other hand, the recognition of the right to collective bargaining, totally excluding non-unionized workers, would violate this same agreement by establishing an unjustified difference to the detriment of workers not represented by a union organization.

The use of legally authorized but sometimes misused schemes such as "collective agreements" and "trade union contracts" is being closely monitored, sanctioned when necessary and their impact on the trade union association is under study as the OECD, the United States and Canada have shown their nonconformity with these figures, expressing that they violate the labour rights of workers.

The Ministry of Labour therefore issued administrative acts providing functions to the Special Investigations Unit to advance investigations related to illegal outsourcing and misuse of Collective Covenants and Trade Union Contracts, increasing the number of members of the Special Investigations Unit to 15.

Statistical information on the management of the Special Investigations Unit is detailed below:

YEAR	CAUSE OF COMPLAINTS	TOTAL
2017	MISUSE OF COLLECTIVE BARGAINING AGREEMENTS AND/OR BENEFIT PLANS	12
	ILLEGAL LABOUR INTERMEDIATION AND/ OR IRREGULAR TERCERIZATION	12
	FOR INFRINGEMENT OF THE RIGHT TO TRADE UNION ASSOCIATION	3
	REFUSAL TO NEGOTIATE	0
	VIOLATION OF THE COLLECTIVE BARGAINING AGREEMENT	1
	VIOLATION OF UNION PRIVILEGES (FUERO SINDICAL)	1



2018	FOR UNION PERSECUTION	0
	<b>TOTAL</b>	<b>29</b>
	MISUSE OF COLLECTIVE BARGAINING AGREEMENTS AND/OR BENEFIT PLANS	0
	ILLEGAL LABOUR INTERMEDIATION AND/ OR IRREGULAR TERCERIZATION	2
	FOR INFRINGEMENT OF THE RIGHT TO TRADE UNION ASSOCIATION	13
	REFUSAL TO NEGOTIATE	7
	VIOLATION OF THE COLLECTIVE BARGAINING AGREEMENT	2
	VIOLATION OF UNION PRIVILEGES (FUERO SINDICAL)	0
2019	FOR UNION PERSECUTION	0
	<b>TOTAL</b>	<b>24</b>
	MISUSE OF COLLECTIVE BARGAINING AGREEMENTS AND/OR BENEFIT PLANS	1
	ILLEGAL LABOUR INTERMEDIATION AND/ OR IRREGULAR TERCERIZATION	3
	FOR INFRINGEMENT OF THE RIGHT TO TRADE UNION ASSOCIATION	2
	REFUSAL TO NEGOTIATE	5
	VIOLATION OF THE COLLECTIVE BARGAINING AGREEMENT	0
	VIOLATION OF UNION PRIVILEGES (FUERO SINDICAL)	0
2020	FOR UNION PERSECUTION	3
	<b>TOTAL</b>	<b>14</b>
	MISUSE OF COLLECTIVE BARGAINING AGREEMENTS AND/OR BENEFIT PLANS	0
	ILLEGAL LABOUR INTERMEDIATION AND/ OR IRREGULAR TERCERIZATION	0
	FOR INFRINGEMENT OF THE RIGHT TO TRADE UNION ASSOCIATION	1
	REFUSAL TO NEGOTIATE	0
	VIOLATION OF THE COLLECTIVE BARGAINING AGREEMENT	1
	VIOLATION OF UNION PRIVILEGES (FUERO SINDICAL)	0
FOR UNION PERSECUTION	0	
<b>TOTAL</b>	<b>2</b>	
<b>GENERAL TOTAL</b>		<b>69</b>

STATUS 2017	TOTAL
PRELIMINARY INVESTIGATION	2
FORMULATION OF CHARGES	2
DECISION TO FILE THE CASE	1
DECISION TO SANCTION	2
EXECUTED	22
<b>GENERAL TOTAL</b>	<b>29</b>

STATUS 2018	TOTAL
PRELIMINARY INVESTIGATION	7
FORMULATION OF CHARGES	3
EVIDENCE TESTS	1



CLOSING ARGUMENTS	1
EXECUTED	8
DECISION TO FILE THE CASE	4
<b>GENERAL TOTAL</b>	<b>24</b>

STATUS 2019	TOTAL
PRELIMINARY INVESTIGATION	7
FORMULATION OF CHARGES	1
EXECUTED	2
DECISION TO FILE THE CASE	2
DECISION TO SANCTION	2
<b>GENERAL TOTAL</b>	<b>14</b>

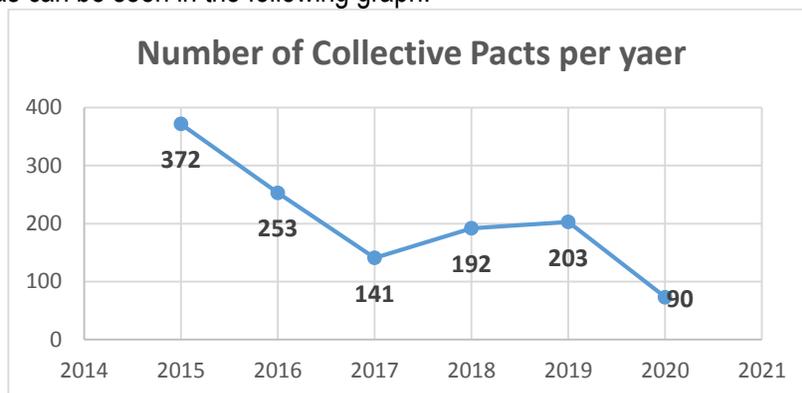
STATUS 2020	TOTAL
PRELIMINARY INVESTIGATION	2
<b>GENERAL TOTAL</b>	<b>2</b>

YEAR	CAUSE FOR COMPLAINT	FIRST DECISION	RESOLUTION	DATE	AMOUNT (COP)	FINAL DECISION/ CURRENT STATUS	
2017	MISUSE OF COLLECTIVE BARGAINING AGREEMENTS AND/OR BENEFIT PLANS	DECISION	SANCTION	5603	13/12/2019	\$ 49.686.960	APPEAL
		EXECUTED	SANCTION	1009	25/04/2019	\$ 66.249.280	SANCTION
<b>TOTAL OF SANCTION</b>						<b>\$ 115.936.240</b>	
2018	ILLEGAL LABOUR INTERMEDIATION AND/ OR IRREGULAR TERCERIZATION	EXECUTED	SANCTION TERRITORIAL DIRECTION	427	30/08/2018	\$ 110.992.188	ARCHIVE
	REFUSAL TO NEGOTIATE	EXECUTED	SANCTION	4073	1/12/2017	\$ 77.771.700	ARCHIVE
		EXECUTED	SANCTION TERRITORIAL DIRECTION	5168	3/10/2018	\$ 3.218.717.040	SANCTION
FOR INFRINGEMENT OF THE RIGHT TO TRADE UNION ASSOCIATION	EXECUTED	SANCTION TERRITORIAL DIRECTION	759	16/02/2018	\$ 78.124.200	ARCHIVE	
<b>TOTAL OF SANCTION</b>						<b>\$ 3.485.605.128</b>	
2019	ILLEGAL LABOUR INTERMEDIATION AND/ OR IRREGULAR TERCERIZATION	DECISION TERRITORIAL DIRECTION	SANCTION TERRITORIAL DIRECTION	44	21/03/2019	\$ 1.904.666.800	APPEAL
		EXECUTED	SANCTION TERRITORIAL DIRECTION	660	20/12/2018	\$ 429.710.400	ARCHIVE
	REFUSAL TO NEGOTIATE	DECISION	SANCTION TERRITORIAL DIRECTION	393	10/12/2018	\$ 683.586.750	ARCHIVE
		EXECUTED				\$ 585.931.500	SANCTION

TOTAL OF SANCTION

\$ 3.603.895.450

Thanks to these actions, the Collective Pacts were reduced by 44%, from 254 deposits in 2016 to 90 in December 2020, as can be seen in the following graph:



Source: Directorate of Inspection, Surveillance and Control

It is important to highlight that the increase observed between 2018 and 2019 is due to the fact that in those years several collective agreements of previous terms ended and the parties decided to renew or sign a new one.

### 3.1.3. Extending collective agreements automatically to all employees of a company, not only to the members of the signatory trade unions (*erga omnes*);

In Colombia, there is already a legal provision providing for what is recommended by the OECD within the Substantive Labour Code, as noted in Article 471 on extension to third parties:

1. Where a trade union whose members exceed one third of the total workers of the undertaking is a party to the collective convention, the rules of the convention extend to all workers thereof, whether unionized or not.
2. The provisions of this article also apply where the number of members of the trade union exceeds the limit indicated, after the signing of the convention.

### 3.1.4. Requiring multiple trade unions in the same company to form a bargaining team to ensure a single collective agreement;

Decree 089 of 2014 made a first approach to this situation, identifying the need to implement a mechanism of concentrated or cumulative negotiating or negotiation unit, rationality and economics in the procedure, so that the different trade unions and statements of petitions are expressed and represented respectively, at the negotiating table and in the negotiating committee.

In Colombia, the constitutional court's rulings created a flexible landscape to form trade union organizations, register their boards of trustees and their statutes; as well as bargaining collectively without taking into account the representativeness of trade unions, which has created great wear and tear for the trade union movement and companies, with extensive negotiation processes and complex administrative processes. Trade union multi-affiliation has not led to the union movement growing and strengthening, on the contrary, it has generated internal division and decay, for this reason the Ministry of Labour has designed a proposal to amend the Decree allowing the strengthening of the trade union movement in an environment of collaboration and harmony between workers and employers, that generates greater productivity in companies, that labour relations are dejudicialized, that union unity is preserved, prevent union fragmentation and lessen union conflicts and lastly, the most important thing, have unions with strong bargaining capacity and provide these processes of agility and efficiency. The draft Decree shall allow a number of trade unions to exist in the same undertaking, they shall establish a joint negotiating committee and submit a unified statement of petitions.

### 3.1.5. Giving the right to strike to higher-level trade union organisations

With regard to this situation, it is important to note that the honourable Constitutional Court of Colombia by judgment C-797 of 2000 reiterated the prohibition of the strike on the Federations and Confederations.

Federations and confederations are second- and third-degree trade unions, which carry out advisory functions of their affiliated organizations to the respective employers in the handling of their disputes and to the authorities or third parties of any claims and may, according to their statutes, *be attributed "the functions of appellate court against any disciplinary action, taken by one of the affiliated organizations; to address disputes between members of an affiliated union because of decisions made, and to resolve disputes between two or more federal organizations."*

In that context, the high court in the judgment in question noted in summary that:

#### **RIGHT TO STRIKE**-Restriction on federations and confederations

*The direct representation of workers in the economic conflict they have raised with the employer through the statement of petitions rests exclusively with trade unions. It is also the unionized workers, gathered in assembly, who take the decision to declare the strike, when it is not possible to resolve the conflict by direct means. In such circumstances, it is constitutionally justified that federations and confederations are excluded from a decision, such as the declaration of strike action, which is an issue which touches directly and substantially with the interests of affiliated workers and even unaffiliated workers. The decision whether or not to go on strike is a matter for workers who are linked to the undertaking, and it is not the second and third level organisations, which in their domestic field can determine in their entire dimension the economic and legal effects that occur with the declaration of strike and in relation to their employment contract.*

### 3.1.6. Ensuring that all workers, irrespective of the legal status under which they work, can join trade unions in practice;

Colombia's Honorable Constitutional Court by judgment in C797 of 2000 considered that: *"freedom of association entails: (i) the right of all workers, without discrimination or distinction, to be grouped together through the establishment of permanent organizations that identify them as groups with common interests,*



*and whose defence they advocate. This right implies freedom both to join and withdraw from such organizations; (ii) the power to establish and organize those organizations structurally and functionally and automatically conform them as legal persons, without the interference, intervention or restriction of the State; (iii) the power of workers' organizations to determine: the object of the organization, conditions of admission, permanence, withdrawal or exclusion of its members, internal disciplinary regime, governance and representation bodies, constitution and management of assets, causes of dissolution and liquidation, liquidation procedure, and other aspects concerning its structure, organisation and functioning, which must, in principle, be freely agreed upon by the members of trade union associations when given their own statutes or reform them, except for limitations that the legislature may validly impose under article 2 of Art. 39; (iv) The power of trade union associations to formulate the rules relating to the organisation of their administration, as well as the policies, plans and programmes of action that best suit their interests, with the above limitation; (v) the assurance that workers' organizations are not subject to the cancellation or suspension of legal persons being ordered by the administrative authority, but by judicial means; (vi) the right of trade union organizations to form and join national and international federations and confederations; (vii) inhibition, for public authorities, including the legislator, of adopting regulations, decisions or advancing actions that would lead to hindering the enjoyment of the right to freedom of association."*

Similarly, the Constitutional Court of Colombia has been repetitive in arguing that the right of trade union association constitutes a modality of the rights of freedom of thought, expression and association and, moreover, is inherent in the right to work, insofar it consists in the free will or willingness of workers to formally create permanent organizations that identify them and unite them in defence of the common interests of profession or trade, without prior administrative authorization and without interference by the State or employers. This is in accordance with CONVENTION 087, but also notes that even within the regulatory framework of the tripartite international body, it is feasible for the Member State, through its respective legislative body: (i) to establish the general framework of organizations leaving them as much autonomy as possible to regulate their operational and administrative aspects; (ii) the law may lay down the requirements for the establishment of a trade union, provided that they are not excessively dilatory; (iii) some formalities can be established for the creation of organizations and these must be respected by the founders of trade unions.

And this is so, since the Court itself has analysed:

*"It is emphasized that the understanding of the content of the right of freedom of association in other laws is not violated with the nomination that may be granted to forms of association, but must be examined that such a nomenclature does not affect the intrinsic content of the right, that is, that there is an effective means of establishing trade unions, which are independent, established voluntarily without being subjected to any state interference, coercion or repression, freely as to the affiliation and exercise of the rights enshrined in the Constitution. In this case it is necessary to refer to the doctrine of the "National Margin of Appreciation", which allows democratic and pluralistic States to have a certain scope of action in the interpretation of fundamental rights recognized both in their domestic order and in the international treaties to which they are a party. Notwithstanding the foregoing, this deference with the democratic legislature is no stranger to limits, and implies, in addition to internal conditions of deliberation, respect for the minimum content that international conventions and the jurisprudence that the courts responsible for interpreting them, give to such human rights. The use of the National Margin of Appreciation must meet objective standards derived from national legal tradition, and cannot be used in a discretionary manner to evade international human*

*rights standards. In this particular case, an analysis of Colombian jurisprudence shows that the interpretation and application of ILO Convention 87, in The Colombian legal order, does not deny a margin of action, not without limits, to the legislature in relation to the configuration of trade union organisations".*

In any case, it is important to note that in our country there is no limitation for workers to be able to constitute or join Trade Union Organizations of any kind, except for the exception established for members of the National Army and police forces or bodies of any order.

However, the honourable Constitutional Court's analysis of how this right is exercised has indicated that, in accordance with the categorization existing in our country of trade union organizations, those seeking to exercise their right of unionization must do so in accordance with Colombian rules and in accordance with their real need. Therefore, the one who is not a worker of a particular company, will find it impossible to join the Trade Union of the company, because it is simply not tied by any employment link, but may go to other forms of trade unions given the categories established in the Law.

All of the above is logical since given the current forms of business it could not be thought that a worker of a contracting company may require the contractor to fulfil employment obligations that are not in his charge since the latter is not his employer and therefore in the absence of an employment link.

Other cases that the Honourable Constitutional Court has unreleased has been that of temporary workers in establishing that they have every right to form or belong to trade union organizations, but without forgetting that the fact that they are exercising a mission in favour of a third party does not return to this their employer, let alone those responsible for their employment rights , since the one with which he has the employment link is the temporary service company with which he signed his employment relationship. If a temporary employee wishes to participate in a trade union organization that has a presence in the user enterprise, he or she may not join the user's trade unions, but may join the industry trade unions that exist.

Therefore, from this perspective it is considered that in Colombia full compliance is given to what is recommended by the OECD with regard to the possibility of trade union membership and in general to the guarantee of the right of trade union association and the right to collective bargaining.

### **3.1.7. Systematically collecting data on collective bargaining to track evolution.**

With the support of the Government of Canada, this register will be conducted on collective negotiations in enterprises in order to monitor their developments.

In accordance with this, the Ministry of Labour has been developing the SINDICAL FILE INFORMATION SYSTEM – SIAS, which has as its main characteristics:

- Development and implementation of SIAS to ensure the protection of trade union rights provided for in the Colombian Constitution and Laws.
- Coverage: National for approximately 12,350 Trade Union Organizations.
- Annual growth rate: 10 to 15% by new Organizations or addition of existing information.
- Contracted organization: National Digital Government Agency – MINTIC Colombia.
- Start and End Date: September 2019 – November 2020.



- Project status: Final tests, MINTRABAJO user training, implementation.

#### Benefits of SIAS:

- Create Trade Union Organizations.
- It maintains reliable information about its statutes, pacts, agreements, agreements, contracts and other actions.
- Issues all certifications required by Trade Union Organizations.
- Generates reports and statistics on the subject.

#### General advantages:

- In-line modular system supported by state-of-the-art technologies.
- Structure based on microservices.
- Oriented to the direct management of users of Trade Union Organizations.
- Simplification and speeding up of formalities.
- Instant information generation

### **3.2. 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.**

Strike action is a right linked to democracy and the Social Rule of Law, which allows workers to participate in defence of their economic rights in order to achieve equitable and social justice, but which is restricted to the essential rights of the community.

In the same sense, article 56 of the Political Constitution recognizes the right to strike, "except in the essential services defined by the legislator". That is, the strike is restricted only in the segment responsible for providing essential services to the community.

According to judgment 1680 of 2020, issued by the Labour Chamber of the Supreme Court of Justice, the strike is a fundamental right which, within its consequences, provides for the restrictions and limitations provided for by law, which in no case can undermine the guarantees and freedoms of association, postulated as evidenced in the draft law, by allowing the development of the strike not to be affected in the case of essential public services defined by the Legislator.

### **3.3. 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.**

Colombia has made significant progress in equity in recent years; however, it continues to record high inequity rates, maintaining a low level of purchasing power for a significant part of the population. This level creates greater vulnerability for low-income families who have children or seniors in the home. A determinant of this condition is household income, which is conditioned by the determination of the minimum wage, which is carried out by the National Government, employers and workers. The setting of the minimum wage follows the parameters established by the Constitution, in full compliance with the

jurisprudence principles that require that its annual adjustment guarantee the minimum vital and mobile to workers in accordance with article 53 of the Constitution.

The Colombian minimum wage is at levels that ensure the vital and mobile minimum of the working population, which is ordered by the Colombian Constitution and Jurisprudence and therefore, for the conditions of the Colombian population is not high. This is imperative under a social rule of law, which seeks the benefit of the population, especially the protection of the most vulnerable. The minimum wage is also at average levels when compared to other countries in the region, especially with OECD countries.

## Indicators of Collective bargaining

### i. Overview of newly adopted regulations and legislation;

#### Summary of Regulations and Legislation 2017

- Resolution No 3783 of 29 September 2017, assigned competence for the conduct of administrative investigations from the stage of formulation of charges, for improper use of collective bargaining agreements, to the Special Investigations Unit.

#### Summary of Regulations and Legislation 2019

- Resolution 0993 of 2019 Collective Negotiation Act 2019, Whereby the agreements reached in the collective bargaining 2019, held between the Trade Union Organisations and the Ministry of Labour, are adopted.

### ii. Number of collective agreements in the private sector and in the public sector (total and newly signed);

Collective agreements				
	2017	2018	2019	2020
Private Sector	380	490	572	194
Public Sector	431	314	314	314
Total	911	804	886	987

### iii. Number of workers covered by collective agreements in the private sector and in the public sector;

It is important to note that in the private sector they are called Collective Agreements (Convenciones Colectivas) and in the public sector they are called Public Sector Collective Bargaining Agreements (Acuerdos Colectivos de Negociación del Sector Público) and have different regulations.

Collective bargaining in the public sector with all the country's central organisations has benefited around 1,200,000 public servants. On the other hand, it is not possible to specify the number of workers covered in the private sector as the Trade Union Archives Group does not keep records of this information.

### iv. Number of collective pacts in the private sector and in the public sector (total and newly signed);

Collective Pacts				
	2017	2018	2019	2020
Private Sector	141	192	203	90

Source: Directorate of Inspection, Surveillance and Control

It is important to clarify that only in the private sector collective agreements are signed. Also, that the Trade Union Archive does not keep records of workers who have benefited from collective bargaining agreements.

**v. Number of workers covered by collective pacts in the private sector and in the public sector;**

The Trade Union Archives does not keep records of workers covered by collective agreements.

**vi. Number of arbitration tribunals convened and resolved.**

2017	2018	2019	2020
38	89	87	64

Source: Directorate of Inspection, Surveillance and Control

It should be noted that in the case of the Ministry of Labour's functions, a tribunal convened is a settled request. All convened tribunals end in the issuance of an arbitral award. At some point an arbitral award may be annulled by the Labour Jurisdiction, however, the latter is no longer within the competence of the Ministry of Labour.

**vii. Number of strikes and duration;**

The Ministry of Labour does not have official figures for this indicator. Although the Observatory of Labour Conflict records data on strikes, the information comes from open sources and cannot be presented as official information. Likewise, the Directorate of IVC reports strikes declared under the procedure established in the Substantive Labour Code. Cessation of Activities are not reported as declared strikes. Therefore, between the period 2017-2020, one (1) strike has been reported as stipulated in the Labour Code, which took place in 2020.

**viii. CETCOIT: Number of active cases and their stages, and number of closed cases and their outcomes.**

CASES PER YEAR	Agreement	NO AGREEMENT	Pending	TOTAL CASES	% EFFICIENCY PER YEAR
2017	11	8	0	19	58%
2018	12	4	0	16	75%
2019	19	1	0	20	95%
2020	12	1	7	20	60%
<b>Total</b>	<b>54</b>	<b>14</b>	<b>7</b>	<b>75</b>	<b>72%</b>

Source: Directorate of Fundamental Rights



## 4. Crimes against trade unionists:

In the National Development Plan 2018-2022, which contains the route that the country will take in the coming years contemplates the **"Pact for Colombia, Pact for Equity "** this pact is based on the welfare equation:

The legality pact is based on the consolidation of the Social Rule of Law, to ensure coexistence and ensure access to effective, efficient and effective justice so that we all live freely and in democracy. This pact for legality will consolidate the presence of the State throughout the country and, in particular, in those territories where the absence of institutions and empty spaces of authority have persisted. The pact for entrepreneurship and productivity is a pact for a dynamic, important and sustainable economy that enhances all our talents. This pact will make possible the productive transformation that Colombia has been waiting for and that will reduce our dependence on mining and hydrocarbons, increase labour and business formalization and achieve greater use of the opportunities provided by free trade agreements. The entrepreneurship pact also includes an alliance to boost the development and productivity of rural Colombia.



It is important to note that the Development Plan also contains **the Peacebuilding Pact**: Culture of legality, coexistence, stabilization and victims. The pact states that peace requires enabling conditions and short-, medium- and long-term measures to ensure its construction.

Our Government wishes to reiterate that we strongly reject any act of violence whatever its origin and reiterate the will of the State to move forward with investigations to clarify the facts and protect our workers in particular trade union leaders. It is also important to note that, as can be seen, although the number of homicides of unionized workers has been reduced in recent years, we will continue to fight for this figure to be zero homicides, because unfortunately Colombian society is still the victim of acts of violence and within these acts, unfortunately, the unionized population has been compromised. Similarly, it is worth noting that while there are still acts of violence against the unionized population, this does not mean that there is anti-union violence, since as noted the violence affects even several sections of the population.

Externally, security threats have become more sharp for Colombia. These include transnational criminal organizations that take advantage of the extension and porosity of borders to commit crimes. The complexity of phenomena relating to illegal economies increases when criminal groups threaten people, families and construction communities of social capital, who, by exercising their duties, activities or positions, see their rights to life, integrity, freedom and security threatened. In this context, each of the institutions of the State responsible for defending human rights have made great efforts to comply with the protection of the life and integrity of the inhabitants of the Colombian territory, especially the social leaders including trade unionists, which is why the Colombian Government has generated a number of strategies, in order to mitigate these situations, as shown below.

### **Strategies advanced by the National Government for the protection of the life and integrity of the leaders.**

Decrees 2078 of 2018 and 2137 of the same year were issued, through the first year, the National Government governed collective protection for Social Leaders and Human Rights Defenders throughout the national territory; which prioritizes collective protection and protection of communities at risk.

By Decree 2137 of 2018, President Duque created the High Cross-Level Commission for the development of the Plan of Action For the Prevention and Individual and Collective Protection of the Rights to Life, Freedom, Integrity and Security of Human Rights Defenders, Social Leaders, Communes, and Journalists, "Commission of the Timely Action Plan (PAO) for human rights defenders, leaders. and journalists", with the aim of articulating, guiding and coordinating the different protection and resource programmes of the various government entities involved in the prevention and individual and collective protection of the rights to life, freedom, integrity and security of human rights defenders, social leaders, communes, and journalists.

The National Government, through the Ministry of Defence, has implemented a strategy to develop activities to concentrate capacities to control territories where murders of trade union leaders, social leaders and trade unionists have been presented and continue to take place.

Through the General Command of the Military Forces, the National System of Immediate Reaction for the Advancement of Stabilization (SIRIE) was created and activated, which aims to monitor, verify and analyse instability factors in regional security to take appropriate action in a timely manner, including actions against trade union leaders, social leaders and human rights defenders.

The following activities are also implemented with this strategy:

- Develop military and police operations, to disarticulate organized crime groups
- Support the work of the Prosecutor General's Office
- Participate in campaigns against stigmatization and prevention and self-protection



Similarly, following the instructions of the Ministry of Defence, the National Police implemented a strategy to counter any criminal activity against union leaders, social leaders and human rights defenders.

For which the institution created an Elite Corps with a multidimensional approach, in an immediate response of the State to disarm the criminal organizations that have been attacking human rights defenders, social and political movements.

In addition to the above, the Police developed a Permanent Operational Directive No. 013 DIPON INSGE "Parameters of police action of the ESPOV Strategy", which sets guidelines and parameters for police action aligned with recent regulatory reforms in the prevention and protection of individuals, groups and communities, in particular for leaders and defenders.

#### **4.1. 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.**

Within the framework of the Inter-Agency Commission on Human Rights, involving the country's three most representative plants, the Andi, and the Minister of Labour, the Minister of the Interior, the Minister of Justice, the Minister of National Defence or his delegate; the High Counsel for Human Rights, the Prosecutor General's Office, the Ombudsman's Office, the Prosecutor General's Office, the Higher Council of the Judiciary, the José Alvear Restrepo Lawyers Collective; the Colombian Commission of Jurists and the National Trade Union School have been widely explained the State's strategy to move against violence.

It is important to note that the commission has high authorities of the country that guarantees human rights, such as Mr. Deputy Public Defender, who stresses that the Ombudsman's Office as guarantor of human rights accompanies all trade unions in the country, in order to generate an open, frank and constructive dialogue in order to prevent the criminalization and stigmatization of trade unionism in Colombia.

In this scenario, tripartite actors have the opportunity to interact directly with judicial authorities and express their concerns to them, as well as make recommendations to achieve greater effectiveness of the measures taken in terms of protection and investigation.

The Commission has not only met in Bogota, but has held regional meetings in Meta, Valle, Córdoba, Florence and the last committee agreed on a schedule of regional meetings where there is greater conflict.

In the last committee, the Ministry released the recommendations of the Committee on Freedom of Association in the context of case 2761 and discussed extensively the differences in figures that exist in terms of the number of assaults, as well as it was agreed that the human rights policies currently in the stage of elaboration by the Ministry of the Interior and the High Ministry for Human Rights would be socialized with all tripartite actors that could provide various criteria for policy-making.

The Ministry of Labour, the National Protection Unit and the National Trade Union School with the accompaniment of the CUT held a working meeting to try to identify criteria in the statistics of acts of violence, so that an approximation can be made in the identification of the victims of the trade union movement.

In 2016, the Office of the Prosecutor General of the Nation created the elite Group to promote and monitor criminal investigations for crimes committed against trade unionists. Together with the Ministry of Labour, important advances have been made, such as:

- Coordinate the Directorates in charge of the issue of violence against trade unionists in the Office of the Prosecutor.
- Identify the type of attacks and compile data related to processes from across the country in unified databases.
- Promote research in sectional and national directorates.
- Promote the procedural progress of the cases by identifying the tax offices in charge of the processes and highlighting knowledgeable prosecutors in the Directorates.
- Carry out control and follow-up on investigations where unionists are victims, advancing committees and working groups to these cases and continue training prosecutors.

With the 2020-2024 Strategic Direction Plan "Results on the streets and in the territories", the FGN is raising the levels of clarification of crimes that affect citizen security and rural areas.

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

### 4.2.1 Maintaining adequate financial resources for the National Protection Unit

Since the Protection Programme started operating under the UNP, have been carried out: 4,112 risk level studies to union leaders or activists for the years from 2012 to 2020 (cut off July 31).

For 2018, \$ 42,889,000,054 (COP) was allocated for the protection of 370 trade unionists.

As of December 31, 2019, approximately 300 risk assessments had been performed, resulting in the following: 62% with extraordinary results, 37.7% with ordinary results and 0.3% with extreme risk.

Since the creation of the Protection Program led by the UNP, **the allocation of resources for the protection of Union Leaders and Activists has been allocated according to the results of the Risk Level Studies conducted.**

For the period from January 1 to December 13, 2020, the UNP attended 1034 protection requests from trade unionists.

The total accumulated expenditure from 2018 to February 2020 is \$96,110,614,471 (COP). However, by the end of 2020, the investment for the total number of protected persons was \$939,387,650,512 (COP) of which a total of \$34,092,044,531 (COP) was allocated for the protection of 299 trade unionists.

**Note:** It should be mentioned that the UNP manages a global budget, which although it has increased annually, does not indicate that the calculation of the measures for a single type of population (e.g.: Population 3. Union leaders and activists) will also increase; this is due to the fact that the calculation of the allocation of resources by population depends on the demand that arises. Additionally, it is important to highlight that the implementation of measures depends on the matrix of the Committee for Risk Evaluation and Recommendation of Measures -CERREM- for the allocation of schemes, which may vary from one year to another depending on the number of schemes implemented in this population.

Estimated expense on protection measures UNP Population. 3 - Union Leaders and Activists	
Year	Estimated Expense (\$ COP)
2018	\$ 42.889.000.054



2019	\$ 39.986.188.070
2020	\$ 13. 235.426.347 *
<b>Total</b>	<b>\$ 96.110.614.471</b>

Source: UNP Planning Advisory Office. \* Cut-off date February 2020.

#### 4.2.2 Implementing, in close collaboration with trade unions, the recently developed collective protection mechanism for at-risk trade unionists.

On December 7, 2017, Decree 2078 was issued, which contemplates the procedure for access to collective protection mechanisms for trade union organizations. Said decree points out the following characteristics, which the population subject to protection must meet:

1. Clearly defined common objectives.
2. Meet on a temporary or permanent basis in order to achieve their objectives.
3. Share cultural, social and/or political traits.
4. Geographical location in a specific part of the national territory.
5. To be organized and correctly cohesive.
6. Have an identified or identifiable spokesperson or leader/leaders, representing the community or group.

The protection measures may materialize with the concurrence of the competent national and territorial entities for their implementation.

#### 4.3 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:

Pursuant to Article 250 of the Colombian Constitution, the Prosecutor General's Office is responsible for the exercise of criminal action and the investigation of facts that have the characteristics of crimes and for charging the alleged offenders before the competent courts and tribunals. In response to this constitutional duty, the Entity has sufficient institutional capacity to provide the necessary conditions to allow access to justice for citizens, with special emphasis on vulnerable sectors due to geographical limits or the impact of the crimes committed against them.

In this sense, understanding that crimes committed against a unionized person have an impact on the trade union movement, the Prosecutor General's Office has designed strategies that allow it to advance in the identification and prosecution of those responsible for the conducts that affect trade unionists. The Prosecutor General's Office is aware of the importance for the Colombian State of the trade union movement and, consequently, of its responsibility to prosecute under the parameters established by the Constitution, the law and international standards, in particular, due diligence.

To this end, the Prosecutor's Office has defined institutional mechanisms to address each crime according to its particularities. Thus, the entity has a Strategy for the Investigation and Prosecution of Homicides against union members and another one for homicides against human rights defenders, including union.<sup>4</sup> It also has a team in

<sup>4</sup> In certain circumstances, union members may have a dual status. On the one hand, they have access to constitutional protection for being members of trade unions; this condition is only verified with the affiliation to any trade union. On the other hand, in addition to being affiliated to the union, they may also carry out work for the promotion and defence of human rights; in this case, in addition to being a union member, they will be considered human rights defenders, in accordance with the provisions of the United Nations Resolution on Human Rights Defenders. It is important to clarify that not all union members have this dual status, which only applies to those who carry out activities in defence of human rights. This is why some homicide cases are reported by organizations that follow the behaviour of homicides against union members -



charge of following the behaviour of the crime of violation of the rights of assembly and association and, finally, it has been strengthening its institutional capacity to respond to threats against human rights defenders and union members.

By prioritizing the investigation of situations affecting unionized persons, the Prosecutor General's Office contributes to the fulfilment of the State's obligations in relation to the guarantees necessary for the exercise of freedom of association. The measures within the entity are not only strategic. The agencies responsible for the investigation of crimes against unionized persons have assigned prosecutors to include, within the framework of their workload, the prosecution of crimes against this population.

In this way, the Prosecutor's Office has strategies, officials and internal articulation mechanisms focused on the clarification of crimes against union members. The strategies and officials are not generally highlighted, but are specialized for each crime.

With these measures, for example, in relation to the homicides registered against this population, between 2017 and 2020 a percentage of progress in the clarification of 43.02% has been achieved. This rate is higher than that of intentional homicide, which for 2020 closed at 29.70% and for 2019 closed at 27.23%. This means that the Prosecutor's Office has concentrated its efforts on focusing resources on those who have special constitutional protection and is moving forward with forcefulness to raise this indicator. Progress has also been made in the termination of 714 cases for the crime of violation of freedom of assembly and association (see section 4.3.2 below).

The experience acquired after 4 years of working with the Elite Group and the Strategy for Investigation and Prosecution of crimes against human rights defenders will allow us to take on the challenge of advancing in the clarification of threats against the unionized population.

In the following paragraphs, the information requested in the formal opinion of the OECD of March 21, 2018, related to the issue of violence against trade unionists, under the competence of the Prosecutor General's Office, will be presented.

#### **4.3.1 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.**

The investigation and prosecution of crimes against unionized persons and human rights defenders is part of the last two strategic plans of the Prosecutor General's Office: 2016-2020 "Prosecution of the people, for the people and by the people" and 2020-2024 "Results in the street and in the territories".

The validity of the subject matter in the strategic plans of the Prosecutor General's Office demonstrates the permanent commitment of the Entity in the search for guarantees for access to justice in relation to unionized persons.

##### **a. Strategic Planning:**

The Prosecutor's Office, through the 2016 - 2020 Strategic Plan "Prosecutor's Office of the people, for the people and by the people", decided to focus its institutional efforts on the investigation and prosecution of threats and homicides against key actors.

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regardless of leadership-, while others are reported by those that follow the behaviour of homicides against human rights defenders; sometimes, several victims are reported from both perspectives, as union members and as human rights defenders.



This approach has been forcefully strengthened by the Prosecutor General of the Nation, Francisco Barbosa Delgado, through the Strategic Direction Plan 2020-2024 "Results in the street and in the territories", with which the Prosecutor General's Office is raising the levels of clarification of crimes that affect citizen security and rural areas. This involves obtaining clarification, as a priority, of homicides against human rights defenders, reincorporated persons, femicides and those committed against specific populations.

This is based on the recognition of the right to defend human rights, enshrined in the United Nations Declaration on the right and duty of individuals, groups and institutions to promote and protect universally recognized human rights and fundamental freedoms and, especially, the right to judicial protection for those who defend human rights:

"Article 9: Everyone whose rights or freedoms are allegedly violated has the right, either by himself or through a legally authorized representative, to complain to an independent, impartial and competent judicial or other authority established by law to have such complaint promptly reviewed in a public hearing, and to obtain from such authority a decision, in accordance with law, providing redress, including appropriate compensation, where such person's rights or freedoms have been violated, and to obtain enforcement of the eventual decision and judgment, all without undue delay."<sup>5</sup>

The Prosecutor General of the Nation, Francisco Barbosa Delgado, has established a specific strategy to address intentional homicide. This, by prioritizing the regions and allocating human capital to address situations immediately, once the event occurs. In addition, with the constant personal follow-up of the Prosecutor and the Deputy Prosecutor.

Thus, the investigation of crimes against unionized persons is carried out through two strategies. The first one, the investigation and prosecution of crimes against human rights defenders, which deals with unionized persons who carry out any work in defence of human rights, and the second one, the investigation and prosecution of intentional homicide against any unionized person.

## **b. Strategies for the investigation and prosecution of crimes against human rights defenders and Strategy for the investigation and prosecution of crimes against union members.**

### **Strategy for investigation and prosecution of crimes against human rights defenders.**

Since 2016, the Prosecutor General's Office has had a specific and differentiated strategy for the investigation and prosecution of crimes against human rights defenders. Within the framework of this strategy, homicides against union leaders who carry out human rights promotion, denunciation and protection work are investigated.

The Strategy is based on the broad concept of human rights defenders as defined in the UN Declaration on Human Rights Defenders. The Prosecutor General's Office recognizes that, beyond the profession exercised, the quality of human rights defender is determined by the activities carried out by the person in favour of the promotion, protection or realization of individual and collective rights of persons or groups of persons.

In this sense, the crimes committed against these persons affect the effective enjoyment of the right to the defence of human rights and, indirectly, impede the realization of the interests of the communities, groups or associations they defend. This is why the Investigation and Prosecution Strategy has lines of action that have allowed the Prosecutor's Office to reach historic levels of progress in the clarification of homicides against this population.

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<sup>5</sup> UN, General Assembly, A/ RES/53/144, Resolution adopted by the General Assembly on March 08, 1999, Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms: Article 1 Everyone has the right, individually and in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels.

The Strategy has the following lines of action:

- The establishment of human rights defence work as the first investigative hypothesis.
- Work on institutional culture within the entity, in order to adequately understand the concept of human rights defender.
- The application of a methodology for the association of cases, according to common criteria related to the place of occurrence of the facts or the defence activities carried out by the victim, among others.
- The creation of itinerant units to arrive promptly at the scene of the facts.
- The development and implementation of intervention protocols that allow for better preservation of the crime scene and the evidence collected there.
- Strengthening the investigation of the crime of threats against human rights defenders.
- The issuance of precise guidelines for the investigation of the crime of homicide against human rights defenders.
- A work plan that allows the internal articulation of the various units of the Prosecutor General's Office with competence in the investigation of these crimes.

These measures have been accompanied with Directive 002 of 2017 "*Whereby general guidelines are issued on the investigation of crimes against human rights defenders in Colombia*". This internal instrument was built by the Prosecutor's Office with the technical accompaniment of the Inter-American Commission on Human Rights and addresses three specific topics:

- Concept of human rights defender.
- Due diligence in the investigation of crimes affecting human rights defenders.
- Precise guidelines for the investigation of homicide against human rights defenders.

### **Strategy for the investigation and prosecution of crimes committed against union members.**

In order to provide guarantees for access to justice for unionized persons who are victims of crimes and with the objective of contributing to the materialization of the principle of freedom of association, the Prosecutor General's Office prioritized the investigation of crimes that may affect union activity. The above, through the following actions, which will be strengthened based on the provisions of the strategic direction 2020-2024, "Results in the street and in the territories":

- Analysis of the crimes with the highest incidence in the situation of trade unionists in the development of their work: homicides, violation of the rights of assembly and association and threats.
- Definition of the universe of cases and prioritized situations.
- Inter-institutional coordination and with the Ministry of Labour.
- Training to strengthen the investigation of the prioritized crimes.

The measures implemented to deal with the affectations suffered by unionized persons involve multiple departments of the Entity. These efforts are led by the Office of the Prosecutor General of the Nation, in its strategic component, and by the Office of the Deputy Prosecutor General of the Nation, in its mission component. They also include the participation of: (i) the Specialized Directorate against Human Rights Violations; (ii) the Delegate for Citizen Security, in the investigation of the prioritized crimes, (iii) the Directorate of High Studies, in the design and execution of periodic training programs for prosecutors and investigators who deal with these crimes, (iv) the Directorate of Policies and Strategy, in the review of the statistical behaviour of the prioritized affectations and, finally, (v) the Directorate of International Affairs, which follows the compliance with international commitments in the matter.

These units make up the so-called Elite Group for the Promotion and Monitoring of crimes affecting unionized persons and freedom of association, created in 2016 and in charge of complying with the actions defined in the strategy.



The Elite Group follows up on homicides against unionized persons regardless of the role they occupy within the union. For the specific follow-up of criminal proceedings, there is a prosecutor assigned to the national group of the Delegate for Citizen Security, who is in charge of articulating the work of the prosecutors who hear the cases in the 35 Sectional Directorates. This prosecutor, in certain circumstances, supports the investigations of the prosecutors stationed in the Sectional Directorates. Likewise, in the National Directorate against Human Rights Violations, there is also an official dedicated to the follow-up of cases within his competence.

Likewise, the Directorate of Advanced Studies has specific training courses for prosecutors and investigators of cases to develop tools that allow them to understand aspects related to criminal law, such as those that have to do with freedom of association and assembly, the concept of union, constitutional and international protection for unionized persons, among other aspects.

The work of the Elite Group has allowed to increase the results of the Prosecutor's Office in relation to the crimes of homicide and the violation of the rights of assembly and association. Within the framework of this group, work will be coordinated in relation to the investigation of threats against the unionized population.

### c. Budget.

The Prosecutor General's Office does not have a budget allocated to address specific programs or issues. The Entity's budget is allocated to address two major concepts, operation and investment.

For the entire operation of the Entity, for the year 2020 the Prosecutor General's Office had a budget of \$3,690,447,875,000 (COP), with these resources the Entity must cover personnel expenses, acquire goods and services, finance the victim and witness protection program, pay the social benefits of the employees of the Prosecutor General's Office and pay the judgments and conciliations.

It is important to note that this information is public and may be consulted by any person. In the particular case, the Prosecutor's Office, in accordance with Article 74 of Law 1474 of 2011 and Article 9 literal b of Law 1712 of 2014, publishes information on the budget, budget execution and financial statements on its website: <https://www.fiscalia.gov.co/colombia/transparencia-y-acceso-a-informacion-publica/#1519681728030-88388c84-a4a4>.

As indicated in the explanation of the strategies, the investigation and prosecution of crimes committed against unionized persons has the cooperation of several agencies. This is because the exercise of criminal action in these cases requires a coordinated and articulated action of the entire institution. For this reason, it would be very difficult to quantify the budget allocated to the implementation of the Strategy, since it occasionally involves some officials who support the work of the prosecutors assigned to know the subject matter. For example, in the case of homicides, the immediate reaction may be carried out by the available prosecutors and not by the prosecutors on duty.

## 4.3.2 Demonstrating tangible progress in the resolution of all crimes against trade unionists, securing convictions where appropriate.

### a. Homicide against trade unionists - Investigative advances

The Prosecutor General's Office was informed of 89 cases with 93<sup>6</sup> unionized persons victims of homicides, and investigates in the ordinary jurisdiction a total of 86 cases with 90 victims<sup>7</sup> of homicides in which the victim is a unionized person. These events occurred between January 1, 2017 and December 31, 2020. The implementation of the Entity's investigative strategies has allowed progress to be made in the clarification of 43.02% (37 cases) of homicides as follows:

- 9 cases with 11 sentences
- 20 cases in Trial
- 2 cases with indictments
- 6 cases under investigation with arrest warrants in force.

Of the 86 cases of homicides investigated by the Prosecutor's Office, 24 are supported through the Strategy for Investigation and Prosecution of Crimes against Human Rights Defenders, 16 of these were reported with a leadership other than union leadership and the remaining 8 as union leaders. The processes for the homicides analysed in this report are investigated by 57 prominent<sup>8</sup> prosecutors' offices.<sup>9</sup>

It is important to mention that, during these four years, in addition to the 11 sentences handed down for events that occurred during the period 2017-2020, the judges of the Republic have issued 131 sentences for homicides that occurred prior to the baseline established in the formal opinion, that is, events that occurred before 2017.

#### - Annual behaviour.

Below is a table with the annual distribution of cases of homicides against trade unionists that have been brought to the attention of the Prosecutor General's Office, as well as the procedural management in each of the years. It is important to note that the procedural progress is reported taking January 22, 2021 as the date of the consultation, i.e., a case occurred in 2017 has had more investigation time than a case occurred in 2020.

#### Annual distribution and procedural progress of homicides against trade unionists 2017-2020, in the ordinary jurisdiction.

Year	Number of homicides	Sentence	Trial	Indictment	Investigation with warrant	Inquiry	Archive
2017	23	3	7	1	1	10	1
2018	30	6	7		2	15	0
2019	19		3	1	3	12	
2020	14		3			11	

<sup>6</sup> This data was obtained from a consultation made by the Policies and Strategy Sub-Directorate to the SPOA information system and the contrast of the information with the Sectional Directorates of the Prosecutor's Office, Reports of the National Union School and corroboration of the Ministry of Labour through the union registry.

<sup>7</sup> One of the cases reported was filed due to atypical conduct, which means, in accordance with Article 79 of the Colombian Code of Criminal Procedure, "When the Prosecutor's Office becomes aware of a fact with respect to which it finds that there are no motives or factual circumstances that allow its characterization as a crime, or indicate its possible existence as such, it shall order the filing of the action. However, if new evidentiary elements emerge, the investigation will be resumed as long as the criminal action has not been extinguished". For this reason, it will not be considered within the statistics. Additionally, two cases are being investigated by the Special Indigenous Jurisdiction.

<sup>8</sup> It is important to note that the staff of the Prosecutor General's Office is dynamic and constantly varies depending on the criminal phenomena and the methodologies adopted to impact certain phenomena, which is why the number of officials with investigations in charge should not necessarily be related to their effectiveness. On occasion, the number of available personnel can be reduced or increased without negatively affecting procedural results.

<sup>9</sup> The Entity has decided that prosecutors should be familiar with criminal phenomena and not only dedicate themselves to the investigation of each individual case. At present, the investigation is aimed at knowing the context in which the crimes occur, so The prosecutor in the crimes of homicides and threats, is dedicated to know the temporality and the territory in which the events occur and the armed actor or the individual responsible for them.

Total	86	9	20	2	6	48	1
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Source: Policy and Strategy Sub directorate.

### Geographic distribution of homicide victims characterized as trade unionists 2017-2020.

Department of the event	Reported facts
Antioquia	6
Arauca	1
Bogotá D.C	1
Caquetá	3
Cauca	33
Cesar	1
Chocó	3
Córdoba	1
Huila	3
La guajira	2
Magdalena	1
Meta	5
Nariño	4
Norte de Santander	4
Putumayo	4
Santander	1
Tolima	2
Valle del Cauca	15
Total	90

Source: Sub-Directorate of Policies and Strategy.

The departments of Cauca (33) and Valle del Cauca (15) are the ones with the highest number of homicides against union members. Thus, by the year 2021, a specific strategy will be developed to promote prosecutions in these two departments, given that these are areas where there are also cases of human rights defenders and other specific populations, which have led the Prosecutor's Office to focus its attention on these regions.

#### b. Article 200 violation of the rights of assembly and association.

"Article 200 Penal Code. Whoever prevents or disturbs a lawful assembly, or the exercise of the rights granted by the labour laws or retaliates on the occasion of a strike, lawful assembly or association, shall incur a prison sentence of one (1) to two (2) years and a fine of one hundred (100) to three hundred (300) legal monthly minimum wages in force.

The same penalty shall be incurred by whoever enters into collective agreements in which, as a whole, better conditions are granted to non-unionized workers, with respect to those conditions agreed upon in collective bargaining agreements with unionized workers of the same company.



The prison sentence shall be from three (3) to five (5) years and a fine of three hundred (300) to five hundred (500) legal monthly minimum wages in force if the conduct described in the first paragraph is committed:

1. Placing the employee in a situation of vulnerability or that endangers his personal integrity.
2. The conduct is committed against a disabled person, a person suffering from a serious illness or a pregnant woman.
3. By threatening to cause death, personal injury, damage to another's property or to the employee or his ascendants, descendants, spouse, permanent partner, sibling, adoptive or adoptive parent, or relative up to the second degree of affinity.
4. By means of deceit on the worker.

As indicated, Article 200 of the Penal Code criminalizes the violation of the rights of assembly and association. This crime was created with the purpose of protecting the right to freedom of association in the framework of labour relations, especially in relation to unionized workers.

With this criminal type, the following conducts are sanctioned:

"(i) preventing a lawful assembly, (ii) disturbing a lawful assembly, (iii) preventing the exercise of the rights granted by labour laws, (iv) disturbing the exercise of the rights granted by labour laws and finally (v) retaliating on the occasion of a lawful strike, assembly or association. Hence, the offense is constituted not only by obstructing the legitimate meetings of workers or their demonstrations, but also by grossly violating the rights granted to them by law or taking decisions against them because of their union status and activity"<sup>10</sup>

By law, this crime is prosecutable and requires conciliation as a procedural requirement. Since 2017, from the enactment of Law 1826, the crime of violation of the rights of assembly and association has a special abbreviated criminal procedure that allows the process to move forward in a shorter period of time, every time it modifies and suppresses some actions of the traditional procedure.

The complaint for the crime of violation of the rights of assembly and association must be filed by a unionized or non-unionized worker or by a union organization (plaintiff) that considers that it is facing the occurrence of this crime, within a term not exceeding 6 months from the occurrence of the event; it must be indicated against whom the complaint is filed, in this case, against an employer or managers or even employees who have participated in the event (defendants).

During the criminal process, the plaintiff may voluntarily withdraw from the process, as well as terminate it by signing an agreement or conciliation before the prosecutor until the investigation stage or before the judge at the trial stage. The participation of the victim is fundamental for the progress of the proceedings.

Conciliation is mandatory and must take place before the corresponding prosecutor, in a conciliation centre or before a conciliator; the unjustified non-attendance of the complainant will be understood as withdrawal of his claim. If there is an agreement in the conciliation, the case will be filed, and the conciliation act will have the effect of *res judicata* when the parties reach an agreement on their claims.

### Universe of cases and investigative progress.

<sup>10</sup> Case file: 11001310405620080002202, Superior Court of the Judicial District of Bogotá, Criminal Chamber. August two (2), two thousand twelve (2012). MP. Luis Mariano Rodríguez Roa.

The Prosecutor General's Office, in the period between 2017 and 2020, received a total of 865 complaints for the crime of Violation of the Rights of Assembly and Association. 714 cases have been terminated and 151 are active, that is, 17.45%, of the cases. The following table shows the active and terminated proceedings, broken down by year of the complaint.

### Active proceedings and terminated proceedings Art. 200 - disaggregated by year of complaint

Year	Active cases	Terminated cases	Grand Total
2017	17	293	310
2018	25	183	208
2019	56	201	257
2020	53	37	90 <sup>11</sup>
<b>Grand total</b>	<b>151</b>	<b>714</b>	<b>865</b>

Source: SPOA, consultation January 20, 2021.

In the crime under analysis, the following actions were carried out for the termination of the criminal action of the processes that entered the Prosecutor's Office, from January 1, 2017 to December 31, 2020.<sup>12</sup>

In 59 cases, an agreement was reached with conciliation. In these cases, the parties, in front of the Prosecutor, agreed to terminate the criminal proceeding under the fulfilment of equally agreed conditions.

- 95 proceedings were terminated due to withdrawal of the worker or the complainant union organization. This is important because these are cases in which a negotiated solution was reached between the worker and the company.

- In 68 of the cases, the process was terminated due to connection, i.e., the Prosecutor decided to continue the investigation under another criminal notice that shared the same facts, in order to analyse the situation jointly.

- 407 cases (57%) archived. In 57.25% of these cases, it was established that the criminal conduct did not exist. In 29.98% of the cases, the case was closed due to illegitimate plaintiff.

- Other causes: 85 cases ended the investigation due to termination of the criminal action, preclusion, extinction of the complaint, among others.

For events that occurred between 2017 and 2020, 151 active cases were identified, 106 cases in pre-trial stage, susceptible to reach a conciliation, 42 in investigation and 3 cases in trial stage. Of these, 3 prosecutors have been assigned to the areas with the highest number of cases.<sup>13</sup>

### c. Threats against trade unionists

The strengthening of investigative capacities to deal with the crime of threats against human rights defenders is an objective defined within the framework of the Strategy for Investigation and Prosecution of crimes against human

<sup>11</sup>There has been a substantial reduction in the reporting of this crime, which may be related to the period of quarantine due to the pandemic generated by COVID19.

<sup>12</sup> The procedural management data are provided cumulatively and not by year, which means that the results in the cases have been obtained during the entire period, not in one year.

<sup>13</sup> In previous years, it had been reported that 7 prosecutors had been assigned to deal with crimes under Article 200. Currently, given that the number of active cases has decreased, 3 prosecutors' offices have been assigned, with the same criteria, i.e., areas with the highest concentration of cases.



rights defenders of the Prosecutor General's Office. The investigation of this crime represents a real challenge for the work team of the Institution.

This is why, since 2017, internal work began in order to define the actions to be executed to strengthen institutional capacities in terms of threats. In the first step, a diagnosis was built that allowed identifying the main challenges of the Prosecutor General's Office in the investigation of this crime. Based on the results of the diagnosis, the lines of work for the threat strategy were defined. At present, progress is being made in strengthening the capacities of the Sectional Directorates in the investigation of threats.

The following is an explanation of the design process of the Threat Investigation Strategy, based on the diagnosis, the lines of action and the strengthening provided by the Prosecutor General of the Nation, Francisco Barbosa Delgado, since 2020. It will continue with a brief explanation of the analysis of the threats suffered by unionized persons and, finally, it will culminate with the situations defined for the procedural impulse during the next years.

### - Diagnosis 2017

By 2017, the Prosecutor General's Office did not have a unified strategy for the investigation of threats. Until that time, no significant results were obtained in the clarification of threats against human rights defenders. In order to identify the obstacles that prevented the Prosecutor's Office from making progress in this crime, a diagnosis was made based on the analysis of a consultation made in the Entity's mission information system, SPOA. As a result of the diagnosis, the following challenges were identified:

- Adequate reception of the complaint. Important difficulties were identified at the time of receiving complaints about threats, in particular, the following are highlighted: (i) lack of clarity in the typicity of the conduct, given that officials did not clearly recognize the differences between the crime of threats and the behaviour regulated in the National Code of Police and Coexistence. The latter is not a punishable conduct and is not investigated by the Prosecutor's Office. (ii) Late receipt of the complaint, since many complaints are filed sometime after the facts have occurred; most of them were reported about a month later, which made it difficult to obtain evidentiary material elements.

- Adequate characterization of the victim and relationship with the context in which the facts occurred. In 2017, the investigations did not include an adequate characterization of the victim or the context. That is, the process did not ask questions related to the human rights defence work exercised by the threatened person, the defence activities that could motivate the threats were not identified, nor were differential risk and vulnerability factors related to gender, belonging to a certain ethnic group, among others, weighted.

- Difficulties in the urgent acts of investigation. At the time of analysing the results of the diagnosis, it was identified that urgent acts were not carried out immediately when the facts were known. In a crime as complex as that of threats, the collection of material evidence must be timely; the passage of time is a factor that affects the success of investigations.

- Lack of investigative analysis. Although orders were issued to judicial police seeking elements that would allow characterizing the victim, identifying the alleged perpetrators and clarifying the manner, time and place of occurrence of the events, there were no in-depth analyses that would allow noticing common aspects in several cases; this reality prevented the association of processes to build situations.

It should be noted that the crime of threats, unlike other crimes, has particular complexities, given by the multiplicity of procedural subjects (victims and / or perpetrators), the large number of facts, the passage of time between the knowledge of the threat and the complaint to the Prosecutor's Office, the collection of evidentiary material, either in threats by digital means or by physical means (pamphlets, suffrages, etc.).

However, in order to comply with the standard of due diligence, measures were established to allow the Prosecutor's Office to increase the rate of progress in the clarification of this crime. Thus, an investigative strategy was designed to allow the Prosecutor's Office to better respond to threats against human rights defenders. The Strategy began with a pilot plan applied in the city of Bogotá, and after proving its effectiveness, it was extended to the national level. Among the objectives of the Prosecutor General's Office is to strengthen the investigation of threats in all Sectional Directorates.

- Strategy for the Investigation and Prosecution of Threats against Human Rights Defenders

Based on the challenges identified for the reception of complaints, the timely completion of urgent actions and the lack of investigative analysis, the Prosecutor General's Office's Threat Investigation Strategy contains the following measures:

- Creation of a National Working Group for the support, promotion and coordination of the analysis, investigation and prosecution of cases of threats against human rights defenders. Currently, the Working Group is made up of 6 specialized offices attached to the National Specialized Directorate against Human Rights Violations<sup>14</sup> which are articulated with the Sectional Directorates of the Prosecutor's Office. The main functions of the group are as follows:

- Provide guidelines for the reception of complaints.
- Develop and promote, in coordination with the sectional directorates, the urgent actions to be taken once the event has occurred.
- Promote processes of threats against human rights defenders and specific populations.
- Articulate the work of the various units of the Prosecutor's Office that have in their workload cases of threats.
- Analytically and strategically investigate cases of threats, in order to identify relationships between the different cases and understand the contexts in which they are framed.
- Strengthen institutional capacity by supporting the investigation of threats carried out in the Sectional Directorates, in order to respond adequately, effectively and in a timely manner to cases of this crime.

- Mechanisms were created for receiving threats against human rights defenders that operate 24 hours a day: hotline 3506011181, contact centre 122 and e-mail [recepción.amenazas@fiscalia.gov.co](mailto:recepción.amenazas@fiscalia.gov.co)

- Likewise, the Prosecutor General's Office had an impact on the creation of the specific criminal type of threats against human rights defenders, regulated in Article 188E of the Criminal Code, Law 1908 of July 2018, "whereby the investigation and prosecution of criminal organizations are strengthened, measures are adopted for their subjection to justice and other provisions are issued".

At this point, a specific crime was created to punish those who threaten human rights defenders, including union leaders:

**"Penal Code Art 188 E:** Whoever by any means frightens or threatens a person who exercises activities for the promotion and protection of human rights, or their relatives, or any organization dedicated to the defence of human rights, or political leaders, or union leaders communicating the intention of causing them harm constituting one or more crimes, by reason of or on occasion of the function they perform, shall incur imprisonment of seventy-two (72) to one hundred twenty-eight (128) months and a fine of seventeen point seventy-seven (17. 77) to two hundred legal monthly minimum wages in force.

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<sup>14</sup> Prosecutor General's Office, Resolution 1223 of 2020.



The same penalty shall be incurred when the conducts referred to in the preceding paragraph are committed against a public servant or his family members.

PARAGRAPH: Family members shall be understood to be relatives within the fourth degree of consanguinity or civil relationship, second degree of affinity or spouse or permanent partner or any other person who is part of the domestic unit of the addressee of the threat".

In the case of unionized persons who do not carry out human rights advocacy work, the Penal Code punishes threats in Article 347:

**"Penal Code Art 347. Penal Code.** Whoever by any means frightens or threatens a person, family, community or institution, with the purpose of causing alarm, anxiety or terror in the population or in a sector of it, shall incur for this conduct alone, imprisonment of four (4) to eight (8) years and a fine of thirteen point thirty-three (13.33) to one hundred and fifty (150) legal monthly minimum wages in force.

If the threat or intimidation falls on a member of a trade union organization, a journalist or his relatives, by reason of or on occasion of the position or function he holds, the penalty shall be increased by one third".

### **Prioritization of threats against unionized persons.**

In order to prioritize the investigation of threats against unionized persons, the Prosecutor General's Office analysed the complaints that the Entity has known of this crime against this particular population. For this purpose, based on a quantitative analysis, situations were identified that will be prioritized based on the behaviour that the crime had between January 1, 2018 and December 31, 2020. The analysis was executed throughout 2020 and included the review of the workload by sectional and the incidence of crime by economic sectors, departments and threat modalities.

The filters used to define the information subject to the analysis were the following:

- The study prioritized cases of threats in which the victim was a trade unionist.
- Identification of cases for either of the two crimes of threats, either Article 347 of the Penal Code or Article 188E.
- Selection of cases in which it is noted that the threat is related to the exercise of the work of human rights defence carried out by the threatened person.
- Analysis of the modalities of threats: pamphlet, telephone call, rumour, intimidating objects, computer media, personal, follow-up, de facto means.
- Selection of cases in which the responsibility of a criminal organization is noted.
- Prioritization of cases in which the extreme risk to the life, integrity or security of the threatened persons is identified.

These analysis criteria allow the selection of investigations, in order to, through a context analysis, build situations that potentially impact the reality of trade union organizations and the validity of freedom of association. Characterizing the criminal phenomenon in all its dimensions is fundamental for the prosecution of those behind the threats.

Thus, the objective of the Prosecutor's Office is not reduced to clarifying a specific case. On the contrary, the entity seeks to associate cases by common criteria to build situations and, in this way, generate greater effectiveness in the use of available institutional resources. The results of a situation can be obtained in the short, medium and long term. In the short term, it is possible to identify the number of victims of a given type of crime, the common characteristics that unite them, the actions of the perpetrators and other aspects such as the time frame and territoriality in which they occur.



In the medium term, the analysis of individual cases will make it possible to extract crime patterns that explain the situation of the victims, the motivations or objectives of the perpetrators and the impact of the crimes. In the long term, it will help to refine investigative methodologies and provide analytical tools to clarify crimes in less time.

The selected situations will be directly known by the National Working Group for the investigation of threats against human rights defenders, which will support the investigation to work together with the Sectional Directorates in charge of the investigation.

From this perspective, the analysis criteria defined for the review of the behaviour of threats against unionized persons are the following:

**The modality of the threats and some preliminary patterns.** Common modalities and patterns were identified in the threats suffered by the organizations analysed. The preliminary analysis even identified concentrations at certain times of the year against unions belonging to a certain economic sector.

**- Type of union.** The above criteria made it possible to identify that unions related to the natural resource extraction sector are the ones with the highest number of threats. This situation is similar to that of unions in the education sector. It is worth noting that the threats against the latter have preliminary patterns that call the attention of the Prosecutor's Office.

**- Geographical distribution of threats.** Finally, a department was defined in which the criteria indicated in the previous points converge and which identifies greater victimization of trade unionists from different economic sectors. That is to say, a department with a high number of threats, with unions in the resource extraction and food sectors, among others, and where the threats identified include procedural actions and the performance of urgent acts.

**- Prioritized situations.** According to the criteria indicated in the analysis, three situations of victimization were defined that will allow the Prosecutor's Office to meet the objectives set, that is, to advance in the clarification of threats against the unionized population and to impact those responsible for this crime.

### **Department of Valle del Cauca.**

The first situation is related to threats in the department of Valle del Cauca. In this department, threats against unionized persons allow establishing a situation of victimization. In the first place, this department has an important trade union movement, since it is home to companies in multiple sectors, including the extraction of natural resources.

Secondly, in the last three years, this department has registered a significant number of cases. Likewise, the workload of the Sectional Directorate has been studied and measures have been put in place to strengthen it.

Thus, the Prosecutor General's Office will prioritize the investigation of threats against union members in the department of Valle del Cauca, which, in addition to having a high number of threats, also has a significant number of homicides against union members.

### **Threats against unions belonging to the natural resource extraction sector.**

4 unions were identified that have suffered threats in the period 2018-2020. The processes advanced by the Prosecutor's Office meet the selection criteria indicated in the previous section and, taking into account that they all



belong to the natural resource extraction sector, a situation will be constructed with the information analysed in the work carried out during 2020.

Some of the identified events occurred in the department of Valle del Cauca, the others are scattered in departments such as Meta, Bolivar, Santander, Antioquia and Cesar. The most recurrent modality to threaten these unions was the use of electronic media (WhatsApp, Facebook, Twitter, Instagram, among others) followed by intimidating objects and physical pamphlets.

The delimitation of a situation, based on the cases that meet the indicated criteria, will allow impacting the recurrent threats suffered by unions in the natural resources extraction sector throughout the country. Likewise, patterns of behaviour will be identified that will facilitate the individualization of the perpetrators of the threats and the clarification of the cases.

At the close of this report, one person has already been arrested and charged for threats against a member of a union in the extractive sector.

### **Threats against unions belonging to the education sector.**

The Prosecutor's Office has observed a steady increase in threats against unions belonging to the education sector. The analysis of the situation in 2019 and 2020 has identified threats produced by pamphlets, by WhatsApp messages, computer media and intimidating objects. The threatening messages have been mostly directed against the FECODE Executive Committee and against some affiliated organizations.

Preliminarily, it has been identified that the highest percentage of threats occurred against educators who exercise their work in rural environments.

These situations will be taken on by the National Working Group, which will support the work of the prosecutors of the Sectional Directorates currently hearing the cases. For this purpose, the Group has Judicial Police officers - including analysts-, prosecutors and, in addition, the support of the Elite Investigation Corps of the National Police. This working mechanism has been successful and has allowed the Prosecutor General's Office to obtain satisfactory results in relation to the affectations against other populations, as is the case, for example, with the attention to threats against journalists.

However, the Prosecutor General's Office cannot commit itself to obtaining a determined number of cases with progress in clarification. The duty of States to investigate is an obligation of means and not of results. As stated above, the Entity expects to have an impact on those responsible for the threats against unionized persons, by making available to the Strategy an installed capacity at the national and local levels, which includes the application of a specialized work methodology and permanent follow-up from the Elite Group.

Annually, the Prosecutor General's Office will report to the OECD on the results obtained.

### **4.3.3 Ensuring the timely resolution of cases of violence and threats against unionists, including by hiring a third labour judge.**

The Colombian State, through the Administrative Chamber of the Honourable Superior Council of the Judiciary, issued Agreement No. 4924 of June 25, 2008, through which it created the Tenth and Eleventh Criminal Courts of the Specialized Circuit of Bogota, where the Courts created are assigned and extended for decongestion the exclusive

knowledge of the processes of homicide and other acts of violence where the victims have the quality of leaders or workers affiliated to the different trade union organizations throughout the country.

During the year 2020, these two specialized circuits issued 70 sentences, contributing to the progress and clarification of the investigations of the facts committed against trade unionists.

#### **4.3.4 Publically releasing on a yearly basis statistics on the investigation and prosecution of crimes, as well as the case timelines.**

Information on sentences for crimes committed against trade unionists is published on the web page of the Public Prosecutor's Office. Any person can access this data by accessing the following link: <https://www.fiscalia.gov.co/colombia/servicios-de-informacion-al-ciudadano/consultas/sentencias-crimenes-contra-sindicalistas/>

The data reported in this report will be updated annually and will be published as agreed with the OECD in the formal opinion of March 21, 2018.

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

The Prosecutor General's Office has evaluated the effectiveness of conciliation as a procedural requirement for the exercise of criminal action against the crime established in Article 200 of the Criminal Code-Law 599 of 2000-, in light of the guarantee of the right of access to justice. The Entity has concluded that conciliation is an effective mechanism to guarantee the right of access to justice and to solve legal disputes in an expeditious manner, guaranteeing a timely restoration of the rights of the affected persons.

The effectiveness of conciliation, beyond being measured in numerical terms, is related to the prompt and efficient administration of justice for those who demand the timely resolution of their controversies. Conciliation, the work of conciliators and the legal effects of this mechanism are regulated in various laws, including Law 640 of 2001 and the Code of Criminal Procedure, among others.

Conciliation is not only a mechanism to decongest the justice system. According to the Constitutional Court, it is a way for civil society to participate in matters that affect it<sup>15</sup>, which "allows the community and the affected persons to intervene in the exercise of the jurisdictional function".<sup>16</sup>

##### **a. The rights of assembly, association and the right to form trade unions and associations**

Colombia recognizes the right of all persons to assemble peacefully (Article 37 of the Constitution), to associate for the development of different social activities (Article 38 of the Constitution) and to form unions and associations without State intervention (Article 39 of the Constitution). These constitutional rights are complemented by those recognized in international treaties that have full force in the national legal system. Such is the case of the rights enshrined in Articles 15 and 16 of the American Convention on Human Rights and Article 22 of the International Covenant on Civil and Political Rights.

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<sup>15</sup> Constitutional Court, Decision C-893 of 2001.

<sup>16</sup> Ibid.



The purpose of the criminal offense of violation of the rights of assembly and association is to punish conducts that impede the exercise of the aforementioned rights, particularly, it punishes those who affect the right of union association. The guarantees for the protection of this right are essential for the consolidation of the Social State of Law, since it enables the effective participation of non-state actors in economic and social policy. Its purpose is to guarantee the participation and representation of workers and employers.

The full enjoyment of this right implies the prohibition of all public and private authorities to adopt regulations, decisions or take actions that tend to hinder the enjoyment of the right to freedom of association.<sup>17</sup>

To conciliate is not to evade justice; on the contrary, the conciliation act or agreement has the same effects as a final judgment, is produced in a much shorter period of time and has the commitment of the parties involved. In the case of Article 200 of the Penal Code, it binds both the employee or union representative and the employer. In any circumstance, if the conciliation fails, the Prosecutor's Office continues with the exercise of the criminal action and with the prosecution of those responsible for the punishable conducts.

### **b. Conciliation as an Alternative Dispute Resolution Method**

In law, conciliation is an alternative dispute resolution mechanism in which two or more persons manage by themselves the resolution of their differences, with the help of a neutral and qualified third party, called conciliator.<sup>18</sup> Conciliation as a requirement for the exercise of the criminal action may be interpreted as a time limit for the enjoyment of the right of access to justice. However, as mentioned by the Colombian Constitutional Court<sup>19</sup>, this mechanism contributes to the fulfilment of five objectives:

- Guarantee access to justice.
- Promote the participation of individuals in the resolution of their disputes.
- Stimulate peaceful coexistence.
- Facilitate the resolution of conflicts without unjustified delays.
- To decongest the judicial offices.

The following will explain why conciliation is effective for the crime of violation of the rights of assembly and association. To do so, it will begin with a brief description of conciliation in criminal matters and will continue with data on the crimes with the highest rate of conciliatory agreements in 2017.

### **c. Conciliation in criminal matters.**

In criminal law matters, conciliation is an exception, since the investigation and prosecution of crimes is an exclusive obligation of the State and is fulfilled by the actions of the Prosecutor General's Office. However, for certain crimes, conciliation brings multiple benefits, among them:

It is a restorative justice mechanism that allows the parties affected by the crime to participate in the speedy resolution of the dispute under parameters of justice and social peace.

- It promotes the redress and reparation of the victims, facilitating the reconciliation of the parties and seeking the continuity of the social relations that are built between them.
- It responds to the United Nations initiative related to the application of alternative methods of conflict resolution.<sup>20</sup>

<sup>17</sup> Ruling C-201/2002, Ruling C-063/2008, Ruling C-617/2008, C-465/2008, Constitutional Court of Colombia, among others.

<sup>18</sup> Ministry of Justice. National Conciliation Program. See: <http://info.minjusticia.gov.co:8083/MASC/-Qu%C3%A9-es-Conciliaci%C3%B3n-en-Derecho>

<sup>19</sup> Constitutional Court, Ruling C-1195 of 2001.

<sup>20</sup> First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held in Geneva, Switzerland, from 22 August to 3 September 1955.

- It is an alternative mechanism to the exercise of the coercive power of the state. This tool facilitates judicial decongestion to the extent that it makes it possible to resolve disputes without the need to go to trial.
- Conciliation may be held in multiple victim assistance centres, in front of a prosecutor, in private or public conciliation centres, before conciliators in equity or before administrative public servants authorized by law for this purpose.

Conciliation for the crime of violation of freedom of assembly and association may be carried out before prosecutors before the beginning of the trial stage. Once this stage has been reached, it may only be held before the trial judge.

#### d. Crimes with the highest rate of conciliation with agreement

A statistical analysis of the conciliations advanced only before the Prosecutor General's Office indicated that the crime of violation of the rights of assembly and association is one of the crimes with the highest rates of conciliation with agreement, if compared to the number of effective entries<sup>21</sup> throughout the year.<sup>22</sup>

#### The 10 items with the highest rate of conciliation with agreement in 2017, by year of action.

Article	2017	Number of reconciliations
Damage or injury to persons or things intended for worship. art. 203 penal code.	100%	1
Omission of humanitarian relief and assistance measures. art. 152 penal code.	100%	1
Violation of borders for the exploitation of natural resources art. 329 penal code.	100%	1
Alteration, defacing and impersonation of livestock brands. art. 243 Penal Code.	50%	1
Use of a matter subject to secrecy or reserve. art. 419 penal code.	50%	1
Impediment and disturbance of religious ceremony. art. 202 Penal Code.	38%	3
Outrage to emblems and patriotic symbols Art. 461 Penal Code.	25%	1
Culpable injuries art. 120 penal code aggravated by no license or suspended license art. 110 n. 3 penal code.	23%	11
Slander. art. 221 penal code.	22%	2880
Violation of the rights of assembly and association. art. 200 penal code.	21%	40

<sup>21</sup> Actual entries. The effective entries are the entries of criminal news entered in a period and of which a file was not made due to atypicality or non-existence of the fact. This makes it possible to exclude cases in which the FGN determines that the facts did not occur or that there was no crime.

<sup>22</sup> The conciliation rate indicates that the crime of violation of freedom of assembly and association for the year 2017 reports within the 10 crimes with the highest rates of conciliation by the Prosecutor General's Office, being the tenth crime with the highest rate of conciliation with agreement.



Source: Office of the Prosecutor General of the Nation.

These indicators demonstrate the effectiveness of conciliation in relation to Article 200 of the Criminal Code. Likewise, the Prosecutor's Office has worked on the training of prosecutors who, in addition to investigating the crime, also serve as conciliators.

#### **4.5 Critically and independently examine the role of the Mobile Anti-Riot Squad (ESMAD) and its excessive use of force. In cooperation with the social partners, take steps to address the pending recommendations on serious and urgent cases in the ILO Committee on Freedom of Association on violence against trade unionists;**

The National Police, defines the Mobile Anti-Riot Squadron as a specialized operational group, in charge of special interventions that occur in urban and rural areas of the national territory due to public agglomerations, when these result in riots, riots and other situations of violence, which seriously alter the coexistence and citizen security; for the restoration of the exercise of public rights and freedoms.

#### **Conformation**

Through Resolution No. 01363 of April 14, 1999, the creation of the Mobile Anti-Riot Squad (ESMAD) was established, determining its mission and the personnel that would integrate this specialized unit of the National Police, with headquarters in the city of Bogotá, as a deconcentrated police unit of the Operational Directorate, whose mission is supported by the support to the units at national level in the control of citizen disturbances.

For the year 2014, through Resolution No. 03595 of September 5, 2014, "Whereby the internal organizational structure is defined, the functions of the Command of Special Operational Units (CUOPE) are determined and other provisions are issued", the organizational structure and functions of the units of the Mobile Anti-Riot Squad Unit (UNADI) were defined, and in its Article 16 the headquarters of the ESMAD are determined, for the fulfilment of its mission and nationwide coverage.

Currently, the Mobile Anti-riot Squadron for the attention of the requirements of its mission in the national territory, has (29) squads, made up of (97) sections and (4,614) officers, strategically distributed in the 8 police regions. Determining in the future the strengthening and growth of the unit in accordance with the guidelines of the national government that allows having a specialized group in charge of restoring order in situations of violence and disturbances in line with international guidelines and standards on respect for human rights.

#### **Training**

The training, updating, qualification, training, retraining and specialization of all uniformed personnel of the institution is carried out through academic events offered by the National School Directorate, since it is the body accredited by the Ministry of National Education for this purpose. The academic programs of formal and informal education are the following:

- Crowd and Riot Control for Citizen Security Course, which has a training period of 768 teaching hours and contains the following topics:
  - Human Rights applied to crowd control
  - International standards on the use of force
  - Use of force as a material means of policing
  - Legal framework for police action
  - Role of the Police in Crowd and Riot Control
  - Weapons, ammunition and non-lethal devices

- Technical means, technical data sheets of elements and their characteristics
- Polygon practices and exercises
- Responsibilities in the event of an excess or omission of functions.
- Seminar for the use of weapons, ammunition, less lethal elements and devices

In order to strengthen and update the competencies of less lethal weapons operators, the academic event entitled Seminar on the use of less lethal elements, devices, ammunition and weapons is offered, which has a training period of 41 teaching hours and contains the following topics:

- Human Rights
- International standards on the use of force, applied to the police function.
- National legislation applicable to the use of force
- Internal regulations on the use of force
- Weapons, ammunition, less lethal devices and elements
- Polygon practices and exercises

## Justification

The Justification for the National Police to create and strengthen the Mobile Anti-riot Squads, arises from the Political Constitution of Colombia of 1991, in its articles:

"(...) **Article 2.** Essential purposes of the State: to serve the community, promote general prosperity and guarantee the effectiveness of the principles, rights and duties enshrined in the Constitution....

The authorities of the Republic are instituted to protect all persons residing in Colombia, in their life, honour, property, beliefs, and other rights and liberties, and to ensure the fulfilment of the social duties of the State and of private individuals.

**Article 218.** The law shall organize the police force. The National Police is a permanent armed corps of a civilian nature, under the responsibility of the Nation, whose primary purpose is to maintain the conditions necessary for the exercise of public rights and liberties, and to ensure that the inhabitants of Colombia live together in peace.

The law shall determine its career, benefits and disciplinary regime (...)"

Based on the above, the specialty contributes to strengthen the essential purposes of the State, such as protecting rights and freedoms, to ensure compliance with the social duties of the State and individuals, so that the inhabitants of Colombia live in peace.

Similarly, in Law 1801 of July 29, 2016 "National Code of Security and Citizen Coexistence", establishes in its articles i. 22, as holders of the use of force to the uniformed personnel of the National Police, ii. in 149 the use of force as a material means of Police, and iii. 166 the cases in which it may be used.

In accordance with the above, in Resolution 02903 dated June 23, 2017, "Regulations for the use of force and the use of weapons, ammunition, less lethal elements and devices, by the National Police", establishes a differentiated model for the use of force, in which the officers in accordance with the principles of necessity, legality, proportionality, rationality, training and experience, define the level of force to be deployed in each particular situation, considering the circumstances of time, manner and place of each event.

The National Police of Colombia, regarding the services of accompanying demonstrations and riot control, has as a doctrinal document Resolution 03002 of 2017 "Whereby the Manual for the service of demonstrations and riot control



for the National Police is issued", which compiles a legal framework, from the Political Constitution, Law 1801 of 2016 "National Code of security and citizen coexistence" and whose purpose is to standardize and unify parameters regarding the planning of the service and the management developed by the personnel attached to the different police units.

It is important to highlight that, regarding the exercise of the right to public and peaceful assembly, the National Police used all its capabilities to provide guarantees to the participants in the different events, also seeking to protect the rights of non-participants; interventions only occurred in the event of acts of violence or violent behaviour.

### Alignment with international standards

When the levels of violence exceed the initial police capacities, the Institution, in order to guarantee the life and physical integrity of its uniformed personnel, as well as that of the citizens who do not participate in these illegal acts and who are seriously affected, generates the intervention of the Mobile Anti-Riot Squad ESMAD, which, in any case, is aimed at controlling the sources of violence, ensuring that those who demonstrate peacefully can do so.

At the end, all police procedures are documented by means of executive reports, which describe the before, during and after each intervention; all the actions of the Mobile Anti-Riot Squads are aligned with international standards, as follows:

### International instruments

- International Covenant on Civil and Political Rights, articles 2, 6, 7 and 9.
- International Covenant on Economic, Social and Cultural Rights, articles 8.1, 8.2 and 12.
- Convention against Torture, preamble, paragraphs 4 and 6; articles 1, 2 and 4.
- American Convention on Human Rights, articles 2, 4, 5, 7 and 27.
- Universal Declaration of Human Rights, articles 3 and 5.
- United Nations Code of Conduct, Resolution 34/169 of December 17, 1979.
- Basic Principles on the Use of Force and Firearms held in Havana (Cuba) from August 27 to September 7, 1990. Which establish the principles of legality, necessity and proportionality.

"Principle 2. Governments and law enforcement agencies shall establish as wide a range of methods as possible and provide relevant officials with different types of weapons and ammunition to enable them to make differentiated use of force and firearms. These weapons should include non-lethal incapacitating weapons for use where appropriate, with a view to increasingly restricting the use of means likely to cause injury or death (...)"

- American Declaration of the Rights and Duties of Man. Articles: 1 and 9.
- Rome Statute: in relation to the responsibility of the chain of command, as long as essential elements of the objective responsibility of the superior or commander of the police procedure are established, being imperative to demonstrate and prove the effective control over the personnel, the knowledge of the conducts and their omission in taking the necessary and reasonable measures within their reach to avoid the commission of the crimes.
- Less Lethal Weapons in Latin America and the Caribbean - Challenges and Opportunities: publication prepared by (UNLIREC).
  - United Nations Human Rights, Guidance on Less-Lethal weapons in law enforcement created by the Office of the United Nations High Commissioner for Human Rights.

### Institutional regulations

- Resolution No. 03595 of September 05, 2014 "Whereby the internal organizational structure is defined, the functions of the Command of Special Operational Units (CUOPE) are determined and other provisions are issued".
- Resolution No. 02903 of June 23, 2017 "Whereby the regulations for the use of force and use of weapons, ammunition, less lethal elements and devices by the National Police are issued".

It is contextualized that weapons, ammunition, less lethal elements and devices: are means of support of a technical and technological nature, which due to their capacity and characteristics are designed to control a specific situation, on a person or group of persons, involved in eventual criminal conduct or behaviour contrary to coexistence, with the objective of making differentiated use of force, neutralizing or deterring the threat, and thus avoiding deploying lethal force.

- Resolution No. 03002 of June 29, 2017, "Manual for Service in Demonstrations and Riot Control for the National Police".

"(...) Article 12. Anti-riot mobile squads unit. It is the dependency of the Command of Special Operational Units, in charge of the control of disturbances, crowds, and accompaniment to evictions of public and private spaces, which occur in urban or rural areas of the national territory, for the restoration of the exercise of public rights and freedoms.

*The intervention of the Mobile Anti-Riot Squad must be considered as the last resort for the reestablishment of the conditions of coexistence and citizen security. Before its intervention, the instances of dialogue and mediation with the coexistence managers and/or public prosecutor's office must be exhausted, as well as the dissuasion with the unit's own personnel (...)"*

- Procedure 1CS-PR-008 Riot Control. The interventions of the Mobile Anti-Riot Squads, initiate when the police capacities of the jurisdiction are exceeded by crowds or agglomerations of people, who by means of violent actions attempt against the criminal law or behaviours contrary to coexistence; and that, in the same way, the methods of dialogue or mediation that can stop the behaviours of the offending citizens are exhausted.
- Procedure 1CS-PR-0010 Coexistence and Citizen Security, whose objective is: to accompany and guarantee the right to demonstrate, preventing and controlling alterations to coexistence and citizen security.
- Guide 3EC-GU-0001 "Practical Guide to the Basic Police Tactical System" Date: 10/12/2018, Version 1.
- Instruction 004 DISEC-ESMAD of 2016 "Parameters for the identification of personnel carrying riot gear in the National Police".

By means of this document, the National Police has standardized the criteria for the identification of uniforms and accessories of personnel, adapting institutional identity parameters that allow providing a police service with effectiveness and transparency.

- Instruction 014 DISEC PLANE of 2018 "Institutional parameters regarding the good use of less lethal elements and devices in police procedures".
- Transitory Operational Directive 005 DIPON-DISEC "Institutional parameters for the activation of the system of anticipation and attention to public demonstrations and riot control in the national territory".
- **General information, number and progress status of ongoing investigations.**



According to information from the General Inspectorate of the National Police and its units with disciplinary powers in the national territory, from 2015 to date; the following disciplinary actions have been advanced: (Official Communication S-2020-023154-INSGE of December 27, 2020).

CURRENT PROCESSES	
STAGE	PROCESSES
Preliminary	16
Formal	3
<b>TOTAL</b>	<b>19</b>

CONDUCT	PROCESSES
Abuse of authority	53
Physical aggression	26
Damage to private property	1
Non-compliance with orders	2
Personal injury	2
Reckless handling of weapons	2
Service negligence	1
<b>TOTAL</b>	<b>87</b>

CLOSED PROCESSES	
REASON FOR CLOSURE	PROCESSES
Archive	55
Pre-emptive power	9
Acquittal	2
Penalty	1
Suspension	1
<b>TOTAL</b>	<b>68</b>

Source: S-2020-023154-INSGE del 27/12/2020

*The information provided is solely and exclusively for the purposes described in the request, therefore, its reserve and protection must be guaranteed within the framework of the legal and regulatory constitutional postulates in accordance with Law 1712 of 2014 "By which the Law of Transparency and the Right of Access to National Public Information is created and other provisions are issued" in its Articles 16, 17, 18 and Law 734 of 2002 "By which the Single Disciplinary Code is issued" in its Article 95 Reserve of the Disciplinary Proceeding" (SIC).*

On the other hand, a series of meetings have been advanced with the Ministry of Defence, in the meeting held on August 06, 2019 where the Vice Ministers of each entity concerned, the Foreign Ministry and the Ministry of Commerce, Industry and Tourism met. According to the action plan with Canada under the FTA, the following was agreed:

- The Ministry of Defence will deliver annually every January 30 or the next corresponding working day and during the implementation of this Action Plan a report that will include the following information: number of ESMAD interventions discriminated by prevention and intervention services; trainings and educational programs on human rights given to ESMAD members; and articulation work with international organizations in strengthening protocols and interventions.



- Proposal in response to Canada's request to work continuously to produce an independent report on the role played by ESMAD in social protests. The report is currently being awaited from Canada.
- The Colombian National Police should express its firm commitment to collaborate with the success of this study and the resulting recommendations.

Precisely, in the Report of the Mobile Anti-Riot Squad - ESMAD for the 2019 fiscal year, in compliance with what was approved in the framework of the Colombia - Canada Labour Cooperation Action Plan 2018-2021, it is mentioned that in 2019, 7,396 services and interventions were carried out by the ESMAD related to demonstrations for labour issues, which correspond to 13.10% of the total number of ESMAD interventions.

Likewise, the report mentioned that "the process of education and training of ESMAD members has been a constant process, aimed at strengthening respect for human rights and adherence to operational procedures by virtue of their mission. A greater participation of female personnel within ESMAD schemes is highlighted, as well as a significant reduction in the number of interventions in labour demonstrations compared to the 2018 report (26.9 in 2018 compared to 13.10 in 2019) .

As part of the referencing process with ESMAD counterpart agencies at the regional level, the recognition that Colombia has received regarding the professionalization of the Mobile Anti-Riot Squad is highlighted, being a model through which experiences have been shared and training has been provided to other countries.

## Indicators of Crimes against trade unionists

### i. Overview of newly adopted regulations and legislation.

Law 1826 of 2017 - Whereby a special abbreviated criminal procedure is established and the figure of the private accuser is regulated: The State, through the Office of the Prosecutor General of the Nation, is obliged to exercise the criminal action and conduct the investigation of the facts that have the characteristics of a punishable conduct, *ex officio* or that come to its knowledge by means of a complaint, special petition, complaint or any other means, except for the exceptions contemplated in the Political Constitution and in that code.

Resolution 02903 of 2017 of the National Police - Regulations for the use of force and the use of weapons, ammunition, less lethal elements and devices, by the National Police: establishes a differentiated model for the use of force, in which officers in accordance with the principles of necessity, legality, proportionality, rationality, training and experience, define the level of force to be deployed in each particular situation, considering the circumstances of time, mode and place of each event.

Resolution 03002 of 2017 of the National Police - By which the Manual for the service of demonstrations and riot control for the National Police is issued: which compiles a legal framework, from the Political Constitution, Law 1801 of 2016 "National Code of security and citizen coexistence" and whose purpose is to standardize and unify parameters against the planning of the service and the management developed by the personnel attached to the different police units.

Directive 002 of 2017 - Prosecutor General's Office. Whereby general guidelines are issued on the investigation of crimes against human rights defenders in Colombia: This internal instrument was built by the Prosecutor's Office with the technical support of the Inter-American Commission on Human Rights.

Law 1908 of July 2018 - Whereby the investigation and prosecution of criminal organizations are strengthened, measures are adopted for their subjection to justice and other provisions are issued: The provisions provided for in



this law shall be applied in the investigation and prosecution of Organized Criminal Groups (GDO), and Organized Armed Groups (GAO).

Resolution 1223 of 2020 of the Prosecutor General's Office - Creation of a National Working Group for the support, promotion and coordination of the analysis, investigation and prosecution of cases of threats against human rights defenders. Currently, the Working Group is made up of 6 specialized offices attached to the National Directorate Specialized against Human Rights Violations, which are coordinated with the Sectional Directorates of the Prosecutor General's Office.

## ii. Number of reported cases of homicides and different types of violence against trade union members and leaders.

The Prosecutor General's Office was informed of 89 cases with 93[\*] unionized persons victims of homicides, and investigates in the ordinary jurisdiction a total of 86 cases with 90 victims[\*\*] of homicides in which the victim is a unionized person. These events occurred between January 1, 2017 and December 31, 2020.

[\*] This data was obtained from a consultation made by the Sub-Directorate of Policies and Strategy to the SPOA information system and the contrasting of the information with the Sectional Directorates of the Prosecutor's Office, Reports of the National Union School and corroboration of the Ministry of Labour through the union registry.

[\*\*] One of the cases reported was filed due to atypical conduct, which means that in accordance with Article 79 of the Colombian Code of Criminal Procedure "When the Prosecutor's Office becomes aware of a fact with respect to which it finds that there are no motives or factual circumstances that allow its characterization as a crime, or indicate its possible existence as such, it shall order the filing of the action. However, if new evidentiary elements emerge, the investigation will be resumed as long as the criminal action has not been extinguished". For this reason, it will not be considered within the statistics. Additionally, two cases are being investigated by the Special Indigenous Jurisdiction.

## iii. National Protection Unit

### a. Budget for trade unionists (total and per head);

Information related to the population: "RISK-3. Union leaders or activists. (numeral 3 article 2.4.1.2.2.6. of Decree 1066 of 2015)" **rescuing that for the 2017 validity a calculation of measures was not carried.**

	DATE: 31/12/2018	DATE: 31/12/2019	DATE: 31/12/2020
TOTAL NUMBER OF UNION MEMBERS	370	299	299
TOTAL NUMBER OF UNP PROTECTED PERSONS	7433	8316	7561
	DATE: 31/12/2018	DATE: 31/12/2019	DATE: 31/12/2020
INVESTMENT FOR THE PROTECTION OF TRADE UNIONISTS (\$ COP)	\$ 42.889.000.054	\$ 39.986.188.070	\$ 34.092.044.531
INVESTMENT FOR THE TOTAL NUMBER OF UNP PROTECTED PERSONS (\$ COP)	\$ 692.101.097.470	\$ 893.993.459.798	\$ 939.387.650.512

\* values in Colombian Pesos (COP)

**b. Number of trade unionists receiving protection (individual protection versus collective protection);**

b. Number of trade unionists receiving protection (individual protection)	2017	2018	2019	2020
<b>RISK-3. Union leaders or activists. (numeral 3 article 2.4.1.2.6. of Decree 1066 of 2015)</b>	405	369	299	296

*Note 1: In the databases available to date, there is no information recorded at the level of detail disaggregating the union to which each protégé belongs. For this reason, statistics on the number of protégés in general who belong to some type of corporation or union association are listed.*

*Note 2: It is important to mention that there are no resolutions of union collectives, all resolutions are issued individually and in some cases the measures are shared by 2 or more persons.*

**c. Average time needed for completion of the risk assessment process.**

Times determined according to Decree 1066 of 2015:

As determined by the Decree (Decree 4912 of 2011, Art. 34); ARTICLE 2.4.1.2.2.35. Powers of the Preliminary Appraisal Group. To prepare, within a term no longer than 30 working days, the evaluation and re-evaluations of the risk level, counted from the moment the applicant expresses its written consent for such purpose.

Times according to current UNP procedures: (it is important to clarify that within the framework of reengineering work is being done to articulate the procedures with technological tools and other mechanisms aimed at reducing the time it takes to obtain the result of the individual and collective risk assessment, taking into account the regulatory part, governmental orders and updating of internal procedures of the Entity).

Protection Request Group - GSP: 5 working days The Population Advisor of the GSP who is assigned the protection request will verify that it complies with the minimum documents required to start the protection program procedure.

Assignments: has five (5) working days to verify the information in the files and assign the Work Order - WO to the CTRAI Analyst.

CTRAI: Contact the Applicant within eight (8) calendar days, through the means that the latter has informed for such purpose; in order to set date, time and place of interview, The Risk Assessment Analyst, has eight (8) calendar days, after having made contact with the applicant, to obtain the signature of the consent or waiver and conduct the corresponding interview, the Analyst has 22 working days from the signature of the consent and/or waiver, to carry out the Field activities = 33 working days.

GCCAR: The GCCAR Advisor has three (3) working days from the moment the Analyst uploads the instrument file to the platform to review the substance and form of the Risk Assessments submitted to grant the quality approval.

GVP: The GVP Technical Secretariat Group has five (5) working days before the TO is scheduled for the GVP session, coordinating the date on which it will present and support the case.

CERREM: at this point it is important to clarify that the responsibility for the time is shared, since the projection of the Resolution is made by the STCERREM, in addition, the time used by the management advisors in its review and



signature by the Director must be taken into account to continue with the next step in the value chain, which consists of the communication sent to the citizen.

#### **iv. Prosecutor General's Office;**

##### **a. Budget of Prosecutor General's Office;**

The Prosecutor General's Office does not have a budget allocated to address specific programs or issues. The Entity's budget is allocated to address two major concepts, operation and investment.

For the entire operation of the Entity, for the year 2020 the Prosecutor General's Office had a budget of \$3,690,447,875,000 (COP), with these resources the Entity must cover personnel expenses, purchase goods and services, finance the victim and witness protection program, pay the social benefits of the Prosecutor General's Office employees and pay the judgments of sentences and conciliations.

It is important to note that this information is public and may be consulted by any person. In the particular case, the Prosecutor's Office, in accordance with Article 74 of Law 1474 of 2011 and Article 9 literal b of Law 1712 of 2014, publishes information on the budget, budget execution and financial statements on its website: <https://www.fiscalia.gov.co/colombia/transparencia-y-acceso-a-informacion-publica/#1519681728030-88388c84-a4a4>

As indicated in the explanation of the strategies, the investigation and prosecution of crimes committed against unionized persons has the cooperation of several agencies. This is because the exercise of criminal action in these cases requires a coordinated and articulated action of the entire institution. For this reason, it would be very difficult to quantify the budget allocated to the implementation of the Strategy, since it occasionally involves some officials who support the work of the prosecutors assigned to know the subject matter. For example, in the case of homicides, the immediate reaction may be carried out by the available prosecutors and not by the prosecutors on duty.

##### **b. Number of prosecutors exclusively assigned to crimes against trade unions;**

##### **c. Number of judicial police investigators that support these prosecutors;**

Art. 200 - For events that occurred between 2017 and 2020, 151 active cases were identified, 106 cases in pre-procedural stage, susceptible to reach a conciliation, 42 in investigation and 3 cases in trial stage. Of these, 3 prosecutors have been assigned to the areas with the highest number of cases [\*].

[\*]. In previous years, it was reported that 7 prosecutors had been assigned to address crimes under Article 200. Currently, given that the number of active cases has decreased, 3 prosecutors' offices have been assigned, using the same criteria, i.e., areas with the highest concentration of cases.

#### **v. Prosecution of crimes against trade unionists:**

##### **a. Number of active cases related to violence and threats against trade unionists, and their respective stages in the justice system;**

Annual distribution of cases of homicides against trade unionists that have been brought to the attention of the Prosecutor General's Office, as well as the procedural management in each of the years. It is important to note that the procedural progress is reported taking January 22, 2021 as the date of the consultation, i.e., a case occurred in 2017 has had more investigation time than a case occurred in 2020.

### Annual distribution and procedural progress of homicides against trade unionists 2017-2020, in the ordinary jurisdiction.

Year	Number of homicides	Sentence	Trial	Indictment	Investigation with warrant	Inquiry	Archive
2017	23	3	7	1	1	10	1
2018	30	6	7		2	15	0
2019	19		3	1	3	12	
2020	14		3			11	
<b>Total</b>	<b>86</b>	<b>9</b>	<b>20</b>	<b>2</b>	<b>6</b>	<b>48</b>	<b>1</b>

Source: Policy and Strategy Sub directorate.

#### b. Number of active cases related to crimes against the right to freedom of association and collective bargaining (Art. 200), and their respective stages in the justice system;

The Prosecutor General's Office, in the period from 2017 to 2020, received a total of 865 complaints for the crime of Violation of the Rights of Assembly and Association. 714 cases have been terminated and 151 are active, that is, 17.45%, of the cases. The following table shows the active and terminated processes disaggregated by year of the complaint.

#### Active proceedings and terminated proceedings Art. 200 - disaggregated by year of complaint

Year	Active cases	Terminated cases	Grand Total
2017	17	293	310
2018	25	183	208
2019	56	201	257
2020	53	37	90
<b>Grand total</b>	<b>151</b>	<b>714</b>	<b>865</b>

Source: SPOA, consultation January 20, 2021.

#### c. Number of closed cases related to violence and threats against trade unionists, and their outcomes;

The application of the Entity's investigative strategies has allowed progress to be made in the **clarification of 43.02% (37 cases) of homicides**.

It is important to mention that, during these four years, in addition to the 11 sentences handed down for events that occurred during the period 2017-2020, the judges of the Republic have issued 131 sentences for homicides that occurred prior to the baseline established in the formal opinion, i.e., events that occurred before 2017.

#### d. Number of closed cases related to crimes against the right to freedom of association and collective bargaining (Art. 200) and their outcomes.

See information referred to in item **b.** of this point (terminated cases).