



OECD Reviews of Labour Market and Social Policies

COLOMBIA

Executive Summary, Assessment and Recommendations



OECD Reviews of Labour Market and Social Policies: Colombia 2016

**Executive Summary,
Assessment and Recommendations**

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Foreword

This volume consists of a background report prepared by the OECD Secretariat to support the Labour Market and Social Policy Review of Colombia, which is currently being undertaken by the OECD Employment, Labour and Social Affairs Committee as part of the process for Colombia's accession to the OECD [see the Roadmap for the Accession of Colombia to the OECD Convention: C(2013)110/FINAL]. In accordance with paragraph 14 of Colombia's Accession Roadmap, the Employment, Labour and Social Affairs Committee agreed to declassify the report in its current version and publish it under the authority of the Secretary General, in order to allow a wider audience to become acquainted with the issues raised in the report. The publication of this document and the analysis and recommendations contained therein, do not prejudice in any way the results of the ongoing review of Colombia by the Employment, Labour and Social Affairs Committee as part of its process of accession to the OECD.

The review was prepared by Horacio Levy, Thomas Liebig and Veerle Miranda (project leader), supported by Rodrigo Fernandez and Hervé Philippe for statistical work and Monica Meza-Essid for project assistance, under the overall supervision of Monika Queisser. Valuable comments were provided by Stefano Scarpetta, Mark Pearson and many other OECD colleagues. The report also includes comments from the Colombian Ministry of Labour and the Department for Social Prosperity.

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Acronyms and abbreviations

ANSPE	National Agency for Overcoming Extreme Poverty
AP	Pacific Partnership (<i>Alianza del Pacífico</i>)
APRE	<i>Programa de Abono Anticipado de Prestación a Extranjeros</i>
BEPS	Periodic Economic Benefits (<i>Beneficios Económicos Periódicos</i>)
CAN	Andean Community of Nations (<i>Comunidad Andina de Naciones</i>)
CAL	Workers' Rights Centres (<i>Centro de Atención Laboral</i>)
CCF	Family compensation fund (<i>Caja de Compensación Familiar</i>)
CETCOIT	Special Committee for the Handling of Conflicts referred to the ILO
CREE	Corporate income contribution to equity
CTA	Associated work co-operative (<i>Cooperativa de Trabajo Asociado</i>)
DANE	Statistical Office of Colombia
DOIC	Database of Immigrants in OECD countries
ECV	National Quality of Life Survey (<i>Encuesta Nacional de Calidad de Vida</i>)
ENIG	Household budget survey (<i>Encuesta Nacional de Ingresos y Gastos</i>)
ENS	National Trade Union School (<i>Escuela Nacional Sindical</i>)

ESLF	Longitudinal Social Survey of Fedesarrollo (<i>Encuesta Social Longitudinal de Fedesarrollo</i>)
GEIH	Integrated Household Survey (<i>Gran Encuesta Integrada de Hogares</i>)
ICBF	Colombian Institute for Family Well-being (<i>Instituto Colombiano de Bienestar Familiar</i>)
IDD	Income Distribution Database
IMAN	Alternative minimum personal income tax (<i>Impuesto Mínimo Alternativo Nacional</i>)
INCYDE	Chamber of Commerce Institute for Creation and Enterprise Development (<i>Fundación Instituto Cameral para la Creación y Desarrollo de la Empresa</i>)
LAC	Latin American countries
LAP	US-Colombia Labour Action Plan
MERCOSUR	Southern Common Market (<i>Mercado Común del Sur</i>)
PES	Public employment service
PLUMA	<i>Plataforma Laboral Única para el Migrante Andino</i>
POS	Contributory health care scheme (<i>Plan Obligatorio de Salud</i>)
POS-S	Non-contributory health care scheme (<i>Plan Obligatorio de Salud Subsidiado</i>)
SAS	Simplified stock company (<i>Sociedad por Acciones Simplificada</i>)
SENA	National Training Service (<i>Servicio Nacional de Aprendizaje</i>)
SITAC	Sistema Integrado de Trámites al Ciudadano
TWA	Temporary work agency
UNAD	<i>Universidad Nacional Abierta y a Distancia</i>
VIP	Free Housing (<i>Vivienda Gratuita</i>)
VIPA	Priority Interest for Savers (<i>Vivienda de Interés Prioritario para Ahorradores</i>)

Executive summary

Colombia has made major economic and social advances in recent years. The combination of strong economic growth and policies targeted at the most vulnerable groups improved considerably the living standards of the Colombian population. Today, the country enjoys higher employment and labour force participation rates than the average of OECD countries and unemployment is steadily declining. These favourable economic conditions are also attracting more immigrants from neighbouring countries.

Nevertheless, despite these positive trends, deep structural problems remain. Labour informality is widespread, the rate of self-employment is high and many employees have non-regular contracts. Income inequality is higher than in any OECD country and redistribution through taxes and benefits is almost negligible. In addition, half a century of internal conflict and violence has displaced a significant part of the population, and many of them are living in extreme poverty. Despite considerable progress, violence continues to be a challenge and also affects trade union members and leaders.

The Colombian Government has undertaken important reforms in recent years to address these labour market and social challenges, and the efforts are gradually paying off. However, further progress is needed to enhance the quality of jobs, coverage of social protection, social dialogue, and overall well-being for all. A correct application of the labour legislation is a first step towards a more equal labour market. Labour inspectors and the labour justice system are key to investigate and sanction breaches of labour regulations, but also social dialogue and collective bargaining mechanisms are important ways to ensure decent working conditions. A better functioning of these systems is crucial. Additional reforms are required to bring workers out of informality and better protect them and their families against poverty, sickness and unemployment. Public social spending, albeit rising, is low and not always targets those most in need. The pension system is complex, restrictive and concentrated among those with higher incomes, and could benefit from a comprehensive reform. Social policy programmes for the poor and vulnerable should be scaled up to improve outcomes and the redistributive effect of family allowances should be enhanced. More

could also be done to engage the large emigrant community abroad, often highly-educated people, and to support their return and reintegration in the Colombian labour market.

The main trust of the OECD report is to support the Colombian Government in tackling labour market duality, generate trust between the social partners, develop inclusive and active social policies, and get the most out of international migration. As suggested policies will imply a rise in public social spending, it will be important to improve the tax system or shift the composition of spending towards labour market and social policies.

Assessment and recommendations

Towards a more equal society

Colombia has enjoyed strong economic growth, improving the living standards of most Colombians

Colombia has experienced strong and sustained growth over the past decade and a half, driven by an oil and mining boom, foreign direct investment in the commodity sector and measures to reduce barriers to trade and investment. A sound monetary, fiscal and financial framework also moderated macroeconomic volatility that characterised previous decades. Yet, Colombia needs to sustain high growth rates to converge towards the living standards of OECD countries. With GDP per capita at 34% of the OECD average in 2013, Colombia ranks well below Mexico (46%) and Turkey (50%), the two OECD countries with the lowest GDP per capita.

The combination of strong economic growth and policies targeted at the most vulnerable has considerably improved the living standards of most Colombians, including the poorer parts of the population. Measured against the price of a basic basket of food goods, the incidence of absolute poverty fell from 48 to 31% in the decade to 2013. Also extreme poverty dropped from 16 to 9% and multidimensional poverty, which takes into account education, living conditions of children and youth, work, health, public services and housing, declined from 49 to 25% over the same period.

Yet, income inequality remains very large

Despite this progress, Colombia remains a very unequal country, with a Gini coefficient of disposable income inequality of 0.56 compared with 0.31 in the OECD on average. The Gini coefficient is considerably higher than in Chile (0.50) and Mexico (0.47), the OECD countries with the highest income inequality levels. Significant differences across regions in labour market outcomes and the level and quality of education are the main factors behind the high levels of income inequality and poverty in the country. Moreover, and in contrast to most OECD countries, there is hardly any redistribution of income through taxes and benefits in Colombia.

Strong improvements in employment rates hide deep structural problems

Employment and labour force participation rates are slightly higher than in the OECD area, in particular thanks to high employment rates among men (of all ages) and strong improvements in the employment rates of youth, women and older workers. In 2013, 73.4% of the population aged 15-64 was active in the labour market and 66.5% was employed, compared with respectively 71.1 and 65.3% on average in the OECD. Not only men, but also youth and older workers now have higher employment rates than their counterparts in OECD countries; only women continue to lag behind. The unemployment rate has also declined considerably, from 15.6% of the labour force aged 15 or over in 2002 to 9.6% in 2014, and long-term unemployment is marginal.

Nevertheless, deep structural problems in the labour market are visible through the unusually high share of self-employment: 52% of the population works as self-employed compared with 27% in Mexico and 39% in Greece, and 17% in the OECD on average. Moreover, the majority of self-employed people work in unregistered businesses (83%) and are not covered by social security (93%). Informality is also high among employees, with around 42% of them not contributing to the pension system; a much higher share than in most other emerging economies. Transitions from informal to formal employment are very low, and those who manage to move to the formal sector are more likely to work under a fixed-term contract than a permanent one, which in turn carries a higher risk of falling back into informality or unemployment.

Despite significant progress, violence persists...

Over the past decade, Colombia has made noteworthy progress in reducing violence, but the crime rates remain high in international comparison. At around 14 700 deaths per year, the homicide rate in Colombia stood at 30.8 per 100 000 population in 2012 (down from 66.5 in 2000), compared with a global average homicide rate of 6 per 100 000 population. Colombia ranks second-highest in South America, after Venezuela. In the OECD area, the average homicide rate was 2.2 per 100 000 population in 2012, with Mexico and Estonia at the top of the ranking with a homicide rate of 21.5 and 5.0 per 100 000 population respectively.

...displacing a significant part of the population and affecting trade unions members and leaders

Fifty years of internal conflict and violence have displaced about 6.2 million people in Colombia. With 12.9% of the total population internally displaced, Colombia ranks second highest in the world, after Syria, and accounts for about 22% of the global stock of internally displaced people. Forced displacement is disproportionately concentrated among Afro-Colombians and indigenous people and is increasingly concentrated in certain regions. Two-thirds of the internally displaced individuals live below the poverty line, and one third below the extreme poverty line.

Trade union members and leaders are also affected by the high crime rate, with 20 homicides of trade unionists in 2014 and more than 300 hundred assaults, threats, harassments and other types of violence in the same year. There has been some debate as to whether violence against trade union members is targeted or just part of the general violent climate in Colombia. While the national and international literature describes numerous examples of trade union members who are murdered for their involvement in union activities, other reports argue that violence against trade union activists responds to a range of different motivations due to their role as local leaders, including resistance to armed groups and displacement. Improved prosecution of crimes, in close contact with trade union organisations during investigations, will be crucial in promoting greater clarity and accuracy in the determination of the motivations and intellectual authors behind the crimes.

The protection programme was considerably improved, but could benefit from further reinforcement

Over the past three years, the protection programme for trade union members and leaders has been significantly improved through the creation of a National Protection Unit, an expansion of the programme's coverage, better material, a reformed risk assessment process, shorter delays and investigation of several corruption scandals. These initiatives have produced important results: since their introduction, none of the trade unionists covered by the protection programme has been killed.

Nevertheless, the protection programme continues to face challenges. In particular, the budget of the National Protection Unit remains very unstable, and each year there is a risk that the budget will be cut, including for 2015. The risk assessment process of 33 business days also remains too long for people under immediate risk. There is no evaluation instrument for collective risks and no system in place to monitor the adequacy of the provided protection measures or to prevent corruption. Most importantly,

impunity for crimes against trade unionists, related to inefficiencies and dysfunctionalities in the judicial branch, should be addressed.

Policies addressing labour market duality

Recent reforms to promote labour formalisation are paying off, but remaining barriers to labour formalisation should be addressed as well

Over the past decade, the government has sought to encourage labour formalisation in Colombia through a series of legislative initiatives, of which the Formalisation and Job Creation Law of 2010 and the tax reform of 2012 were the two most important. Through a package of reduced corporate income and payroll taxes, tax reliefs and government support programmes, the Colombian Government encouraged formal job creation and reduced labour informality by 5 percentage points in less than four years.

Notwithstanding the success of the reforms, the informality rate remains high in comparison with other emerging economies. The Colombian Government needs to address the remaining barriers to formalisation as well, including 1) labour market distortions related to social insurance programmes; 2) weak implementation of labour law; 3) complex procedures for the registration of companies and the affiliation of workers to social security; 4) high minimum wage; and 5) large imbalance between the skills needs of the productive sector and the available workforce.

Starting with increasing the incentives for workers to contribute to social insurance...

The combination of poorly designed mandatory social insurance programmes for formal workers and non-contributory schemes for the rest of the population can have negative effects on the labour market. First, workers in Colombia have limited incentives to formalise and pay into the contributory health care system because: 1) part of the formal workers' health care contribution is used to finance the subsidised system and thus acts as a tax; 2) the subsidised health care system offers similar services and is free of costs; and 3) there is a discontinuity in health care coverage when an individual's employment status changes. Second, there is a disconnection between the mandatory contributions employers pay into the family compensation funds (*Cajas de Compensación Familiar*) and the benefits their employees receive.

To stimulate the formalisation of labour without jeopardising universal health care coverage, it would be important to broaden the sources of funding for the subsidised health system. Additional resources would allow

the government to gradually reduce the share of total health funding coming from formal-sector employee contributions and increase funding from the general budget. The planned tax reform may be an opportunity to raise additional resources for the health system.

A similar recommendation would hold for the family compensation funds. Increased resources from the government for the services these funds provide to non-affiliates would allow a gradual decline in the employer contribution to the compensation funds. In addition, the government could consider making the services that are not available to all formal workers (such as cultural and recreational services that are only located in the bigger cities) voluntary, to allow employers to opt out from this services in return for a lower contribution rate.

...and strengthening labour law enforcement to address labour market duality

Weak enforcement of the employment legislation further contributes to labour market duality. While many workers and firms in Colombia are forced to stay in the informal sector because they are unable to enter the formal one due to the high costs, informality may also be a choice for certain firms and workers to avoid taxes and social contributions. For this reason, it will be important to strengthen labour law enforcement and raise fines for labour law infringements related to social insurance.

Furthermore, there is a tendency among Colombian employers to rely on contracts regulated under civil-law provisions for their employment relations, such as dependent self-employment and third-party contracting through associated work co-operatives, simplified joint stock companies and union service contracts. The different forms of contracts have in common that the workers involved do not benefit from the rights stipulated in the labour code (such as minimum wage, hiring and firing rules, affiliation to trade union, and collective bargaining rights and social security rights), even though working conditions are often similar to those of regular employees. The magnitude of the use of civil-law contracts is not entirely clear, but estimated at 10% or more of all employees with a written contract. While the use of associated work co-operatives for labour relations is prohibited since 2011, there has been increased hiring through other types of civil-law contracts. The Colombian Government should prohibit the use of all types of civil-law contracts for labour relations as soon as possible and oblige companies to formalise employees working under such contracts through regular employment contracts that ensure access to all basic labour rights.

Finally, while fixed-term contracts and subcontracting through temporary work agencies (TWA) provide flexibility for firms to adjust their

workforce to changing economic circumstances, these types of contracts also generate a high degree of job insecurity for the workers involved. While Colombia has very flexible regulations on fixed-term contracts and rather strict rules on TWA employment, the shares in total employment are high for both types of contracts. In 2013, 34% of all employees with a written contract had a fixed-term contract; a share above that in Chile (30%) and Poland (27%), the two OECD countries with the highest share of fixed-term contracts. The high share of TWA contracts – 9% of all employees with a written contract work for a TWA; compared with less than 3% in nearly all OECD countries (no information is available on TWA employment in Chile and Mexico) – despite the strict regulations points to a weak enforcement of the law. To safeguard job quality of TWA workers and limit abuse, the Ministry of Labour should continue to closely survey temporary work agencies.

A new unemployment protection scheme has been introduced but more resources are needed

To address the country's high levels of unemployment, the Colombian Government introduced in 2013 a new "protection mechanism against unemployment" (*Mecanismo de proteccion al cesante*). The system consists of four elements: 1) small allowances for unemployed people; 2) a voluntary system of individual unemployment savings accounts; 3) a network of public employment services (PES) with a nationally-shared job database; and 4) active labour market programmes.

Taking into account Colombia's financial resources and administrative capacity to run a comprehensive unemployment protection scheme, the choice for individual unemployment savings accounts is probably the most appropriate way to provide income compensation in the case of job loss. Such a system avoids moral hazard problems inherent to traditional unemployment insurance schemes and promotes active job search among benefit recipients – which would be very difficult to monitor in the presence of the large informal sector. Individual savings accounts also draw a clear link between contributions and benefits. In order to strengthen the system and increase the use of the individual unemployment savings accounts, it would be important to limit the options to withdraw funds for reasons other than unemployment (like house purchase/renovation or education).

Negligible funding for employment service providers implies that the support they are able to deliver is very limited. While higher-skilled formal workers might quickly find a new job through personal contacts or through the nationwide job database, harder-to-place jobseekers, such as long-term unemployed, inactive and low-skilled people, need personalised

employment counselling and targeted training to improve their skills. For these groups, it will be important to ensure sufficient funding for employment service providers for the organisation of job-search support and effective active labour market programmes.

Enhancing social dialogue

Trade union density is low due to labour market segmentation and violations of trade union rights

Colombia has ratified all fundamental ILO conventions (unlike some OECD countries) and freedom of association is recognised by the Constitution and the Labour Code. With trade union density estimated at 9.2% of salaried workers (formal and informal) and 4.5% of the total workforce, Colombia is at the lower end of the OECD ranking and considerably below Chile and Mexico. As in most other OECD countries, trade union density is much lower in the private sector (estimated at 5.1%) than in the public sector (55.5%). The average trade union counts just over 200 members, but the large majority (80%) has fewer than 100, limiting their bargaining power. The low trade union density in Colombia is related to a number of factors, including labour market segmentation, violence against trade union leaders and members, and repeated violations of freedom of association rights.

To enhance trade union rights, the criminal code was reformed in 2011, establishing higher penalties and possible imprisonment for employers who undermine the right to organise and to bargain collectively. The Ministry of Labour has also been organising media campaigns to improve the perception about trade unions among employers and the Colombian population more general. The Prosecutor General's Office (*Fiscalía*, also translated as Attorney General's Office) is currently investigating 277 cases of alleged violations of the reformed article. It will be important to see whether these investigations lead to convictions, where warranted. At the same time, it is unclear whether the administrative sanctions that were imposed by labour inspectors on firms violating the right of trade union association have been collected in the meantime.

Collective bargaining coverage is limited despite a recent increase in collective bargaining agreements

The coverage of collective bargaining remains low, at 6.2% of all salaried workers, despite a significant increase in the number of collective agreements. Contrary to most OECD countries, but similar to Chile and Mexico, the bargaining coverage rate for salaried workers is lower than the

trade union density rate, indicating that many local trade union units are too weak to engage their employer in collective bargaining. In addition, authentic collective agreements account for a decreasing share of all agreements signed in the private sector in 2013; instead, the bulk of collective agreements are union service contracts, which have become a popular instrument for labour subcontracting.

Important progress in collective bargaining has been made for public sector workers

Until 2012, most public sector workers did not effectively enjoy the right to collective bargaining despite Colombia's ratification of the relevant ILO conventions. Two new decrees, issued in 2012 and 2014, set out the bargaining procedures for public employees (with the exception of the armed forces, police and high-level officials) and allowed for substantial progress in their collective bargaining rights. In 2013, 266 collective agreements were signed covering more than 430 000 public employees. In addition, for the first time in history, a national agreement was reached between the government and various trade union federations on a unified set of demands related to government service, benefitting more than 1 million public employees throughout the country.

Legislative loopholes affect collective bargaining in the private sector

Collective bargaining in the private sector is affected by a number of legislative restrictions, including the lack of within-firm extensions and a framework for sectoral bargaining, collective pacts, and trade union fragmentation.

Collective agreements are not automatically extended within firms

Collective agreements are only extended to all employees of a company if the trade union that negotiated the contract represents more than one third of the company's workforce. This practice contrasts with those in most OECD countries where, once an agreement has been signed, the benefits resulting from collective bargaining are normally extended to non-unionised workers within the firm (often with the exception of managerial/supervisory staff), irrespective of the size of the trade union and even if there is no statutory regulation on the subject. The "free-rider" problem that the extension within a firm may pose is usually considered of less relevance than the need to preserve peaceful and co-operative labour relations among all workers.

There is no framework to allow for sectoral bargaining

The labour code allows higher-level trade union organisations (such as industrial unions, federations and confederations) to sign collective agreements, but sectoral or regional bargaining hardly occurs in practice as there are no further regulations by the Ministry of Labour to structure the negotiations (for instance, the Labour Code gives only rules on company-level bargaining). In the OECD, all member countries (except Japan) have sectoral or even national agreements in place. It is nevertheless true that, over the past few decades, many OECD countries have seen a trend towards decentralisation of collective bargaining towards the company level. Similar to many OECD countries, Colombia could promote the development of a two-tier system of collective bargaining in which bargaining at the company level is coupled with sectoral bargaining on basic wage and working conditions. To do so, regulation on sectoral and regional bargaining should be further developed in the Labour Code.

Collective accords undermine the power of trade unions

Similar to Chile and Mexico, but unlike other OECD countries, employers in Colombia have the possibility to negotiate collective accords with non-unionised workers if trade unions represent less than one third of the company's workforce. Even though employers are not allowed to offer better conditions than those already agreed upon in the collective agreements with the trade unions in their company, collective accords are sometimes used by employers to prevent the emergence of trade unions or weaken their influence. To avoid misuse, the option to negotiate collective accords with non-unionised workers should be eliminated.

Trade union fragmentation complicates the bargaining process

In some cases, five or more different trade unions operate in one company and, until recently, the latter had to negotiate with each union separately even though some workers would belong to more than one union. Union fragmentation is driven by competition among trade unions, but also the result of trade union members searching for protection against dismissal. Trade union immunity (*fuero sindical*) is granted to the trade union's founders and initial members for a maximum of six months, as well as to elected board members of trade unions and higher-level trade union organisations. It implies that they cannot be fired or transferred and their working conditions cannot be downgraded, without just cause as determined by a labour judge.

To address the adverse effects of having multiple collective bargaining processes, the Ministry of Labour issued a new decree in January 2014,

giving trade unions the opportunity to join forces and strengthen their bargaining power vis-à-vis the employer, and encouraging them to sign one single collective agreement at the company level. The decree is in line with regulations in most OECD countries that require a “single bargaining channel” in order to prevent or attenuate the costs involved in trade union rivalry, but the decree could go further by requiring (rather than encouraging) multiple trade unions in the same company to form a bargaining team to ensure a single collective agreement.

Conditions on the right to strike are sometimes overly strict

The Colombian Constitution recognises the right to strike and employers are prevented from using strike breakers at any time during the course of a strike. Yet, while trade union federations and confederations are allowed by law to sign collective agreements, the labour code forbids them to organise strikes. As such, strikes can only be organised by unions at the company level, in contrast to most OECD countries where strikes can also be declared in an industry. In addition to giving the right to strike to higher-level trade union organisations, the government should also consider abolishing the clause for compulsory arbitration after 60 days of strike action. While legislation in OECD countries typically provides for conflict-resolution mechanisms in collective labour disputes, the use of such mechanisms are not imposed on the bargaining parties through the use of the statutory mechanisms. In all, strikes do not seem to be particularly widespread in Colombia: there were 18-19 strikes in 2012 and 2013 and only 2 strikes in the period January-June 2014, compared with 400 to 600 industrial disputes that are resolved annually without industrial action.

Strikes are illegal when the dispute arises in services considered essential, including 1) civil servants not exercising authority of the state; 2) transportation by land, water and air; 3) electricity and telecommunications; 4) social assistance, charity and welfare; 5) hospitals and clinics; 6) production, refining, transport and distribution of oil and oil products – exactly those sectors where the largest trade unions operate. While there is a diversity of positions among OECD member countries on the sectors in which the public interest in securing an uninterrupted service justifies restricting the freedom of workers to initiate industrial action, Colombia would fall into the group of the more restrictive countries. The government could therefore reflect on alternatives to the outright prohibition of strikes in public and essential services, such as introducing a requirement of minimum service, while allowing the majority of employees in a particular industry to participate in strike action.

Collective dispute mechanisms are increasingly used and positively contribute to social dialogue

For conflicts related to public and other essential services, as well as for conflicts that did not obtain the absolute majority vote of the company's workforce, arbitration is the only option if the conflict cannot be solved through direct negotiation. The arbitration tribunal for collective conflicts is composed of three members: a representative from the trade union, a representative from the company and a third person, the arbiter. The latter has to be approved by both the trade union and the company. In case there is no agreement on the arbiter, the Ministry of Labour assigns the arbiter. In the past couple of years, the number of convened arbitration tribunals increased substantially, but the share of cases that were solved dropped considerably.

Disputes in the areas of freedom of association and collective bargaining that cannot be solved by any other instance, can be submitted to the Special Committee for the Handling of Conflicts referred to the ILO (CETCOIT). The committee is composed of nine persons, i.e. three representatives each of the trade union federations, the employer federations and the government. CETCOIT was considerably strengthened in 2011 and an independent facilitator respected by all parties was appointed. These measures improved the efficiency of the committee and, by October 2014, an agreement was reached for 64 out of 99 cases, many of which were longstanding conflicts (11 years or longer). It was also agreed to create regional structures, but there are not enough funds available to do so. All in all, both the employers and trade union federations have confidence in CETCOIT and it is positively contributing to social dialogue in the country.

In 1990, the Colombian Government dropped previous provisions on mediation of industrial disputes in the private sector, which used to be a mandatory step before calling a strike or taking a conflict to the arbitration tribunal. The abolition of any mediation services could be considered surprising in view of the positive experience some OECD countries have made with assisting the collective bargaining parties by means of conciliation and mediation. The government may consider reintroducing mediation in the collective dispute resolution process, ideally organised by an autonomous body that is respected by both the trade unions and the employers.

Reinforced collective bargaining would allow the minimum wage to regain its role as wage floor

Over the years, the minimum wage in Colombia has lost its purpose of providing a wage floor and instead has become the wage norm for many

formal, and even for half of all informal employees. At 96% of the median wage in 2013, it is much higher than in any OECD country and most emerging economies. As a result, many workers – typically low-skilled workers and youth – cannot access the formal labour market because of their low productivity levels. The very high minimum wage also contributes to wage inequality, while it does not reduce poverty rates since poor households do not have access to formal-sector jobs.

Nevertheless, the minimum wage should be seen in the context of the limited role of collective bargaining in Colombia. Since the minimum wage is one of the few ways for trade unions to ensure decent working conditions for their affiliates, they tend to put strong pressure on raising its level. To allow low productivity workers to join the formal labour market and reduce poverty among these workers' households, the minimum wage should gradually regain its role of wage floor. However, the minimum wage adjustment hinges upon a better social dialogue and reinforced collective bargaining on aspects other than the minimum wage, such as working conditions or take-home pay. In the meantime, increases in the minimum wage should closely follow inflation. Differentiating the minimum wage across regions could be a possibility, but improved labour law enforcement is a prerequisite, given that minimum wage differentiation increases complexity and could potentially reduce compliance. It would be equally important to further develop social policies to reduce poverty amongst the poorest households.

Enforcing labour rights

The labour inspection system has been significantly strengthened, but additional improvements are necessary

Labour inspectors have an important role to play in the enforcement of employment regulations. Colombia has taken an impressive amount of measures in the past few years to improve the labour inspection system. In particular, the number of labour inspectors was more than doubled in the space of four years and their salary scales were increased to 4-6 times the minimum wage to attract better candidates and avoid staff turnover. In addition, intensive training sessions have been organised in collaboration with the ILO to improve the technical capabilities of labour inspectors, and practical guidelines, checklists and methodologies were developed through tripartite consultations. Counselling services for workers were improved to better address their questions concerning labour rights and to register complaints about violations of those rights. Finally, the fines collection system was revised and strengthened.

In spite of these important efforts, given the high frequency of labour law violations and the low coverage of collective bargaining, additional improvements to the labour inspection system appear to be necessary. The number of labour inspectors per worker remains low compared with most OECD countries and inspectors have insufficient resources to properly fulfil their function. Not all labour inspectors have followed the trainings (the completion rates are between 59 and 87% depending on the training module) and it is unclear to what extent the labour inspectors undertake preventive inspections in addition to inspections following complaints. Finally, there is no structural co-operation between the labour inspection and judicial system.

Especially the collection of fines remains problematic

Fines imposed by labour inspectors on employers are collected by the National Training Service (SENA) – a government body attached to the Ministry of Labour. However, the SENA does not seem to have the experience to fulfil this function properly. Moreover, until recently, SENA was barred from collecting the fines if a company could demonstrate that it had filed a judicial appeal of the case, which nearly all companies would effectively do. A new resolution in June 2014 profoundly changed the fines collection procedures of SENA, and gave the institution the authorisation to require and hold collateral payment from an enterprise pending the outcome of the judicial appeal. The immediate effect was that companies are no longer filing appeals.

SENA is slowly starting to collect the fines, but only the more recent fines can be collected. By law, fines related to labour rights violations expire in three years and those related to social security and trade union rights in five years. As a result, many fines will never be collected, especially knowing that the administrative process to collect the fines takes on average 417 days. To better enforce labour rights, the fines collection process should be shortened significantly and companies whose fines have expired should be re-visited and re-fined if the labour law violations continue.

There is too little supervision over the formalisation agreements

Companies that were fined for third-party contracting through associated work co-operatives can obtain a reduction or even remission of their fine if they hire the workers directly with an open-ended contract. While this possibility ensures job security for the involved workers, there is insufficient follow-up by the Ministry of Labour to verify the content of the formalisation agreements (some agreements do not offer workers open-ended contracts but just fixed-term contracts for only a year) or to ascertain

if these workers are effectively hired within the terms set out in the agreement. The agreements are negotiated without involvement of the workers or their trade union organisations and it is unclear whether the labour inspectors or regional directors involved in the process have received guidance or training to draw up the agreements. The number of workers that have been formalised so far is marginal compared with the misuse of associated work co-operatives and workers are not always offered open-ended contracts. To limit abuse, the Minister of Labour should closely monitor the content and implementation of the agreements negotiated between companies and the Ministry of Labour that obtained a reduction or remission of their fine for third-party contracting.

Improving redistribution through social policy

The pension system is very complex, restrictive and concentrated among those with higher incomes

The pensions system is based on two mutually exclusive schemes: a public pay-as-you-go defined-benefit and a fully-funded private scheme. Workers are allowed to switch between the two systems every five years up to ten years before reaching the retirement age. Due to its complexity, it generates inequities, administrative inefficiencies and high operating costs. Coverage is very low and benefits mainly affluent people. About 35% of the population in retirement age receive a pension, compared to 90% on average in the OECD. Almost 90% of pension spending targets the richest 20% and less than 6% the poor. Furthermore, pensions are largely exempt from taxes and pension contributions and investment returns are not taxed at all. Low coverage is due to high informality; about one third of workers actively pay pension contributions. Informality also disproportionately penalises the worse-off. Only the richest 30% of men and richest 10% of women contribute enough to be eligible for a regular pension. People at the bottom 10% contribute on average five weeks per year, thus unable to reach the required 1 300 weeks within a normal working life.

A comprehensive reform is needed to increase coverage and make the pension system more equitable and sustainable. Over time this could involve several options. In any case, the competition between the public defined-benefit and the private defined-contribution plans should be removed as it is costly and inefficient. The constraint of the minimum pension being at least equal to the minimum wage should be relaxed. Equalising the retirement age between men and women – currently at 62 and 57, respectively – would raise female pension coverage as it would provide longer contribution periods and higher chances to fulfil the requirements. Gradually moving towards a scheme that increases the retirement age in line with life

expectancy would increase long-term sustainability and, despite public perception, is unlikely to reduce job opportunities for younger people.

Recent reforms for vulnerable elderly people have made significant inroads but more is needed

Recently, two programmes were announced aiming to cover vulnerable elderly people who reach pension age and have not contributed enough for a pension: *Beneficios Económicos Periódicos* (BEPS) and *Pension Familiar*. These new programmes are welcome, but so far only a few people have joined them. This may reflect the difficulty lower-income people face in accessing information, taking up the benefits and saving for old-age. Measures to increase awareness and take-up of BEPS and *Pension Familiar* should be put in place. Potentially eligible population must be identified (e.g. combining information from Colpensiones and SISBEN) and contacted to be made aware of the benefit. Access must be facilitated by extending the number of centres where the population can apply for the benefits (currently limited to large cities). *Colombia Mayor*, a safety net programme for the elderly, is neither generous nor comprehensive; the amount is about 10% of the minimum wage and according to government estimates only half of potential recipients are covered. The government has been increasing its coverage and plans to extend it all potential legitimate recipients. It is a welcome initiative that should be accompanied by an increase of the benefit level.

The cash allowance of the family subsidy system could be better designed, and the services of the family compensation funds should be rationalised

The family subsidy system (*sistema de subsidio familiar*), to which employers contribute 4% of their wage bill, is used to support a number of programmes (including cash allowances, employment services, housing and services). These programmes are run by family compensation funds, not-for-profit private organisations, which operate at the department level and charge an administration fee of 8%.

The family cash allowance is restricted to formal workers, thus not covering most low-income families, as they tend to be in the informal sector. The cash allowance is paid at the same rate for all workers earning between one and four times the minimum wage, thus not taking into account differences in need and creating distortions around the upper threshold. The design and redistributive effect of the cash allowance could improve by increasing the amount for lower earners and applying a tapering rate on higher earnings.

Many services provided (such as recreation, education and culture) are located in the regional capitals, thus not easily accessible to people in smaller cities. Furthermore, as the size and financial situation of the family compensation funds are not homogeneous, the scale, scope and quality of services they provide are also not the same.

The family compensation funds should continue to play a role in service delivery, but stricter rules and control should be applied in determining which services must be financed by the family subsidy system based on widespread access and public interest. In the long run, the Colombian Government should consider taking a more active role in the provision of family protection.

Social policy programmes for the poor and vulnerable are well targeted but more resources are needed to improve outcomes

Social policies for populations in poverty or vulnerability, such as *Red Unidos*, *Familias en Acción* and *Jóvenes en Acción*, are generally well targeted and achieve positive outcomes, according to independent programme evaluations. However, the expenditure level on these programmes is still small thus limiting their impact (for example, *Familias en Acción* spends less than half a dollar per child per day). Spending must increase not only on the amount of cash benefits but particularly on the elements that could reinforce the achievement of long-term objectives. For instance, although *Familias en Acción* had increased school enrolment, the impact on education achievement was smaller due to lack of improvements in the quality of education. Similarly, the impact of *Red Unidos* was limited due to lack of resources. In comparison to *Chile Solidario*, social workers are less qualified; their visits to beneficiary families are not as frequent; and means are not available to respond to eventual increases in the demand for social programmes or services. Furthermore, lack of co-ordination between different programmes, agencies and levels of government reduce the efficiency and effectiveness of programmes.

The design of social programmes could be revised to improve equity, work incentives and formalisation

Benefit levels of social programmes for the population in poverty or vulnerability are not differentiated by income or any other indicator of living standards. Most benefits are paid without tapering or grading scale – either the benefit is paid in full amount or not paid at all. This approach produces discontinuities in the income distribution thus generating very high effective marginal tax rates (or kinks) and possibly distortions both on work incentives and formalisation. It may also cause horizontal inequity, public

resentment and opposition as those just marginally above the threshold (thus excluded) may end up significantly worse-off than those just marginally below the threshold (thus included) once the programme is taken into account. Currently income tapering is not possible, due to inaccurate income data collected by SISBEN. An alternative could be to taper based on the SISBEN score (which is a continuous indicators ranging from 0 to 100); the technical and administrative feasibility could be explored while income data collection is being improved.

Making the most out of migration

Colombia is an emigration country and remittances have played an important role

Colombia is a net emigration country – sending more migrants abroad than it receives. In 2010/11, there were about 1.3 million Colombians living in OECD countries, with the United States and Spain being the primary destinations. The two most important non-OECD destinations are Colombia's neighbours, Venezuela and Ecuador. Nevertheless, the share of Colombian emigrants residing in OECD countries, as a percentage of the total Colombian population, stands only at about 3% – which is below the average for OECD countries. Colombian emigration is characterised by an over-representation of women and highly-educated people and indeed, one in nine highly-educated Colombians lives in an OECD country. At 78%, the labour market participation of Colombians residing in OECD countries is relatively high. However, the unemployment rate among this group reached 12% in 2010/11 and, among those highly-educated who have a job, 35% are overqualified.

Given the large diaspora, remittances have played an important role for Colombia's economic development, and the evidence suggests that while they have lowered poverty, they have also contributed to enhancing inequality. With the global economic crisis, remittances have declined by almost one half and currently stand at 1.2% of GDP. Unlike other countries, Colombia has not developed specific instruments to try to channel remittances into local economic development. Instead, the Colombian approach has rather focused on encouraging personal and family savings. This seems adequate, given the mixed evidence on the impact of channelling remittances towards economic development beyond the family level.

More could be done to engage with the diaspora and to support return migration

A number of initiatives have been put in place to engage with the emigrant community, but most of these have been small scale, with little policy co-ordination. The difficult economic situation in key destination countries – in particular Spain and Venezuela – coupled with favourable economic conditions in Colombia, has also prompted many former emigrants to return. A few targeted policies have been put in place to support return migrants, mainly consisting of counselling and tax and customs incentives. Yet, for reasons which are not entirely clear, take-up has been low. In any case, an approach more directly linked with informing return migrants about labour market opportunities in Colombia, possibly coupled with some training, would seem more promising. First steps in this direction have already been taken.

Immigration flows are still small, although there has been significant growth in labour migration supported by a liberal policy

Immigration to Colombia was a marginal phenomenon until recently, and, at 0.3%, the population share of immigrants is lower than in any OECD country. However, this situation is gradually changing, and the more favourable economic and living conditions in Colombia are notably attracting many Venezuelans, the largest immigrant group. In contrast to most OECD countries, where family and – to a lesser degree – humanitarian migration are important, labour accounts for the bulk of new migration inflows.

These labour migration flows have been supported by a significant modernisation and liberalisation of the labour migration system. Institutional changes, such as the creation of *Migración Colombia*, an agency under the Ministry of Foreign Affairs, and a labour mobility unit within the Ministry of Labour, are also witness of the growing importance of labour migration. Current admission conditions are more favourable than in most OECD countries. There is no labour market test and, if they have a job offer, foreigners can in principle take up any employment that pays at least the minimum wage. However, in spite of recent improvements in the statistical infrastructure, there is still little monitoring of the flows to date. In addition, the permit system is rather opaque. The management of labour migration would benefit from capacity-building on the analytical side, along with more transparency in the permit system and the statistics derived from it.

Integration is not yet on the radar screen

Given the small-scale nature of immigration to Colombia, integration policy has not, thus far, been a priority. Formal protection against discrimination is similar to that provided in OECD countries and conditions to take up Colombian nationality are very liberal. There are, however, no active integration policies, such as training. Clearly, this would currently concern only few migrants, namely refugees from non-Spanish speaking countries. And while the number of refugees remains negligible, it has seen a strong upward trend in recent years. In this context, a small pilot for the integration of recognised refugees may be worth considering. Such a pilot should include language training – where necessary – and labour market orientation, and would enable a nascent integration system to gain experience in dealing with integration, in preparation for the eventuality that immigration flows continue to grow considerably.

Enhancing international co-operation should be high on the migration policy agenda

One area which could potentially convey large benefits is international co-operation over migration management. Within this, three domains are particularly relevant in the context of the rather skilled nature of Colombian emigration: social security agreements; co-operation regarding recognition of foreign qualifications, and bilateral labour migration agreements. Existing activity in each of these areas regarding OECD countries has been limited, with a few exceptions in the area of social security. International co-operation, by its very nature, concerns – at least – two sides, but Colombia seems well-placed to take an active role in promoting this. Larger-scale co-operation, for example regarding mutual recognition coupled with bilateral labour migration agreements, could be tested in pilots or in selected occupations.

Policy recommendations for Colombia

In the context of enhancing job opportunities and well-being for all, the Colombian Government is invited to consider the following items as part of its strategy to tackle labour market duality, generate trust between the social partners, develop inclusive and active social policies, and get the most out of international migration. As the suggested policies will imply a rise in public social spending, it will be important to improve the tax system or shift the composition of government spending towards labour market and social policies.

Labour market policy and institutional setting

- Make further progress to provide income support to unemployed people. In this context, reinforce the system of individual unemployment savings accounts by restricting options to withdraw funds for reasons other than unemployment (like house purchase/renovation or education), and complement the income support with sufficient funding for employment service providers to enhance the effectiveness of job-search support and active labour market programmes.
- Tackle labour informality through 1) improving the link between what workers and employers are required to contribute to social insurance and the benefits and services they receive in return; 2) better informing workers about the benefits of social insurance; 3) strengthening labour law enforcement; and 4) addressing the complex procedures for the registration of companies and the affiliations of workers to social security.
- Review different atypical labour market contracts to avoid abuses and promote formalisation. In particular, closely monitor contracts under temporary work agencies and prohibit the misuse of civil-law contracts that undermine the labour rights of the workers involved; companies should be required to formalise employees working under such contracts through regular employment contracts that ensure access to all basic labour rights.
- Develop a constructive framework for social dialogue, by 1) promoting a two-tier system of sectoral and firm-level bargaining by elaborating the regulations on sectoral and regional bargaining in the Labour Code; 2) eliminating the option to negotiate collective accords with non-unionised workers; 3) extending collective agreements automatically to all employees of a company; 4) requiring multiple trade unions in the same company to form a bargaining team to ensure a single collective agreement; 5) giving the right to strike to higher-level trade union organisations; and 6) abolishing the clause of compulsory arbitration after 60 days of strike. 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. In the context of better social dialogue and reinforced collective bargaining, 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.

Policy recommendations for Colombia (*cont.*)

- Further strengthen the protection programme for trade union members and leaders, by 1) ensuring sufficient and permanent resources; 2) reducing the amount of time for completion of the risk assessment process for people under immediate threat; 3) monitoring the sufficiency of the provided protection measures and increasing them if deemed inadequate; 4) ensuring effective controls to prevent corruption; 5) implementing an evaluation instrument for and providing participants the option of becoming part of a collective protection scheme; and 6) addressing the low rate of conviction for threats and violence against trade unionists.
- Strengthen the labour inspection system, by 1) increasing the number of labour inspectors towards international standards; 2) ensuring sufficient resources for labour inspectors; 3) ensuring that all labour inspectors receive appropriate training and implement the lessons learned; 4) undertaking sufficient preventive inspections in addition to inspections following complaints; 5) shortening significantly the administrative process of fines collection; 6) re-visiting and re-fining, as appropriate, companies whose fines have expired; 7) monitoring closely the content and implementation of formalisation agreements negotiated between companies and the Ministry of Labour; and 8) establish and implement a framework of co-operation between the Ministry of Labour and the Prosecutor General's Office to improve the prosecution of labour cases under the Penal Code.

Social policy

- The pension system needs a comprehensive reform. There are several options for reform, but in any case several measures that should be considered. The competition between the public defined-benefit and the private defined-contribution plans should be removed. The taxation of pension benefits should be increased and could be one of the resources to improve the safety net for the elderly. The minimum pension should be delinked from the minimum wage. The minimum contributory period should be reduced, and the reference wage based on more years. The retirement age of men and women should be equalised and its evolution be linked to changes in life expectancy.
- Enhance the effectiveness of the family subsidy system by improving the design and redistributive effect of the cash allowance and rationalising services by focusing on those of widespread access and public interest.
- Increase public spending on social policy programmes aimed at the poor and vulnerable. Target additional resources particularly on measures that would enhance the impact of current policies (e.g. expand the quantity and quality of educational resources in line with higher school attendance produced by Families in Action).
- Strengthen the co-ordination between different programmes, agencies and government levels involved in social policy programmes. Integrate databases and put in place the right mechanisms and incentives for all stakeholders to actively participate and co-ordinate activities.

Policy recommendations for Colombia (*cont.*)

Migration policy

- Expand co-operation between Colombia and destination countries regarding bilateral labour migration agreements, recognition of foreign qualifications, and co-ordination in the area of social security.
- Engage more strongly with the diaspora, by informing them about opportunities in Colombia, and provide, where appropriate, training opportunities to return migrants, in particular to those who need adaptation to the Colombian labour market.
- Build capacity to use the improved statistical infrastructure for a better monitoring of migration flows, linked with more transparency in the permit system.

OECD Reviews of Labour Market and Social Policies

COLOMBIA

The Colombian Government has undertaken important reforms in recent years to address labour market and social challenges, and the efforts are slowly paying off. However, further progress is needed to enhance job quality and well-being for all. The OECD invites the Colombian Government to tackle labour market duality, generate trust between the social partners, develop inclusive and active social policies, and get the most out of international migration.

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