



MAKING CONNECTIONS

FREE TRADE AND LABOR
RIGHTS IN COLOMBIA

METHODOLOGY

This report is the culmination of research conducted in Colombia from May 25 to June 2, 2019. For the purpose of this study, Witness for Peace delegates visited several regions of the country, including the departments of Cauca and Valle del Cauca. The delegates met with a cross-section of Colombian civil society organizations, including land claimants; victims of the armed conflict; representatives of human rights organizations; community leaders; academics; lawyers; Afro-descendant, Indigenous, small-scale coca farmers, demobilized combatants, and the UN verification mission.

Witness for Peace delegates also held meetings in Colombia with national and regional labor union representatives, including Sintralloreda; SintraCatorce; SintraFDP; Sintrainal; Sintraimagra; Union Portuaria; and Fensuagro. Together, these unions represent thousands of Colombian men and women working in sugarcane, palm oil, biodiesel, railroads, manufacturing, agriculture, ports, and food and beverage industries across the country.

Witness for Peace would like to thank all those who gave their time to talk to the delegation. In particular, Witness for Peace thanks the land claimants and victims of forced displacement, union leaders and human rights NGOs accompanying them, who shared their experiences courageously, despite the risks involved. Some of their stories appear in this report.

INTRODUCTION

Defending labor rights in Colombia continues to be a dangerous activity. Despite the fact that it is a human right recognized by international instruments as well as the Colombian constitution, defending basic labor rights has cost lives, physical integrity and freedom of hundreds of trade unionists in Colombia.

Over the past two decades, Witness for Peace has documented killings, forced disappearances, death threats, intimidation and an increase use of the legal system to intimidate and repress the defence of labor rights in Colombia.

There are very few cases of abuses against trade unionist where advances are made in the investigation and those responsible for these serious human rights violations are brought to justice. The lack of impartial and thorough investigation means that it is not established who is behind those attacks, leaving trade unionist at the mercy of powerful interests who use violence knowing that they most likely will never be held to account for their actions.

The United States and Colombian government urgently need to implement measures to prevent, eliminate, and sanction these serious abuses, and ensure a safe and enabling environment for Colombian workers to exercise their right to organize for better labor conditions, ensuring comprehensive protection so that labor leaders can freely carry out their legitimate activities.

Finally, it must be recognized that, in spite of the violence, frequent attacks and stigmatization suffered by Colombian trade unionist, they continue to demonstrate their strength and commitment to the protection of the rights of all individuals and their families.

For Witness for Peace, the work, dedication, commitment, and tenacity with which labor leaders in Colombia address serious problems and difficulties will always be a source of profound inspiration and respect. It is time for the United States government to demonstrate its commitment to human rights and those who defend and promote them by specific and robust actions.

LABOR ACTION PLAN

The plan was intended to offer protection but it has not worked, particularly under this current government.

Hector Fabio Barrandica, SintraFDP

In April 2011, the governments of the United States and Colombia signed an agreement known as the “Labor Action Plan”, which was intended to address widespread and long standing violence against Colombian workers who try to organize and negotiate for better working conditions.

Said agreement included specific commitments by the U.S and Colombian governments to address key areas of concern, including violence against unionist, impunity for the perpetrators of violence, third party contracting and protection of basic labor conditions.

As we mark the eight-year anniversary of the Labor Action Plan, we note that violence and persecution against men and women committed to the protection of human rights in Colombia is on the rise. Since the signing of the 2016 peace accords, at least 566 social leaders have been assassinated, 66 of them were trade unionist.

This dramatic increase in targeted violence has placed serious limitations on the possibility for workers to organize to defend their rights without being stigmatized, persecuted or killed.

The “Labor Action Plan” was an attempt to stem the tide of violence against workers by companies, including many corporations based in the United States.

Eight years after the signing of the “Labor Action Plan”, many employers continue denying the rights of Colombian workers through illegal tactics aimed at weakening Colombia’s labor movement.

As Colombia moves to implement the 2016 peace accords, the enforcement of basic labor protections to ensure millions of families have the ability to live with dignity and safety, will be paramount in securing a lasting peace in Colombia.

I. ILLEGAL LABOR OUTSOURCING

It is a form of modern slavery.

William Ramirez, Sinaltrainal Colombina

Colombian labor legislation offers relatively strict protections for collective dismissals of workers but markedly flexible and weak protections for individual cases of dismissal. Furthermore, there are remarkably few restrictions on the provision of fixed-term contracts and these can be renewed indefinitely.

With such a lack of regulation, it is hardly surprising that fixed-term contracts are so common in Colombia, comprising, for 2013, 34.5% of all labor contracts in the country, a rate that far exceeds any OECD-member country.

This proliferation of fixed-term workers exacerbates worker insecurity and impacts on the possibility affected workers have of making plans for their future as a means of limiting the risk of personal and family vulnerability. Nonetheless, the predominant business practice used in Colombia to foment capital flexibility and weaken worker security and rights is the promotion of labor outsourcing-intermediation.

The Labor Action Plan, explicitly demanded the elimination of business practices that were used to “negate workers their union rights or the benefits of a direct labor relation”. Here, in line with ILO Directives on the issue, it is important to differentiate between, firstly, the outsourcing of goods and services and secondly, the outsourcing of labor.

Under the first form a firm contracts another to undertake all tasks related to the provision of goods and services as stipulated in the contract, whereas, in the second form, the only objective of the contract is that a third-party firm supplies another firm with workers who, despite undertaking activities for the user-firm, are not directly employed by it. Labor intermediation, in Colombia, refers directly to this second form of outsourcing.



Members of Sinaltrainal explain how Colombina S.A uses illegal labor outsourcing at its plant in Zarzal, Valle del Cauca

Despite the explicit demand made by the Labor Action Plan in Colombia, more than eight years on from its introduction, rather than witnessing an end to the practice of labor outsourcing what has occurred has been a simple name change.

After the disposition of the Labor Action Plan, requiring that the Colombian government committed itself to effectively regulating Cooperatives of Associated Work (Cooperativas de Trabajo Asociado- CTA) and eliminating those that practiced labor intermediation, along with any other juridical figures that did the same, a variety of business models have appeared (and/or expanded) which have taken the place of CTAs and continued fomenting precarious labor conditions.

The most exemplary forms of these models are: Societies of Simplified Shares (Sociedades por Acciones Simplificadas- SAS), Union Contracts (Contratos Sindicales), Service Provision Contracts (Contratos de Prestación de Servicios), and in certain cases, Temporary Service Firms (Empresas de Servicios Temporales- EST).

It is important to note that the only legally constituted figure permitted to undertake labor intermediation are EST, although they can only do so in specific cases (for occasional, accidental or transitory activities associated with production peaks, seasonal activities, and for the temporal replacement of personnel on vacations, sick leave or maternity-paternity leave).

These contracts should not exceed a maximum period of six months, which can be extended for a further six months at most. Nonetheless, even after the initial attention given to more effectively regulating CTAs and eliminating those that undertook labor intermediation, rather than ending such practices, many registered Colombian businesses simply took to more “creative mechanisms” of undertaking them.

Immediately after the signing of the Labor Action Plan in 2011, the Colombian government, under considerable pressure from the US Department of Labor (USDOL) and various Democratic Congressmen, made what was perhaps its most concerted effort to eradicate illegal labor intermediation, undertaken principally by CTAs.

CTAs had been highlighted due to their exponential growth during the first decade of the 2000's and the flagrant manner in which they violated the most basic labor rights of their supposed affiliates. Especially in sectors such as health, ports, cut-flowers, palm oil, mining and sugarcane, the expansion of CTAs was prolific as was their impact on deepening and widening precarious working conditions.

But the presence of CTAs was not only in these sectors, indeed, for 2010, according to data from the Association for Cooperatives in Colombia, Confecoop, there were 4,307 CTAs registered, grouping together over 610,000 workers.

Six years on their numbers have dropped more than sixfold: for 2016 Confecoop registered 764 CTAs which covered 90,230 "members". Nevertheless, unfortunately, the prohibition of labor outsourcing by CTAs did not serve to eliminate the phenomenon of illegal labor outsourcing.

Rather, it merely served to pressure many firms to change their form of labor outsourcing, in many cases they simply substituted CTAs with SAS or union contracts.

The figure of simplified stock companies (SAS) only emerged in Colombia ten years ago as a means of fomenting the formalization of micro and small firms by way of simplifying and reducing the administrative and legal procedures required to register, run or liquidate a firm.

While such a legal creation was very much in line with the competitive discourse of World Bank initiatives, which pressure countries to lessen administrative and bureaucratic regulations to enhance firm efficiencies and reduce costs, in Colombia SAS rapidly expanded right at the time of growing pressure to regulate CTAs and as such, for many unscrupulous business leaders the moment and the fit was perfect.

In SAS, paralleling CTAs pre-2011, workers are viewed as being partners of the company who are contracted out to user firms and as such, these workers have no protection under Colombia's labor law.

One of the major commercial benefits of registering a business as a SAS is that such societies can undertake any legal commercial or civil activity and as such, they are not limited to regulation that stipulates that firms must not outsource workers to carry out activities related to the firms' "core business", usually stipulated in a firm's legal statutes regarding its "social objective".

The rise and growth of SAS in Colombia has few precedents. According to information from the Confederation of Colombia's Chamber of Commerce, in 2011 SAS had come to represent almost 90% of all registered legal societies, with a growth rate of 43% for the same year that limited societies had a negative growth rate of 47%.

Indeed, for this year there were over 11,000 SAS registered. Moving on to 2019, it is estimated that 54% of all firms created in Colombia since 2008 are SAS, with over 500,000 registered nation-wide.

The exorbitant rise of SAS in the past decade has not been met with any adequate attempt to regulate or monitor their behaviour concerning working conditions of employees and indeed, the type of labor relations practiced. As SAS workers are legally considered partners, the Ministry of Labour does not produce any data concerning the number of workers employed by such firms. Other State entities are similarly curtailed in their regulatory powers.

For example, contrary to other business society figures, SAS do not need the authorization of Supersociedades to dissolve the firm and shareholders of these firms are only legally liable for the amount of their invested capital, as such they are exempt from being legally obliged to respond for labor-related payments due.

For the many trade unionists we met with, SASs have effectively become a type of legal tool used by business interests to operate outside international labor laws and restrictions as to its actions vis-à-vis its employees. In such a state of affairs, in a business and social environment grounded in the popular anecdote, "make the law, make the cheat".

Union contracts (contrato sindical) have been the other figure most charged with replacing the practice of illegal labor outsourcing after labor inspectors began to regulate and fine CTAs for this practice.

Classified by the Ministry of Labor as a type of collective agreement, in reality, union contracts function as a flexible manner for firms to outsource commercial activities. While union contracts are not new legal figures in Colombia, they remained decidedly peripheral to labor relations before regulatory attention began focusing on CTAs.

Indeed, by 2006 there were only 12 union contracts registered by the Ministry of Labor and 50 by 2010.

Yet just as the Labor Action Plan began to take effect, the numbers of these contracts submitted by unscrupulous "fake" union presidents began to soar: 708 in 2012 and peaking at 2066 in 2014 with an estimated number of 105,366 workers laboring under such figures without recourse to adequate protection from the State and forced into being members in unions that rather than uphold their basic labor rights, actively sought to negate them.

These contracts flooded the health sector, up until 2013 more than 95% of all union contracts were registered in there, but during 2013-2014, the Ministry of Labor registered 429 union contracts in the commercial sector and a further 439 in manufacturing, a factor showing how such a figure had obtained the approval of unprincipled business interests.

The phenomenal rise of this figure and its perversion of union activities only began to end and reverse its tendency during 2016 and 2017 due to the formulation of Decree 036 of 2016 which set forth a timid form of regulating union contracts, which while slightly impeding their spread did not enhance mechanisms aimed at protecting workers' rights who were outsourced by "their" union.

The number of workers contracted by Temp Service firms (EST), the only legal figure formally permitted to undertake labor outsourcing, increased during the 2011-2016 period by 76,431 workers.

Meanwhile estimates for the numbers of workers outsourced via union contracts, during the same period, also increased by 63,661.

Without being able to account for workers outsourced by SAS, due to the lack of any official information, but based on a number of cases whereby workers and trade unions have filed complaints concerning such practices in a number of firms in diverse economic sectors, it appears evident that there has been no real progress made by the U.S and Colombian government in terms of abiding by their commitments made in the Labor Action Plan to eradicate or at least dramatically reduce illegal labor outsourcing in the country.

II. INSTITUTIONAL STRENGTHENING

When inspectors come they only show a few of the workers, not the true face of the industry.

Omar Cedano, SintraCatorce

The creation and strengthening of the Ministry of Labor were the two pillars of the Labor Action Plan as most of the actors involved in formulating this “Plan” realized that without a state entity in charge of regulating labor relations which counted on a sufficient number of personnel to ensure that labor law was complied with, there was no hope that new laws protecting workers would actually be implemented or respected in practice.

As many experts have noted, labor inspection is the key activity that ensures the effectiveness of labor law, especially in a global context in which the “fissuring” of employment relations, the relocation of production and the decrease in union numbers and density, have meant that labor inspection needs to be strengthened and more effective.

In Colombia, where the rate of union membership is only 4.6% and labor informality stands at 64% (or 14.1 million workers), the need for efficient, well-trained, independent and autonomous labor inspectors is even more pressing than in most other countries experiencing similar processes of capital flexibility and mobility.

The Labor Action Plan was created to ensure that labor inspection was strict and punitive when employers were caught discriminating against workers, firing workers unjustly or intimidating and/or threatening workers. First and foremost, alongside the creation of the Ministry of Labor, the Labor Action Plan specified the need to increase the number of labor inspectors, moving from the 289 active inspectors as of 2009 to a grand total of 904 inspectors.

Nonetheless, eight years on from the signing of the Labor Action Plan, it appears that the Ministry is yet to fulfil its commitments. Indeed, the latest figures available, state that for the end of 2016 there were only 837 inspectors in the Ministry and this figure fluctuates year-on-year, with the Ministry continuously losing many of the inspectors it contracts.

Labor inspection in Colombia remains weak, purely administrative, and although now more inspections are conducted, there are still no positive results for workers.

Sanctions serve more as public relations successes for the Ministry of Labor than as punishments capable of exerting pressure for changing the fraudulent behavior of many businessmen in the country. Few sanctions have been confirmed, and fewer have resulted in an order for payment, and, as far as we know, no significant amount has been paid during the eight years since the Labor Action plan came into force.

Advances have been made but they are considerably less than what was called for and promised by the Colombian government. The number of inspectors remains below the government's commitments and their progress in effectively implementing the labor law is minimal and inefficient.

III. ANTI-UNION VIOLENCE

To be a labor leader is like buying your own coffin.

Ernesto Cano, Sintralloreda

On May 5 2019, William Andres Ramirez Grisales, a member of Sinaltrainal and a worker at the Colombina plant in Zarzal, Valle del Cauca, was threatened with a firearm in front of his wife and young son after two men broke into his home in the middle of the night.

One of the men pointed their gun at William's head and said "I am here to tell you to be still, to stop causing trouble".

There have been multiple armed death threats towards the leadership of Sinaltrainal at the Colombina plant owned by Cesar Caicedo.

One member of Sinaltrainal's board of directors had been threatened at gunpoint three different times with no response from the authorities.

Colombina, a major supplier for U.S companies such as the Walt Disney Company and Walmart Inc, has been increasingly hostile towards members of Sinaltrainal since its formation at the Zarzal plant in 2017.

Colombina's Zarzal plant has roughly 1,800 workers, of which, 44% are subcontracted and more than 400 workers have suffered work related injuries due to inadequate safety conditions.

In 2018 alone, five members of Sinaltrainal were assassinated and dozens more received death threats. Three members on the board of Sinaltrainal have been given bulletproof vests and cellphones by the UNP, while others simply get a visit twice a month by a police officer to their homes.

These protective measures have proven to be wholly inadequate as trade unionists continue to be murdered for their labor activism.



Workers at the Colombina are subject to mass firing, sub-contracting, deplorable safety standards, lack of healthcare and death threats.

Anti-union violence is not an issue of the past, nor has it been overcome. Over eight years after the Labor Action Plan entered into effect, violence against trade unionists has continued to be an almost daily occurrence in Colombia.

According to the Escuela Nacional Sindical, during this period, 173 unionists were killed, and there were 112 attempted murders, 12 forced disappearances, and about 1,662 death threats, with no significant progress in investigations, no initiation of trials, and no convictions or arrests.

It should be emphasized that certain violence indicators registered increases in 2018, including 34 homicides of unionized workers, 172 death threats, 3 cases of forced disappearance, and at least 1 case of torture.

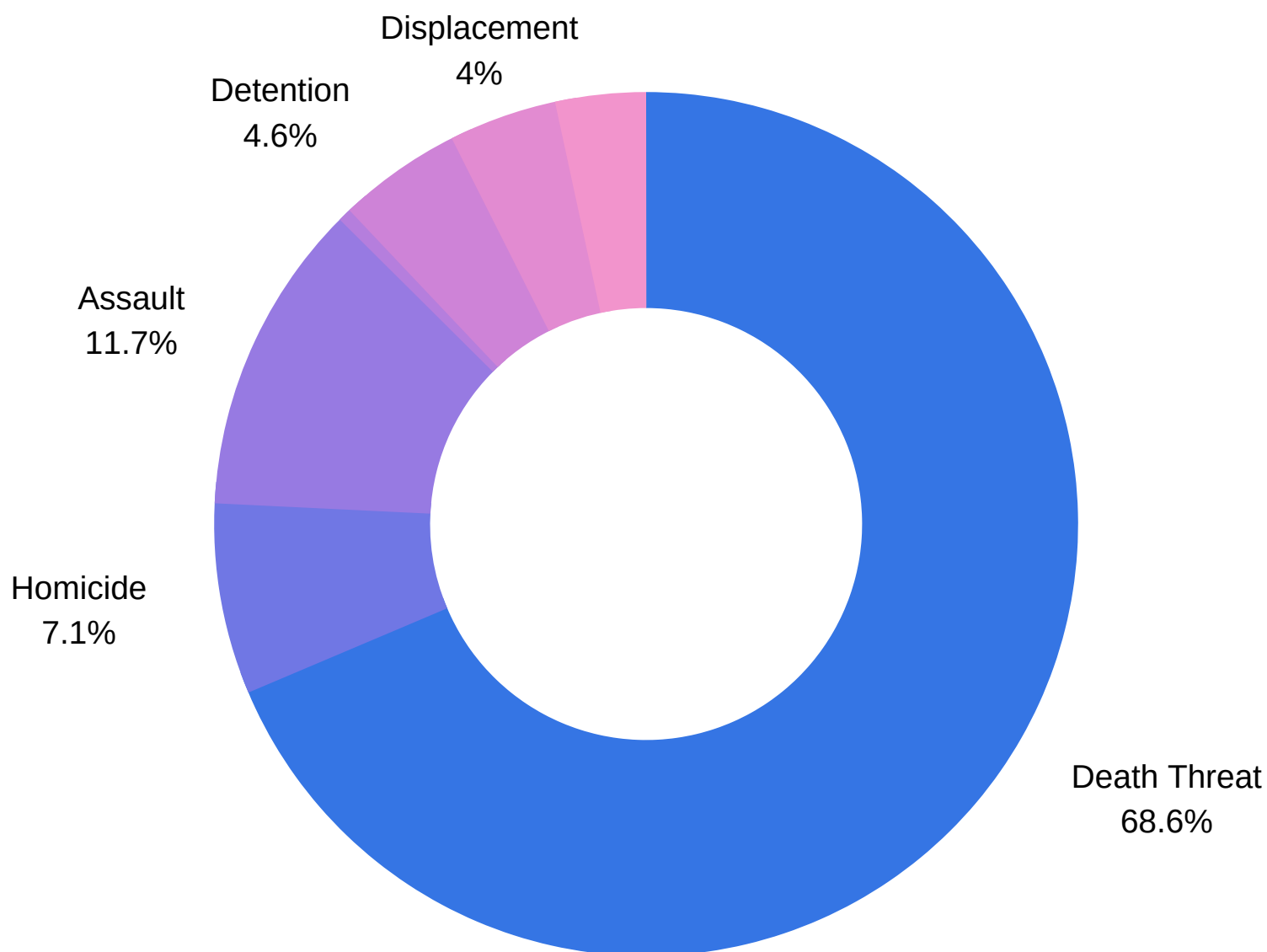
Concerning the progress of investigations reported by the group of prosecutors that investigate cases of anti union violence in the National Unit for Human Rights and International Human Rights, out of the cases that are currently underway (1,007), almost half (41%) are only in the initial stages. It can thus be concluded that, regarding homicide, there is an impunity rate of 86.8%.

The crime of imposing a threat, which is the crime trade unionists experience the most (1,662 since 2012), has the highest rate of impunity (99.9%).

Crimes involving forced disappearance, forced displacement, and kidnapping had 99.6%, 99.5%, and 90.6% impunity rates, respectively.

In general, in regard to crimes involving serious human rights violations, impunity in cases involving trade unionists is extremely high, averaging 96.7%.

**Violence Against Trade Unionist in Colombia from January
2012 to December 2018**



Source: Escuela Nacional Sindical



**Daniel Aguirre, founder of SinalCorteros, assassinated on
April 27, 2012**

Even after both the Colombian and United States governments signed the Labor Action Plan in April 2011, labor leaders have been victims of over 1,662 death threats and 173 assassinations.

One such case is that of Daniel Aguirre, the Secretary General and founder of SinalCorteros. Mr. Aguirre was assassinated on April 27, 2012 and to this date no justice has been served.

Immediate action is necessary to solve this case and bring justice to the perpetrators since Mr. Aguirre is the first union leader to be killed since President Obama declared implementation of the free trade agreement.

Other assassinations this year include that of Mauricio Redondo of USO, who was killed along with his wife on January 17 in Puerto Asis, Putumayo, and Alexander Gonzales Blandon of SINTRAENTEDDIMCCOL who was murdered on January 19, 2012 in Bugalagrande, Valle del Cauca.

In 2011, the death of Sinaltrainal member John Fredy Carmona, whose body was discovered on December 9 in Medellin, and the paramilitary attack of Sinaltrainal Executive Committee Member Juan Carlos Galvis on November 9 2013 have not been sufficiently investigated.

Given the alarming rates of persistent threats and acts of violence, we observed that the implementation of the protection programs and judicial reforms delineated in the Labor Action Plan have not been achieved.

It is imperative that the Colombian government, with the support of the United States, ensures their compliance with the specific programs and initiatives outlined in the Labor Action Plan.

IV. OMISSION OF WOMEN'S VOICES

The concerns of Colombian women were not taken into consideration with the development and passage of the United States-Colombia Trade Promotion Agreement (CTPA), either through a government study or listening to the case of the women's movement.

Without the inclusion of specific protections for women, the CTPA cannot stand as a just document. The obligation to reduce discrimination against women is present in the Colombian Constitution as well as various international humanitarian agreements, but is absent from the CTPA.

Discrimination based on gender is rampant in Colombia, and has worsened during the past eight years of free trade negotiation. According to a 2007 NGO report, the salary gap between men and women holding the same position was 14.28%.

According to the women's division of the Central Unitario de Trabajadores (CUT), the rate has doubled to 28.9% today. Additionally, the increased economic inequality and instability caused by the CTPA forces more people (especially women) to work in the precarious informal sector, without healthcare, contracts, or specific commitments by the Labor Action Plan.

The major concerns held by women of the Sabana of Bogota during their First Popular Women's Assembly surrounded threats to the environment and the local economy. The government does not monitor the flower industry's water or soil pollution, or hold companies responsible for these negative externalities.

The displacement of food crops for monoculture and flower production has decreased agricultural job opportunities, and created precarious employment where wages are suddenly lowered or hours reduced.

Despite being hailed as one of the most unionized industries in Colombia, due to the prevalence of sindicatos patronales which are headed by the company, the union Untraflores is alone in truly seeking to protect workers' rights.

Furthermore, cheap agricultural imports have destroyed women's capacity to compete with their own micro-economic agricultural enterprises.

The women most disproportionately affected by the CTPA are indigenous and Afro-Colombian, as well as poor campesina women in rural areas, because of displacement by armed groups or multinational economic interests.

Colombia has the highest rate of displacement in the world, and many indigenous communities are on the verge of extinction. According to a leading indigenous organization in Cauca, more than 7,000 people have been displaced in their region this year alone.

Community leaders are concerned that this generation of children has only known violence, and child recruitment continues to be a serious problem.

The ethnic rights of indigenous and Afro-Colombian communities protected by the International Labor Organization (ILO) decrees were ignored by the parties who approved the CTPA without consulting either community.

V. SHELL COMPANIES AND ASSET DISSAGREGATION

A major threat to the protection of labor rights in Colombia is the ongoing use of shell companies by big business to circumvent labor laws and suppress unions. Such is the case for the workers of **Lloreda S.A** and **Ferrocarril del Pacifico**.

Lloreda S.A was secretly purchased by **Grupo Harinera del Valle** (HDV) through Panamanian shell companies (Metcalf, Sondrio, Waenne, Berlings Holdings, Fresnel, Aravali) in 2008, forming an agroindustry cluster, which later began disaggregating its assets towards a shell company **C.I Yumbo**.

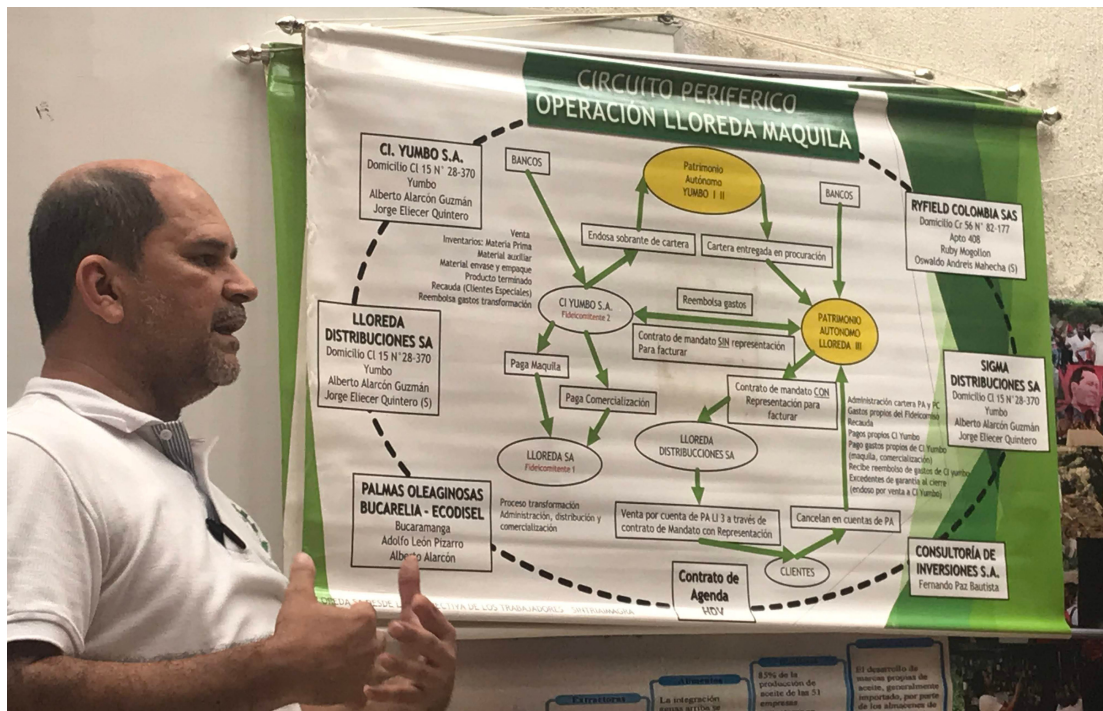
This was done in order to misrepresent the financial viability of **Lloreda S.A**, creating a fictional financial panic in order to suppress union organizing within its companies through the fraudulent use of Law 550, which permits the loosening of labor restrictions in the case of financial difficulties.

After a six-year investigation, members of Sintralloreda discovered that **Grupo Harinera del Valle** was also a majority shareholder of Palma Oleaginosas Bucarelia S.A.S. a partner of ECOPETROL S.A and another 6 companies in the production of Biodiesel.

HDV also owns a sugarcane plantation named Maria Luisa that produces ethanol from sugarcane, which mixed with palm oil creates Biodiesel. This means **HDV** is the primary producer and distributor of Biodiesel in Southwestern Colombia.

HDV also owns an extension of the port in Buenaventura as well as its own transportation fleet PORTAGRANELES S.A.S.

Grupo Harineras del Valle is a cluster which controls major market shares in several industries, however, it continues to use shell companies to obfuscate the true nature of its assets in order to circumvent its obligations vis-a-vis its employees.



Ernesto Cano - SintralLoreda, explains the intricate web of shell companies used by Grupo Harinera del Valle to undermine labor rights.

A similar strategy was used by **Trafigura**, the parent company of Impala Colombia, to sell off 99% of its shares (an investment of over \$50 million dollars) for \$500 to **Taller Industrial Ferrocarril de Antioquia**. This transaction, resulted in the mass firing of over 100 railroad workers who have yet to see payment or compensation since April 2017.

Many of these workers have lost their homes and have been forced to sleep in the streets. The use of tax-havens and shell companies to evade labor laws must be taken seriously, for this practice is becoming more pervasive in industries across the country and puts at serious risk the basic human rights of thousands of Colombian workers.

VI. CONCLUSION

The U.S and Colombian government have demonstrated that they never had a true interest in complying with the Labor Action Plan, today, eight years since its execution, it is of fundamental importance that the U.S and Colombian government comply in full with all 37 measures covered in the Labor Action Plan.

Additionally, as a serious gesture demonstrating the intention to implement a broad policy to extend the protection and guarantee the labor rights of Colombian workers, the United States and Colombian governments must immediately commit to protecting the rights of Colombian workers to organize for better working conditions without fear of violence against them and their families.

Many trade union organizations undertook actions aimed at applying the very measures that were adopted in the Labor Action Plan. However, the vast majority of these efforts have been in vain and, in many cases, have only backfired on workers.

This is the case for port and palm workers, who have been subjected to the most aggressive and illegal forms of outsourcing and delaborization in Colombia.

We would like to emphasize that thousands of workers and their trade union organizations have tried to make use of the new legal provisions that protect them against labor abuses, but most have found themselves more vulnerable since judges, prosecutors, and labor inspectors almost always refuse to provide the protection available under the new legal framework.

These demands require a serious and committed response from government institutions. To date, none has been given.

Twenty-two million workers are crying out for jobs in which their rights are not violated, their desire for decent positions in which the freedom to associate and bargain collectively are respected, and where they are treated with the dignity deserving of a human being and as subjects with rights.