

SOCIAL DIALOGUE AND TERCERIZADOS IN COLOMBIA'S PALM OIL INDUSTRY

**THE CASES OF PALMAS Y
EXTRACTORA MONTERREY S.A.
AND PALMAS DE CESAR**

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EXECUTIVE SUMMARY

Colombia's palm oil industry is embedded in numerous contested issues: unlawful land-acquisitions, the oppression of indigenous populations, environmental degradation, labour rights abuses, the undermining of small scale farmers, etc. The history of the sector is inseparable from that of the violent conflict that raged through the country for decades and the systematic stigmatisation of trade unionists as well as other social and political activists. Up until today Colombia remains a very hostile country for trade unionists (HRW 2018; Centro Nacional de Memoria Histórica 2018).

The history of violence and conflict has left a deep scar on the industry, breaking down trust and fueling adversarial industrial relations (Centro Nacional de Memoria Histórica 2018). Whilst the 2016 peace agreement between former-president Santos and FARC was seen as a tide-changer - in terms of creating a more conducive environment for social dialogue, as it established aspirations for sustainable peace and security - the election of President Duque and his opposition to the peace agreement as well as the increase in murders and attacks against social leaders, has, in the eyes of many trade unionists, debunked these hopes (United Nations Security Council 2018).

Notwithstanding, optimists argue that the industry has provided much needed employment in Colombia's rural areas (68,000 direct and 102,000 indirect workers in 2018) and is an important driver behind the country's economic growth, representing 11% of the GDP in 2018 (Fedepalma 2019).

High amounts of labour subcontracting and intermediation have always been part of the sector, taking on different forms over the years; from *contratistas* in the 1960 and 1970s, to *Cooperativas de Trabajo Asociado* (CTAs) in the 1990s and *Sociedad por Acciones Simplificada* (SAS) from 2011 onwards. This has posed specific difficulties in terms of labour organisation and collective bargaining because workers employed through CTAs are legally not recognised as such and therefore are not entitled to labour rights and the short term contracts through which the majority of SAS-workers are employed inhibit workers from practising their labour rights (Hawkins 2014). The organisation rate is low (5%), with trade unions

primarily representing direct workers, whilst the majority of CBAs only cover direct workers.

Tackling the issue of precarious labour conditions in the sector has been difficult due to the difference in discourses related to formality. According to Fedepalma and the Ministry of Labour there is no harm in subcontracting as long as it occurs within the confines of the law and from their perspective 82% of the workers in the sector are formally employed because they are in the possession of a "labour" contract. Trade unions, however, have a more critical analysis of the labour situation, as many of the indirect workers do not have access to basic labour rights such as health and safety at work. Based on this more critical analysis only 20.7% can be seen to be formal workers.

Genuine social dialogue and collective bargaining in the industry is still incipient. Despite the long history of labour organisations sector-wide social dialogue has as of yet never occurred and collective bargaining at firm level has from the start been rife with conflict, at times violent in nature. With shifting intensity, the issue of indirect workers or *tercerizados* has been part of many of the trade unions' campaigns (in the 1970s and since 2011s more overtly) but only in two companies have there been genuine advances with regards to formalisation: *Palmera y Extractora Monterrey S.A.* and *Palmas de Cesar*. The key to their success has been: (1) a strong alliance between the indirect workers' union (SINTRATERCERIZADOS) and the direct workers' union (SINTRAINAGRO-MINAS and SINRAPALMAS) and their numerous and persistent industrial actions (e.g. strikes and lock-outs); (2) a realisation from the side of the companies that business as usual was no longer possible as it would lead to even more labour conflicts; (3) international pressure through the Labour Action Plan as part of the Obama-Santos free trade agreement, which led to fines issues by the Ministry of Labour for using illegal subcontracting systems; (4) lastly the mediation by external consultants and the international trade union cooperation allowed the deeply entrenched mistrusts between both parties to be overcome.

Key steps to be taken to allow more widespread formalisation processes and effective social dialogue are: (1) adapting the legal framework in order to diminish

the ability to subcontract work that is part of the company's core activities; (2) adopting a more diversified rural development model instead of the current one, which is solely based on the expansion of agro-industry and monocultures; (3) creating alliances between direct and indirect workers through union representa-

tion and putting the collective interest above individual interests; (4) convincing the employers of the benefits of formalisation and social dialogue and breaking down the myths through presenting positive business effects (e.g. increase of productivity and quality of work).

FOREWORD

This research was commissioned by Mondiaal FNV within the scope of their Social Dialogue programme as part of the Trade Union Cooperation Programme 2017-2020. The research project aims to take stock and investigate in which ways issues of informal workers are addressed in social dialogue mechanisms and to what extent informal workers are or can be included. To be able to distil this macro-perspective, a micro-approach was adopted by zooming in on eight case studies across the world. Each case study pursued the following research objectives (1 & 2) and investigated the related research questions (a-e):

1 Deepen the understanding of the SD processes of the selected case studies:

- a. Which social partners (SP) are involved?
 - What are their goals/interests they hope to achieve through SD?
 - Where does their bargaining power stem from?
- b. Which bargaining strategies are adopted by each social partner?
- c. Which issues are on the SD agenda?
 - Who sets the agenda?
 - Are all SP equally committed to the agenda? Who is the driving force?
- d. What are the main obstacles to SD in the selected cases and how were they overcome?
- e. What were the key enabling conditions that allowed SD to be effective (e.g. respect for the rule of law/institutionalisation, respect for TUs rights, well-organised labour organisations)?

2 Develop a list of key lessons learned that can be used as a basis for exchange activities

Each case study adopted a qualitative research approach looking into successful cases of “inclusive” social dialogue processes. Primary data was collected during 5 to 8 days of fieldwork and included semi-structured interviews, focus groups discussions, participant observation and in some cases participatory workshops. The primary data was contextualised via literature review as well as media and document analysis adopting a historical, political economy perspective.

Following the Terms of Reference (TOR) developed by Mondiaal FNV, social dialogue and collective bargaining were defined as followed in all eight case studies:

“Social dialogue can be characterised by bipartite or tripartite bargaining and negotiation processes between government institutions, employer organisations/employers and trade unions at four levels: internationally, nationally and at sector and company level. So, collective bargaining is seen as a part of social dialogue as well.”

Although specific attention was given to less-institutionalised forms of social dialogue by including the wide range of informal negotiation processes found in both the formal and informal economy.

The following report represents the research results of one of the eight case studies: indirect workers (or tercerizados) in **Colombia's** palm oil industry and their struggle for formalisation. To protect the safety of the respondents this report does not include a list of respondents.

The other 7 case studies are about:

- Street-vendors in **India** and their adaptations to Town-Vending Councils as new social dialogue arenas
- Domestic workers in **Peru** and their collective action towards the ratification of ILO Convention 189 (on Domestic work)
- Market- and street-vendors in **Ghana** and the initial steps made by UNIWA towards local informal workers' forums'
- Boda boda (motor taxi) drivers in **Uganda** and the political tango they are in to protect their livelihoods
- Construction workers in **Rwanda** and the creation of various Memorandums of Understanding by tapping into the political priorities of the government
- Guides and porters in **Nepal's** tourism sector and the sector-wide agreements that have been accomplished
- Informal construction workers and outsourced workers in the electricity sector in **Indonesia** making slow but steady gains in an uncondusive environment

These 8 cases show us that there is not one-size-fits all when it comes to social dialogue practices of informal workers. Nevertheless, another Mondiaal FNV's research SOCIAL DIALOGUE AND INFORMAL WORKERS: WHAT WE CAN LEARN FROM 8 SUCCESS CASES summarises the overarching insights based on the comparative analysis of the eight case studies.

ACKNOWLEDGEMENTS

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1. SOCIO-POLITICAL CONTEXT: MAQUILLAGE... C'EST CAMOUFLAGE

My first days in Colombia reminded me of this famous Belgian song: *Maquillage...c'est camouflage*, referring to how one can cover up appearances. Whilst the government of President Duque - who took office in August 2018 - and Colombia's economic elite are dedicated to keeping up appearances of economic and social stability, the persistent human rights abuses and growing inequality keep on surfacing (WOLA 2019; HRW 2018)^{1,2}. Between the signing of the Peace Agreement between President Santos and FARC in November 2016 and April 2019, 702 social leaders were assassinated including, farmers' and indigenous' rights activists, community leaders, trade unionist as well as human rights' activists in addition to 135 ex-FARC combatants. ENS furthermore has documented 73 assassinations of trade unionists between 2016 and 2018 and an increased amount of threats and violence towards trade unionists, especially in rural sectors (including palm oil), education and the mining industry (CUT and CTC, 13 June 2019).

The difference between discourse and reality are blatant and are clearly manifested in the palm oil industry. It has for instance become a claim of the government - in concert with Fedepalma, the Colombian National Federation of Oil Palm Growers - to depict the palm industry as a sector of smallholder-farmers (80%) and inclusive development based on associative business-models or *alianzas productivas*, of which there were 139 in 2018 (APs)³. This is, however, in huge contrast with Oxfam's (2017) analysis that ranks Colombia as Latin-America's most unequal country in terms of land ownership. According to the report, 81% of the country's farm lands are owned by the 1% largest firms and a growing number of these are used for growing

African palm trees (Oxfam 2017)⁴. A publication, by ALL (2017), enforces this analysis, stipulating the inequality within the sector and thereby debunking the "inclusive palm oil" imaginary.

"The model of APs in the palm sector has not been developed to democratise land ownership or the access to productive resources, but to lower the costs of production of the extraction plants through outsourcing the provision of the palm fruit"⁵.

Another presumption created by Duque's government is that of respect for labour rights and the importance of social dialogue. This discourse builds on the conditionalities tied to the Obama-Santos trade agreement and Colombia's admission to the OECD. In both international agreements labour rights were a key point of discussion and one to which the Colombian government had to make concessions in order to close the deals⁶. At the national level this translated into a change in law which made labour intermediation through CTAs (*Cooperativas de Trabajo Asociado*) illegal, because they structurally undermine workers' rights (members of CTAs are legally not considered as workers), as well as the creation of a decent work pact - among many other "pacts". In reality, however, trade unionist are facing increased harassment, labour flexibilisation is creating ever more precariousness, and the "pacts" create handy photo opportunities but entail few real commitments. As one respondent put it: *"The decent work pact is a joke and does not entail any real commitments"⁷.*

The optimism that could be found in 2016 after the signing of the peace agreement between President

¹ Ivan Duque took office as the President of Colombia in 2018. He won with 53.9% of the votes from the leftist politician and former Mayor of Bogota Gustavo Petro (The Guardian 18 June 2018). Only 53% of the electorate went to vote although it is an increase since last elections. Many of the taxi drivers I spoke to said they did not want to vote for Duque but the fear of becoming like Venezuela (a fear initiated by mainstream media outlets) and the disagreement with the peace deal, which is seen to give little justice, made them go for what many thought would be a safer option to change.

²<http://ail.ens.org.co/informe-especial/en-2018-crecio-la-arremetida-contra-activistas-y-lideres-sindicales/>
<https://www.hrw.org/world-report/2019/country-chapters/colombia#>

³There are about 6,000 palm producers in the country of which 5,000 Fedepalma considers to be small-holders, which means they have less than 50 hectares of palm plantations. According to this definitions 80% of Colombia's plantation owners are indeed small-holders but 50 hectares is still a large-size plantation (Fedepalma2018).

⁴The government are able to make its opposing claim because the real owners of plantations or investors of the palm oil industry do not feature in their statistics.

⁵<http://ail.ens.org.co/informe-especial/las-alianzas-productivas-sector-la-palma-aceite-informe-especial-la-ens/>

⁶Interviews with Viva la Ciudadania, Centro de Solidaridad and CTC

⁷Interview with Viva la Ciudadania

Santos and FARC (the left-wing guerrilla group with which the government was in war for over 30 years) is steadily disappearing as Duque has vowed to annul the agreement as well as the protocols signed with ELN (another left wing guerrilla group). During the first weeks of 2019 six social leaders were killed and in 2018 120 lives were lost (WOLA 2018; WOLA 2019). The assassinations of social leaders seem to have become so common that they are mentioned amongst the “short news” items in the newspaper (El Tiempo 26-01-2019). This trivialisation of the deaths of human rights’ defenders should not be underestimated but is part of a deliberate exercise by the government, which is in control of the two largest newspapers in the country, to downplay the impunity with which most cases are met.

Additionally, President Duque adheres to the same political line as Brazil’s right-wing President, Bolsonaro, and is steadily promoting the expansion of corporate power over access and use of land whilst oppressing the rights of workers and indigenous populations. The ZIDRES law (Law 1776 of 2016) serves as the legal footing. Whilst the law - which gives access to large pieces of land for agricultural development, i.e. the expansion of mono-cultures such as palm tree plantations - was adopted under President Santos, Duque is one of its most fervent defenders pledging to expand the palm oil plantations⁹. 10 out of 16 ministerial-posts in the Duque administration are occupied by businessmen or people representing the country’s small economic elite. The head of the department of indigenous land rights, is for instance a former Fedepalma employer. Knowing that the palm industry is one of the substantial infringers of indigenous rights, this placement cannot be seen as coincidental¹⁰.

It is within this bleak context that we should situate the following report on social dialogue within the palm oil industry. Although the general political climate is not hopeful there is a little light, a *luzecita* as a respondent phrased it, which is the small but significant strides made by the trade union movement against the precarisation of palm oil workers. More than half of the workers in the palm oil industry in Colombia are indirect workers, or workers who are sub-contracted by labour brokering companies, temporary work agencies, cooperatives, etc. The legal forms of labour intermediation in Colombia are plentiful and are used as cloaks to disguise informality or illegal contracting. Throughout the report I will refer to the workers that do not have a direct contract with the palm oil company for which they are carrying out the work, as indirect workers or *tercerizados*, literally meaning working for a third party. This group thus encompasses workers under various, distinctive forms of subcontracting but all have precarious labour conditions (in different degrees).

It is the struggle of the trade unions, which have successfully achieved the formalisation of indirect workers and the courage of two palm oil companies in adopting a distinct business-model by investing in genuine social dialogue, which will be the focus of the following analysis. But before zooming in on these cases we will present an overview of the history of the palm industry in Colombia, the labour movement and its workers.

⁹Interview Viva la Cuidadania

⁹Interview ONIC

¹⁰Interview representative department of indigenous affairs.

2. THE EXPANSION OF COLOMBIA'S PALM OIL INDUSTRY AND THE HISTORY OF THE LABOUR MOVEMENT

Colombia is the fourth largest producer of palm oil in the world (Fedepalma 2019). The history of the industry is embedded in numerous contested issues: unlawful land-acquisitions, the oppression of indigenous populations, environmental degradation, labor rights abuses, the undermining of small scale farmers, etc. Notwithstanding, optimists argue that the industry has provided much needed employment in Colombia's rural areas (170,790 direct and indirectly employed workers in 2018) and is an important driver behind the country's steady economic growth, representing 11% of the GDP in 2018 (Fedepalma 2019).

The first palm plantations in Colombia date back to 1945 but the sector really took off in the 1960s; first establishing itself in the fertile lands of departments now known as Magdalena Medio, Cesar, Santander and North Santander or what is now known as the central palm oil production region. The first palm oil plantation owners planted on land which was known as baldias, or "wasteland", but soon found out that indigenous communities had built their livelihoods there, living from fishing, subsistence farming and animal husbandry. This did not keep the first investors, or colonos, from carrying out their plans as they set out to displace the indigenous populations: either by force or with money (Centro Nacional de Memoria Histórica 2018)¹¹. Today the palm oil sector in Colombia can be divided into 4 regions: the North, Central, East and South-West regions. The Central region is the oldest in terms of cultivation and also has the most vibrant trade unionisation history, with the first unions, such as Ultrasan, emerging in 1963s (Centro Nacional de Memoria Histórica 2018).

Palmas de Cesar (1960) and Monterrey were among the first companies established in the central region, and the country (Vergel 2017). Then, as well as today, many of the palm oil plantation owners were affiliates of the conservative party with strong Catholic beliefs and class-based perceptions. These traditional palm

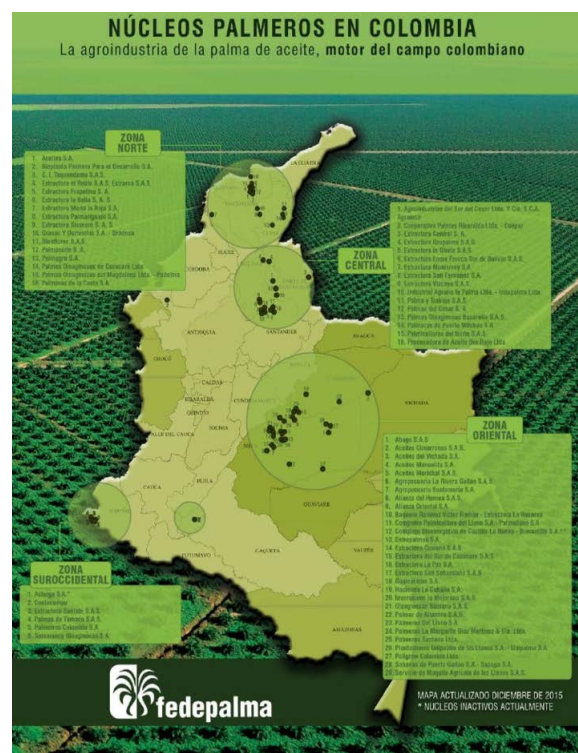


Figure 1: Map of Palm Oil Plantation Nucleos

growers were part of the land-holding Colombian elite, embedded in a feudal mentality stemming from the times of the huge latifundia. Whilst extremely conservative and therefore fiercely afraid of any kind of labour organising, the majority of traditional palm-growers are not tied to illegal activities such as narco-trafficking and their businesses operated, and still operate, within the legal margins. In comparison with a new group of palm growers that emerged during the 1990s of which many have ties with the drug-cartels and paramilitary movements¹².

¹¹Interview ONIC

¹²Interview Social Dialogue consultant

2.1 TERCERIZACIÓN AS AN INHERENT CHARACTERISTIC OF COLOMBIA'S PALM OIL INDUSTRY

From the onset, labour relations in the palm oil sector have been characterised by *tercerización* or labour intermediation-practices that have evolved over the decades, taking on different (legal) forms. With the start of the palm oil plantations in the 1960s, *contratistas* gathered together a group of workers, which they then offered to the palm companies. Many companies would only hire workers through such labour brokers. The *contratistas* made a good profit out of this practice whilst the workers were paid very little and women were paid half of what men earned. Labour rotation was high as workers moved from farm to farm following the demand for labour. Furthermore the living conditions on the plantations were pessimal. The first unions were created in 1960s and at the start primarily sought to improve the working conditions and wages of the permanent, directly-hired workers, most of whom were stationed in the extraction plants. It soon became clear however that a united labour front was necessary and by the 1970s the working conditions of the “*tercerizados*” became part of the unions’ agenda. To this effect, a number of strikes were organised at the beginning of the 1970s, bringing an end, albeit it a temporary one, to labour intermediation-practices in firms such as Indupalma (Centro Nacional de Memoria Histórica 2018; Vergel 2017)¹³.

From the mid-1980s onwards the total palm oil production in the country has been on a steady increase (Henson et al. 2011)¹⁴. Together with the growth of the sector, trade unions were becoming stronger, due to the decrease in labour intermediation-practices. In Palmas de Cesar, for example, in 1985 the trade union SINTRAHIPILANDIA managed to achieve indefinite labour contracts for 180 of the 220 workers who were still working through *contratistas*. The process was long and hard fought for through a strike of 62 days which included a 5 day march to the department’s capital, Bucuramanga and a sit-in at the embassy of Spain. Confronted with the strong union the owners sold the company 2 years afterwards¹⁵. Another important step was made in the central palm oil region with the creation of SINTRAPROACEITES in 1987. For the first time, the labour movement moved beyond firm-based

organising and set-up an industry-wide union by bringing together 3 unions (based in the companies: Indupalma, Palmas de Cesar and el Copey) in the central region, uniting around 1,600 members (AIL 2016; Centro Nacional de Memoria Histórica 2018). Later on, SINTRAPROACEITES grew to become a union with national coverage. SINTRAPROACEITES and other unions made important strides, particularly with regard to salary increases, but all by way of strikes, protests and marches (Centro Nacional de Memoria Histórica 2018). In no way was there a situation of a peaceful industrial relations climate and all gains were achieved through struggle. At the end of the 1980s the first assassinations of union leaders took place by right wing paramilitary groups that linked trade-unionists with the communist party and left-wing guerrillas (AIL 2016)¹⁶.

2.2 TRADE UNIONS, ARMED CONFLICT AND LABOUR FLEXIBILISATION

During the 1990s the anti-union violence took a dramatic turn. Hundreds of union leaders were murdered by paramilitary groups and companies launched a campaign to tarnish the name of the trade unions linking them to the left-wing guerrillas (AIL 2016; Centro Nacional de Memoria Histórica 2018). Caught up in the fight between the government, paramilitary groups and left-wing guerrillas, a weakened labour movement lost what they had fought so hard for two decades earlier: the abolition of labour intermediation (Vergel 2017). Because many companies were also suffering from economic problems due to the conflict it was intimated to the trade unions that the only way to save the companies (the only employer in the regions) was by lowering the cost of labour. This discourse, together with the violence towards trade unionists, resulted in many trade unions unwillingly accepting the reinstatement of labour intermediation and a decrease in non-wage benefits. The *contratistas* from the 1960s were replaced by *Cooperativas de Trabajo Asociado* (CTAs), or associated workers’ cooperatives (Vergel 2017). This was made possible through the new labour code established in 1990s in the spirit of opening-up Colombia’s economy to international investors and increasing competitiveness. The essence of Law 50 of 1990 (outlining the new labour code) was decreasing the costs of labour and increasing labour flexibilisation (Echeverry

¹³During the 1970s the alliance between the trade unions and the communist party, fuelled by the Cuban revolution, increased the political capital and bargaining power of the unions in the central region (interview Centro de solidaridad).

¹⁴Between 2000 and 2018 there has been an annual growth rate of 9.2% (Fedepalma 2018)

¹⁵Interview SINTRAINAGRO

¹⁶Interview Social Dialogue Consultant

& Santa Maria 2004). The CTAs function as intermediaries and provide subcontracted labour to palm oil companies, meaning that workers are hired by the CTA and not the company. Through the use of CTAs, companies avoided complying with Colombia's labour code as technically workers affiliated to CTAs are not seen as workers but as members of a cooperative, hereby losing their rights to social security and other work-related benefits paid by the company. Many companies required their workers to be part of CTAs to be able to be eligible for the job. Members of CTAs pay for their own social security through fees paid to the CTA. The fees can reach up to 45% of their monthly wages (WOLA 2011; Farras y Perez 2013). In addition, in comparison with the directly hired workers, CTA workers have to pay for their own working tools, sometimes having to take out loans from the CTA to acquire them, leaving them in a situation of labour bondage as they have to work until their debt is repaid¹⁷. CTAs also undermine unionisation as CTA-members technically are not workers and several different CTAs might provide workers to a particular firm, fragmentising the labour movement and crippling a sense of shared fate (WOLA 2011).

The armed conflict also gave the opportunity to new players in the palm industry to gain large pieces of land from displaced people, either illegally by planting palms on land belonging to people who were no longer present to claim it or by buying the land for very little money. These new investors were mostly related either to the drug-cartels or paramilitary fractions. Many traditional palm oil investors who had little to do with these new players have since the 1990s been unrightfully associated with paramilitaries and land-grabbing (Mongabay 2018; Miroff 2015)¹⁸.

Throughout the 2000s the violence continued and the situation of workers and their organisations in the palm industry deteriorated further. In 2003, in Palmas de Cesar, the trade union, SINTRAINAGRO section Minas, faced a huge loss when during a negotiation over a labour petition in which the direct hiring of the subcontracted workers was demanded, the union's president, Juan de Jesus Gómez Prada was assassinated¹⁹. Sadly this was just one out of many cases of assassinations of trade unionists. It must also be noted that owners and managers of the palm plantations were not

immune to the violence of the time. Some managers were held hostage, others lost their lives.

This all added to the general environment of distrust, overshadowing the collective bargaining processes, which in many companies were still held when the collective agreements needed renewal (every 2, 3 or 4 years depending on the company). The industrial relations, which had never been peaceful, had reached an all-time low. Because of the violence, going on, striking was no longer an option, leaving the trade unions with little bargaining power, resulting in losses of important gains such as the minimum wage. By the end of the 2000s the workers in the palm oil industry were where they had been in the 1960s, with little job security due to the prevalence of labour intermediation and short-term contracting, few to no labour rights and weak organisations.

The profoundness of the scar on the trade union movement left by the violence between 1990 and 2010 cannot be underestimated. SINTRAPROACEITES, for example, went from 1600 members in 1985 to 180 members in the 2000s. The dual impact of fear and disappointment over the concessions made to the companies by trade union leaders left many workers disillusioned by the labour movement. In addition, the widespread flexibilisation and related precarisation – made possible through the changes in the labour code in 1990 and 1991 – made organising workers all the more difficult. Under the new schemes for labour subcontracting, such as CTAs, workers in the palm oil plantation were not even recognised as such, depriving them of any basic labour rights as well as possibilities to organise and negotiate (Centro Nacional de Memoria Histórica 2018; AIL 2016; Farras y Perez 2013).

2.3 SAME STORY, DIFFERENT NAME: FROM CTAS TO SAS, TEMPORARY WORK AGENCIES AND THE REST

It was not until 2011 that a window of opportunity emerged through the Labour Action Plan which was signed by President Obama and President Santos as part of the free trade agreement between Colombia and the United States. Although many have criticised the plan for being death letter, in the case of the palm industry it did increase the bargaining power of the trade unions by presenting an international negotiation leverage²⁰. As a result of the labour action plan CTAs

¹⁷Interview ENS

¹⁸Interview Social Dialogue Consultant

¹⁹Interview SINTRAINAGRO-MINAS; Interview Centro de Solidaridad

²⁰Interview Centro de Solidaridad

were by law no longer allowed to function as labour brokers or intermediaries (Decreto 2025 2011)²¹. This gave the trade unions a concrete issue to lobby against as well as a sense of heightened security due to vigilance by international observers such as the US department of labour. In 2011 for example six of the unions went on strike simultaneously demanding the dismantlement of the CTAs and the direct hiring of the workers employed through such systems and more strikes and shut-downs followed in 2013, 2015 and 2018. To increase their leverage and possibility to sustain the strikes the Pacto Obrero was created. The pacto is an act of solidarity and mutual support among various unions in the palm oil sector, it serves as a forum to exchange information on labour conditions in the respective companies and as an economic buffer during strikes²².

These strategies together with legal actions taken by unions denouncing the persistent use of CTAs have had two notable effects: the Ministry of Labour issued very high fines for companies that did not comply with the new regulation concerning the CTAs and the trade unions have seen their membership increase by 62% between 2010 and 2018 or about 10% of the directly hired workers in the sector (ENS 2019; El Harold 2014)²³.

If we look at the labour conditions, however, the number of indirect workers has kept increasing between 2010 and 2018 (Baena Lopez 2019). Whereas many companies have stopped hiring workers through CTAs, they have found other ways to subcontract their workers through SAS or temporary work agencies. These new forms of subcontracting serve the same purpose: decreasing labour costs by outsourcing parts of the palm oil company's core jobs and hindering the sindicalisation (Farras 2011; ENS 2019). So for many workers in the palm industry the situation has not significantly improved, as there are still high levels of labour insecurity due to the prevalence of fixed-term contracts, subcontracting or service contracts (e.g. per kilo of fruit harvested, or number of plants pollinated). In addition, the optimistic political climate of the 2016, with the signing of the peace agreement with FARC and the government's general commitment to dialogue has taken a drastic turn since the inauguration of President Duque, who has no interest in harnessing dialogue but has returned to the hard hand way of governing reminiscent of the times of his political backbone, ex-president Alvaro Uribe²⁴.

Nonetheless, in a few cases since 2015, there has been genuine progress in terms of formalising workers and putting an end to *tercerización* through the adoption of social dialogue. It is these hope-giving cases which will be the focus of the analysis of social dialogue processes discussed further on.

²¹During the negotiations over the labour action plan trade unionists and associated organisations wanted to tackle the phenomena of labour intermediation all together but in the end only one form of it was prohibited, the CTAs (interview Social Dialogue Consultant).

²²Because workers find themselves without an income during strikes the trade unions of the Pacto all pledge funds to be used to support their colleagues who are on strike.

²³Interview Centro de Solidaridad

²⁴Interview Viva la Ciudadania; Interview Centro de Solidarida; Interview Catalina Restrepo; Interview CTC

3. SOCIO-ECONOMIC CONTEXT: WORK IN COLOMBIA'S PALM OIL SECTOR

But first let us have a look at the structure of the palm oil industry at present. The palm oil industry is structured into economic units of production that are called nuclei. At the heart of each nucleus lies a palm oil extraction plant, where the palm fruit is processed into palm oil. To achieve high quality oil the fruit should ideally be processed within 24 hours, which means that the distances between the plantations and the processing plant cannot be too great. Most of the directly hired workers work in the processing plants whilst the majority of plantation workers (who harvest, pollinate, fertilise, etc.) are indirect workers. Sometimes the company owning the extraction plants owns most of the plantations providing the fruit for the plant whilst in other instances they buy the fruit from small or medium scale plantations. At present Fedepalma together with the government is contributing to the creation of *alianzas productivas* (AP) or alliances between the processing plants and the palm fruit producers. Although the government presents these APs as win-win solutions for rural development by means of which the palm fruit producers are guaranteed a market for their fruit through their agreements with processing plants, a more critical analysis demonstrates the way in which the model increases the vulnerability of palm fruit producers whilst increasing the profits of the processing companies (AIL 2018). In addition, the system of APs also undermines the organisation of workers into unions because the workers are dispersed among different plantations with varying employers.

According to DANE (2018) there were 67,672 directly employed workers in the palm oil sector in 2016 out of a total of 140,000 workers in the sector (ENS 2018: 46). The central region employs the most workers (approx. 27,000). The majority of the workers are men (85.9%), whilst women (14.1%) are hired for specific tasks such as pollination or administration. Because work in the palm plantations is physically demanding, the largest age group of the total labour force in the sector is that between 26 and 35 years of age (36.7%). Palm oil workers often have to stop working between their 40th and 50th year of age because of health complaints. 36% of all workers in the sector have

reached primary education (grade 5). The most worrying conclusion from the DANE survey is the fact that 23.9% of these direct workers are contracted based on the work or service they deliver. This means many workers are still paid depending on a quota-system of the amount of kilos of palm fruit they harvest or the amount of palm trees they have pollinated. Another interesting conclusion that can be drawn from the statistics is the high amount of labour rotation in the sector, especially in the central region. In all regions the segment of workers that work for an employer for 1 year is the largest, followed by those working between 2 and 3 years or 3 to 5 years, depending on the regions, for the same employer. Very few workers work for more than 11 years for the same employers. This high rate of labour rotation has an impact on labour organisation as many workers do not see the need to join a company-based union when they know there is a high likelihood that they will be leaving within a year. This illustrates the need to have industry-wide unions such as SINRAPROACEITES and SINTRAINAGRO, which represent workers across different companies. Nevertheless, the high rotation of labour makes organising workers much more difficult. The number of migrant workers (internal or external) is highest in the Eastern Region (62.4%) and interestingly this is also the region with the highest amount of sindicalised workers (1,452 workers), compared to 525 in the Northern and 982 in the Central Region. This could be explained by the higher incidence of yellow unions in the Eastern Region. For the South-Western Region no data was available.

3.1 WHAT'S IN A NAME? "FORMAL" EMPLOYMENT IN COLOMBIA'S PALM OIL SECTOR

If we look at the level of formalisation in the sector, the Ministry of Labour as well as Fedepalma present a rather optimistic picture based on an industry-wide survey they conducted in 2016. According to their statistics 82.4% of the workers in the palm sector can be considered to be "formal". However, their definition of formality is a very narrow one and basically comes down to the worker being in possession of a contract,

of any kind. They do not take into account the nature of the contracts neither the presence of other decent work indicators such as access to social security, compensation for work related diseases or accidents, etc (Fedepalma 2018; Baena Lopez 2019).

If we take a closer look at the statistics derived from the 2016 employment survey, only 20.7% of all workers in the sector can be considered as standard formal employment, according to the ILO's definition. These 20.7% have a permanent contract with the company for which they work, with the all work-related benefits. All other types of employment found in the sector can either be defined as non-standard or informal.

“Non-standard forms of employment” (NSFE) is an umbrella term for different employment arrangements that deviate from standard employment. They include temporary employment; part-time and on-call work; temporary agency work and other multiparty employment relationships; as well as disguised employment and dependent self-employment. Many workers in “non-standard employment” earn less, have less social protection and often cycle between temporary employment and unemployment. (ILO 2016)

Based on the survey-data, the workers with fixed-term contracts (19.3%) fall within this category as well as apprentices and interns (13%) and workers hired through temporary service *companies or temporales* (9.5%).

Informal employment in the formal sector, as we are discussing in the report, occurs when “workers are, in law or in practice, not subject to national labour legislation, income taxation, social protection or entitlement to certain employment benefits (advance notice of dismissal, severance pay, paid annual or sick leave, etc.)” (ILCS 2003).

The informal workers in the sector include: workers hired under service provision schemes (23.9%), owners, partners and family with a salary (3.9%), or CTAs and SAS (3.8%), as well as day-labourers (12.5%) and owners, partners and family without fixed salaries (5.1%). These workers have little to no entitlements to employment benefits.

Therefore, based on a more critical analysis of the labour conditions in the sector an optimistic view would consider 62.5% to be formal (including the non-standard forms of employment) and adopting the most rigorous definition we can say that only those under standard employment conditions can be considered to be formal, resulting in a mere 20.7%.

If we take into account access to social security the picture becomes even bleaker. According to data from the Ministry of Labour only 9,654 workers with direct contracts (either permanent or fixed-term) are insured for work-related accidents and illnesses. Whilst the number of workers who are considered to be “independent” or without direct contracts (incl. outsourced workers through temporary work agencies, CTAs, SAS, etc.) is a mere 167. This means that of 170,794 workers in the sector (direct and indirectly employed) only 5.75% are insured for work-related accidents and illness. If we take into account that the number of work-related accidents increased between 2009 and 2018 from 409 to 2,172, the extremely low coverage is even more problematic (Baena Lopez 2019). There is no data on the number of workers affiliated to health insurance or pension schemes.

4. LEGAL FRAMEWORK: *HECHA LA LEY HECHA LA TRAMPA*

Trying to understand the legal framework governing workers in the palm oil sector is like finding yourself trapped in a labyrinth and feeling perpetually lost. According to the ILO, there are 691 national labour, social security and human rights-related legislations and many of the labour legislations relate to giving legal backing to forms of labour intermediation and subcontracting (LO FTF 2018, Perez & Farras 2014). Whilst in theory the 1991 Colombian constitution (last modified in 2015) ensures several fundamental labour principles such as the right to social security and a fair wage, in practice many workers earn below the minimum wage because they work informally (DANE estimates informal employed to be 48% out of total employment whilst trade union believe it to be 62) (LO FTF 2018). The Labour code of 1961, which was last amended in 2017, is applicable to all workers within the Colombian territory, irrespective of their nationality and their type of employment relationship. So in theory both formal and informal workers are by law entitled to the rights and privileges as stipulated under the labour code (LO FTF 2018).

However, successive Colombian governments have proven themselves masters in legal tricks. A phrase I often heard during my fieldwork was: *Hecha la ley, hecha la trampa* or the art of developing laws which have hidden intentions. There is a general sentiment that the law does not serve to protect the Colombian people but is created to protect and allow the political and economic elites to prosper. This is especially apparent in the ways in which governments have regulated labour flexibilisation.

In the 1990s, in the wake of the neoliberal economic thinking and the opening of Colombia's market to free

trade, the first laws set-out to flexibilise the labour market were drafted. Law 50 of the 1990s was presumably drafted to tackle the rising unemployment in the country by reducing the cost of labour and facilitating the ability to fire employees. Reducing the costs of labour was achieved by allowing for flexibilisation through temporary labour contracts. However due to the adoption of a new social security law in 1993 the cost of labour actually increased between the 1990s and the 1999s. This, together with the high amount of severance payments for firing workers after 10 years of services, leads to a substantive increase in labour sub-contracting. Companies sought to decrease labour costs by increasing temporary contracts (often through CTAs) and seeking high labour rotation (Echeverry & Santa Maria 2004).

In 2002 the government under President Uribe made additional labour reforms. Although the 2002 constitutional reform and law 789 presented some benefits for workers, such as the installation of unemployment funds, it also decreased the real wages of workers by increasing the legally allowed working hours, decreasing severance payments and decreasing bonuses for working on Sundays or holidays. However, it was the laws regulating temporary work agencies and syndical contracts (Decree 657 2006; Decree 4369 2006; Ley 1258 de 2008.) that had the greatest impact on the palm oil sector as it created new ways of subcontracting workers (Echeverry & Santa Maria 2004; Perez & Farras 2014).

Whilst in 2011, law 2025 made labour intermediation through CTAs illegal, existing and new laws still allowed for intermediation through other enterprises, syndical contracts, etc. The table below presents a glimpse of the laws relating to labour intermediation in Colombia.

DECREE/LAW	SUBJECT
Decree 2676 1971	Labour agencies
Decree/law 1421 1989	Governance of employment and labour intermediation
Law 50 1990	Temporary work agencies
Law 10 de 1991	Cooperative Work Associations (CTAs)
Decree n 24 de 1998	Temporary work agencies
Decree 657 2006	Sindical contract
Decree 4369 2006	Agencies of Temporary services
Ley 1258 de 2008	Sociedad por Acciones Simplificadas (SAS)
Law 1429 2010	Sociedad por Acciones Simplificadas (SAS)
Law 2025 2011	Making labour intermediation by CTAs illegal and establishing a system of fines for non-compliance
Law 1610 2013 and Resolution 321 of 2013	Structure de <i>Acuerdos de Formalización Laboral</i> between the employers and the Ministry of Labour
Decree 583 2016	Outlines the inspection, vigilance and control procedures related to illegal labour intermediation/subcontracting (builds on Law 2015)

Figure 2 Overview of laws relating to labour intermediation (elaborated by author based on ENS 2017; Perez & Farras 2014 and ICEM s.d.)

5. COLLECTIVE BARGAINING IN COLOMBIA'S PALM OIL INDUSTRY

Sector-wide or national social dialogue has as yet not occurred in Colombia's palm oil industry. The following analysis is therefore based on the collective bargaining processes that have taken place at firm level.

Although the history of Colombia's palm oil industry is rife with struggle and violence, collective bargaining was never completely abandoned. Even throughout the 1990s when anti-union violence reached its height, some trade unions kept on presenting their petitions/*pliegos* every 2, 3 or 4 years, depending on when the collective agreements were set to be renegotiated. However, there was never a climate of good-faith and mutual respect. Many petitions went unanswered, or were annulled. Real negotiations were only ever initiated as a result of long strikes or lock-outs (Centro Nacional de Memoria Histórica 2018). Under such conditions collective bargaining processes almost always took place in an atmosphere of hostility and competition. The idea was for one group to win over the other, not to find a solution to the labour conflict based on a mutually agreed upon consensus.

Interestingly, in the few cases in which companies since 2015 have decided to invest in genuine social dialogue based on respect, trust and transparency, the labour relations were particularly pessimal and violent. It is as if industrial relations had to reach rock bottom before both sides could see that a change was necessary (in the following section these specific cases of "hope" or *luzecitas* will be subjected to a more in-depth analysis).

Unfortunately, for a sector with such high degrees of subcontracting, collective bargaining appears to take place predominantly between the direct workers and the core firm. There have been no examples of collective bargaining between workers and the subcontracting companies or between the workers and small-scale plantation owners who provide fruit to the extraction plants. Consequentially the Collective Bargaining Agreements (CBAs) only cover a small portion of the workers in the sector, the ones directly contracted by the large palm oil extraction plants and plantations. The impact of *alianzas productivas*, being pushed by the government with the support of Fedepalma, on collective bargaining is yet to be analysed. On the one

hand you could argue that you may negotiate a CBA with the *alianza*, which makes it easier to organise the workers at small plantations. On the other, by supporting fragmentation into smallholders, workers are scattered across thousands of small farms making them difficult to organise. The competition between smallholders might also translate negatively on the working conditions and wages in pursuit of lowering production costs; as the principal buyer sets the price of the palm-fruit. The reasons for the absence of collective bargaining within sub-contracting firms or small-scale farmers are many and varied.

If we look at the case of the small-scale farmers we can see that many of the workers are either informal workers without contracts or family members. In other cases the workers are so few in number that it is legally impossible for them to form a union and the sector wide unions find it very difficult to organise these workers because of their precarity; workers fear losing their jobs if they join a union.

In the case of the sub-contracted workers in large palm oil companies, other issues emerge. Throughout the 1990s most of these workers were contracted through CTAs that made it impossible to collectively bargain with the companies or form unions as legally they did not qualify as workers (Law 78 of 1988 art 70). After 2011, when subcontractation through CTAs was made illegal, the form of subcontracting changed but not the effect on labour conditions or organising. The most common way of subcontracting is through *Sociedades de Acciones Simplificadas* (SAS) (Ley 1429 de 2010, art. 63). Although workers employed by an SAS are legally entitled to the rights under the labour code, the nature of their contracts (predominantly short-term, most often for 1 year) and their payment (predominantly based on work-delivered) leaves them as precarious as before. Under these conditions, partaking in collective bargaining is not really an option; if you do not agree with the labour conditions, you will not be hired again (ENS 2017). Because in most rural areas the palm plantations are the only employment opportunities these workers have, taking the risk of losing their job is not something one easily gambles with. Subcontracted workers who have tried their luck negotiating with the core company have been let-down, as

the palm oil plant and plantation owners argue that they have no responsibilities over workers hired through SAS.

The only ways in which this circle of precarity has been broken is through the creation of an alliance between indirect workers or *tercerizados* and the directly hired workers. In practice the *tercerizados* form a union and with the support of the trade union representing the directly hired workers push for the formalisation of their employment conditions. Once directly contracted the union of *tercerizados* is abandoned and the former subcontracted workers are affiliated within the “formal” union. As we will see below this is not an easy process and as yet only 2 unions have been able to successfully formalise all workers in a company. In the case of Indupalma, despite the promising outlook, the alliance between the direct workers’ union SINTRAPROACEITES and the union of *tercerizados*, UGTTA, eventually broke down because of disagree-

ments over the formalisation terms offered by the company. This case demonstrates the fragility of such alliances due to differences of interests and power struggles playing out. Although from the outside the joining of forces seems like a natural and logical process, the reality is much more complex. Once formalisation takes place, the assumption is that the union of *tercerizados* should dissolve and merge with the direct workers’ union. However, these mergers involve competition about leadership positions in the union and direct workers fear they might not be able to reach the same results in a CBA if the number of covered workers increase. The dominant rationale is that asking for a wage increase for 100 workers is easier than asking for one for 400.

In the following, we will look into the only two success stories of formalisation and social dialogue, namely those that occurred at Palmas y Extractora Monterrey S.A. and Palmas de Cesar.

6. THE *LUZECITAS* OR BEACONS OF HOPE: THE CASES OF PALMAS Y EXTRACTORA MONTERREY S.A. AND PALMAS DE CESAR

Both Palmas y Extractora Monterrey S.A. (1961) and Palmas de Cesar (1960) are situated in Magdalena Medio in the Central Region and are amongst the oldest firms in the region. In 2017 they were among the 25 biggest companies in the palm oil industry (ENS 2019)²⁵. The histories of the trade unions in the companies are almost as old as the companies themselves. In Palmas de Cesar the union was created in 1967 and after changing names several times, is now known as SINTRANAIGRO. SINTRAPALMAS; the union in Monterrey, was created in 1971. In both companies the labour relations have always been conflictual with the first strikes taking place in the 1970s, which led to the abolition of the hiring of workers through *contratista*, but, as outlined in the Historical section, new forms of labour intermediation were introduced in the 1990s²⁶. After subsequent strikes throughout the 2000s, the last ones in alliance with unions of *tercerizados* (SINTRATERCERIZADOS), labour intermediation was finally ended in 2015 when Palmas de Cesar provided 225 workers with direct contracts and promised to formalise the remaining 47 incrementally. In 2016 Monterrey followed, hiring 122 workers directly (ENS 2019)²⁷. Interestingly, the decision to formalise the workers went hand in hand with the decision to invest in social dialogue, not only as a conflict resolution mechanism but as a new way of managing the companies.

Today, Monterrey has 400 employees, all with direct contracts and Palmas de Cesar has 840 direct employees and 47 *tercerizados* and both have structural social dialogue mechanisms in place that have for the first time in history pacified the labour relations (ENS 2019).

6.1 THE DRIVERS BEHIND FORMALISATION

Why did formalisation take place in these companies and not in others in the region? And why did the companies decide to initiate constructive social dialogue processes?

Firstly, the mentality shift, which occurred in both companies, should be placed within the period of the tumultuous years between 2011 and 2015. Perhaps inconsistently, because of the poor industrial relations throughout this period, with various prolonged strikes, the company owners realised that business as usual, in terms of the conflictual relations they had with the trade unions, was no longer an option. In 2011, as outlined in the Historical background, there were numerous strikes about the dismantlement of the CTAs within Magdalena Medio (Central Region), in which the *tercerizados* also participated. The 2011 that had the support of both local communities as well as international actors such as the ILO and the US department of labour. Although the outcome of the strikes was disappointing, as the Ministry of Labour only agreed to inspect companies which could be assumed to be breaking the law, it did create an important precedent and brought the eyes of the country and the world on Colombia's palm oil sector. So for the first time there was real pressure vested in public opinion, the international community and the government to tackle the issue of illegal intermediation²⁸.

Nevertheless, in 2011 the pressure was not yet high enough. There seemed to be an expectation from the side of the companies that the government would not keep its word and would keep on turning a blind eye to the issue of *tercerization*. In fact, in 2013 many companies even decreased the number of directly hired workers, replacing them with subcontracted employees or *tercerizados*. They were able to do this by creating panic among workers and the dependent communities over the economic viability of their businesses (much the same as they did in the 1990s when they established the CTAs). Although it was a fact that many companies were in poor financial condition at the time – in the case of Monterrey this was primarily due to the loss of around 60% of their plantation to bud rot – the way

²⁵Palmas de Cesar rank number 12 and Palmas y Extractora Monterrey 25.

²⁶Interview SINTRAINAGRO-Minas; Interview SINTRAPALMAS

²⁷Interview ENS

²⁸Interview Centro de Solidaridad

in which they created fear about the closures of the plants was an exaggeration. Using this pretext it was argued that lowering the costs of labour was essential in order to save the companies. As a result many trade unions, unwillingly, accepted voluntary retirement schemes. These schemes entailed the ending of the contracts of the directly hired workers and their rehiring under subcontracted forms, by which they lost many non-wage benefits. In Monterrey for example out of approximately 300 directly employed workers, only 25 remained. Consequently, the trade union almost vanished.

A second driver of change took place in 2014-2015. Contrary to expectations, the Ministry of Labour finally took action and imposed huge fines on companies using illegal subcontracting mechanisms. This was the result of the US labour department's persistent pressure to take real action against the CTAs, in line with the commitments made by the Colombian government in the Obama-Santos trade agreement. Palmas de Cesar was fined 2,515 million or the equivalent of 3,500 monthly minimum wages (El Herald 2014). Monterrey was not fined but very afraid it would be, as they were aware that they, too, were breaking the law. The Ministry provided a way to annul the fine, if the companies could prove they would change their hiring practices and would formalise their workers.

Thirdly, adding to these possibly huge economic losses, workers in Palmas de Cesar organised themselves yet again and went on a 52-day strike in 2015. It was this strike that eventually made the difference. In Monterrey, since 2013 the relationship between the company's owners and the union leaders had already significantly improved as the latter very much appreciated the union's willingness to support the company by accepting the voluntary retirement plan. Although another strike was also imminent in 2015, the union managed to avoid it by asking the owners to keep their lawyers away from the negotiation table, pleading their ability to find a joint solution.

The fourth driver is the fact that between 2011 and 2015 the organisation of the *tercerizados* in both

companies had strengthened considerably (with the support of the Centro de Solidaridad), accumulating in the creation of SINTRATERCERIZADOS. Additionally, there was a sense of joint commitment between the formal workers' unions and those representing *tercerizados*. This confronted the employers with an even stronger labour front, feeding the fear of yet another labour dispute with the associated losses in profits. The support of the CUT (Santander section) was influential in strengthening the trade unions and giving them a regional voice.

The fifth and final driver is the genuine shift in mentality of the owners which have come to strongly believe in the virtues of establishing and supporting a sense of connection or *vinculación* between the worker and the company. Both owners are convinced that by making workers feel part of the business, productivity and the quality of the work would increase. However, it was simultaneously realised that by formalising more workers they would be indirectly strengthening the trade union and this made them see that they needed to adopt a different approach towards managing their labour relations. They therefore decided to invest in social dialogue not only as a mechanism to solve problems but one that could prevent labour disputes and improve the general management of the company. Conversely, effective social dialogue goes hand in hand with the need to formalise the workforce. It would have been extremely difficult to build mechanisms of consultation with subcontracted workers with perpetual short-term contracts, because of the fact that most *tercerizados* do not feel connected to their workplace. They live in constant labour and income insecurity so see no benefit in investing in the future of a company.

Whereas the last two drivers were the most decisive in bringing about formalisation and constructive social dialogue, in both case study companies (all other drivers were also present in other companies to no effect) it was the international pressure that gave the first spark for the change. International opinion seems to outweigh the complaints made by the local population and workers in the sector.

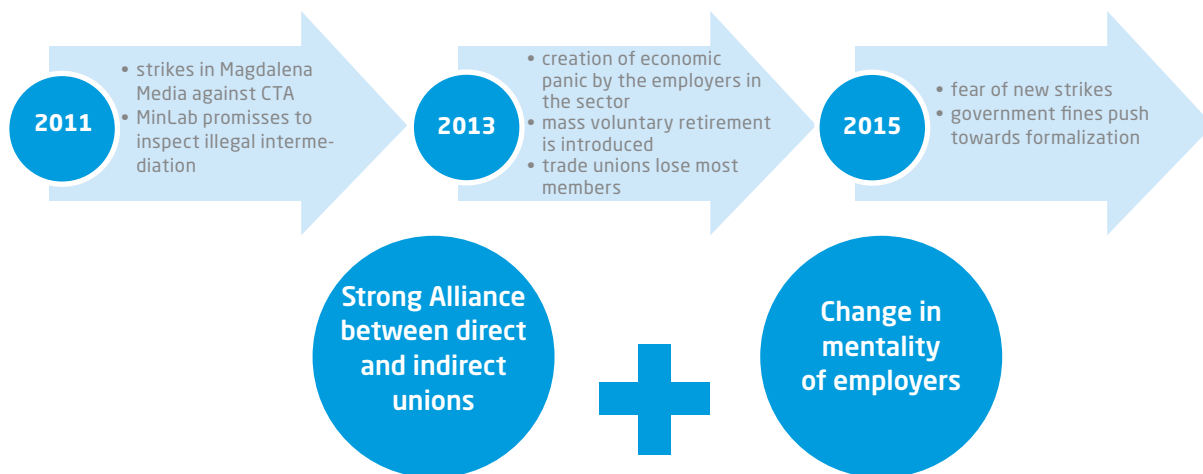


Figure 3 Chain of Events towards Formalisation

So why have both SINTRAPALMAS and SINTRAINAGRO succeeded where so many other unions have failed despite their good intentions: the closing of ranks between direct and indirect workers? One reason can be found in the fact that the amount of workers to be formalised in both companies was relatively small in real terms but more importantly in relation to the amount of direct workers. This meant that union leaders did not feel so threatened about losing their positions when after formalisation the former *tercerizados* would be affiliated to the direct workers' union and given their rightful voting rights. In Indupalma, on the contrary, the *tercerizados* by-far outnumbered the direct workers, implying a change in power within the union if they were to be incorporated. In addition, the relation between the direct and indirect workers was perhaps stronger in Palmas de Cesar and Monterrey because the companies are relatively smaller and because there was not such a high degree of labour in comparison with other companies, allowing for closer ties between both groups of workers. A last explanatory factor might be the leadership style of both union leaders and the strong belief in the collective good. The representation of indirect workers, and later on their inclusion once they had been formalised, did not develop organically but required difficult and extensive negotiations among the members of the respective direct workers' unions and their leaders.

6.2 PUTTING SOCIAL DIALOGUE INTO PRACTICE: CREATING A CULTURE OF TRUST

Although on paper the virtues of formalisation and social dialogue sound obvious, in reality it was not an easy process. Employers as well as union leaders were confronted with considerable opposition from within

their own ranks. If it were not for the leadership skills of both sides the transition would not have been a success. In addition both companies hired social dialogue consultants to guide them through the process of building a culture of trust from which effective social dialogue could take place.

Based on the history of conflict between employers and workers in the region, the first and most important step towards social dialogue was to establish an environment of mutual trust. This was built incrementally through regular meetings every 2 months. The first meetings were dedicated to treating old wounds. Both parties were invited to put all their grievances, frustrations and anger on the table. Once these issues were out, it was mutually decided to bury them and move forward. The next step was the development of a joint action plan comprising issues that could be easily resolved, those that were more difficult and lastly, the very difficult ones. For each issue both the employers and the trade unions were asked to look for solutions, thus creating a joint programme. In Palmas de Cesar this was coined *Palmas en Acción*. From then onwards the progress made on each of the listed issues was monitored during the monthly meetings. The changes resulting from the joint actions strengthened the sense of trust and so did the fact that the company owners started becoming more involved in the plantation and plant work. Instead of discussing things far away in offices in Bogota the owners visited the plantations, participated in the work and became much more aware of the specificities of the labour tasks and related risks. They were also invited to share lunches with the workers and in return organised football matches or other social activities all serving the

purpose of team-building and confidence creating. The trade unions also serve as the owners' eyes on the ground and are much more aware of the daily issues in the company. So, the firm now not only involves them in decisions regarding labour conditions but also asks their advice on other issues that could help increase productivity and efficiency. In the case of Monterrey the trade union leaders assisted the owners in identifying fraud committed by administration workers, an act for which the company's owners are to this day very grateful. These small steps all combined to break the negative images both parties had of one another. Today in both companies there is a sense that employers and employees are walking hand-in-hand, have a shared goal and joint responsibilities. This does not mean that disputes have ceased to occur. In fact in the case of Monterrey, a strike was only barely avoided in 2018. However, experience has taught both parties that negotiating with a win-win mentality is much more fruitful in the long run than stubbornly holding on to one's agenda without being willing to compromise³⁰.

However, the change was not solely confined to social dialogue mechanisms. Both companies adapted their management style and invested in a change in work ethics and the general culture within the company. There was an important investment in improving the human resources department, capacitation and an emphasis on the importance of values and respect. Moreover an over-all open-door policy was adopted between the workers and the company. Discussions did not only take place within the 2-monthly meetings but whenever an issue arose. Both parties could take the initiative in bringing forth issues for discussion.

A last important step in consolidating the climate of mutual trust was the way in which the company also reached out to the communities, involving the families of the workers. Family days were initiated and playgrounds were developed in cooperation with the trade unions. This not only improved the image of the company in the eyes of the workers but also in the eyes of the entire community.

6.3 POSITIVE IMPACT OF FORMALISATION AND SOCIAL DIALOGUE

6.3.1 Workers' perspective

From the perspective of the workers, obtaining an indefinite or long term contract is a life-changing event. In the first place because it allows them to have a life-plan, to invest in the future, to build a house if they wish to and to be certain they will be able to send their children to school³¹. Secondly, all this adds to the general mental health of the workers and their families, as a large source of their financial stress is taken away. Although the wages of direct workers are still low, their financial stability increases significantly and a work contract allows them to have access to loans and other services such as social security and pension schemes.

Apart from the economic benefits of formalisation, being seen as equal partners within the company has also supported the workers in regaining their self-esteem and confidence. Their knowledge of the work and the daily situations within the firms is appreciated and the employers no longer see them as a menace but as a support. This positive working environment based on mutual respect has a significant impact on the general wellbeing of the workers (Bowling et al. 2011) and on the performance of the company (Harter et al. 2003).

The change in workplace culture is all the more welcome after years of struggle and conflict. Finally workers can feel more relaxed and at peace. Not in a constant state of alertness or battle mode. This does not mean that they have completely dropped their guard but at least for now they feel safer in their working environment.

6.3.2 Employers' perspective

Whilst many companies fear formalising workers as this would lead to a stronger labour movement, in Palmas de Cesar and Monterrey it was argued that they preferred a stronger, unified labour movement with a constructive attitude towards the company's progress rather than a fragmented one that was always in battle

³⁰Interview Social Dialogue Consultants; Interview Palmas y Extractora Monterrey SA; Interview Palmas de Cesar

³¹<https://www.ilo.org/global/about-the-ilo/multimedia/features/colombia/lang-es/index.htm>

modus. Instead of seeing a strong union as an enemy, they have come to see the union as a tool for improvement and an important channel of communication between the workers and the company's management. The union leaders are much more aware of what is going on on the ground and can pass on this information to the managers and owners, which allows for more timely solutions and the circumvention of possible conflicts.

In addition, they have discredited the myths surrounding the formalisation and direct hiring of workers (decrease of productivity, increase of absenteeism, etc.). However, formalisation should not be seen as the goal in itself; a direct contract does not automatically increase workers' productivity and quality. It does however allow for a more stable worker-employee relationship through which improvements in worker performance can be achieved. In other words, work ethic and performance are not related to the type of contract workers have, but to the quality of the management and general work culture within a firm. For the managers of Palmas de Cesar and Monterrey, increasing the quality of performed tasks is seen as much the firm's responsibility as it is the workers'. They argue that by creating a respectful working environment - of which formalisation is an important but not the only element - workers will work more efficiently and with a higher quality.

Lastly, the most important advantage of formalisation has been the establishment of social peace. Similar to the trade unions' sentiments, managers and owners of Palmas de Cesar and Monterrey have been exhausted by the many years of labour conflict. The creation of an atmosphere of constructive dialogue with a positive outlook to a joint future has not only improved the wellbeing of the workers but also of the managers, owners and entire company. According to Fabio Gonzalez, Manager of Palmas de Cesar, it is formalisation that enabled social dialogue, due to the sense of connectedness it creates between workers and the company.

6.4 AND NOW? MAINTAINING THE PEACE

Perhaps the most difficult challenge for both companies will be maintaining the social peace they have been building. Indeed, as Catalina Restrepo, one of the owners of Monterrey said: social dialogue is not an end in itself. It is a constant process that requires sustained commitment from both sides. The important issue here is not to lose focus: the belief that the progress of the company goes hand-in-hand with the progress of its workers and vice-versa.

In both companies there is still a genuine fear that the labour relations will deteriorate again. First of all because - although a lot of progress has been made - there are still people within the firms who are critical of social dialogue both among workers and among management and administrative personal. In the case of Palmas de Cesar this is especially worrisome because the Manager, Fabio Gonzalez, who has been the driving force behind the changes from the side of the company will be retiring soon. In the case of Monterrey it was noted that they are uncertain of maintaining good practices without the support of the social dialogue consultants, which they can no longer afford to pay. The wider political context is not very fruitful either in terms of fostering social dialogue. The general political discourse is one of confrontation and not compromise: in Colombia and internationally, with right-wing governments such as those in the US, Brazil and many European countries returning to an "us against them" rhetoric. Within this climate, Palmas de Cesar and Monterrey are sadly the odd-ones out, especially among the conservative, neoliberal-minded palm oil companies represented by Fedepalma. Nevertheless there is a strong conviction on both sides that this new road is the right one to follow and there have been no doubts about turning back to the old conflictual ways.

7. STAKEHOLDER ANALYSIS

7.1 SOCIAL PARTNERS

The potential social partners in Colombia's palm oil value chain include the following groups: (1) the trade unions representing workers in the sector and the national confederations to which they belong; (2) the palm oil companies owning plantations as well as extraction plants; (3) small scale plantation owners that sell their fruit to the plants; (4) Labour Intermediation Firms such as SAS or Temporary Work Agencies, etc.; (5) Fedepalma, the palm industry employers' organisation; (6) the groups of investors behind the palm oil companies (e.g.) and (6) the

Ministry of Labour. If we look further up the value chain we could add: (7) biofuel companies (e.g.); (8) exporting companies of which ACEPALMA is the biggest; (9) Colombian companies that buy palm oil; (10) multinationals that buy huge amounts of palm oil such as UNILEVER.

However, in practice, trade unions have up to now only engaged in social dialogue with palm oil producing companies or the owners or managers of palm oil nucleus (the green arrow in the figure below).

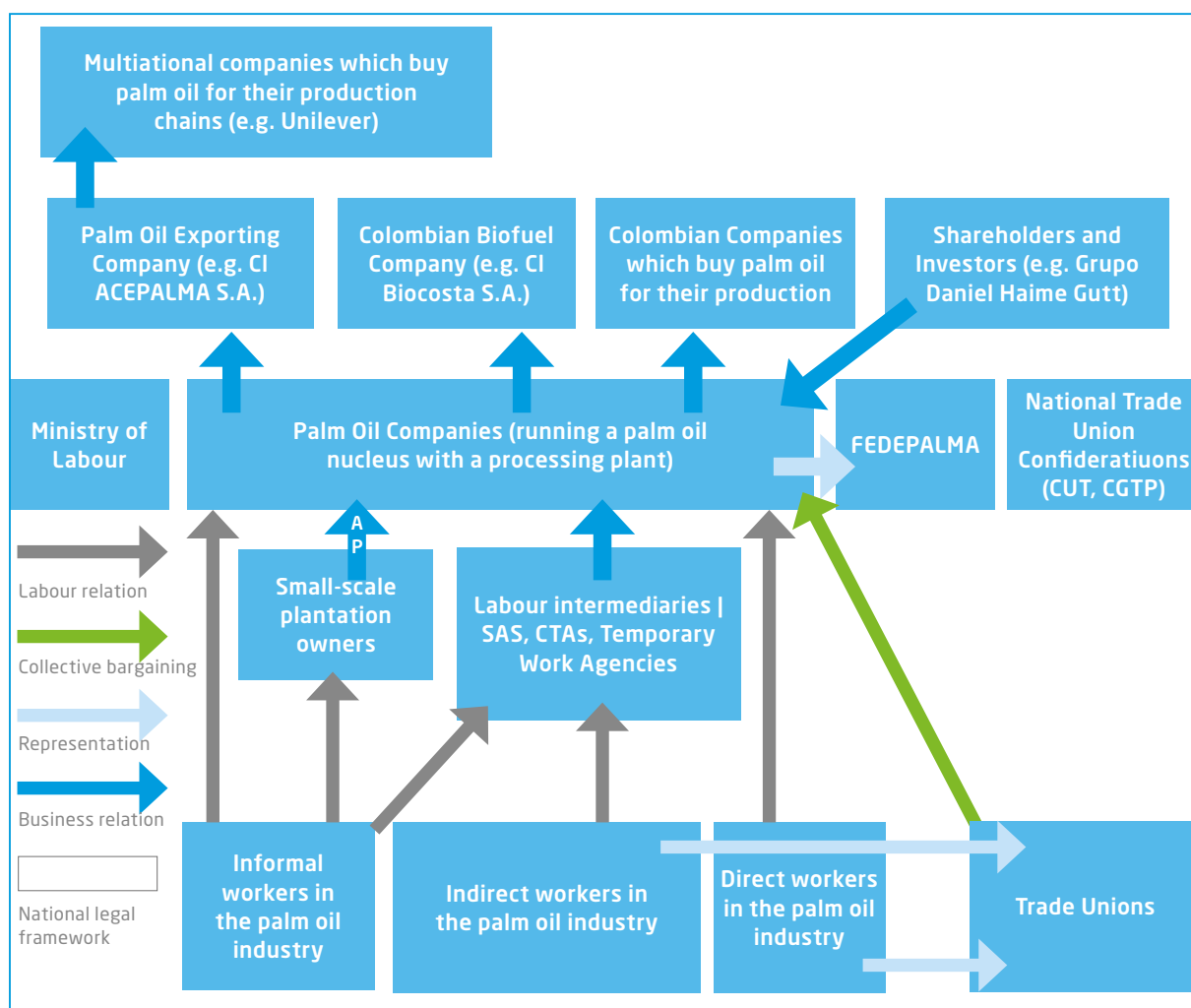


Figure 4: Potential Social Partners

7.1.1 Trade unions

There are 29 trade unions representing 6,595 workers in Colombia's palm oil sector (see overview in annex). Four of them have a sector wide character: SINTRAPROACEITES, SINTRAIMAGRO, SINTRAINAGRO and SINTRAPALMAS. There is no legal footing for sector-wide collective bargaining agreements so, at present most trade unions engage in firm level collective bargaining whenever their CBA is due to be renegotiated (every 2, 3 or 4 years depending on the CBA³²). These negotiations are very often limited to determining the salaries and rights and privileges of the directly-hired workers. *Tercerizados* are most often not represented in the *pliegos* or petitions to renegotiate the CBAs. According to Carlos Guarnizo of the Solidarity center, who has assisted many unions in their negotiations, there are two main reasons for this:

- It is easier to negotiate improvements of labour conditions and wages for 200 direct workers than for 1,000 direct and indirect workers. The trade unions representing direct workers fear they will have to surrender achieved gains if they take the *tercerizados* on board.
- Because in many companies the *tercerizados* outnumber the direct workers, trade union leaders fear they will lose their leadership positions if they take the *tercerizados* on board.

Indeed in the two cases in which successful representation and formalisation of *tercerizados* has taken place the companies were relatively smaller with smaller amounts of *tercerizados*. This made the respective unions less averse to supporting these workers. In general, trade unions understandably take a very defensive position towards the companies due to the history of anti-union violence. In fact only recently has it become acceptable to talk about social dialogue within the labour movement. Although the idea is slowly becoming more accepted, many unions still believe dialoguing with employers to be equal to being co-opted by them. The existence of yellow unions, especially in META (or the Eastern region), does not help in changing this mentality³³.

It is important to note that trade unions are not a homogenous block. In fact, within unions there are often ideological differences which make changing the

modus operandi in terms of social dialogue a slow process. In both cases where unions have started engaging in social dialogue with the employers the union leadership has witnessed considerable headwind from their members.

7.1.2 Palm oil companies

According to Ramon Jimeno, a journalist and consultant to several palm oil companies, the employers can be roughly divided into two camps. The old, traditional land-owners and the newer players which have made their capital through narco-trafficking or through their ties with paramilitaries. The latter is still very much in defensive modus and does not (so far) show interest in investing in more peaceful and respectful labour relations. Among the former group of employers, there have been signs of hope since 2015 as a few companies, namely Palmas de Cesar and Palmera y Extractora Monterrey S.A., have started to practice social dialogue. Not only as a conflict resolution mechanism but as a management style which aims to smoothen the relations between workers and the plantation managers as well as the company owners.

Nevertheless most companies have a deeply entrenched mistrust towards trade unions due to the history of violence in the country in which unionists are associated with left wing guerrillas which add to the conservative sentiments of most owners. It is important to note here that similar to the trade unions, palm oil companies are also characterised by internal conflicts over the benefits of social dialogue. In some cases the company owners are the ones who are pushing for more and improved negotiations with the trade unions whilst in others the plant managers are the ones who are taking the lead. In both cases companies that have made the change and have invested in formalisation and social dialogue still experience considerable opposition from colleagues in the sector.

There are well rooted myths within the business world that relate both formalisation and social dialogue to an increase in costs and a decrease in productivity. Whilst these myths are in no cases based on facts, they are persistent and a great deal of sensitisation is at hand to alter these perceptions. In this respect it is important to make the business case both for social dialogue

³²In the Banana Industry, however, sector-wide agreements are made and translated into company-level CBAs to make them legally binding. Sintranagro negotiates a general agreement with Augura every 2 years. In 2002 it covered 185 companies, 315 plantations and 15,000 workers in the sector and serves as a framework for CBAs at Enterprise level (Ospina & Carlos, 2004 : 133).

³³Interview ENS

as well as for formalisation; companies need to have the economic interest of investing in them demonstrated to them. If we look at the positive examples we can see that the companies' productivity has not decreased and that furthermore formalisation has been a positive driver of the local micro-economy. Workers who used to be contracted for short-term periods and therefore had little income security are now able to take loans and buy goods on a more regular basis due to the security offered by long term or indefinite contracts.

At present it is common practice for employers to use the low price of palm oil in the global market as an argument to oppose any increases in wages or non-wage benefits as well as formalisation. Indeed many companies in the sector are in poor financial shape. However, the economic crisis in which most companies find themselves is one that has been engineered to avoid making concessions to the trade unions and more importantly to avoid paying taxes. Whilst many palm oil companies indeed sell the oil at a very low price to ACEPALMA, which is the key exporter of crude palm oil, ACEPALMA sells the oil at a much higher price on the global market. What is often overlooked is the fact that many palm oil producers have shares in ACEPALMA. So while the processing plants are suffering losses and are therefore exempted from taxes, the owners are making profits through their shares in the companies who are buying their palm oil. Such systems of fragmenting the production processes between various companies is equal to the ones adopted in Colombia's banana sector and presents a key issue through which workers could be united. Trade unions should be made aware of these false pretences before engaging in collective bargaining processes, demanding transparency of the entire economic groups of which the companies and their owners are part³⁴.

7.1.3 Fedepalma

Although Fedepalma would be the natural social partner for sector-wide social dialogue, in an interview with their representatives it was argued that the responsibility for social dialogue lay with their members. Because of the diversity in the sector, a sector-wide social dialogue would in their view not be useful. Furthermore, they claimed that they do not have the power to dictate the activities of their members but

can only play a guiding role³⁵. It is also common knowledge that Fedepalma represents an extremely conservative group of businessmen, with origins in Colombia's large landowners, which historically have very little confidence in opening doors to trade unions³⁶. In addition, Fedepalma has been, and is, a fierce defender of the successive governments' pushes towards labour flexibilisation. In fact, according to the representatives I spoke with, the current labour laws are not flexible enough as they do not cater for the specific needs of work in the sector. I understand that Fedepalma for example is currently lobbying for a new labour law which will allow for hiring by the hour³⁷.

In their guide to good labour practices within the sector they underline that it is not the type of contract that counts but the way in which the relations between the workers and their employees is managed (Carillo Guarin, s.d.). So as long as there is not a breach of contract and workers are treated with respect, they can be subcontracted, have little to no connection with the core firm, little to no job-security or possibility to exert their right to organise and still be considered as adopting good labour practices according to Fedepalma.

On a positive note, both companies, which have made advances in social dialogue and formalization, are members of Fedepalma and are eager to initiate a conversation within the organisation about the benefits of formalisation and social dialogue. Nevertheless both owners have expressed their view that the change in mentality among their peers will be a long-haul process. Interestingly, the positive experience with direct hiring, specifically for the work of pollinating, has already aroused interest from colleagues. Pollinating is a labour-intensive, relatively expensive and difficult part of the plantation work. In Monterrey in particular the decision to hire the pollinating workers directly has increased the productivity and effectiveness of the work. In contrast most companies pay workers for pollinating a certain number of hectares per day; if the quota is not reached, the payment is not made. This has resulted in poorly executed work³⁸. Such concrete examples of the advantages of formalising labour are useful tools in the quest of debunking the negative myths surrounding it.

³⁴Interview Centro de Solidaridad

³⁵Interview Representatives Fedepalma

³⁶Interview Centro de la Ciudadania; Interview Social Dialogue Consultant

³⁷Interview Representatives Fedepalma

³⁸Interview Palmas y Extractora Monterrey SA

7.1.4 Ministry of Labour

The position of the Ministry of Labour is ambiguous. On the one hand they are seeking to flexibilise labour even further whilst on the other hand they have shown willingness to create a Palm Oil Pact, such as the Decent Work Pact, which was signed in 2018. The Pact would be developed in consultation with Fedepalma as well as all relevant trade unions. However, trade union leaders fear this will be another paper-commitment which will be used to boost the government's image more than it would serve to improve the working conditions of the workers in the sector. The secretary general of the CUT was very clear in stating that CUT would not sign such a pact if no real dialogue about the structural conditions at the heart of the precarisation in the sector took place. As long as the government does not comply with the requirements embedded in the international agreements and conventions they have signed with the ILO and other international organisations, CUT will not sign the Decent Work Pact or any other pact. These pacts are seen as instruments for the government to improve its image but harness no real commitment towards the improvements of the lives of workers in the palm oil, and other sectors. Furthermore, because the government has not honoured earlier pledges they are not seen as a reliable partner (AIL 2018). Despite the hesitance of some segments within the trade union movement, consultants from the *Centro de Solidaridad* AFL-CIO are currently mediating between all social partners to outline the contours of the Palm Oil Pact, which in response to the demand by the trade unions will have specific indicators and monitoring frameworks related to freedom of association, formalisation and health and safety at work.

However, the question is whether the government truly believes in the necessity to tackle the precariousness of labour in the sector. In the past, consistent, structural international pressure was needed for the Ministry of Labour to finally take action. The progress made in terms of prohibiting some forms of labour intermediation, more specifically the CTAs, has been achieved through the Obama-Santos Labour Action Plan and the persistent pressure by the U.S. Labour Department to implement it. More recently a Labour Action Plan has also been laid down in the free trade agreement with Canada (2018-2021). In this plan

addressing the issue of disguised short term work, often adopted by SASs, is specifically mentioned^{39,40}. But it is unclear whether the Canadian government will be as watchful over its implementation as was the Obama administration.

7.2 OTHER STAKEHOLDERS

Although, as demonstrated in the historical background, the palm oil industry touches upon a wide array of social and environmental issues, the trade unions representing workers in the sector have not made alliances with other CSOs such as those representing indigenous communities or environmental organisations⁴¹. Because of its conflictual history, the labour movement has very much focused on strengthening itself from within.

Nonetheless there have been important strides in improving the relations with the communities directly related to the palm oil plantations. These communities have grown incrementally since the first palm plants and plantations were installed. They generally consist of families of palm oil workers, smallholder farmers selling palm fruit to the plants, people living from the industry by providing services such as transport, and small merchandisers selling goods to the community members. It has been common practice by the owners and employers to set the community up against the trade unions, by fuelling the sentiment that the actions of the workers inflict income losses on those who provide fruit and services to the plant. However over the last decades many unions have worked to improve their relations with community members, stipulating that better working conditions in the firms will also serve them, as their children will most likely be employed in the same company and higher wages means higher purchasing power from which the merchandisers will also profit. To this effect trade unions have built communal playgroups as well as football matches and conducting sensitising campaigns on the importance of the unions, not only for the workers but for the development of the entire community⁴². The improved relations with the communities increase the unions' bargaining power as it makes it easier to sustain a strike. In some cases local community members now even help the workers by providing food and other goods to the striking workers who are temporarily left without an income.

³⁹SASs usually hire workers through short-term contracts whilst the jobs for which they are hired are of a long term nature and form a structural part of the plantations maintenance.

⁴⁰Interview Centro de la Solidaridad

⁴¹ONIC the national organisation representing indigenous communities in Colombia have mentioned their willingness to explore possible joint actions (interview ONIC representatives).

⁴²Interview SINTRAPALMAS; Interview SINTRAINAGRO- Minas

The adversarial industrial relations in the sector have created opportunities for a specific group of labour lawyers and consultants. On the one hand, the importance of specialised lawyers and consultants and organisations assisting the unions through the, often very complex, legal issues involved in the collective bargaining processes cannot be underestimated⁴³. Both Monterrey and Palmas de Cesar hired social dialogue consultants. On the other, companies seldom start a collective bargaining process without a set of very good lawyers, specialised in annulling the unions' petitions over one legal cavity or another.

Mondiaal FNV and other solidarity organisations have been influential in two respects. They have capacitated trade union leaders in negotiation skills and sensitised them on the importance of social dialogue. Secondly, Mondiaal FNV created a space of encounter between trade union leaders, employers and the Ministry of Labour in January of this year. During this first exchange some employers shared their experiences with social dialogue and the positive impact it has had on the company's productivity and overall working environment. These examples are key to bringing about a change in mindset. In addition, Mondiaal FNV has created links between RSPO and the trade unions in the sector as well as with the Dutch Embassy. Furthermore, the in-depth study on health and safety in the palm sector conducted by ENS with the support of Mondiaal FNV has provided the trade unions with much needed information for developing concrete lobby and social dialogue strategies on the issue (ENS 2019).

The Roundtable of Sustainable Palm Oil (RSPO) is potentially an ally for trade unions in the sector. The creation of an office in Latin-America, with its headquarters in Bogota four years ago was able to make a significant difference in bringing the RSPO closer to the workers in the sector. Up until now the organisation has been of more use to the companies, which see the RSPO certificate as an important marketing tool. The key challenge of the RSPO tool (in Colombia but also in Indonesia and Malesia) is the implementation of a truly independent audit of the human and labour rights situation in the production and processing units.

The fact that certification bodies are contracted and paid by the company being audited creates a credibility gap in sustainability auditing. Other difficulties are

insufficient time, resources and auditor competence, the reluctance to criticise the charge that a company is not in compliance, and the fact that social issues are not easy to detect in a short visit or documentation⁴⁴.

However, in theory the RSPO Latin-America headquarters is an open organisation that welcomes the views and opinions of all actors involved in the industry in order to make sustainability (both in social and environmental terms) a reality throughout the sector. The organisation has a complaints system that is transparent and available online and workers and trade unions are invited to denounce any malpractices by employers that go against certification requirements. The RSPO then starts a mediation process, investigating the complaint, always seeking the improvement of the company's methods and not the withdrawal of the certification altogether. In Indonesia there have been pilots with using app-technology such as ULELE to create a more continuous monitoring of the social and environmental practices adopted by certified companies. This will allow for a more realistic representation than those presented by the 5-day yearly certification inspections. RSPO Latin America hopes to roll out a ULELE pilot in Colombia in the near future. At present the headquarters in Bogota are getting started on initiating the national interpretation process of the 2018 certification. This interpretation process seeks to adapt the generic certification standards to local realities as well as to flag-up any conflicts with national laws that might exist. Although RSPO does not have the power to change such legislations its certified companies are obliged to follow the standards as laid out by the RSPO, even if it exceeds national legalisation. Lastly, this year a 3-year sensitisation campaign will be initiated, which hopes to make the RSPO certification process and implications better known among stakeholders and the general public. Hopefully workers and trade unions will be targeted as specific interests groups allowing for a better use of the RSPO framework in their lobbying and bargaining efforts⁴⁵.

Last but not least, other important indirect allies are the consultancy firms that have assisted companies within the sector in their transition towards more peaceful labour relations based on mutual trust. In both exemplary cases the company owners and managers were assisted by consultants for over a year in establishing trust, identifying key points of action,

⁴³The Centro de Solidaridad has played a very important role in this respect.

⁴⁴WWF, 2016, "Expecting too much, getting too little? A think piece on sustainability certification auditing in the oil palm sector"

⁴⁵Interview RSPO

addressing and letting go of deeply embedded frustrations and anger and building positive relations based on a shared vision and a win-win mentality. Both companies have stated that the current constructive rela-

tions they have with their employees and the trade unions representing them could not have occurred without the assistance of these external mediators and advisors.

8. CONCLUSION

In conclusion we could say that genuine social dialogue and collective bargaining in Colombia's palm oil industry is still incipient. Despite the long history of labour organisations, sector-wide social dialogue has as yet never occurred and collective bargaining at firm level has from the start been rife with conflict, at times, of a violent nature. With shifting intensity, the issue of indirect workers or *tercerizados* has been part of many of the trade unions' campaigns (in the 1970s and since 2011s more overtly) but only in two cases have there been genuine advances with regards to formalisation. In the following we will summarise the key enabling conditions and obstacles towards social dialogue.

8.1 ENABLING CONDITIONS FOR SOCIAL DIALOGUE

8.1.1 Bridging the formal-informal divide

First and foremost, the change in mindset within the trade unions - to open their doors to indirect workers, moving beyond corporatist trade unions that only fight for their own members but having a social vision that goes beyond - has been key in achieving formalisation. In both cases the alliance between the direct- and indirect trade unions (and later the affiliation of former indirect workers into the direct union) was essential to increasing their bargaining power and leveraging for formalisation. Companies time and time again use the divisions between direct and indirect workers against both groups in negotiations. By presenting a united front the unions took away an important leverage stick from the side of the employers.

8.1.2 Formalisation

First and foremost, the 2 exemplary cases have demonstrated that the formalisation of the *tercerizados* enabled inclusive social dialogue. Without it there would have been no foundation of mutual trust or commitment from the side of the workers. By formalising the workers, a sense of connectedness and shared goals is created that are essential to establishing open social dialogue. From the side of the company it was also realised that a larger, formal workforce and therefore stronger union, should be managed in a different way if there were not to be even worse labour conflicts.

8.1.3 Connection with community

Both the images of the company and the trade unions have been improved by establishing positive

connections with the broader community in which the companies are situated. Whilst employers have the idea that trade unionists only think of their own narrow goals, workers believe employers to be solely interested in making a profit. These prejudices can be partially broken by engaging with community members and showing good faith. In addition, community support has been essential in the trade unions' struggle for formalisation, as it gave them the necessary backing to sustain strikes.

8.1.4 Strong labour organisations

Although from an employer perspective a strong trade union might be seen as hampering social dialogue, the evidence has shown that strong unions do not necessarily mean adversarial ones. A strong constructive union is key to creating unity among workers and overseeing the correct implementation of agreements concluded. In situations of weak unions, social dialogue is more likely to stay at the level of union leadership and employer representatives without having an effective impact at the level of the workers. At a national level the political support of CUT will be essential to being able to influence government and FEDEPALMA policies, if a sector-wide social dialogue is to be achieved.

8.1.5 History of conflictual industrial relations

Although it might seem contradictory, the extremely poor industrial relations in both companies were a catalyst for the change of course. In cases where the labour relations were less conflictual, business as usual is still an option. In the case of Palmas de Cesar and Monterrey the strikes were so numerous, the scars left by the anti-union violence so deep, that the only way to overcome this vicious circle was to adopt an entirely new labour relations approach. It must, however, not be forgotten that these remain exceptional cases within the Colombian context. In general the violent conflict has scared off industrial relations to such an extent that the building of trust between social partners is now extremely difficult.

8.1.6 External mediation

In both cases, as mentioned above, external consultants were hired to guide the initial stages of the social dialogue processes. For a period of a year the consultants played a mediating role between the employers and trade unions and supported them in the creation of an environment of mutual trust and respect. Both

parties have expressed the opinion that the transition would have been very difficult to achieve without the assistance of the consultants.

8.1.7 Fruitful political context

When Palmas de Cesar and Monterrey decided to invest in social dialogue, they did so in a wider political context of reconciliation brought about by the negotiations and signing of the 2016 peace agreement between President Santos and FARC. Being shown the example of two groups that for decades have been in violent conflict, discussing issues and finding joint solutions, created a general belief in the possibility of overcoming deeply entrenched divisions through dialogue. Sadly, the context today has changed dramatically with the referendum denouncing the peace agreement and the election of President Duque, who does not share his predecessor's commitment to a genuine dialogue with social and labour leaders. This is underlined by the significant increase in murders of and attacks on human rights' defenders since the end of 2016 (United Nations Security Council, 2018).

8.1.8 International pressure: the Obama-Santos free trade agreement

Indirectly, the Labour Action Plan as part of the Obama-Santos trade agreement, has played a role in enabling social dialogue as it is one of the important drivers leading to the formalisation of workers. And as demonstrated in the first point, formalisation lies at the heart of effective social dialogue.

8.1.9 Support and capacitating by (international) solidarity organisations

The ways in which the union leaders have been capacitated in negotiation skills through organisations such as Mondiaal FNV, the Centro de Solidaridad, ENS and Fundación Paz y Libertad has prepared them and provided them with the appropriate tools to engage in meaningful constructive dialogue. Although many unionists are still skeptical about letting down their guard towards employers, there have been important strides in making the idea of social dialogue discussable as a potential tool for the labour movement. Union leaders of SINTRAPALMAS and SINTRAINAGRO representing workers in Palmas de Cesar and Monterrey have both expressed the positive impact the capacitation training and education in negotiation skills has had.

8.1.10 Enlightened, open-minded leadership

Last but not least we should never forget that social dialogue is a human activity, not an institution.

Personal character and demeanour and the ability to create positive rapport with people are as essential to successful social dialogue as are all of the above. It is very clear that in both cases there is a personal "click" between the trade union leader and the company owner (in the case of Monterrey) or manager (in the case of Palmas de Cesar), which goes beyond pure business but is vested in a genuine respect and appreciation one of the other. The short communication line between these core antagonists has been essential in circumventing potential labour conflicts.

8.2 OBSTACLES TO INCLUSIVE SOCIAL DIALOGUE

8.2.1 The formal-informal divide

Whereas bridging the formal informal divide is the key to achieving social dialogue in the sector, the lack of doing so might be considered its main obstacle. Most unions have not been able/willing to achieve what SINTRAINAGRO and SINTRAPALMAS have, namely: representing indirect workers and including them in their union structures once they have been formalised. The high amount of indirect workers has fragmented the labour movement. Most unions have primarily focused on organising direct workers and companies have been eager to set both groups up against each other. Some unions have shunned away from representing the large numbers of indirect workers because they believe they will lose hard fought gains in their collective agreements in order to improve the labour conditions of others. It is easier to negotiate for 200 direct workers than for 1000 indirect ones. It is believed that more and higher gains can be achieved by representing a smaller labour pool. However trade unions might underestimate the power of numbers. The bargaining power of 1,000 workers is higher than that of 200, in theory and in practice if we take the cases of Palmas de Cesar and Monterrey SPA.

8.2.2 Relatively recent development of a national social dialogue strategy for the Palm Sector

There has been no meaningful sector-wide/ national social dialogue in the palm oil industry such as the one that can be found in Colombia's Banana sector for example. At times unions have felt forgotten by the national federation, which should be representing them at the national government level. Although the regional sections of the CUT (especially that in Santander) have been supportive to the union struggles, CUT is has only recently been taking steps to establish dialogue with the Ministry of Labour

regarding the sector and initiating an awareness-raising campaign. Within the federation, indirect workers have also only recently been placed on the agenda and the need to include them within union structures has only recently been adopted as a structural policy within the federation.

8.2.3 Monoculture as a model for rural development

On a macro level, the model for rural development based on the promotion of agroindustry and the expansion of monocultures severely limits the creation of genuine social dialogue. At a national level there seems to be little discussion about the adopted rural development path. Agro-industry and specifically the palm industry has been hailed for its employment creation ability and the way it has been the motor for rural development. Fedepalma and RSPO, both fervent advocates of sustainability and the people, planet, profit mantra, raise no questions about the expansion of monocultures although they stand in direct contrast to the idea of sustainability, as a social and environmental concept. One could argue that the expansion of monocultures of palm oil plantations, in a context of poor rural development with insufficient government support/services, limits social dialogue because it creates an overdependence on one industry or firm. Although palm oil plantations are applauded for being the sole providers of formal employment in some regions, this fact should be analysed more critically. Workers for whom no other employment opportunities exist do not have the same bargaining power or negotiation position as those who do have the possibility to look for another job. In the case of many palm oil plantation regions there are no other jobs, which implies that for workers, the maintenance of their job and indeed the survival of the company for which they work is indispensable, and even more so, because it is often the sole provider of an income for an entire family. Consequentially, they will more easily accept sub-optimal conditions in collective bargaining negotiations out of fear of losing their work. This occurred on a large scale in 2013 when large numbers of workers accepted voluntary retirement schemes in Magdalena Media because several companies argued this was the only way of keeping the business alive. So, in summary, the economic model of monocultures in combination with poor economic development of the region gives companies a comparative advantage in negotiations, which they are all too aware of.

8.2.4 The high amount of indirect workers/tercerizados

As outlined throughout this report the high amount of indirect workers severely cripples social dialogue for the following reasons:

- *Tercerizados* are afraid of organising themselves because they have short-term contracts and fear they will not be hired again if they join a union. This fear is grounded in the many cases in which unionised workers have indeed been fired and in the high dependency on the palm oil industry as sole source employment as outlined in the previous point
- Some indirect workers are by law not able to partake in collective bargaining or social dialogue because they do not fall under the labour code (e.g. members of CTAs)
- The fragmentation of the production process through the use of multiple subcontracting firms or labour brokers makes it very easy for employers to shovel the responsibility of workers' conditions onto another employer's plate. The core firm will argue that the workers hired through SAS should discuss their issues directly with them whilst the SAS will argue that they are bound by the agreement with the core firm and labour issues should be discussed there
- Because of the extensive use of short-term contracts, generally not exceeding a year, there is a high amount of labour rotation. This directly negatively impacts the ability to organise and the likelihood of establishing social dialogue. There is no interest from the side of the worker to invest in social dialogue when he or she knows that the chances are high they will not have the same employer in 12 months' time

8.2.5 History of violence and "us against them" mentality

All in all Colombia is only recently emerging from decades of violent conflict and, regrettably, in some regions such as the Southern palm oil region, violent conflicts are still part of everyday life. The conflict has created deeply rooted fears and mistrust among trade unions on the one hand and employers on the other. For social dialogue to take place in a conducive setting, the existence of mutual trust is pivotal. However with assassinations of social leaders on the rise again, establishing such trust is extremely difficult.

8.2.6 The lack of a common understanding of the problem

Effective problem-solving between multiple stakeholders necessarily departs from a common understanding of the issue that needs to be addressed. In the case of the Colombian palm oil industry this issue might be the high amount of informal forms of employment. However, although on paper all parties (trade unions, Fedepalma and the Ministry of Labour) agree that formalisation is necessary, the conception of what formal employment or good labour practices entail are very different. For Fedepalma and the Ministry of Labour, formal employment is equal to being in the possession of a labour contract whilst for trade unions many sub-contracted workers with contracts cannot be considered as being formally employed. In order to have constructive negotiations leading towards formalisation, a big hurdle to be overcome will be the alignment of discourses and the understanding of the problem all social partners hope to address.

8.2.7 The legal framework

The legal framework that has allowed the exponential increase of labour flexibilisation through the use of all kinds of forms of labour intermediation and subcontracting is indirectly limiting the possibility of workers to partake in social dialogue, as explained above. Above all, workers with an employment contract are entitled to organise and collectively bargain. The reality in which indirect workers live does not allow them to practise these rights. In addition the law does not provide for the possibility of sector-wide collective

agreements. In the banana sector there are collective negotiations but these are translated into various CBAs for each of the partaking companies as sector-wide CBA have no legal footing.

8.2.8 Emergence of predatory labour-lawyers

An issue that was mentioned by many workers and unionists was the way in which certain lawyers have made their living out of instigating labour conflicts. The most infamous of these is that of Juan Pablo Lopez. Lopez offered his services to various palm oil companies simultaneously and in this capacity caused numerous petitions from the side of trade unions to be annulled, which subsequently initiated labour conflicts rather than foster dialogue.

8.2.9 The (hidden) economic and financial value chains of palm oil companies

Last but not least, the complex economic constructs that have been set up by palm oil companies have allowed for the false-presentation of the financial state of the company. This has allowed them to mislead the trade unions during negotiations. Similar to the way in which the downward fragmentation of the production process inhibits social dialogue, the upward fragmentation of the financial chains of the companies do so too. In a large value-chain such as that of palm oil, the bargaining power of the workers is naturally much weaker as there is little transparency. Whilst the interests of capital are often well-aligned throughout the value chain, those of workers are not.

9. LESSONS LEARNED

So what can we learn from the cases of Palmas de Cesar and Monterrey S.A. in terms of including indirect workers in collective bargaining practices?

- **Forming alliances.** The formalisation of indirect workers was only possible due to the alliance between the direct workers' unions and the indirect workers union. Clear agreements were made about leadership positions after formalisation had been achieved and the indirect workers' union would then merge into the direct workers' union. Collective interests were placed above personal ones.
- **Thinking outside of the box.** The trade unions organised indirect workers and included them in collective bargaining with the principal employer although they were either not considered as workers (in the case of CTAs members) or considered to be the responsibility of other employers (in the case of employees of temporary work agencies or SAS). They did not let themselves be confined by legal frameworks.
- **Building positive relations with the community.** In both cases the trade unions have invested time and efforts in improving the relationships with community members. This has allowed them to stand as one front, strengthening their bargaining power vis à vis the employers.
- **Presenting the business case.** Convincing employers of the benefits of formalisation and peaceful labour relations requires not only legal measures. Economic incentives such as the large fines imposed for illegal outsourcing practices, as well as the positive economic impact of formalising (in terms of increasing productivity) and social dialogue (in terms of avoiding costs related to strikes, etc.), are key to changing business practices.
- **Building trust.** In both cases the road towards formalisation and establishing peaceful labour relations has been a long and difficult one. More than an institutional exercise, social dialogue is a human one, establishing trust, especially in light of the violent, conflictual history, is key. Without trust, there is no foundation for effective social dialogue. Trust requires nourishment through a general culture of respect and commitment to made agreements within a firm.
- **Having patience and a joint goal.** Trust is not built overnight and requires an open-mind, honest communication, a considerable amount of patience and belief in a joint goal. Establishing this joint goal including a set of shared objectives indicating each social partner's responsibilities is key.
- **Using windows of opportunity.** Although piecemeal, the labour movement was able to make progress in terms of diminishing the worst forms of labour outsourcing (through the CTAs) by strategically taking advantage of the window of opportunity presented by the Labour Action Plan in the Obama-Santos free trade agreement.

Never giving up. In many policy-making processes, it is sheer persistence that is one of the key enabling conditions. Tirelessly pushing for your agenda even when the political climate is inopportune is the message. A struggle that unionists are continuing despite the risk to their own life.

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ANNEX 1

EXPERIENCE-SHARING WORKSHOP ON SOCIAL DIALOGUE AND INDIRECT WORKERS

Participants were asked to share experiences on the following 4 questions:

- ¿Como la tercerización debilita el Dialogo Social?
- ¿Cuáles soluciones han aplicado para superar las barreras de la tercerización?
- ¿Qué lecciones pueden compartir de las buenas practicas en dialogo social?
- ¿Que es el mensaje clave para compartir con los empresarios con base a las buenas practicas?

ANNEX 2

FOCUS GROUP DISCUSSION ON THE DIFFICULTY WITH CREATING ALLIANCES BETWEEN DIRECT AND INDIRECT WORKERS

During the focus groups we looked into the case of Indupalma, which in 2018 went through a process that should have led to the formalization of the indirect workers but instead created 2 new companies (SAs), which hired the workers who were formally hired through CTAs. One of the reasons why the deal broke off was because of the difference in opinion between SINTRAPROACEITES representing the direct workers and UGTTA which represented the indirect workers.

ANNEX 3

TRADE UNIONS IN COLOMBIA'S PALM SECTOR

SINDICATO	2010	2012	2014	2016	2017	2018
	Nº AFILIADOS					
Sinaltragrasco	507	507	507	507	507	507
Sindiacegrasas	58	58	58	58	58	58
Sintragradinsa	45	45	45	45	45	45
Sindicato de Trabajadores de Grasas Vegetales S.A. (Gravetal)	620	620	620	620	620	620
Sintragracetales	306	306	306	306	306	306
Sintraceitales	710	710	710	710	710	710
Sintraprogal	317	317	317	317	317	317
Sintraimagra-Cumaral						78
Sintraimagra-San Carlos de Guaroa		112	112	112	112	287
Sintragraco	60	60	60	60	60	500
Sintraproaceites-San Alberto	250	260	260	260	260	276
Sintraproaceites-El Copey		327	327	327	327	362
Sintraproaceites-Sabana de Torres						55
Sintraproaceites-La Gloria						50
Sindicato de Trabajadores de la Fábrica de Grasas y Productos Quimicos Grascal Ltda.		35	35	35	35	35
Sindicato de Trabajadores de Palmeras del Llano S.A.		35	35	35	35	35
Sintraatercerizados			35	35	0	0
Sintragradesa				35	35	35
UGTTA					35	
Sintrainagro-Ciénaga	330	330	330	330	330	330
Sintrainagro-Puerto Wilches	231	220	220	220	220	328
Sintrainagro-Minas		149	149	149	149	360
Sintrainagro-San Alberto						540
Sintrapalmas-Puerto Wilches	114	117	117	117	117	117
Sintrapalmas-San Alberto		117	117	117	117	
Sintrapalmas-Barrancabermeja						90
Sintrapalmas-Sabana de Torres						19
Sindiunipalma	500	500	500	500	500	500
Sintrapaloriente			35	35	35	35

Figure 5 Source Trade Union Palm Sector (ENS 2019)

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