

# THE FORMALIZATION AND UNIONIZATION CAMPAIGN IN THE BUENAVENTURA PORT, COLOMBIA

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*Trade unions organizing workers 'informalized from above': Case studies from Cambodia, Colombia, South Africa, and Tunisia". Financiado por el American Center for International Labor Solidarity, coordinado por Adrienne Eaton y Sue Schurman de la Universidad Estatal Rutgers, de Nueva Jersey, Estados Unidos.*

## Introduction

The privatization of Colombia's port sector in 1993 inaugurated a process of pervasive employment flexibilization. The thousands of port workers, previously unionized on a mass scale and protected by collective bargaining agreements and indefinite employment contracts, witnessed a rapid transformation in their working conditions, highlighted by the explosion of non-standard work contracts, informal hiring and firing, and the gradual asphyxiation and/or transformation of labor unions. In Buenaventura, home to the country's busiest seaport terminal, the flexibilization of labor relations took on a decidedly robust form. A multitude of large, medium, small, and even one-person firms sprang up within the port, many of which specialized in nothing more than creating and expanding lines of labor intermediation: hiring out low-paid, temporal workers to the formally constituted port operating firms to undertake the numerous tasks and services required to ensure that the country's import/export market functioned accordingly.

In the two-decades following privatization, the working conditions in Buenaventura's principal port became even more degraded and precarious. In response, the embattled worker unions, bereft of space for collective bargaining and faced with a dwindling pool of formally contracted workers, began to mimic many of the labor intermediation practices of other firms. Before long, the conversion process was complete: for all practical purposes these unions had become intermediary firms and their registered members merely workers used as pawns for landing service contracts. As this small Pacific Ocean-dwelling town grew at a staggering rate, unemployment reached untenable proportions. Intermediary labor firms responded by further intensifying the extensive exploitation of workers: lowering wage rates, hiring workers on day-based or even task-based verbal contracts, most of which were entirely informal and without adhering to the stipulations of laws regarding social security benefits.

Faced with such deplorable working conditions, a group of long-time port workers in Cartagena came together six years ago to discuss the founding of a new and novel union, one that would represent workers by pressuring the principal port operating firms--in Cartagena, Santa Marta, Barranquilla and Buenaventura--to end labor intermediation and directly hire workers via fixed-employment contracts with

all the associated legal social security benefits. This union, *Union Portuaria* (UP), formed with the support of the American Center for International Labor Solidarity Center (ACILS), was registered as a national union in 2009 with local offices in these four main ports as well as the port set up in one of Colombia's preeminent banana-growing regions, Turbo, Antioquia. The UP in Buenaventura began with a double-pronged campaign to affiliate port workers and also pressure for the formalization of work at the port. After 15 years of employer-enforced indecent and often illegal working conditions and no formal response from a union, 2012 saw the recommencement of worker protest and strike actions, leading to the direct hiring of approximately 80 previously subcontracted machinery operators and the promise of future employer-union negotiations. But the capital kick back has been both furtive and assertive. New types of companies replaced the now outlawed, fictitious cooperatives, which had been the preferred manner of evading the existing strong norms but weak enforcement of them by Colombian labor law, while leading firms continued their anti-union practices, looking to fire or blacklist any worker affiliated with the UP.

Alongside the worker-capital struggle, played out on the docks of Buenaventura, the long-stalled FTA between Colombia and the USA, provided the political dynamite necessary to begin a major reshuffling of the manner in which the Colombian state regulated the labor market, after decades of state ambivalence, at best, and connivance, at worst, regarding the horrific practice of unionist murder and its association with the gradual extermination of union organizations. Pressured to more assertively protect and guarantee union rights and worker protections, the Colombian President, Juan Manuel Santos, signed a Labor Action Plan with President Obama. Along with various normative reforms, this Plan focused on improving the situation for workers in five key economic sectors, one of which was the port industry in Colombia.

This report describes the multiple regulatory problems still evident in the actual labor relations and forms of contracting at the Buenaventura port, focusing on the still prevalent practice of anti-union tactics adopted by many port-based firms and the ambivalent role adopted by the Colombian Labor Ministry which, although significantly revamped through the Labor Action Plan, still remains out-of-touch with the multiple and concrete problems unionized and informal workers face throughout the country. The report first provides a brief overview of the economic, social, and labor contexts in Colombia, and then illustrates the manner in which labor intermediation takes place, both normatively and in practice. This is followed by a detailed analysis of the UP's worker protest campaign for the formalization of work contracts and the termination of anti-union practices at the port. The report concludes with reflections on both the successes and failures or limitations of the UP-led worker formalization campaign as a means of more clearly outlining some of the structural and contextual problems that still constrain the promotion of decent working conditions and the protection of core labor rights both in the Colombian port industry and in the wider economy.

## **Colombia's Recent Economic and Labor Market Performance**

In recent years, the economy of Colombia, Latin America's third most populous country, has displayed a worrying trend of sustained economic growth, measured by an increase in its Gross Domestic Product (GDP), alongside a labor market plagued by high levels of unemployment and informality. Indeed, while the economy grew 4% and 5.9% for two years, 2010 and 2011 respectively, the unemployment rate was 11.1% and 10.8% for the same period, rates that are way above the regional average.<sup>1</sup> Alongside such high and ingrained levels of unemployment, leading to a situation of economic hysteresis,<sup>2</sup> the massive amount of labor informality throughout the country has meant that unprotected employment<sup>3</sup> and "indecent work" have become the norm for many of Colombia's workers.

According to the National Department for Statistics (DANE),<sup>4</sup> in Colombia's 13 metropolitan areas in 2011, 51.3% of all occupied people worked in the informal economy, an increase of 4.3% from the 2010 levels.<sup>5</sup> What's more, if a national informality rate was available this would, no doubt, show a considerable increase, due to the extensive spread of informal labor relations in Colombia's rural zones. In terms of the manner in which informal work is concentrated per economic sector or activity in the 13 areas studied, the three most informalized sectors for 2011 were commerce, hotels, and restaurants where the port industry is located (with a rate of 69% informality); transport, storage, and communications (with 62.7%); and construction (with 59.8%).<sup>6</sup> Only two sectors scored percentages of labor informality lower than 10%: financial intermediation and the provision of electricity, gas, and water.

Apart from the prevalence of informal economic activity measured per economic sector in terms of the percentage of firms with five or fewer workers, Colombia's precarious levels of social security coverage beleaguer its labor market. According to official data, only 37.7% of the total occupied workforce contributes to a private health insurance plan and an even smaller percentage of workers (30.6%) contribute to a retirement plan. Such statistics, together with similar low levels of affiliation to the other three main realms of social security,<sup>7</sup> paint a worrisome picture of the general precarity faced by the majority of Colombia's more than 20 million active workers.

Of course, such a consolidated lack of basic protections available to the majority of the country's workers is not just a recent trend. Rather, poor quality

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<sup>1</sup> According to CEPAL, in 2011 the regional unemployment average for Latin America was 6.8%. See: Cepal (2012), Balance preliminar de las economías de América Latina y el Caribe.

<sup>2</sup> Hysteresis refers to a situation when a significant proportion of a country's workforce finds itself stuck in unemployment, effectively becoming permanently unemployed.

<sup>3</sup> Numerous labor market and labor studies scholars have highlighted the links between informal work and unprotected work; see especially: Portes, Alejandro. 1994. "By-passing the rules: the dialectics of labor standards and informalization in less developed countries. *International Labor Standards & Economic Interdependence*. N. Sensenberger & D. Campbell. Geneva: Institute for Labor Studies: pp.159-176; Chen, Marta. A. 2005. "Rethinking the Informal Economy: Linkages with the Formal Economy and the Formal Regulatory Environment". Helsinki, Finland: EGDI and UNU-WIDER.

<sup>4</sup> Departamento Administrativo Nacional de Estadística, [www.dane.gov.co](http://www.dane.gov.co)

<sup>5</sup> See: ENS (2012), *Informe Nacional de Trabajo Decente*, Ediciones ENS: Medellín.

<sup>6</sup> DANE, *Gran Encuesta Integrada de Hogares*.

<sup>7</sup> Respectively, (ARP) Professional Risk Insurance; *Cesantías* (Severance pay); and *Cajas de Compensación* (Family benefits program).

jobs, characterized by low-income levels, a lack of job security, and widespread exclusion from social security have been the norm, especially in the last decade, due to the consolidation of neoliberal economic policies. Indeed, alongside the controversial two-term presidential Democratic Security program of the Uribe Governments (2002-2010), which intensified the military offensive against the country's guerrilla groups (The FARC-EP and ELN) as a means of opening out and safeguarding "new" territories for capital (particularly foreign), the government-led campaign to further deregulate the labor market and flexibilize labor relations led to strengthening a decidedly pro-capital politico-economic model.

Uribe enacted two major reforms (Labor Reform, Law 789 of 2002 and Pension Reform, Law 787 of 2002) in the initial months of his first presidential term, setting the tone for the following eight years. The labor reform law followed from the flexibilization begun with Law 50 in 1990.<sup>8</sup> Uribe, one of the Senators who most vigorously promoted the legislative passing of this law had, as president, a wider political berth, and he made certain that he would take advantage of this. Law 789 was enacted under the auspices that it would generate employment via more deregulation. It reduced labor costs in a dual manner: initially, by extending the working day without penalty rates (from 5pm to 9pm), and secondly, by minimizing costs associated with overtime and reducing employer costs related to unfair dismissal.

In terms of the general panorama within which Colombia's union movement is located, one could contend that after a period of extreme repression and harassment during the Uribe years, which continued the decades-long repression of the union movement, the present climate pervading the country's unions is one of fragile respite, reprieve, and perhaps even a glimmering of newfound potential organizational possibilities. Nevertheless, in order to more accurately locate this recent flicker of opportunity for union consolidation and indeed expansion, a brief synopsis of the systematic exclusion of Colombia's union movement, both from the workplace and, more generally, from the formal spheres of politics, must be offered.<sup>9</sup> It has been argued that internationally, less effort is generally devoted to the protection of *enabling* rights, such as freedom of association (FoA) rights, than to the upholding of minimum labor standards.<sup>10</sup> In the case of countries with long and pervasive anti-unionist violence, such as Colombia, FoA rights are even more

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<sup>8</sup> This labor reform took the first step towards flexibilizing Colombia's labor regime as it eliminated the retroactivity of a worker's severance payments (*cesantias*), moving towards a regime that liquidated these payments each year into a remuneration fund. Furthermore, this reform reduced workers' protection from unfair dismissal and restructured the possible contractual period, legalizing contracts for periods of less than one year (which could be renovated on three occasions), against the pre-existing "indefinite" contractual period. See: Estrada, Jairo. Á. 2004. *Construcción del Modelo Neoliberal en Colombia 1970-2004*. Colombia, Ediciones Aurora, pp.74-75.

<sup>9</sup> For an historical overview of anti-union violence in Colombia, see: ENS & CCJ (Comision Colombiana de Juristas). 2012. *Imperceptiblemente nos encerraron: Exclusion del sindicalismo y logicas de la violencia antisindical en Colombia, 1979-2010*. Bogota: CCJ.

<sup>10</sup> See: Anner, Mark. 2008. "Meeting the challenges of industrial restructuring: Labor reform and enforcement in Latin America". *Latin American Politics & Society* 50(2), pp.33-65; and, Mosley, Laura. 2011. *Labor Rights & Multinational Production*, USA: Cambridge University Press.

tenuous and require more state enforcement mechanisms to ensure their protection.

### **The Historical Legacy of Anti-unionism**

In Colombia the union movement has experienced historical constraints of a severity perhaps more pronounced than in any other country of the world. While many unionists across the globe face harassment, employer and even state repression, as well as the structural hostilities wrought by neoliberal labor market flexibilization processes, unionists in Colombia have had to confront similar issues in a socio-political and cultural climate of extreme anti-unionist practices. The number of trade unionists killed in Colombia more than doubles that for the rest-of-the-world combined. Between 1979 and 2010, 2,944 Colombian unionists were murdered, 229 disappeared by force, and a further 280 had attempts made on their lives.<sup>11</sup> Such flagrant targeting of the unionist population implies a profound degree of constraint on union activity entirely foreign to unionists in most countries. Workers must contend not only with fear of losing their jobs when they embark on union creation and organizational processes, but also fear for their personal safety.

In the face of such victimization, the Colombian union density and collective bargaining coverage have declined precipitously in recent decades. For 2010, less than 390,000 Colombian workers were beneficiaries of a Collectively Bargained Agreement (CBA),<sup>12</sup> of a total occupied workforce of more than 19 million,<sup>13</sup> giving CBA's in Colombia a total firm-wide coverage of only 2.08%.<sup>14</sup> In terms of union density, for 2011, this came to only 4.4%, one of the lowest rates of unionization in the entire continent.<sup>15</sup> Colombia's industrial relations framework is extremely fragile in terms of the spaces open to worker organizations. To create a union, there must be a minimum of 25 workers in the firm, and to negotiate a CBA, the union (or unions when they agree to negotiate collectively) must group together at least one third of the company's employees. In Colombia, unions are not permitted to negotiate CBAs per industry or sector, a factor that significantly lowers the rate of CBA coverage across the economy as well as limiting unions' practical influence in terms of thwarting destructive inter-firm wage rate competition.

### **Unions in Colombia**

The union movement in Colombia is institutionally divided into three Confederations: The Unitary Confederation of Workers (CUT), The General Confederation of Workers (CGT), and the Confederation of Colombian Workers

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<sup>11</sup> Information taken from: ENS & CCJ. 2012. Op cit., pp.37-43.

<sup>12</sup> ENS. 2011. *Informe de Trabajo Decente, 2010. De giros discursivos a realidades contradictorias*. Ediciones Escuela Nacional Sindical: Medellin, October, p.90.

<sup>13</sup> In 2010, according to the DANE, the total national occupied population in Colombia came to 19,279,000 people.

<sup>14</sup> ENS. 2011. op cit., p.94.

<sup>15</sup> ENS. 2012. *Informe de Trabajo Decente, 2011*, Agencia de Informacion Laboral, revised document for the Colombian press, October 2012, p.28.

(CTC). The CUT is the largest of the three and was founded in 1985-1986.<sup>16</sup> The CUT is the most leftist of the Colombian union confederations and groups together the largest union federations of Colombia (Fecode, Fenasibancol, Funtraminenergetica). It is the only Colombian confederation that has direct membership-based elections to decide the conformation of the Departmental and National CUT leaders. The CGT, created in 1971, is numerically the second largest confederation and groups together 20 relatively small union federations. Lastly, the CTC, the oldest confederation with a history of 77-years, was created during the initial period of welfare-like political openings during the first Alfonso Lopez Pumarejo Government (1934-1938). The CTC has 17 affiliated union federations, all of which are relatively small both numerically and in terms of their political influence. Like organized labor across the world, Colombia's unions are most present in the public sector, with total union membership divided 54-46% between public and private sector workers.<sup>17</sup>

Unlike most of its Latin American neighbors, the Colombian union movement has not maintained official partisan ties to either of the two traditional parties (Conservative and Liberal Parties). From the 1950s to the 1980s, the largest confederation at that time, the Union of Colombian Workers (UTC) declared itself non-partisan<sup>18</sup> and the CUT, since being founded, has maintained a staunch position of opposition to every national government in office. In terms of their influence on wage policy, the three union confederations form part of the tripartite Council, The Permanent Commission for Salary and Wage Policies,<sup>19</sup> in which employers and union representatives attempt to agree upon the official national minimum wage annually. During the eight years of Uribe's presidency, this Commission only reached agreement on two occasions and every other year the Government set the Legal Minimum Wage unilaterally.

### **Recent Developments in Terms of Advocating for Union Rights in Colombia**

Following the trend to advance the global integration of economies, particularly the examples set by Chile and Mexico,<sup>20</sup> the Uribe first-term Government launched an agenda that included the negotiation of various Free Trade agreements (FTAs), with emphasis on the promulgation of FTAs with the world's largest and most prosperous economies, especially the USA, Europe, and Canada. The negotiations for an FTA with the USA began in May 2004 as part of a regional accord between Colombia, Ecuador, and Peru. Nonetheless, after Rafael Correa was voted in as president in 2005, Ecuador withdrew from the process and at a later date, Colombia and Peru decided to undertake bilateral negotiations and sign separate agreements

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<sup>16</sup> See: Cárdenas, Mauricio. 2006. Treinta Años de Sindicalismo en Colombia: Vicisitudes de una Transformación. *En La Encrucijada: Colombia en el Siglo XXI*. F. L. Buitrago. Bogotá, Grupo Editorial Norma/CESO de la Universidad de los Andes: 233-260.

<sup>17</sup> ENS. 2012. Op cit., p. 33.

<sup>18</sup> Levitsky, Steven & Scott Mainwaring (2006). "Organized Labor and Democracy in Latin America." *Comparative Politics* 39 (1), p.

<sup>19</sup> In Spanish: *La Comisión Permanente de Políticas Salariales y Laborales*.

<sup>20</sup> Chile has signed 20 FTAs with 57 countries. See: [www.direcon.gob.cl/pagina/1489](http://www.direcon.gob.cl/pagina/1489) (accessed on 20 November 2012). Mexico, for its part, has signed 44 FTAs, see: WTO. 2012. *World Trade Developments in 2011: A Snapshot*, [www.wto.org/statistics](http://www.wto.org/statistics) (accessed on 25 November 2012)

with the US Government. Despite the fact that the Colombia-US FTA negotiations ended in February 2006 and the Agreement was signed by both parties in November of that year, it took more than an additional five years before it received both US Congressional approval and US Presidential ratification.<sup>21</sup>

The principle reason for the extremely slow passage of the FTA was the vociferous opposition to the implementation of an FTA with Colombia, considering that this country had such a deplorable history in terms of the protection of human rights and labor rights. Indeed, the vehement local and international union and social movement opposition to the ratification of this and other FTAs brought together, under a consolidated union front, a transnational advocacy network (TAN),<sup>22</sup> which simultaneously opposed the ratification of the FTA while also calling for concrete improvements to be made to both the Colombian legal framework and the state's effectiveness in enforcing its labor laws.

During Alvaro Uribe Velez's two presidential terms, there was little concrete improvement in labor rights' protection. Instead of actually strengthening state protection of unionists and the extent to which Colombian workers could enjoy their fundamental rights at work, the two Uribe governments were synonymous with heightened antiunion rhetoric, attempts at delegitimizing union activity, and a general failure to undertake labor law reform as a means of appeasing members of the US Congress (especially after the Democrats gained a majority in the Senate in 2006), the AFL-CIO, other unions, and even President Obama from 2009 onwards. One of the key antiunion policies implemented during Uribe's presidency was the newfound ability of the Ministry for Social Protection<sup>23</sup> to negate union status. This policy, in clear violation of Article 39 of the 1991 Colombian Constitution and the ILO Convention 87, led to the Ministry rejecting the request of 253 unions (between 2002-2007) to be formally registered. Furthermore, during the Uribe years, the fundamental right of workers to strike was severely curtailed as the government made highly questionable interpretations of sections of the Colombian Labor Code,<sup>24</sup> one of which involved using extraordinary faculties (article 1, paragraph 2 of Law 1210 of 2008), allowing the President, after obtaining approval from the Labor Room of the Supreme Court, to terminate a strike that was deemed to affect the "health, security, public order, or the economy, in all or part of the population . . ."<sup>25</sup> And finally, perhaps the state-propelled development that most crippled unions and

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<sup>21</sup> For a step-by-step review of the main announcements and political events during this more than five year process, see: "Hitos del viacrucis para el TLC con Estados Unidos". *Portafolio*, 11 September 2011, [www.portafolio.co](http://www.portafolio.co)

<sup>22</sup> For an overview of this concept, see: Anner, Mark. 2011. *Solidarity Transformed: Labor Responses to Globalization and Crisis in Latin America*. ILR Press: Ithaca/ London.

<sup>23</sup> At the beginning of Uribe's first presidential term, via Law 790 of 2002, the Ministries of Health and Work were fused into one: The Ministry of Social Protection, alongside the fusion of the Ministries of Justice and Government into the Ministry of the Interior.

<sup>24</sup> For example, during the Uribe years, many strikes were declared illegal on the following grounds: the strike took place outside a CBA; it was undertaken by workers who did not have a work contract; it included the participation of a union confederation or federation; it took place within a public sector service or in the telecommunications and energy sectors, or in establishments of social assistance. See: Hawkins, Dan. 2009. "100 years of Colombian trade unionism: battles and bloodshed". *Relay: A Socialist Project Review* (28), October-December, pp.55-57.

<sup>25</sup> Hawkins, Dan. 2009. Op cit,

the protection of basic worker rights in the first decade of the new century in Colombia was the prolific expansion of Associated Work Cooperatives (CTAs), legal entities that made a mockery of the historical conception of the cooperative movement inspired by Robert Owen in Britain's early 19<sup>th</sup> century.

### **CTAs in Colombia: Mimicking Cooperatives while Crippling Worker Voice and Union Organizations**

In the Colombian case, although CTAs have a long legal history, first being promulgated in 1931 (Law 134), it was not until the present millennium that they took hold, at the same time as their alleged "social objectives" became tainted by opportunities to expand a firm's profit line. Initially, perhaps, CTAs were promoted as a means of consolidating a true cooperative experience. Some commentators have argued that the driving motivation of legislators was to enhance the potential role of CTAs in the community by "creating the material and juridical conditions so that citizens who only possessed their labor power, and perhaps some small initial capital . . . could associate with others and build a business, and from that, generate their own employment while also building upon a principle of wellbeing for themselves and their families."<sup>26</sup> Nonetheless, especially during the Uribe governments, this admirable conception was set aside by a double drive to cut business costs while simultaneously crippling union activity.

The cost cutting opportunities afforded by outsourcing to CTAs stemmed from the fact that they were not bound by the Colombian Labor Code (CST) because the "associated workers" were simultaneously workers and, in theory, owners of the cooperative. As such, "workers" in a CTA were not paid a salary but rather received "compensation," which did not include any of the privileges underwritten by the CST.<sup>27</sup> Furthermore, upon becoming members of the CTA, workers were often obliged to pay a non-returnable starting fee as well as a capitalization contribution and 5% of one's monthly compensatory income.<sup>28</sup> Perhaps the most dangerous structural impact of the CTA model is that it rendered union activity superfluous. How can a union organize in a business where the "associated people" are workers and businessmen and women? In the words of one commentator, in many CTAs, "unionization of the cooperative workers is a legal impossibility. A list of demands would have to be handed from one associate to another."<sup>29</sup>

Under Uribe, the CTA model expanded prodigiously. Prior to his election as president, there were only 710 CTAs, which grouped together just under 54,000 associates.<sup>30</sup> Nine years later, just after Uribe had vacated the presidential office, there were over 4,000 CTAs and over 610,000 associates (see table 1 below).

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<sup>26</sup> Rios, Norberto. No date. "El trabajo asociado. Un instrumento para deslaborar la contratacion laboral". Medellin: Escuela Nacional Sindical.

<sup>27</sup> See: Farne, Stefano. 2008. "Las cooperativas de Trabajo asociado en Colombia: Balance de la politica gubernamental, 20002-2007". *Revista de la Economia Institucional*, vol. 10, No.18, first semester, pp.261-285.

<sup>28</sup> Farne, Stefano. 2008. Op cit., p.264.

<sup>29</sup> Aricapa, Ricardo. 2006. "Las cooperativas de trabajo asociados en el sector azucarero: Flexibilizacion o salvajizacion laboral?" *Documentos de la Escuela* 58, Escuela Nacional Sindical: Medellin, p.4.

<sup>30</sup> According to the Confederation of Colombian Cooperatives (Confecoop).



**Table 1: Number of CTA's and members**

<b>CTA</b>	<b>Number of CTAs</b>	<b>No. of members</b>
2001	710	53,645
2002	1,110	97,318
2003	2,039	198,477
2004	2,631	321,617
2005	2,980	378,933
2006	3,296	451,869
2007	3,602	500,450
2008	3,903	537,859
2009	4,111	559,118
2010	4,307	610,526
2011	3,462	482,168

Data taken from the Confederation of Colombian Cooperatives (Confecoop)

Beyond the supposed philanthropic reasoning for promoting the expansion of CTAs, there were a number of more sinister motives. First and foremost were the vast possibilities for political corruption and clientelism. In line with Stefano Farne,<sup>31</sup> we could argue that the massive process of privatizations that swept Colombia and other Latin American countries during the 1980s and 1990s and the ensuing drive to incorporate meritocratic hiring practices in public entities led to a significant reduction in the number of jobs that were available based on political patronage. The expansion of CTAs, especially the hundreds that obtained contracts with public entities,<sup>32</sup> opened up a new sphere for political influence and enrichment and a phase of legal shutdown as many Congressional proposals to reform the CTAs were unceremoniously tabled, lest the farce be terminated.<sup>33</sup>

Alongside the chance to foment old lines of patronage and corruption, the CTA model allowed businesses to save substantial money on wage costs. Relative to directly hired workers, the CTA model allowed enormous savings. There were no requirements to pay parafiscal contributions, weekend pay rates, nocturnal rates and prior to the 2010 and 2011 reforms, social security contributions, offering savings of up to 50% in overall wage costs. Relative to Temporal Service Agencies (ESTs), one calculation estimated that CTAs could save between 12 and 15% of the overall wage costs paid: 9% saved on the required transfers to Colombia's parafiscal contributions and a further 4-5% saved from not having to pay the commission charged for the administration of the wage bill.<sup>34</sup> However, such estimation is highly conservative given the fact that the CTAs, prior to the 2008 reform, were not required to pay the fees for unjust dismissal, and they allowed for significant savings by conveniently avoiding the appearance and costs associated with any CBAs.

<sup>31</sup> Farne, Stefano. 2008. Op cit., p.267.

<sup>32</sup> Especially, in the health industry, after Decree 536 of 2004, which opened up the possibility that state-owned social enterprises could utilize third-party contracts with external operators.

<sup>33</sup> Farne, Stefano. 2008. Op cit., p.267.

<sup>34</sup> See: Farne, Stefano. 2008. Op cit, p.268.

What's more, CTAs benefitted from numerous tax reductions, which made their administrative costs decidedly lower than conventional temp agencies.

### **The CTA Model and Precarious Work in Colombia's Port Sector**

Along with the tremendous explosion of CTAs in the health industry, particularly in the last few years of the 2000-decade, the port sector also underwent a dramatic labor regime reconstitution due to the rise of CTAs in the post privatization period. Indeed, the 1990s privatization process and the drive for renewed competitiveness across the Colombian economy, pushed forth together with the relative deregulation of the labor market, brought about a dramatic reformulation of the labor-capital relation. In the port sector, once marked by stable, relatively well paid employment, such changes were highly noxious to port workers and especially trade union activity. It is only in very recent years that there has been a renewal in worker struggles against this oppressive system of labor squeeze. Understanding how this renewal developed requires detailing the main protagonists involved in this struggle and the actual working conditions and rates of worker organization within which it occurred. Then we can finally examine what happened to ignite a new round of worker organization and union activity to confront and overcome the perpetuation of non-standard labor hiring practices.

### **Actors**

**The firm at the top of the ladder at Buenaventura's main seaport, and the one under discussion in this report, is** The Regional Port Society of Buenaventura S.A., *Sociedad Portuaria Regional de Buenaventura S.A.* (SPRBun). This firm was constituted in December 1993, after the privatization of the State-owned port firm, Colpuertos (in 1991). The SPRBun originally signed a contract for the concession of the Buenaventura Port with the General Superintendent of Ports for a 20-year period, for the sum of US\$106,693 million. On the 30 May 2008, the Ministry for Transport of Colombia emitted the resolution 246 of 2008, which extended the concession until February 2034. The SPRBun, according to its webpage, moves "67.1% of all the cargo that passes through the port".<sup>35</sup> The SPRBun also has controlling shares of a number of port operating firms:

- a) TECSA (*Terminal Especializado de Contenedores de Buenaventura S.A.*). The SPRBun has a 52% share in this firm;
- b) ZELSA Ltda( *Zona de Expansion Logistica*). The SPRBun has a 99.9% share in this firm;
- c) *Sociedad Portuaria de Caldera S.A.* (SPRBun owns 51% of its capital);
- d) *Socieda Portuaria Granela de Caldera S.A* (SPRBun owns 51% of its capital).

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<sup>35</sup> See: [http://www.sprbun.com/documentos/INFORME\\_GESTION\\_FINANCIERO\\_NOTAS\\_2010\\_SPRBUN.pdf](http://www.sprbun.com/documentos/INFORME_GESTION_FINANCIERO_NOTAS_2010_SPRBUN.pdf) (accessed on 2 November 2012).

<b>FIRM</b>	<b>Operational income* (millions of Colombian pesos)</b>	<b>Net profits* (millions of Colombian pesos)</b>
TECSA	63.665.967	11.636.18
ZELSA	9.141.078	1.954.5
Sociedad Portuaria de Caldera	22.133	2.959
Sociedad Portuaria Granela	8.692	2.927

Data taken from the financial reports of SPRBuen (2011-2012)

\* Combining totals for 2nd Semester 2011 and 1<sup>st</sup> semester 2012

As well as the SPR terminal, there are also three other specific port terminals with their respective Regional Port Societies.<sup>36</sup> Muelle El Bosque S.A., also commonly known as Muelle 15, is the first 100% privately owned port terminal in Colombia. It has port installations in Cartagena and Buenaventura as well as possessing a Logistical Center in Cartagena.<sup>37</sup> The firm in Buenaventura employs roughly 300 workers. In mid-November 2012, this firm merged with the port societies owned by Colombia's multi-Latina cement company, Grupo Argos. This newly formed firm will count on seven port terminals in Colombia (four located in the Atlantic coast, two in the Pacific coast, and one along the Magdalena River).<sup>38</sup>

Muelle 13, owned by the Grupo Portuario S.A., specializes in the unloading of steel and other bulk merchandise (coal, general cargo, minerals, loose cargo, and automobiles). It employs approximately 60 workers in Buenaventura. TCBuen S.A., (Terminal de Contenedores de Buenaventura) is in charge of the construction and administration of the new container terminal in Buenaventura. The Spanish firm, Terminal de Contenedores de Barcelona S.L. will operate this new terminal in association with the Regional Autonomous Corporation of Valle (CVC), the Government of the Department of Valle del Cauca, the Municipal Mayor's Office of Buenaventura, and other private firms located in Buenaventura.<sup>39</sup> This terminal began operations in 2010 and specializes in receiving (loading and unloading) containers; daily there are approximately 700 employees contracted by the firm Data Control.

<sup>36</sup> Nonetheless, as a point of clarification, this study concentrates solely on the main port society, the SPRBun and the labor relations found there.

<sup>37</sup> See: <http://portal.elbosque.com/en-us/qui%C3%A9nessomos.aspx> (accessed, 11 November 2012).

<sup>38</sup> See: "Grupo Argos, fusion en los negocios de servicios portuarios". *Portafolio*, 16 November 2012, [www.portafolio.com](http://www.portafolio.com) (accessed, 16 November 2012).

<sup>39</sup> See: <http://www.ccc.org.co/archivo/revista-accion/090/25.html> (accessed, 11 November 2012).

Moving back to firms involved in activities at the SPRBun port terminal, alongside the principal administrative and operating firms, there are a number of other private enterprises involved in specific functions and port operations. Some of the main ones are:

- Serteport (Servicios Tecnicos Portuarios S.A.). This is a Medellin-founded Stevedore company that operates in all four principal ports of Colombia.
- Accion S.A (a Temp Service firm). In Buenaventura this firm has been engaged in numerous activities, but recently it is in charge of cleaning.
- Ciamsa is a sugar-exporting firm based in Cali. This firm has a total of 130 employees (administration, logistics, and loading for export. In Buenaventura its installations allow for the storage of 16,000 tons of loose sugar and 12,500 tons in sacks.<sup>40</sup> Many workers interviewed claimed that Ciamsa utilized other temp agency firms as a means of avoiding its full contractual obligations with employees. One of the firms mentioned was Ocuservi.
- Ocuservis (a Temp Service Firm) is based in Cali, which offers outsourcing services. In Buenaventura, this firm has been active since 2001.
- Nueva Calidad (CTA) focuses on cleaning activities in the port.
- Intermodal. This firm offers a variety of port-related services (storage, manipulation, inspection, maintenance, repair of containers, and tracking of containers.
- Pilotos Practicos del Pacifico S.A. Pacific Pilots Ltd. This firm offers a number of services related to the appropriate positioning of a cargo ship as it arrives at a port; ship berthing; docking; transporting ships from one wharf to another; and so forth.

## Trade Unions

Presently, there are a number of unions present at the SPRBun terminal, but only three are officially registered and have some degree of union history and practice, even though their present role as trade unions is quite a distortion of what they actually represent.<sup>41</sup>

1. Sintramaritima (National Union for Cargo Handlers at Colombian Seaports) has roughly a 20-year history and is present at the Buenaventura port. Although this union makes a pretense of having a national reach, it only has a union office in Buenaventura and as such should not be counted as a national union. Since privatization, Sintramaritima, has confronted the massive chain of labor intermediation and as a means of “surviving,” its president, Harold Alegria, has opted to utilize the models of CTAs and, more recently, union contracts<sup>42</sup> as a means of ensuring that the union does not fade into non-

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<sup>40</sup> <http://www.ciamsa.com/index.php> (accessed on 7 November 2012).

<sup>41</sup> Sintraalpar is a union in name only. It has no elected Directive Board and no formally affiliated members. Simbraseim is also, in reality, but a semblance of a union as its members are not formally affiliated and aren't required to pay dues.

<sup>42</sup> It is important to specify that the *contrato sindical* (union contract) in Colombia is not a collectively bargained agreement. It is a mode of labor intermediation officially backed by the leadership of a firm-level union.

- existence. Sintramaritima is affiliated with the CUT, Colombia. It claims to have 1212 affiliates nationwide, although numerous Buenaventura port workers, as well as members of Union Portuaria, state that these “affiliates” are actually workers who have signed up as casual laborers as a means of getting rudimentary work through past and present Sintramaritima union leaders.<sup>43</sup>
2. Simbrasemar (Union of Laborers, Stevedores, and Auxiliary Services of Maritime Firms). At the beginning of 2011, Simbrasemar was negotiating a union merger with Sintramaritimos. As of December 2012, this merger had not come to fruition. Like Sintramaritima, this union has long been associated with the model of labor intermediation, with the president and director’s board having close ties with many of the firms involved in “hiring out” workers for the principal operating firms. Neither Simbrasemar nor Sintramaritima has attempted to negotiate formal lists of demands as the first step towards signing a CBA. It appears that worker representation in the eyes of the union hierarchy in both these unions goes no further than attempting to attain work for the members; working conditions and pay come at a distant second on the list of priorities. Sintrabrasemar currently counts 510 members, although as with the Sintramaritima case, these members are passive; neither of these two unions undertakes any type of union organizational activities or any form of union representation for its members and, as such, they are unions in name only.
  3. Union Portuaria (UP), initially consolidated in Cartagena in 2009 after a six-year process of planning, discussion, and worker consultation, the UP had approximately 300 members at the time of its Caribbean inauguration. The elected President, Javier Marrugo, ex unionist of Sintramaritima and current pensioner, was the lynchpin in the efforts to create a new national level union from 2002 onwards. Marrugo, with the support of the Solidarity Center, began a series of nation-wide visits to the main Colombian ports in an effort to drum up port-worker backing for the formation of port-based UP sectional offices. In Buenaventura, after much on-the-ground union canvassing, port workers came together to attend numerous assemblies (in 2006, 2007 and 2008), which were organized to discuss the formal creation of a union office of the UP in Buenaventura. Roughly 300-400 people participated in these assemblies, which focused on the need to promote union unity in the port sector nationally, via the creation of a truly national port workers’ union that would have union offices in the main Colombian ports. Furthermore, discussion revolved around the need to reinvent what unionism meant to port workers, after the long-winded saga in which many local union leaders had unscrupulously veered into the role of middlemen

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<sup>43</sup> Comment made during an interview with the President of UP-Buenaventura, Jhon Jairo Castro, in Buenaventura, 3 October 2012. It was also reiterated in interviews with Fabio Arias, Fiscal of the CUT-National, Bogota, 9 October; and with Jose Luciano Sanin, General Director of the ENS, Medellin, 12 October 2012.

and hoodwinked affiliated workers in the complex web of labor intermediation.

As well as the many protagonists from the employer-employee spheres, state apparatuses and officials have played a key role in permitting, perhaps implicitly, the expansion of non-standard labor contracts and anti-union practices, as well as, more recently, attempting to regulate more visibly the labor relations at the port. The transition from the Uribe to the Santos' presidency in 2010 and the latter negotiation and signing of the Labor Action Plan between President Obama and President Santos impelled a major reconfiguration of the Labor Ministry in Colombia, both in terms of its institutional reach and capabilities and its institutional image and objectives. Indeed, as stated in its institutional homepage, the new Ministry,

*“. . . has nothing to do with the previous dispatch, which was dedicated to resolving confrontations, to authorizing mass dismissals and to assuming passive attitudes in the face of the many gender inequities associated with the past.”<sup>44</sup>*

The restructuring of the Ministry and its revamped role in upholding labor rights throughout the country makes it central to the case study of non-standard work contracts and worker unionization at the SPRBun port terminal in Buenaventura. Institutionally, the Ministry, after merging with the Ministry of Health to create the Ministry of Social Protection in 2002, was given back its core focus on work and the labor market, becoming once again the Ministry for Labor in 2011. The Ministry is now conformed by a Minister for Work and two Vice Ministers, one for Employment and Pensions, the other for Labor Relations, as well as having a Central Directory in Bogota, alongside Territorial Directories in each of the country's 32 departments. The Ministry is also partially responsible for four government entities.<sup>45</sup>

## Research Methods

Since January 2012, the SPRBun port terminal in Buenaventura has been the scenario of two energetic work stoppages and strikes, something that has not occurred since 1997. These mobilizations were aimed at pressuring for the formalization of work at the port, after years of labor intermediation and processes of inter-firm outsourcing as a means of placing downward pressure on wages and working conditions. In order to get inside the Buenaventura case study, this research combined numerous formal interviews with key actors involved either directly or indirectly in this labor dispute, as well as more informal conversations, particularly with unionists and non-unionist workers at the port including:

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<sup>44</sup> See: “Un ministerio modern y humano”, <http://www.mintrabajo.gov.co/el-ministerio/quienes-somos/presentacion-del-ministerio.html> (accessed: 7 January 2013).

<sup>45</sup> Respectively, SENA, Colpensiones, the Unidad Administrativa Especial de Organizaciones Solidarias, the Superintendencia de Subsidio, and the Red de Observatorio de Mercado de Trabajo.

### **With Local Unionists** (interviews)

- \* The President of Union Portuaria-Buenaventura
- \* The General Secretary of the Union Portuaria-Buenaventura
- \* Six women unionists who work as "tarjadoras" (tallymen/women)
- \* Five male "estibadores" (stevedores)
- \* One wincher
- \* One female "oficinista" (person charged with registering merchandise)
- \* One male cleaner
- \* the secretary of the Union Portuaria-Buenaventura

### **Focus Group Session**

- \* With 32 members of the Union Portuaria-Buenaventura

### **With National Union Leaders**

- \* Fabio Arias (Fiscal, CUT-National)

### **Non Unionist Workers (inside the port)**

- \* Male stevedore in the coffee section
- \* Male cleaner in the grain section
- \* Female cleaner in the grain section
- \* Female "distributor" in the grain section
- \* Male security supervisor

### **Colombian Government Officials**

- \* David Luna (Vice-Minister for Labor Relations)
- \* Stella Salazar (Sub Director of Territorial Gestion of the Ministry of Labor)
- \* Giovanni Saavedra (Director of the Department for Inspection, vigilance and Control,  
Ministry of Labor, Valle de Cauca)
- \* Oscar Gutierrez Guateca (Head of Labor Issues, Vice-presidency of Colombia)

### **US Government Colombia**

- \* Andrea Aquila (US Embassy in Bogota; Economic and Social Issues)

### **Others**

- \* Luciano Sanin (General Director of the National Union School of Colombia)
- \* Carlos Guarnizo (Solidarity Center of the AFL-CIO in Bogota)

In addition to the many interviews conducted during an almost three week period in Colombia, the research benefitted from the author having worked at the National Trade Union School of Colombia (*Escuela Nacional Sindical: ENS*), in a period during which researchers conducted a diagnostic study of decent working conditions in the port sector of Colombia. This study, financed by the AFL-CIO Solidarity Center in Bogota, formed the basis of the author's understanding of the working conditions and the prevalence of indecent work in the port sector, particularly in

Buenaventura. Complementing this in-depth study, the researcher made a detailed literature review of the Colombian port sector, focusing especially on newspaper articles from the main national newspapers: El Tiempo, El Espectador, Semana, as well as the principal business magazines of the country: Portafolio and Dinero.

### **Union Revitalization and Worker Protest in Buenaventura, Colombia**

1993 was the year in which the Colombian state formally relinquished its control of the country's ports. This process was pushed forth as part of the hegemonic regional policy discourse and the Washington Consensus as a means of lightening the state's economic load and providing much-needed resources to pay for the burgeoning foreign debt.

Colombia's ports had been under state control since 1959, run and administered by the firm *Colpuertos*. This firm was set for liquidation with the passing of Law 1 in 1991. The new Statute for Maritime Ports outlined that Regional Port Societies (RPS) (*Sociedades Portuarias Regionales*) would administer the country's ports and, initially, nine such concessions were obtained by a mixture of businesses and public entities. These partnerships were urged in order to expand the activities and efficiencies of the country's ports: introducing new technologies, protecting the environment, using beaches efficiently, and reducing port costs.<sup>46</sup> Part of the process of reducing port costs was the apparent need to downsize the workforce and flexibilize the labor regime. Indeed, the rationalization of staffing levels in previously public entities has been one of the main calling cards of multilateral entities, such as the World Bank (WB) and the Inter-American Development Bank (IDB). In the Colombian case, the quick fire dismantling of *Colpuertos* implied the termination of over 10,000 employee contracts.<sup>47</sup>

Many of these workers were rehired by the newly founded RPS or by the numerous operating firms that began to appear from 1993 onwards. However, if they were hired, the conditions were markedly different to those that the majority union, *Sintrapuertos*, had upheld during the period of *Colpuerto's* monopoly of the port sector. First and foremost was the new legal framework governing the period of employee hiring. With the passing of Law 50 of 1990, firms could now hire workers for set periods, rather than the "indefinite" contractual period set out in the CST. Secondly, the reconstitution of port operations and management opened the way for the expansion of outsourcing; particularly that which involved labor intermediation. CTAs became one of the most lucrative ways of fomenting such processes. The Buenaventura port, perhaps more than any other of the country's principal ports, was the most affected by the privatization of *Colpuertos* and the subsequent revamping of labor relations. As such, examining the Buenaventura case study is a good way of comprehending the dynamics of the workers' struggles against changed working and living conditions.

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<sup>46</sup> Conpes 2680 (1993), *Plan Nacional de Expansión Portuaria 1993-1995*, Ministerio de Transporte, Republic of Colombia.

<sup>47</sup> According to Colombia's leading national newspaper, as of 1993, 7,700 port workers had been retrenched and a further 2,740 were awaiting retrenchment. See: El Tiempo (1993), "Privatización de los puertos: A toda vela", 2 March, [www.eltiempo.com](http://www.eltiempo.com)



### **Buenaventura: The Systematic Push for Labor Degradation**

Buenaventura is located on the Pacific Coast of Colombia, on the left side of the Occidental Mountain range. This city is predominantly devoted to the port industry, with few alternative economic opportunities available. The region has experienced massive population growth in the past few years. According to the National 2005 Census, there were 74,843 people residing in this municipality, and this was expected to grow to over 360,000 by 2010.<sup>48</sup> Buenaventura has a homogeneous ethnic composition with almost 90% of the population identifying itself as Black, Mulato, Afro-Colombian, or Afro-descendent.<sup>49</sup> The city is plagued by poverty and unemployment. For 2010, DANE calculated that there was a 35.9% rate of Unsatisfied Basic Needs (NBI) and a whopping unemployment level of 63%, for June 2012, according to the local Chamber of Commerce.<sup>50</sup> Perhaps more than any other factor, it is the extreme level of structural labor market discordance that hinders attempts to improve the working situation of the thousands of port workers.

The many streets surrounding the port's operations are perpetually inundated with people either biding their too plentiful "recreational" time or partaking in what is colloquially termed, *el rebusque*, what could tentatively be translated as "the daily rummage for sustenance." The expansion of labor intermediation via a host of *empresas de papel* (fictitious paper firms) was, to some extent, a natural progression, as many local wheelers and dealers took advantage of the local reserve industrial army to represent them on the informal market of worker hire (by the hour, for piecework, or for the day). This problem of informal dealings is compounded by the strategic importance the Buenaventura port plays in the illegal economy. Due to the city's geographic location and the precarious socio-economic situation of its residents, it has become a strategic corridor for the macro-economy, particularly as one of the key points from where drugs and laundered money can be exported and imported.

These multiple crossings of the illegal and informal economies further complicate the avenues of pressuring for more decent working conditions in the port, and they have allowed for the expansion of cost-cutting labor practices without adequate state regulation and monitoring. Even though such practices often involve small and even one-person firms, the firms controlling the ports' management and operations are the primary agents driving such a system. In the Buenaventura Port, the new RPS was made up of capital distributed in the following manner: 83% private funds (importers, exporters, port operating companies, naval line operators, export workers and other "natural" people); 15% belonging to the Mayor's Office of Buenaventura; and the remaining 2% belonging to the Ministry of Transport. Once this new company began operations in 1993, it set about restructuring the pre-existing labor regime. Following the dictates of the World Bank,<sup>51</sup> the SPR-Buenaventura set about trimming the core labor force so that basically the direct

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<sup>48</sup> DANE, Boletín Censo General 2005: Buenaventura, [www.dane.gov.co](http://www.dane.gov.co).

<sup>49</sup> DANE, Boletín Censo General 2005, op cit.,

<sup>50</sup> See: <http://www.mintrabajo.gov.co/marzo-2012/247-mintrabajo-y-alcaldia-de-buenaventura-firmaron-acuerdo-por-el-empleo-de-la-ciudad.html> (accessed on 5 November, 2012).

<sup>51</sup> See: World Bank. Port Reform Tool Kit. Module 1: Framework for Port Reform.

employees consisted of executives, administrative employees, and specialized operators. All the logistical processes involving the loading and unloading of ships and containers came under the control of primary port operating firms. These firms directly outsource labor and services from smaller firms, often using EST and CTAs.

The principal port operating firms are in charge of all the major services undertaken in the maritime terminals: pilotage, tug-boat services, berth and moor tie-up, opening and closing of storage facilities, loading and unloading of cargo, tally, fastening of boats and ships, recognition and classification of cargo, and so forth. TECSA S.A. is perhaps the most visible and important of the main operating firms. According to members of the UP, TECSA employs roughly 320 workers in the Buenaventura port, but it is also said to be linked to many of the smaller outsourcing firms in the port and, as already noted, TECSA is controlled by SPRBun. Previous to the UP-led worker struggles and mobilizations in 2012, TECSA did not directly hire any of its workers; they all worked for TECSA but were contracted by intermediary firms or CTAs, as were the roughly 4000 other workers laboring at the port. And TECSA is the most visible of the operating firms deeply involved in chains of labor intermediation. The following section will delve into the breadth of such practices and focus on the manner in which they have created a panorama of worker suffering at the principal Buenaventura seaport

### **Non-standard and Precarious Work at the Buenaventura Port**

As noted by numerous labor scholars, having extensive labor laws are necessary but alone they count as mere window dressing if not supported by effective mechanisms to ensure compliance and enforcement.<sup>52</sup> This holds particularly true for Colombia. Some have argued that the overall extent of labor law deregulation was quite placid in the early 1990s, based on the fact that Law 50 of 1990 (Labor Reform), which existed to counteract the new flexibilities given to businesses to hire and fire by improving compensation for unfair dismissal and constraining the degree to which temporary employment agencies could be used,<sup>53</sup> was laxly put into effect. Such re-regulatory mechanisms are only effective to the degree to which they can be implemented on the ground, in the concrete labor relations taking place across the country. The early and pervasive use of labor outsourcing in the newly privatized port sector exemplified the major discord between the written labor law and the labor law in practice in Colombia. Indeed, a popular Colombia saying states, “*hecha la ley, hecha la trampa*” (when the law has been made, so has the means of evading it). Analyzing the spread of non-standard labor relations in the Buenaventura port will help us to comprehend how such semi-informal (and indeed normatively

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<sup>52</sup> See: Anner, Mark. 2008. “Meeting the challenges of industrial restructuring: labor reform and enforcement in Latin America”. *Latin American Politics & Society*, 50(2), pp.33-65; Burgess, Katrina. 2010. “Global Pressures, national policies, and labor rights in Latin America”. *Studies in Comparative International Development*, 45, pp.198-224; Portes, Alejandro. 1994. “When More Can Be Less: Labor Standards, Development, and the Informal Economy”. Cathy A. Rakowski (Ed.), *Contrapunto: The Informal Sector Debate in Latin America*, New York: State University of New York Press, pp.114-129.

<sup>53</sup> Burgess, Katrina. 2010. Op cit., p. 216.

illegal) processes of labor flexibilization drastically weakened worker organizations in the port sector and led to deplorable working conditions.

In Buenaventura, the privatization of the port and the subsequent flexibilization of working conditions were even more destructive than in the other principal port cities of Colombia (Cartagena, Santa Marta and Barranquilla). Unlike the first two cities, Buenaventura does not have an established tourism sector.<sup>54</sup> Nor does it benefit from a diverse industrial structure, as does Barranquilla. Thus, this mid-size city is highly dependent on the port industry. Nonetheless, the massive levels of unemployment in Buenaventura indicate the inability of the main port and the other minor ports to cater to a sufficient portion of the economically active labor force. According to the Labor Market Observatory of the local Chamber of Commerce for 2010, of the roughly 360,000 residents in the city, 284,069 are of a working age. While during the pre-privatization period there were roughly 10,000 employees at Colpuertos' Buenaventura port, in 2012, after years of modernization and downsizing, this had fallen by nearly 60%, with roughly 4000 people working at the main port terminal. There are a significant number of workers laboring in the many export-processing zones (EPZs) located around the port installations, as well as many people employed by public entities directly responsible for overseeing and supervising the industry (especially the DIAN, and the Direction for Antinarcotics of the National Police Department). Nevertheless, the main industry and local employer is the port, both in terms of its direct and indirect demand for labor.

### **Subcontracting Workers at the Buenaventura Port: High Profits, Low Worker Stability**

Buenaventura appears to have been the laboratory for labor intermediation in the Colombian port industry. While diverse firms began their incursion into the sector almost immediately after privatization, Buenaventura was the port of most frenetic entrepreneurial activity. The vastness and depth of "mediating" firms is lost if one only examines the main players in the port's operations and management. SPRBun is the main controlling entity, sitting on top of the pyramid of port operations and hiding behind a veneer that formally assigns it responsibility only for the port's administration. In the words of its CEO during a 2011 interview, in line with the stipulations of Law 1a of 1991, the SPRs are "only responsible for the administration of the ports . . . we are only administrative companies..."<sup>55</sup> When one considers the SPRBun's controlling share in the terminal's main operating firms, principally TECSA, such a claim becomes untenable. Beyond the SPRBun and the already listed primary operating firms, there are upwards of 680 other private firms whose activities are directly concentrated in the Buenaventura port.<sup>56</sup> Beyond these at

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<sup>54</sup> Cartagena is the country's second most important city in terms of non-Colombian tourism, after the capital Bogota. For January 2012, 13.6% of all foreign tourists traveled to Cartagena. See: Ministerio de Comercio, Industria y Turismo, Republica de Colombia. 2012. *Informe turismo, enero 2012*. [www.mincomercio.gov.co/publicaciones.php/id=16590](http://www.mincomercio.gov.co/publicaciones.php/id=16590) (accessed 3 November 2012).

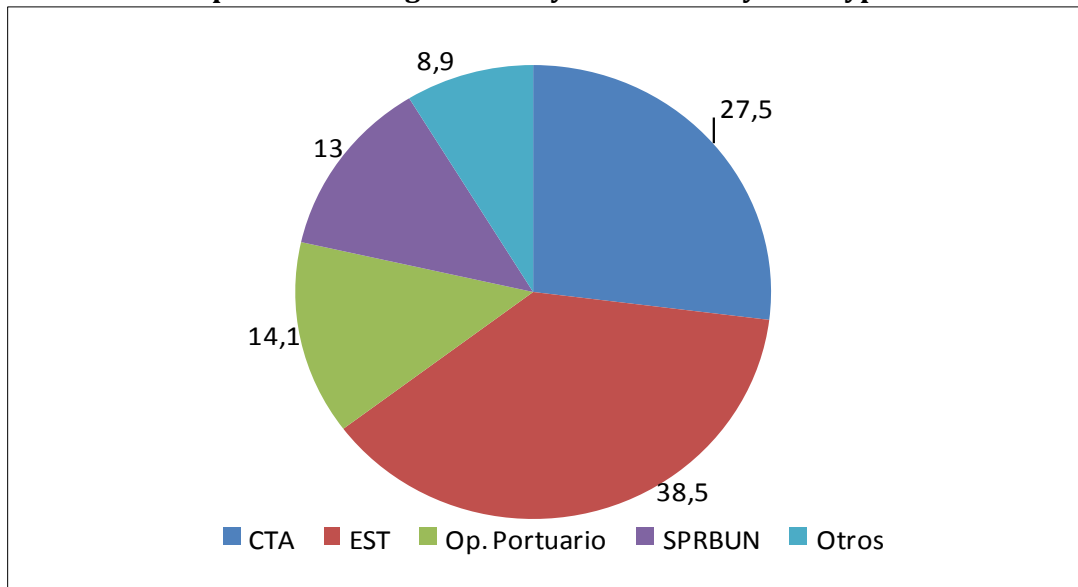
<sup>55</sup> Interview conducted by the ENS' researcher, Juan Diego Gonzalez, in July 2011 in Buenaventura.

<sup>56</sup> Indeed, as of July 2011, there were 700 firms, registered with the local Chamber of Commerce, directly involved in port-related activities. See: ENS. Unpublished. *Condiciones de Trabajo Decente de los Trabajadores de los Puertos de Colombia (Santa Marta, Barranquilla, Cartagena y Buenaventura)*, research document awaiting final publication.

least semi-formal firms,<sup>57</sup> any number of informal and indeed, sole-person firms advance the already spiraling chain of intermediation.

According to the results obtained from the ENS survey,<sup>58</sup> which sampled 195 workers from various occupations at the SPRBun-controlled port terminal, 66% of all workers were subcontracted by either a temp employment agency (EST) or a CTA. Only 27% of the workers (or 52 workers surveyed) had a direct labor contract with either the SPRBun or one of the main port operating firms.

**Graph 1. Percentage of surveyed workers by firm-type**



Taken from ENS. Unpublished. p.28.

The vast number of labor intermediation firms existing at the SPRBun's port terminal is not solely the result of an all-inclusive modernization and efficiency drive in which core business activities are undertaken by the main port operating firms (or by the SPRBun itself), while peripheral or complementary activities are outsourced to specialized firms. As noted by a World Bank study on port reform, the

<sup>57</sup> One of the first steps towards business formality in Colombia is the registration of a firm before the local Chamber of Commerce. After this, the firm must pay both local and national taxes before it can claim to be completely "formal." Of course, a formally-constituted firm may undertake informal labor practices, generally by avoiding complete compliance with labor regulations, in terms of the payment of employer contributions to the social security regime, vacations, overtime, etc.,

<sup>58</sup> The ENS survey and fieldwork was conducted between April and September 2011. In total, port workers from the following cities filled out 699 conditions of decent work surveys: Buenaventura (195); Barranquilla (188); Santa Marta (186); and Cartagena (130). The research document is presently being revised and should be ready for publication by early 2012.

liberalization of Colombian ports did result in “large and rapid improvements in productivity, lower fees for port users, and very attractive returns for the concessionaries.”<sup>59</sup> However, such an affirmation completely bypasses the influence that labor intermediation contractors played in these cost-saving practices. 44.5% of the 195 workers’ surveyed in the SPRBun port terminal stated that they worked for a firm different than the one that contracted them. So the question must be asked: what role are many of these contracting firms undertaking apart from simple labor intermediation?

According to Colombian legislation, the only types of firms that can legally undertake labor intermediation are ESTs (Temp Service Agencies).<sup>60</sup> These firms can send employees to client firms where they will undertake core business activities. However, these employees can only work at the client firm for six months, which can then be extended for a maximum period of six more months (see article 6, Law 50). Furthermore, the EST must ensure that its employees are covered by the legal social security protections and the legal benefits associated with a labor contract. CTAs, once the prime culprits in institutionalizing labor intermediation and promoting the hegemony of non-standard work at the port, once regulated by Law 1429 of 2010, could no longer undertake labor intermediation that involved sending associated members to work in core business activities.

The great majority of the surveyed port workers have spent the main part of their adult life working at the port. Only 3.9% had worked at the port less than one year, with 19.1% having worked between one and five years; 70.7% of the surveyed workers had worked longer than 11 years. However, due to the great instability and lack of employee contracts, only 20.2% of all people surveyed work at the port on a permanent basis. These results imply a number of tendencies and working realities: many port workers in Buenaventura are often contracted by a firm different from the one they actually work for; they have little workplace and occupational stability; and contracts, if and when they actually exist, are generally of a short-term nature. Finally, neither SPRBun nor the principle-operating firm, TECSA, directly contract more than the bare minimum of workers. The CEO of SPRBun, which directly hires only 300 employees as well as another 80 employees who have temporary work contracts, confirmed this.<sup>61</sup>

The pervasiveness of labor intermediation, carried out in a manner outside the parameters of the legal norms, was still starkly evident more than one year after the ENS’ fieldwork was carried out. In interviews with five tallymen and women,<sup>62</sup> it became clear that TECSA S.A. continued to hire workers “through” outsourcing firms, even though these workers were undertaking core business activities and even though they had been working in this occupation for longer than the stipulated one-year maximum period. The means by which TECSA overcame legal impediments to such continual intermediation was by terminating the contract of one temp service firm and then hiring a new one. The tallymen and women would then be told to hand in their CVs to the new firm, and they would immediately

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<sup>59</sup> World Bank. Port Reform Tool Kit. op cit., p.2.

<sup>60</sup> Law 50 of 1990 and Decree 4369 of 2006 regulate the activities of ESTs.

<sup>61</sup> Interview conducted by the ENS’ researcher, Juan Diego Gonzalez, in July 2011 in Buenaventura.

<sup>62</sup> The researcher conducted these five interviews in Buenaventura on the 2 October 2012.

recommence their labors. It is important to note that the actual working conditions and managerial hierarchy in the port did not change; TECSA, through its supervisory personnel, ensured that tasks were completed as required. Effectively, the outsourcing firms did nothing but permit TECSA to evade the payment of costs associated with directly hiring workers and paying their legal employee benefits. Even when an outsourcing firm's contract lasted longer than one year, the firm in question (Accion S.A.) would only hire its employees for a maximum 10-month period. After this period was reached, the workers would receive their severance pay and the other legal minimum benefits and then be told that the contract had ended. Generally, they had to wait either one or two weeks before the firm would tell them to come back to work as "new" employees. A port machine operator with 11 years' experience confirmed that this practice was quite widespread amongst the labor outsourcing firms in the port.<sup>63</sup> Ocupar Grupo Empresarial also used the 10-month contract followed by a small non-working period as a means of evading the legal regulations inscribed in Law 50 and Decree 4369 of 2006.

One curious piece of information that illustrated the fictitious nature of such outsourcing firms was a recent TECSA S.A company brochure that used a photo of two tallymen (one female) as the "image" of its firm. Both of these supposed TECSA employees were interviewed by the researcher and surprisingly, neither of these TECSA employees had a contract with the firm. Rather, they had been passed from one outsourcing firm to another, always undertaking the same task and always under the direct supervision of TECSA management.<sup>64</sup>

Such worker rotation "between" intermediary firms has been one of the persistent realities of working life at the Buenaventura SPRBun terminal ever since the liquidation of Colpuertos. These practices have significantly augmented the degree of worker instability and precarity as well as impede opportunities for worker organization. Nevertheless, blame for the initiation and expansion of labor intermediation also rests with many of the previous union leaders at the time of port privatization. Indeed, some old-time unionists were the first to create labor-intermediary CTAs in the port industry, especially in Buenaventura. These unionists, with their extensive understanding of the industry and their wide array of contacts with workers, were often very well placed to take advantage of the many business possibilities available by promoting fictitious cooperativism at the port.<sup>65</sup>

Certain union leaders have strongly supported the use of union-run CTAs as a better alternative to the private-firm model.<sup>66</sup> However, such a position remains highly questionable when considering the systematic disenfranchisement of workers' rights such a model has pushed forth. Furthermore, the heyday of CTAs as an ambiguously positioned legal cooperative model used to outsource labor services is over. With the expedition of Decree 2025 of 2011, which made adjustments to Law 1429 of 2010, it is illegal for CTAs to use personnel for the undertaking of

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<sup>63</sup> Interview conducted in Buenaventura, on 2 October 2012.

<sup>64</sup> The mentioned brochure can be seen in the appendix.

<sup>65</sup> This point was made during interviews with the General Director of the ENS, Luciano Sanin, conducted in Medellin, 12 October 2012 and a separate interview with the President of Union Portuaria (UP)-Buenaventura, Jon Jairo Castro, on the 3 October in Buenaventura.

<sup>66</sup> Comments made by Carlos Guarnizo, advisor to the Solidarity Center in Bogota, 28 September 2012.

permanent core business activities. With the normative and explicit prohibition of CTAs conducting labor intermediation, what type of adjustment has been made?

Unfortunately, after the expedition of new labor laws outlawing intermediation by CTAs, new business models have emerged and expanded that have, in many instances, continued labor intermediation. Particularly, two new business models—SAS (Societies for Simplified Actions) and union protection contracts with firms (*el contrato sindical*)—have spiraled in number in Colombia in recent years, especially as CTAs have first faced stricter regulations regarding their promotion of labor intermediation and, later on, prohibition.

### **New Forms of Sidestepping Government Regulations**

SAS came into existence with the promulgation of Law 1258 of 2008, which defines this business as a society constituted by one or various natural or juridical persons. Under this model, the firm's owners are only responsible for their own contributions. They are not held responsible for any labor-related obligations, thereby opening up further terrain for new practices of non-standard labor contracts. Alongside SAS, the rise of union protection contracts between a union and a firm is perhaps one of the unhealthiest developments in terms of the timid process undertaken to decrease labor intermediation in Colombia. Although union contracts of this nature have existed in Colombian legislation since 1950 (article 482 of the CST), it was only with the outlawing of CTA labor intermediation and a subsequent amendment to the model of union contracts that this modality of outsourcing workers' labor became attractive to the business world and to certain sectors within Colombia's union movement. When a contract is signed between a union and a firm, the union is held directly responsible for all the labor obligations. Additionally, the second Uribe Government (2006-2010) specifically stated that union contracts fell outside the labor laws on intermediation. In May 2010, the Ministry for Social Protection announced that: "contracts involving labor subcontracting have already been regulated by the Government via Decree 1429 of 2010."<sup>67</sup>

Signing a union contract implies ambiguity in the role of the union as the representative of its members, due to the intrinsic complication that comes with a union assuming a state of bicephaly (being employer and worker representative simultaneously). The very existence of this type of union as a contracting third party leads to a reduction in union autonomy as well as affecting union freedoms vis-à-vis the employer. Any labor demands will fall against the union, rather than the actual contracting firm, which ultimately benefits from the work or service performed. The union must also assume responsibility for the workers' registration with the social security system (as stipulated in article 483 of the Decree 1429 of 2010). Finally, in a complete about-turn in terms of the spheres available for union activity within a union contract, the Labor Room of Colombia's Supreme Court affirmed (see Sentence 13/94 of December 2010) that a union contract is of a merchant nature;

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<sup>67</sup> Ministerio de Protección Social, Boletín de prensa Prensa 57, 1 May 2010.

consequently, it cannot involve any collective bargaining.<sup>68</sup> As such the promotion of union contracts by firms can be seen as a subtle way of poisoning unions from within. A firm may only accept the existence of a union if that union agrees to sign a union contract. One of the key reforms of the original CST disposition regarding union contracts, set out in the Decree 1429, was that no longer must a union contract be approved by a union assembly. Now, the signature of the union's legal representative is sufficient for the union contract to be approved. Such a practice directly undermines the very structure of democratic unionism, opening the door to union leader corruption.

Since the reforms made to union contracts, this new mode of outsourcing has seen quite a rapid proliferation, although so far, in the port industry, this model has not been adopted. According to the ENS collective bargaining database, the number of union contracts in Colombia went from 53 in 2010 to 160 in 2011.<sup>69</sup> In the port industry and especially in Buenaventura, the growth of labor intermediation has led to more than just unstable work contracts. General working conditions have suffered perhaps more than in any of the other principal Colombian ports.

### **Non-standard Work Contracts and Precarious Working Conditions**

The ENS survey of working conditions in the Buenaventura SPRBun-run port terminal highlighted the vast degree of labor subcontracting taking place. And the widespread trend of de-laborization is most worrying. Of the 195 workers surveyed, only 57% responded that they possessed a work contract. The remaining workers labored under a different modality: 62.5% under a service contract (*orden de prestación de servicios*), which is of a commercial nature and does not include any employee benefits; 27.5% under a covenant of association with a CTA; 1.3% with a civil contract; and 8.8% under a different modality.<sup>70</sup> Of the workers who possess an actual employee contract, only 46 (or 23.6% of all surveyed workers) have a fulltime permanent contract. The remaining workers laboring under an employee contract do so for fixed time periods; the majority of these contracts last for three and four months, evidencing a very high level of employee rotation.

In terms of wages or income derived from working at the port terminal, a whopping 70.9% of surveyed workers received, as of mid-2011, a sum equal to or below the legal minimum wage (COP \$535,600.000) per month.<sup>71</sup> The majority of surveyed workers obtained a monthly income ranging from between COP\$50.000 and \$400.000, an amount precariously low, highlighting the pervasive worker exploitation at this terminal. However, in light of the exorbitant rates of unemployment and the post-privatization downsizing and outsourcing of labor, it is not surprising that wage levels are so low. In the words of one long-term stevedore:

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<sup>68</sup> The ENS' labor lawyer, Andres Felipe Sanchez, emphasized this point in an email correspondence with the researcher on 11 November 2012.

<sup>69</sup> ENS. 2012. Op cit., p.34.

<sup>70</sup> ENS. Unpublished. Op cit.,

<sup>71</sup> This sum is equal to the equivalent of roughly USD\$293.50 (conversion made via XE Currency converter) [www.xe.com/ucc/convert/?Amount=535.600&From=COP&TO=USD](http://www.xe.com/ucc/convert/?Amount=535.600&From=COP&TO=USD)



*“Wages are low here because the competition for jobs is so high. Outside the port terminal, people hustle and bustle in order to get one of the few jobs going; as such, the rates either go down or stay stagnant.”<sup>72</sup>*

In another interview with a 47 year-old stevedore, who had been working on-and-off at the SPRBun terminal for 17 years, hourly and piece rates were discussed. This stevedore had worked for a number of EST and CTAs in recent years, and he stated that prior to the recent prohibition of CTAs engaged in intermediation, stevedores generally worked 12 hour shifts and received only COP \$28,500, a rate of only \$2.375 per hour. With the regulatory change, in accordance with the Labor Action Plan Obama-Santos, the firms undertaking labor intermediation now had to comply with the stipulations of an eight-hour shift. Since this change, the stevedores working for Sotesport (previously called Cotesport) received COP\$19,000 for the eight-hour shift.<sup>73</sup> This worker, after so many years of hard labor at miserable wage levels, had no more than a few months of pension contributions to his name due to a combination of employer fraud, avarice, and a lack of adequate state regulation of the sector.

During another interview conducted with a 23 year-old male who had worked for six years at the SPRBun terminal, in a variety of occupations (stevedore, technician, transport auxiliary, and archive administration), he reiterated the poor working conditions encountered at the terminal. As a stevedore, this worker was hired per shift and earnings were based not on a set hourly rate but rather on the workers’ productivity. In other words, he and his co-workers were paid a piece-rate amount. As this was not conducive to hours worked, often the group charged with unloading or loading a container had to work as long as 16 hours straight, but generally the shifts lasted between 10-12 hours.<sup>74</sup>

In addition to long shifts for piece-meal rates, workers complained of the lack of adequate and real break time and the general lack of clear rules and regulations in terms of the supervision of work at the port. During the interviews with group one—the numerous tally women and the tallyman—these workers complained that they were obliged to work shifts of 12 and even sometimes 16 hours, even though in the port the maximum shift permitted was 10 hours. Although they were formally granted a 30-minute break time for lunch or dinner, the intensity of their jobs meant that they could not actually take a full break. Rather, they were required to eat while working, or make a choice between eating and going to the rest room; there was not sufficient time available to do both. Furthermore, during the period of heightened worker consciousness and mobilization (specifically in reference to the two strikes in January and July-August 2012), three of these women had their contracts terminated by the firm Colombiana de Servicios Portuarios Ltd., without due severance pay. According to these workers, after participating in the second port-workers’ strike in July-August, TECSA S.A. terminated its service contract with

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<sup>72</sup> Interview conducted inside the Buenaventura terminal, 4 October 2012.

<sup>73</sup> Interview conducted in the office of Union Portuario, Buenaventura, 3 October 2012.

<sup>74</sup> Interview conducted in the office of Union Portuario, 3 October 2012.

Colombiana, due to the fact that too many tally women had become members of the UP. Colombiana, in turn, cited the women for not having presented themselves for work three days in a row and decided to fire them due to such incomppliance. The fact that the women were legally undertaking a work stoppage, which had been made public and registered before the Ministry for Labor, counted little.

Perhaps one of the most worrying aspects concerning the labor regimes found at the Buenaventura SPRBun terminal has to do with the complete lack of rules or agreements concerning set wage rates per occupation. The ENS survey underlined the massive heterogeneity in terms of worker income per occupation. The two most prevalent occupations--wincher and stevedore--received monthly incomes that varied between COP\$100,000 to \$1.000,000. While certain differences could be explained by the hours worked or the different rates of productivity between individual workers and working groups, the piece-rate and hourly-rate differentials offered by different intermediary firms are the root cause of such disparity. The vast pool of available but unoccupied workers outside the terminal is the fuel that lights the fire for the intensification of worker exploitation, as it pushes downward the hourly, daily, and piece-work rates. Nevertheless the long chain of labor intermediation that begins from the SPRBun and works its way down is the engine that drives wages and conditions towards the miserable sphere in which they presently rest. And the piecework system, promoted throughout the port sector, is by far the biggest culprit when it comes to worker exploitation.

Stevedores working for a piecemeal rate (often between COP\$3-4,000 per worker for each container loaded or unloaded) generally tend to exceed the stipulated working hour limits, and they receive no compensation or income that is not directly related to the actual time employed in loading/unloading containers or boats. Stated in a more precise manner, "despite taking three or four weeks to complete the loading or unloading of a shipping embarkation, the stevedore will not be compensated for the time he/she has undertaken this labor. Instead he/she is paid for the exact weight of the goods loaded/unloaded, without any consideration for the time expended."<sup>75</sup>

### **Union Presence and Activity at the Buenaventura Port**

In light of the widespread state of worker precarity, the question of union presence and organization at the port becomes of paramount importance. With the privatization of Colpuertos, worker organizations were decimated. Many senior workers and unionists were offered retirement packages, and Sintracolpuertos (the main port-sector union) was disbanded. Since privatization, there has not been one CBA negotiated in the port sector, and permanent and direct working contracts have become the exception when once they were the rule. As mentioned in the introductory section, of the three officially registered unions, only the Unión Portuaria (UP) was interested in ending the long-term trend of precarious working conditions at the port and organizing workers as unionists, rather than as workers

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<sup>75</sup> ENS. Unpublished. Op cit.,

on a list from which to select casual laborers, as is the case with the two other unions' "members."

The UP proposal was geared towards representing and organizing workers on the basis of improving their concrete working conditions, especially in terms of pressuring for the formalization of their jobs and obtaining salary increases to ensure that their wages were more in line with the actual physical and intellectual labor they performed. With the assistance of the CUT-National, numerous unionist pensioners from Cali, as well as the continual political support and technical assistance of the Solidarity Center, the UP opened a union chapter in Buenaventura in 2009. At the moment of its formal creation, the Buenaventura office counted 120 members, the majority stevedores and wincheros as well as a few tallymen/women.

Initially, the UP-Buenaventura focused on fostering grassroots port worker support for the initiative and looked to unionize workers who were motivated by the cause and energetic about beginning the long struggle to improve the miserable working conditions at the port. In the words of the elected regional President, Jhon Jairo Castro, the local union strategy "concentrated not on unionizing vast numbers of port workers just for numerical importance. Rather, importance was placed on unionizing people who were committed to the cause."<sup>76</sup> Clearly, from the outset, the national port worker union proposal of the UP was centered on recapturing the seemingly lost cause of unionism in the port sector. As noted by a 54-year old stevedore and member of the UP, the difference between this national union and other unions was that "it was the only one that has looked to represent workers rather than firms."<sup>77</sup>

The opening of the Buenaventura UP chapter was followed by the establishment of port-based union offices in Santa Marta and Barranquilla and then, in late 2011, a fifth office was opened in Turbo, Antioquia, one of the principal export zones for Colombian bananas. There, roughly 70 long-term port workers joined the UP in an effort to collectively contest the poor working conditions in this city, which had been ravaged by paramilitary and guerrilla warfare and spiteful attacks on the population for decades. Nevertheless, as has been customary for many Colombian union initiatives, such initial fervor and hope for change was quickly tempered by the realities of anti-unionist sentiment. The many fictitious contracting firms that managed the chain of labor intermediation in the city specifically targeted the Turbo-based UP members. Most of the founding UP-Turbo worker members were dismissed from their jobs soon after the union was registered.<sup>78</sup> In Buenaventura, such employer and business reactions were slightly more poised but nevertheless active in constraining the space available to the union. As such, in order to survive and undertake union activities, the UP began a port-wide campaign to foment worker consciousness, concentrating on informing workers of their rights at work, and then on pressuring the SPRBun and TECSA to

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<sup>76</sup> Interview with Jon Jairo Castro, in Buenaventura, 3 October 2012, op cit.,

<sup>77</sup> Interview conducted in Buenaventura, 3 October 2012.

<sup>78</sup> See: WOLA. 2012. "Portuarios afrocolombianos estan atacados por la policia anti-motines", 31 August, [http://www.wola.org/es/comentario/portuarios\\_afrocolombianos\\_en\\_huelga\\_estan\\_atacados\\_por\\_la\\_policia\\_anti\\_motines](http://www.wola.org/es/comentario/portuarios_afrocolombianos_en_huelga_estan_atacados_por_la_policia_anti_motines)

formalize labor relations at the port. The following section will summarize and offer commentary on this campaign, highlighting both its successes and failures.

### **The Campaign to Formalize Work in a Sea of Informality**

Solely as a grassroots-driven process of union revitalization and reactivation, the Union Portuaria experience would have ended just as it began: with a whimper. In the context of enhanced global economic integration and the decades-long assault on unionism and job stability, any effort to organize and motivate workers collectively requires a multifaceted strategy and a combination of actors, scales, and cross-border solidarity. And for it to have any political reach and success, it must take advantage of political opportunities and conjunctures.<sup>79</sup> In the Colombian case, the long-drawn out and hotly contested ratification process of the US-Colombia FTA offered a window of opportunity for a consolidated transnational action network (TAN) between Colombian unions and labor activists and their US counterparts.

As in the negotiations and disputes leading up to the signing of the FTA between the USA and Central America-Dominican Republic (CAFTA-DR),<sup>80</sup> widespread complaints of the systematic violation of worker rights, particularly in the export-processing zones (EPZs) of the Latin American co-signing countries, coalesced into a united transnational union campaign to pressure for major reforms of the respective labor laws and the national governments' position vis-à-vis workers' rights and unionization. In the Central American case, this resulted in the inclusion of a labor chapter to the agreement (chapter 16), which states that the signing parties will "strive to ensure" that internationally recognized labor principles, especially those focusing on five main labor rights, will be upheld.<sup>81</sup> As well as these de jure-centered recognitions, the transnational labor advocacy pressure ensured that the FTA included a Labor Cooperation and Capacity Building Mechanism (Annex 16.5).<sup>82</sup> Of course, it would be foolish to equate more adequate labor regulations with better on-the-ground working conditions and improved protections and guarantees of workers' rights.<sup>83</sup> Nonetheless, without first having an improved normative threshold, the possibilities for better regulation of the labor market and broader protections for workers will remain highly precarious.

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<sup>79</sup> This point is critical and as well as being noted repeatedly during the author's fieldwork in Colombia; it was also frequently expressed by other Central and South American unionists when discussing their own country-wide campaigns to improve working conditions and enhance unionization. See: Anner, Mark. 2011. Op cit.,

<sup>80</sup> The CAFTA-DR FTA was passed by the US House of Representatives on 28 July 2005 and signed into law by the then US President George W. Bush on 2 August 2005. It includes El Salvador, Guatemala, Costa Rica, Honduras, the Dominican Republic, Nicaragua, and the USA.

<sup>81</sup> 1. The right to association; 2. The right to union organization and collective bargaining; 3. The prohibition of forced labor; Respect for minimum age employment policies and practices and the elimination/prohibition of the worst forms of child labor; and, 5.

<sup>82</sup> For a brief overview of some of the problems and benefits of this Mechanism, see: Doumbia-Henry, Cleopatra & Eric Gravel. 2006. "Free trade agreements and labour rights: Recent developments", in: *International Labour Review*, Vol.145, No.3, pp. 195-196.

<sup>83</sup> For critiques of the vast difference between norms and practices, see: Marshall, Adriana. 2007. *Explaining non-compliance with Labor Legislation in Latin America: A Cross-Country Analysis*. Geneva: ILO; and, Piore, Michael & Andrew Schrank. 2007. *Norms, Regulations & Labor Standards in Central America*, Studies and Perspectives Series. Santiago: ECLAC.

Following the Central American lessons, as well as those learnt from the various FTA negotiation and union lobbying experiences in Latin America,<sup>84</sup> the Colombian and US union movement vehemently opposed the FTA as it was perceived as awarding the Colombian state, and especially the two-term Alvaro Uribe Government, for its continued apathy in the face of the systematic violation of worker rights across the country. Indeed, the Uribe government's staunch anti-union sentiment and political stance effectively ensured that the Agreement would linger for five years in the US Congress, as broad sectors of the US union movement and NGOs such as WOLA, Human Rights Watch, USLeap, among others, in support of their Colombian counterparts,<sup>85</sup> undertook major political lobbying campaigns to convince political representatives that Colombia's horrid record on human and worker rights violations meant that without change, the FTA could not be sanctioned.

More than being an economic debate, it was a moral one, rooted in what Eddie Webster terms "humanitarian solidarity," a defensive strategy in which human rights violations activate moral outrage.<sup>86</sup> Colombia's workers, in this specific case, were framed as victims in need of state protection and international union support. Such a stance feeds off the rights-based discourse, which has been the counter face to economic globalization and liberalization.

After many years of intense union-NGO pressure and political lobbying against the FTA during the Uribe reign, the inauguration of the Santos Government in mid-2010 brought about new opportunities for the Colombian and US labor movements and their NGO supporters to move from denouncing labor violations to a position where they could propose new ways of protecting labor rights. Santos attained the Colombian presidency in the second round of elections on 20 June 2010, and he was inaugurated on the 7 August of that same year. While the Uribe governmental platform was based on division and a concerted attack on all parties and organizations that opposed the president's ultra conservative political-economic platform, Santos looked to promote conciliation and dialogue. This was confirmed by his proposal to form a cross-party coalition as a means of overcoming a congressional stalemate and obstructionism. His government looked to rebuild the international diplomatic relations that had been so thoroughly dismantled by Uribe's fanatical diatribe against human rights in Colombia and the foreign interventionists. Part of the Santos' strategy involved the nomination of his electoral running mate, Angelino Garzon, one of the founders of CUT Colombia and long-time unionist turned centrist-conservative politician, as Vice President. Garzon was charged with monitoring Human Rights with a particular focus on labor rights

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<sup>84</sup> Especially, the labor clauses or side agreements that form part of the NAFTA of 1993 (Mexico, Canada and the USA), and the MERCOSUR (originally, Brazil, Argentina, Paraguay, and Uruguay) signed in 1991, as well as the Chile-US FTA (signed in 2003).

<sup>85</sup> The main Colombian actors involved in the opposition movement to the US-Colombia FTA were the Polo Democrático (the leftist political opposition party), the three Colombian union confederations (CUT, CGT and CTC), the ENS, as well as a number of diverse social movement groups, and NGOs such as RECALCA, CENSAT Agua Viva, among others.

<sup>86</sup> Comment made by Edward Webster, the WITS University Emeritus Professor of Sociology during a Tele-Conferencing lecture, transmitted to Faculty of the Department of Labor Studies and Employment Relations, Penn State University, on 18 October 2012.

as a means of displaying the Santos' Government intention to improve union-government relations in Colombia after their historic Uribe-year lows.

Disentangling the US-Colombia FTA from its Congressional stumbling point attained preeminent importance. As such, the Colombian and US labor movements could now tap into the new spaces open for the discussion and dissemination of policy reform proposals, geared towards strengthening Colombian labor law and its enforcement. As this heterogeneous TAN continued lobbying it also brought together diverse policy proposals that focused on broadening the protections for workers and unionists in Colombia. These proposals were discussed and reworked by certain US Senators and Congressmen as well as by Colombian Congressmen and women, staff at the then Ministry for Social Protection, and staff at the Vice Presidents' dispatch. After much back and forth, the Obama and Santos governments formally agreed upon and signed the Labor Action Plan Obama-Santos in April 2011.

This plan became a side agreement to the FTA,<sup>87</sup> focusing on policy mechanisms needed to improve the situation of union and worker rights in Colombia prior to the formal Obama Presidential ratification of the Agreement. Without going into too much detail in terms of the intricacies of the Plan, and thereafter, its weaknesses and failure,<sup>88</sup> we can note that it contained numerous legal modifications and reconfigurations as a means of addressing 10 major themes. Furthermore, the Plan focused on improving the protection of labor rights and union activity and ending "illegal" labor intermediation, especially in five key economic sectors:<sup>89</sup> mining, African palm, the sugar cane industry, the cut-flower industry, and the port sector.

Perhaps the most positive aspect of the Labor Action Plan, beyond the specific institutional and legal reconfigurations it propelled, was its focus on increasing the presence and capacity of the state to intervene in labor relations to uphold labor rights where before they had been widely ignored by firms. The creation of the Ministry of Labor was perhaps the first and most emphatic step in that direction. But in terms of harmonizing the often-ambiguous terrain between norms and implementation, it was the plan to strengthen labor inspection that was most important. Under the specifications of the Action Plan, the Ministry was to hire 480 new inspectors,<sup>90</sup> 200 of which would be assigned to the five key sectors.

In the words of the Vice-Minister for Labor Relations of the Colombian Ministry of Labor, David Luna, the newly created Ministry:

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<sup>87</sup> The US-Colombia FTA was formally approved by the US Congress, (both the Chamber and the Senate), on the 12 October 2011. It then received the presidential sanction on the 21 October of the same year. In May 2012, the FTA formally came into effect.

<sup>88</sup> For a more detailed review of the Plan, see: ENS. 2011. "El Plan de Accion sobre Derechos Laborales. Una nueva frustracion?", *Agencia de Informacion Laboral*, October 2011, [www.ens.org.co](http://www.ens.org.co). For a defense of the Plan by the Colombian Government, see: "Action Plan Santos-Obama", 6 April 2012, [www.mintrabajo.gov.co/index.php/tlc-plan-de-accion-laboral/314-documentos/370-action-plan-santos-obama.html?showall=1](http://www.mintrabajo.gov.co/index.php/tlc-plan-de-accion-laboral/314-documentos/370-action-plan-santos-obama.html?showall=1) (sourced 25 September 2012).

<sup>89</sup> These sectors were selected for special attention and protection due to the multiple and continual labor rights' violations found in each of these industries. The Colombian labor movement and its US counterparts argued that unionists in these five sectors required additional protection.

<sup>90</sup> This specification was implemented via Decree 1228 of April 2012.

*“Had to act quickly and strongly but its personnel was insufficient. Due to this the Ministry, with Executive approval, widened its department of inspectors and improved their salary base. As of today, we have 100 new inspectors and by the end of 2012 we will have a further 100. In total, by the end of 2013 there will be 904 labor inspectors throughout the country.”<sup>91</sup>*

Broadening the scope for labor inspection and decreasing the possibilities for corruption, increasing salary rates for often overworked and under-paid inspectors are two of the policy proposals most roundly supported by certain international labor studies’ experts.<sup>92</sup> Nonetheless, even with this institutional strengthening of the monitoring and vigilance of labor relations, Colombia still remains notably short of reaching international standards for inspection. In line with the ILO Conventions 81 and 129 on Labor Inspection in Industry, Commerce, and the Agricultural Sector, Colombia should have up to 2000 labor inspectors to adequately cover the entire country.<sup>93</sup>

Moving on from the creation and strengthening of the institutional mandate of the Labor Ministry and its capacity to monitor and ensure compliance of the labor law, the Action Plan targeted illegal intermediation, especially in the five key sectors. As already mentioned regarding CTAs, the Law 1450 of 2011, via article 63 directly prohibits the misuse of cooperatives or other forms of labor intermediation that negatively affect labor rights. Furthermore, Decree 1228 of 2011 authorized the transfer of 100 labor inspectors to a special branch focusing solely on cases involving cooperatives, especially in the five key sectors. And finally, Decree 2025 of 2011 set out to clarify previous laws regulating cooperatives as well as harmonizing these laws. This decree was formulated to set out a more clear distinction between what could be termed “permanent core business” and “intermediation” as a means of more coherently addressing violations and abuses of workers’ rights. Furthermore, this decree clearly sets out the instances in which a cooperative would be found in violation of laws concerning intermediation.

Together with the many other normative and institutional reforms included in the Labor Action Plan, the stage was set for a new era in workers’ protections in what for decades was considered to be the world’s worst country in which to be a unionist. However, before congratulating the Santos Government for its vision in listening to domestic and international critiques in order to establish new parameters for labor relations, one must endeavor to see the ways in which the reconfigurations associated with the pressure to formulate a Labor Action Plan affected the conditions on the ground in Buenaventura. This task becomes two-fold. Firstly, we must ask the question: to what extent did the moral-based international campaign of union solidarity link to local actions of protest and workers’ organization based on discourses that proclaimed and demanded respect for the rights of port workers? Secondly, we must then determine the degree to which the institutional and legal changes made as part of the Labor Action Plan were

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<sup>91</sup> Interview conducted in the office of the Vice Minister David Luna, Bogota, 10 October 2012.

<sup>92</sup> See: Piore, Michael J. & Andrew Schrank. 2007. “Trading up: An embryonic model for easing the human costs of free markets”, in: *Boston Review*, [www.bostonreview.net](http://www.bostonreview.net)

<sup>93</sup> See: ENS. 2011. “El Plan de Accion sobre Derechos Laborales. Una nueva frustracion?”, op cit., p.3.

understood by workers and used as leverage in their demands. Finally, we must evaluate the extent to which these normative-institutional changes were actually enforced and upheld at the port.

### **Activating Worker Consciousness; Protesting Labor Precarity**

It would be one-dimensional to think that the discourse of rights only affects those people who move in the formal and upper echelons of the political sphere. Indeed, while much political rhetoric is couched in abstract conceptions of citizenship and rights, many grassroots movements have appropriated the discourse of rights and used it to leverage the state and to demand concrete changes.<sup>94</sup> In the Colombian case, grassroots worker protest has been quite prolific in recent years: for 2011 there was a total of 228 worker mobilizations of a diverse nature (including strikes, work stoppages, marches, sit-ins, and so forth); the highest number in over 20 years.<sup>95</sup>

In the ports of Buenaventura such broad national tendencies also took hold. With the consistent political and logistical support offered by the Bogota-based Solidarity Center, the newly-founded UP Buenaventura office also began to perceive major disjuncture in terms of the international importance of human rights in political discourse and government policy and the consistent violation of workers' rights at the port. Participating in a number of workshops financed by the Solidarity Center and undertaken by ENS' staff and union experts from the CUT, the port workers began to awaken to the fact that as workers they had rights and that, irrespective of the precarious socio-economic situation of the city, their rights were inalienable and should therefore be guaranteed by the Colombian state. These workshops had two broad objectives: first, the ENS labor experts explained the legal reforms associated with the prohibition of CTAs as business modes for undertaking illegal subcontracting and their ramifications for workers who had been or still were caught up in these chains of intermediation via CTAs. The ENS staff also explained and discussed with the workers present the legal norms associated with intermediation, so that workers knew of their rights and could then know when they were being contracted illegally, without the stipulated benefits. Second, both the ENS staff and the CUT delegates focused on the broader topic of labor rights (both as set out in International ILO Conventions as well as in the Colombian Constitution) and especially union rights.

These workshops were structured and designed to ensure that not only would the participants learn about the legality of labor relations in Colombia, but they would also be informed of the broader terrain of rights' discourses and especially, their inalienable quality. And, thereafter, workers would learn of the legal tools available to them to defend their rights, both through the union as well as individually, via the Tutelaje Right of Action (*Acción de Tutela*). Such workshops were designed and undertaken as a means of fomenting worker consciousness, so

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<sup>94</sup> For a more conceptual take on such scales of rights-based protest, see: Della Porta, Donatella & Sidney Tarrow (Eds.) 2005. *Transnational Protest & Global Activism*. USA: Rowman & Littlefield.

<sup>95</sup> Data taken from the ENS' *Dinamica Sindical* database, [www.ens.org.co](http://www.ens.org.co)



that workers would understand both their objective and subjective roles in capitalism and more clearly delineate the ways in which they were being exploited by the businessmen who propelled the complex chains of labor intermediaries as well as the principal operating firms and the SPRBun.

Many of the UP members in Buenaventura mentioned the union workshops as being the trigger that activated their motivation to participate in the latter protests and mobilizations at the port. In the words of interviewee six, a 48 year-old woman who had worked for a total of 21 years in different capacities at the port:

*“Sometimes you think that it is normal that the boss and the supervisors ride roughshod over you because you’re from the lower class; it’s normal that they tramp down on you. But when you hear someone tell you that this is not normal, that it’s not normal that you should have to ask for your rights; that you have rights and you need to make sure that these rights are respected, well, you begin to say, what? What was I thinking? Was I asleep? Well, after this, you begin to wake up and see things differently.”<sup>96</sup>*

Interviewee four also succinctly summarized the benefits that the workshops offered the UP unionists:

*“It’s a big plus when you can count on an organization that can provide knowledge to workers about their labor rights. This knowledge helps us to defend our personal patrimony. Just as the boss needs to find out the things that help him to be successful, us workers also need to find out our rights at work. Before joining the UP and participating in the workshops, I didn’t know that I had a right to health coverage, or that I had a right to a pension and to occupational risk insurance.”<sup>97</sup>*

Workshops, alone, however, will never be sufficient to foment a change in consciousness and ignite a sense of worker or class solidarity aimed at challenging the powers that be or the status quo at work. Many workers who were interviewed during the fieldwork spoke of the initial work stoppage in January 2012, as being perhaps the key instigator of a collective sense of enough is enough. The long-time and continuously intensified degree of worker exploitation at the Buenaventura port would eventually bring about a counter-reaction from within. Indeed, this is effectively the thesis at the basis of Marx’s and Engel’s analysis of the development of capitalism in the mid-19<sup>th</sup> century and the development of an international brotherhood/class of workers, set out in the Communist Manifesto, that would bring capital to its knees and to its end. More recent Marxist labor scholars have also argued of the cyclical nature of the capital-labor conflict as it is borne out across sectors and countries over many years and decades: the spatial shift has capital moving to escape increasing worker power (through unionization and the power of association), resting in new terrains of production with lower cost and less

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<sup>96</sup> Interview conducted in Buenaventura, 4 October 2012.

<sup>97</sup> Interview conducted in Buenaventura, 4 October 2012.

organized workers. With time, however, this process repeats itself because essentially, try as capital (and many sympathetic neo-classical economists) may, workers' labor-power cannot be treated as a commodity.<sup>98</sup>

Workers in Buenaventura's ports, despite the multiple structural impediments to worker resistance, could not withstand the perpetual race-to-the-bottom of their working conditions without eventually fighting back. As Marx prophesized, with time and continual exploitation, workers would come to see that they had "nothing left to lose, but their chains." The mere process of observing fellow workers publically protest at the appalling working conditions and the perverse chains of worker subcontracting that took place at the port allowed many workers to comprehend that their individual struggle to "get by" was really a broad collective one shared by all the workers there who were denied decent working conditions. It is for this reason that once this small protest and work stoppage began, it quite quickly drew in many spontaneous supporters and, at a later date, helped to ensure that more workers would begin to voice their demands in a collective and even contentious manner.

Although a few of the UP members had previously been members of Sintramaritima, they had never received union-centered training and educational processes that would help them to understand and better reclaim their rights at work. Indeed, as already noted, since the privatization of Colpuertos and the dismantling of Sintracolpuertos, unionism in Buenaventura had meant little other than a strange means of advancing or at least linking with the vast chain of labor intermediation. As such, apart from the significant on-the-ground and decades-long union training of the President of UP-National, Javier Marrugo, together with a few other mostly Cartagena-based UP members, there was a dearth of union knowledge and experience in Buenaventura. Furthermore, at the SPRBun port terminal, "real" unions were not expected or permitted to assume their roles as worker representatives.

At this terminal, the unwritten rule was that "workers must be thankful to the employers for work, irrespective of its quality. As the boss always states, "outside the port there are thousands of people looking for work."<sup>99</sup> Even the CEO of the SPRBun stated that unions at the port have functioned as go-betweens: "... all of them can manage to get something for their efforts . . . but none of them really knows how the port operates."<sup>100</sup> Under such pressing constraints, the elected leaders of UP's Buenaventura office faced an almost insurmountable task in pressuring for union freedom and the formalization of working conditions at the port. First and foremost, in the first two years of the UP's existence in Buenaventura, the elected leaders were not offered any spaces in which they could undertake dialogue with SPRBun and TECSA management. According to the Labor

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<sup>98</sup> See: Silver, Beverly. *Forces of Labor: Workers' Movements & Globalization Since 1870*. USA: Cambridge University Press, 2003; see also: Arrighi, Giovanni. "Marxist century, American century: The making and re-making of the world labor movement." In: Samir Amin, Giovanni Arrighi, Andre Gunder Frank and Immanuel Wallerstein (Eds.), *Transforming the Revolution: Social Movements and the World System*. Monthly Review Press: New York, chapter two.

<sup>99</sup> Interview six, op cit.,

<sup>100</sup> Interview conducted by ENS' researchers in July 2011 in Buenaventura.

Advisor to the Vice Presidency of Colombia, Oscar Gutierrez, whenever a member of the UP wished to organize a meeting with port management, the Vice Presidency would have to intervene and attempt to negotiate the visit. In his words, in the port sector:

*"It has not been possible that the employers accept, in real terms, union activity. Formally, they say that the workers can unionize but if they do so, the following day they discover that they no longer have a job."*<sup>101</sup>

Mr. Gutierrez also affirmed that efforts by the CUT to establish an ongoing dialogue with the SPRBun and the main operating firms had not come to fruition.

In such a climate of acrimonious and implicit anti-unionism, the UP was forced to adopt a different tactic as the only means of pressuring for change. In 2010, Javier Marrugo, on invitation from the Solidarity Center, travelled to Washington as part of an exchange program to help Colombian union leaders network and acquire new skills from US partnerships. The following year, the President of UP-Buenaventura, Jhon Jairo Castro, together with a small delegation of union leaders from the sugar cane sector, education sector and private security industry, was invited by the AFL-CIO to travel to Washington, to denounce the continued violation of labor rights and the hostile and implicit anti-unionist stance undertaken by all employers in the SPRBun port terminal. Upon his return to the city, Jhon Jairo was threatened and together with the UP's General Secretary, he was assigned a bulletproof vest as a means of protection in the event of an attempt on their lives. Meanwhile, WOLA, the Washington Office on Latin America, sent staff to Buenaventura to assist the UP in publicizing the labor rights' violations at the port.

With the promulgation of the Labor Action Plan, the speedy Congressional approval, and Presidential ratification of the new labor laws, the UP and its Colombian and US supporters began an effort aimed at pressuring the Colombian government to oblige the SPRBun and the principal operating firms to restructure their worker hiring practices in accordance with the new laws and decrees. Unfortunately, such efforts went nowhere. Although management personnel from the SPRBun did eventually meet and discuss the UP's proposals, they clearly stated that their hands were tied, and they could not get involved in regulating the labor relations at the port. The SPRBun was, in a claim already mentioned, nothing more than an administrative firm, not a port operator. Attention then turned to TECSA, the most important primary operating firm at the terminal. Not surprisingly, TECSA's management team did not wish to discuss the manner in which it operated its firm with either unionists or workers, so the UP members decided to adopt the only tactic that remained--worker mobilization and protest designed to both hurt the employers where they most felt it: in their profits; they rattled the local political sphere in the hope that, with international support, their plight would reach the ears and eyes of the Colombian Government and influential US members of Congress.

Alongside the quite frequent union training programs that had begun in 2009, the UP members, distinguished by their motivation to the cause, had begun

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<sup>101</sup> Interview with Oscar Gutierrez, Labor Advisor to the Vice President's Office, conducted in Bogota, 28 September 2012.

canvassing for support among diverse work sections of the port terminal. Winchers and stevedores were by far the dominant numerical basis of the UP-Buenaventura at the port, alongside the *braceros* (casual laborers). But worker bitterness and dismay at the precariousness of working conditions at the port was a broadly felt sentiment, something later confirmed during the author's fieldwork at the port.<sup>102</sup> In order to adequately pressure the TECSA management, the UP's local leaders realized that they would have to attain support from a wider occupational base, particularly as the stevedores and winchers were the easiest workers to replace if a protest, worker slow-down, or stoppage were to be organized. A small group of machinery operators who had discreetly affiliated with the UP began the difficult task of convincing their co-workers of the need to join the UP and demand that TECSA contracted them directly.

Conjuring up worker support outside the union UP base was a highly arduous task. "Trade union" was a distasteful term for more than just the port terminal's operating and contracting firms. The perilously thin-line between unions and sham cooperative firms in Buenaventura was a daily reminder of the risks involved in trusting union leaders to have the workers' best interests at heart. Furthermore, the last terminal-wide work stoppage in 1997, which had been advanced and organized by diverse union leaders and which culminated in the presentation of a list of demands to the SPRBun and the other main firms became, after a two-month period of initial jubilation, a major failure. For some reason the SPRBun and the main operating firms wriggled their way out of negotiating and signing a CBA with the unions, leaving the small and diverse contracting firms responsible for an agreed-upon salary increase. Many workers today complain that the failure of this stoppage and negotiation process was due to union corruption; many still believe that certain union leaders of the time were paid off to ensure that no enforceable CBA came into existence.<sup>103</sup> Whatever the truth may be, the UP unionists faced an uphill battle in assuring their fellow workers that without worker collectivity and a combined show of strength all the labor law changes in the world would come to nothing in the distinct everyday world of the Buenaventura port terminals.

In the case of the machine operators, although there were only a few UP members as of 2011, worker discontent was rife. These male workers were qualified machine operators with certificates from SENA,<sup>104</sup> but they were paid less than the minimum wage, receiving, as of 2009, only COP\$2.900 per hour as the set rate. The principle complaint they had against TECSA, which was their boss but not formally their employer, was that their jobs were perilously underpaid and without any semblance of stability. According to a group of TECSA machine operators, they

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<sup>102</sup> During a near daylong informal tour/scout of the port terminal from the inside, the author managed to speak with and interview workers from a variety of occupations: stevedores, cleaners (both male and female), grain distributors, tally women, as well as management security. All of the workers with whom the author spoke complained about the pay, the forms of hiring/firing, the arbitrary disciplinary procedures, the stress and intensity of working shifts and hours, among other aspects.

<sup>103</sup> Comments made during a focal group session with 32 members of the UP-Buenaventura, Buenaventura 3 October 2012.

<sup>104</sup> SENA stands for the National Training Service. It is the state entity in charge of vocational training and educational courses; see: [www.sena.edu.co](http://www.sena.edu.co)

had no fixed or permanent shifts. Instead, they would all turn up for work daily and hope that the management would put them to work. If successful in their petitions, they would work 12-hour shifts without the legal stipulations in terms of health, pension, and occupational risk insurance. Prior to even hearing about the creation of UP, these workers had attempted, unsuccessfully, to discuss and improve their working conditions and pay scale with the TECSA management.<sup>105</sup> By the end of 2011 their patience had run out. After repeated discussions with UP members, these workers decided that to effectuate change they needed to move from debate and complaints to worker action and protest. The stage was set for the first work stoppage at the port terminal in nearly 15 years.

### **Work Stoppages in Buenaventura: Pressuring for the Formalization of Work**

After many fruitless attempts at negotiating better working conditions for TECSA's principal and key workforce, the UP, bolstered by the new unionization of 110 TECSA machine operators, decided to undertake a work stoppage at the SPRBun terminal. On the 17 of January 2012, 160 TECSA S.A workers stopped work and began a UP organized worker meeting directly outside the entrance to the port. These workers, under precarious, paid-by-the-hour, work contracts with the TECSA contracting firm, Accion S.A., demanded that TECSA directly contract them and that their salary base increase and their overall working conditions improve. The main argument used by the UP in justifying this work stoppage was that these operators undertook "permanent core business" at the port and as such, TECSA could not continue to utilize illegal labor intermediation—through Accion S.A.—as a means of avoiding the costs associated with formal and legally-compliant labor contracts.

As word travelled around the port installations, more workers joined in the work stoppage. Particularly notable was the fact that approximately 80 crane operators who had direct work contracts with the SPRBun united in the stoppage to demand that their salaries be increased to the level of their fellow colleagues in the Cartagena port. Such a decision demonstrated a sense of unity in action of both the mass workforce of casual and non-standard workers and the very small population of directly contracted workers. Indeed, in Buenaventura, even the few workers who had formal work contracts still received quite menial wages, while being forced to labor in strenuous, inhospitable conditions. The TECSA focused work stoppage took place at a key moment in the FTA-related discussions. International and particularly US union pressure was still high and as the port sector was one of the targeted focal points of the Labor Action Plan, something had to change so that the Santos Government could show that change was taking place outside the formal realms of Bogota's political sphere.

The work stoppage continued for eight days, hurting TECSA's bottom line and hurling port workers and the UP into the spotlight locally and nationally. A bilateral negotiating commission including TECSA management, a commission of port workers, UP union leaders and representatives of the CUT-National, came

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<sup>105</sup> Comments taken from the group focal session with UP members, which included approximately eight newly formalized TECSA machine operators; Buenaventura, 3 October 2012.

together on 24 January as a means of bringing the stoppage to an end. This commission finally signed an agreement that had as its basis the direct hiring under indefinite contracts of 80 of the machine operators that were previously paid by Accion S.A. The remaining operators would not be immediately hired directly by TECSA, but they would receive the same wages as their 80 counterparts, what amounted to an increase of approximately 20%.<sup>106</sup>

The relative success of this work stoppage and the UP-led process of fomenting worker consciousness had a ripple-on effect throughout the port. Shortly after the machine operators had achieved the previously unthinkable goal of attaining direct contracts with TECSA, a group of roughly 30 maintenance workers presented a petition to TECSA demanding direct contracts and the corresponding benefits.<sup>107</sup> And perhaps more striking than direct petitions was the fact that after the January work stoppage and the relatively successfully labor accord, workers across the terminal now understood that a new type of union was on the horizon and, even more importantly, that workers did have rights and that they could fight for them.

The situation for female port workers was without doubt even more onerous than for male port workers who were hard-worked, underpaid, and could count only potluck job stability. Many of the female workers interviewed during the author's fieldwork complained that job mobility was a fiction for women. Supervisors were almost always men and mid-level and senior managers were only men. In the words of one tally woman:

*"There has always been lots of discrimination in terms of ascents. Women can never be more than supervisors, and it's doubtful that you can even reach this role. Meanwhile, men scale the ladder."*<sup>108</sup>

Many tally women had taken note of the January work stoppage even while they had not participated directly in it. Indeed, there were but a few tally women who were members of the UP-Buenaventura at the beginning of 2012. This was due to the quite explicit anti-unionist sentiment that prevailed throughout the port. Even to voice support for collective action or unionization was sufficient reason to lose favor with bosses and risk losing one's job. This preference to "*aguantar todo lo malo calladamente*"<sup>109</sup> (silently put up with one's plight) would change as worker inconformity grew across the terminal.

The initial relief for unions and workers that TECSA had at least negotiated and accepted the necessity of directly hiring a group of workers turned into despair as the months wore on. UP members and CUT representatives realized that despite all the Ministry of Labor's high rhetoric, it did not appear to be taking real interest in the plight of port workers. On the one hand, the Ministry, in accordance with the Labor Action Plan, had set out to improve its system of prevention, inspection, and

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<sup>106</sup> Comments made by Jhon Jairo Castro during the focal group session, op cit.,

<sup>107</sup> See: ENS. 2012. "En el Puerto de Buenaventura se dan primeros pasos para la formalizacion laboral", *Agencia de Informacion Laboral*, 2 February 2012.

<sup>108</sup> Interview 4, op cit.,

<sup>109</sup> Interview 6, conducted on 4 October in Buenaventura.

control. According to the Sub-Director of Territorial Management of the Ministry of Labor, Stella Salazar, the revamped ministry began a new program of inspection and control which had two phases: the first being prevention-oriented, focusing on giving administrative assistance to firms so that they could comply with labor norms, especially regarding intermediation. The second phase focused on visits to the many EST, the CTAs, and other contracting firms, as a means of regulating their activities.<sup>110</sup> As part of this plan, the Ministry had undertaken 12 investigations and countless visits to the offices of port-based businesses, which culminated in the imposition of 10 sanctions as of October 2012, for a total of US\$7 million in fines.<sup>111</sup>

On the other hand, while such heavy fines had never before been heard of in the sector, there remained serious questions as to the willingness of the Ministry to pressure for concrete change on the ground in Buenaventura in terms of pushing for union freedom and firm-union dialogue at the port. Leaders of the UP stated that on no occasion had the local labor inspectors consulted the workers as to how labor relations and intermediation practices were undertaken at the terminal. Visits to firms and fines focused on establishing the degree of “financial independence” of the contracting firm in question and whether or not associates of the CTAs in existence actually had access to the economic proceeds of the cooperative and whether they really owned the capital and assets of the cooperative, in line with the stipulations of Decree 2025 of 2011. In the words of the General Director of the ENS, Luciano Sanin, the problem with the method of undertaking labor inspection in Colombia is that:

*“The inspectors undertake visits but these are centered on the firms’ offices. In the meantime, the inspectors leave to the side what actually occurs at the port.”<sup>112</sup>*

With labor inspections conjuring up not unsubstantial fines, many CTAs had begun the process of changing their juridical name and business figure (*su razón social*). But concrete labor relations had not changed for any of the port workers apart from the 110 TECSA machine operators who had received higher salaries and for most, a formal and direct work contract. The Ministry had not really established itself in its supposed role of fomenting social dialogue. The Vice Minister of Labor Relations, David Luna, stated that as part of the Ministry’s policy of promoting respect for unions and encouraging social dialogue, there had been a number of Social Dialogue meetings both in Bogota as well as in diverse departments. If a union requests the Ministry to pressure the firm in question to negotiate, the Ministry is now authorized to order firms to do so.<sup>113</sup> Nonetheless, according to Fabio Arias of the Executive Board of the CUT-National, the tripartite meetings organized by the Ministry had been nothing but a display of:

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<sup>110</sup> Comments taken from an interview with Stella Salazar in Bogota, 8 October 2012.

<sup>111</sup> Comments made by Vice Minister for Labor Relations, David Luna in an interview in Bogota, 10 October, op cit.,

<sup>112</sup> Interview with Jose Luciano Sanin in Medellin, 12 October 2012.

<sup>113</sup> Interview with David Luna, op cit.,

*“Discursive commitment to social dialogue . . . The business sector had refused to negotiate the implementation of concrete policies aimed at formalizing working relations in the port sector and especially at Buenaventura.”<sup>114</sup>*

The lack of commitment from the Ministry to actually examine how the fundamental labor rights of port workers were being violated day-in and day-out created renewed cynicism from UP members and leaders. It seemed that while the Labor Action Plan was being hailed as marking a new beginning in labor relations in Colombia,<sup>115</sup> workers were still facing a notoriously uphill battle to organize and effectuate positive change for workers throughout the economy. For many of the tally women and men who were shuffled between contracting firms, according to the whims of TECSA management, their patience was fast running out.

After the January work stoppage, in which the vast majority of tallymen and women did not participate, TECSA made a bid to separate and disperse workers as a means of reducing the chances of any future collective unrest. A group of roughly 70 tallymen and women (30/40 respectively) had worked for Accion S.A., which had been awarded the tally contract by TECSA for approximately two years. When the work stoppage finished, TECSA unilaterally terminated this contract and its supervisors told half of the workers that they had to take their CVs to a different firm, Empresa Colombiana, so that they could be considered for selection. The remaining workers stayed with Accion S.A. The new tally contracting firm rehired the same workers, but they were coerced into working three days without pay (as a supposed means of evaluating performance), and they were then given a two-month trial period. After this arbitrarily decided two-months came to an end, a number of these workers were fired, saying that they had failed the trial. In response the tally workers organized, without UP assistance, a work stoppage, which lasted from 3-6<sup>th</sup> of June 2012. This pressure forced the firms' hand and the fired workers were reinstated and the two-month trial period was eliminated. But once again jubilation turned to despair as the work regime became even more arduous as they were pressured into working not 10-hour shifts but 12 to 16-hour shifts.

After many informal and formal discussions and meetings with UP leaders, the 70 tallymen and women joined the UP. From here the union decided to undertake another work stoppage, this time one that would incorporate various occupational work groups. The new work stoppage and worker protest took place at the end of August, lasting a total of four days, with mass worker support and participation. However, while the first stoppage had led to a relative union victory, the second major stoppage ended in defeat for the workers. During the work stoppage, TECSA unilaterally terminated its contract with the Empresa Colombiana due to its failure to keep the workers in line and out of protest activity.<sup>116</sup> The workers who had participated in the stoppage were fired on the basis that they had not presented themselves for work during three consecutive days. During the work stoppage, despite the fact that the UP had made the petition to the Ministry of Labor

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<sup>114</sup> Interview with Fabio Arias in Bogota, 9 October 2012.

<sup>115</sup> See, for example: “Punto para los trabajadores”, in: *Semana*, Economic section, 18 June 2011, [www.semana.com](http://www.semana.com)

<sup>116</sup> Comments made by the tally women interviewed on 3 October 2012 in Buenaventura.



that it undertakes an inspection of port-located machinery, ensuring that it was all safe and not in danger of vandalism, as a means of authorizing its registration of the labor conflict, the officials never arrived. In their place, the state sent its repressive arm, authorizing the entry of police into the terminal to assist “scab workers” to replace those workers who had joined the stoppage. Furthermore, the ESMAD, the special anti-riot police unit, arrived to break up the peaceful worker protest. In the process, numerous workers, both men and women, were injured, including a pregnant tally woman, who was beaten to the ground.

In the wake of this violently repressed work stoppage, TECSA and many of its intermediary firms began firing workers who had taken part in the protest. Indeed, according to Jhon Jairo Castro, while the January work stoppage had led to the direct hiring of 80 machine operators, the August stoppage left in its wake approximately 80 workers from diverse occupations “vetoed” from entering the port. No new contracts were negotiated and while numerically, the UP-Buenaventura remained with the same number of members, many of them now were either banned from working at the port,<sup>117</sup> or they could formally enter the port but their association with the union generally precluded them gaining work with any of the numerous firms offering a day’s labor.

### **Concluding Remarks**

Reflecting on the campaign to formalize the working conditions of the Buenaventura port laborers, we believe that a conclusive evaluation remains, as yet, elusive, as the struggle is far from over. Numerically, as already noted, there have been no positive changes in terms of the number of workers who have seen notable improvements in their working conditions. The initial success of the January work stoppage was halted by the anti-unionist stance of the employers following the August strike. However, as argued by Luciano Sanin, in situations of such categorical anti-unionist sentiment where the labor supply far outstrips demand, one cannot expect triumphant union success on a short-term basis. The success of the Buenaventura and indeed nation-wide organizing and formalizing campaign in the port sector is based on the fact that after two decades of union demise and indeed fossilization, workers have rediscovered their consciousness and unionization is now a theme that is discussed throughout the ports, both by workers and firms.<sup>118</sup> According to Fabio Arias of the CUT, the success of the initiative lies in its ability to mobilize workers around the theme of worker formalization and decent work. Furthermore, the manner in which the UP and its leaders have stuck with their goals of pressuring for work formalization at the port has ensured that the union has gained notable

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<sup>117</sup> Due to the prevalence of intermediation at the port and firms hiring workers on a per-shift or “per ship” basis, most workers pay for an entry card that permits them to enter the terminal, after which they can search for work. This system is the basis through which intermediation thrives and survives, despite the many normative changes that were pushed through as part of the Labor Action Plan.

<sup>118</sup> Interview with Jose Luciano Sanin, op cit,

appreciation and support from the port workers. This in itself is a marked turnaround from recent decades.<sup>119</sup>

According to Oscar Gutierrez from the Vice President's Office, overall change in the manner in which labor relations are managed and governed has been too slow. The Vice President's Office, understaffed and under-equipped, has assumed the complicated role of "putting out fires" in various parts of the country, rather than working on designing, effectuating, and monitoring changes in terms of how labor rights are upheld.<sup>120</sup>

Perhaps in the case of the UP-based campaign some degree of blame for the failure to more successfully protect members from being fired can be placed on the union's national strategy. As a means of ensuring its national reach and tapping into the temporal opportunities for unionism that appeared on the eve of the formulation of the Labor Action Plan, the UP attempted to move quickly. In a spiraled movement, its leaders looked to convoke and unionize workers, particularly in Turbo, as early as possible as a means of then handing in a list of demands to the principal operating firms and pressuring for negotiations. The power of mobilization was used as an under-hand threat, as it still remains the biggest form of union power. However, the UP failed to develop a strategic plan of action that could ensure both a strong mid- to long-term organization plan as well as protecting members from the heavy-handed reprisals of the business sector. Before thinking about presenting lists of demands to firms, a union should have in place a definitive structure. This is built by following the steps of unionizing workers and notifying the respective authorities of their affiliation; determining the makeup of union leaders protected by union law (*el fuero sindical*); unleashing a political campaign that highlights the precarity of working conditions in the sector as well as the prevalence of anti-union practices; and finally, when enough workers are unionized and organized, one can present a list of demands. Particularly for the case in Turbo, such steps were not followed and at least 70 UP members were fired and left to "invent" some way of surviving in a town where the banana was king and work at the port was one of only two real forms of obtaining wage work. Nonetheless, this is a common problem in the Latin American region where, in many countries, unions are permitted to register with a bare minimum number of workers rather than a majority. As such, many small unions develop a leadership structure and petition for their demands before establishing a solid worker base. In this way, their power of leverage through association remains very weak and at times, stillborn.

Such a critique, however, should not be stretched too far. This case-study has clearly illustrated that despite the many positive reconfigurations set in place as part of the ratification of the long-frozen US-Colombia FTA, especially the Labor Action Plan, concrete labor-related changes on the ground have yet to be made at Buenaventura's SPRBun-run port. Here, union freedom remains an entirely foreign concept to the business sector, and workers continue to be fired and mistreated simply because they ask for their workers' rights to be respected. While the

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<sup>119</sup> Interview with Fabio Arias, op cit.,

<sup>120</sup> Interview with Oscar Gutierrez, op cit.,

Ministry of Labor has begun the task of internal restructuring in line with the new normative and administrative dictates, as well as positively reactivating its department for inspection, which was for too long understaffed, under-funded, and under-trained, it has yet to adequately enforce compliance with the laws concerning the prohibition of illegal labor intermediation.

### **Broad Reflections on How to Improve the Enforcement of Labor Standards and Labor Law**

We come then to the oft-repeated question that frustrates many labor scholars and irritates many governmental labor lawyer officials: What is the best way of harmonizing the gap between normative dictates and their enforcement in diverse sectors and diverse countries? This question, central to understanding the still significant constraints facing workers and the UP in the SPRBun port regarding their inability to uphold their legal labor rights, is also one which could be stretched to cover multiple sites of labor-capital-state conflict throughout the global economy. Is the answer simply to bolster the Ministry of Labor, providing it with more resources and more labor inspectors who are better trained and better compensated? Looking at the Chilean, Dominican Republic<sup>121</sup> and more recently, at the Colombian case, this has been the preferred response. Without doubt, this is an important and positive step forward. Indeed, in the opinions of Piore and Schrank, the revamped Latin American model of labor inspection, compared to the US model, is “. . . better able to reconcile the need for regulation with the exigencies of economic efficiency.”<sup>122</sup> Notwithstanding the fact that one should be hesitant of offering evaluations so early on in the process of institutional transformation, the results of this case study do not hold favorably to such arguments. This is in no way to belittle the efforts being made by the Minister of Work, Rafael Pardo, and his nation-wide team.

Rather, the case study has shown that the problem of regulating firms in Buenaventura and Colombia in general and ensuring that they respect the labor law and guarantee the labor rights of the Colombian workforce has very structural and cultural-political roots. More and better-paid labor inspectors may mediate the problem, but such a policy shall not overcome it, especially when these labor inspectors, very knowledgeable about the specificity and breadth of labor law, remain quite removed from understanding what actually happens “within” labor relations. How do firms interpret, ignore, or comply with labor law dictates in a manner that best suits their concrete interests, rather than in a way that first prioritizes the respect for workers’ rights?

An alternative approach to ensuring widespread respect for workers’ rights is one in which the onus is on state officials and is shared by recognized worker representatives to “enforce and monitor.” Such an approach would involve a vision of enforcing labor standards that is rooted in tripartism. Herein, workers’ organizations would be given “equal standing with government and employers to

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<sup>121</sup> See: Schrank, Andrew. 2009. “Professionalization and probity in a Patrimonial state: Labor inspectors in the Dominican Republic”. *Latin American Politics & Society*, No.51 (2), pp.91-115.

<sup>122</sup> Piore, Michael J. & Andrew Schrank. 2007. Op cit,

supplement complaint-driven and targeted inspections . . .”<sup>123</sup> Such a reconfiguration would not be a new form of non-state governance of the labor market, and it would best be suited to sectors or industries marked by historical anti-unionist practices, low wages, high work-place health problems, and risks of accidents. Indeed, while there is ample literature attesting to the spread of endeavors associated with Corporate Social Responsibility, such as Codes of Conduct, which are based on firms outlining standards of production and working conditions that should be upheld in outsourced supplying factories, there have been too many cases where such initiatives are found wanting in practice, especially in terms of their convenient ignorance of FoA rights,<sup>124</sup> and anyway, such codes are generally associated with the apparel sectors and global brands.<sup>125</sup>

Neither would this tripartite proposal be directly linked to the bilateral initiative promoted by global union federations: International Framework Agreements (IFAs), which look to ensure that workers’ organizations are directly involved in the design and implementation of company codes of conduct. For while such mechanisms do bring worker unions to the negotiating table, they remain plagued by problems associated with their geographical reach.<sup>126</sup> As a side point here, after studying the UP organizational and formalization campaign, it does appear that the UP lacks international industry-based worker support. Due to unhelpful, personal disputes between union officials, the UP has yet to negotiate its affiliation to the International Transport Federation (ITF), one of the strongest and most collaborative GUFs. This seems like a missed opportunity as the ITF, based on the transport industry’s logistical power in an ever-more integrated global economy, has done much to improve working conditions in seaports and in sea vessels the world over. The UP could benefit from its support and experience of negotiating with and pressuring port-based firms.<sup>127</sup>

The trilateral proposal of renovating the practice of workplace inspection simply seeks to reaffirm the central role the state and its governmental apparatuses have in ensuring respect for labor standards and labor law. However, in certain sectors marked by flagrant and continual labor rights’ violations, states must consider widening the role played by workers’ organizations and union-backed worker centers, by listing violations and moving to ensure that the state can and does respond to eradicate such practices. The port sector in Colombia, like the other four sectors marked for special monitoring in the Labor Action Plan, is one such industry, particularly in that the SPRBun, like all but one of the country’s Regional

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<sup>123</sup> Fine, Janice & Jennifer Gordon. 2012. “Unpacking the logics of labour standards enforcement: An alternative approach”. Chris Warhurst, et al., (Eds). *Are Bad Jobs Inevitable? Trends, Determinants & Responses to Job Quality in the Twenty-First Century*. New York: Palgrave Macmillan, pp. 193-207.

<sup>124</sup> See: AFL-CIO. 2013. *Responsibility Outsourced: Social audits, workplace certification & twenty years of failure to protect worker rights*.

<sup>125</sup> See, for example: Locke, Richard et al., 2007. “Beyond corporate codes of conduct: Work organization and labour standards at Nike’s suppliers”. *International Labour Review*, Vol. 146, No.1-2, pp.21-40.

<sup>126</sup> See: Stevis, Dimitris. 2010. “International framework agreements and global social dialogue: Parameters and prospects”. *Employment Sector, Employment Working Paper No.47*, International Labour Office: Geneva.

<sup>127</sup> Based on an email correspondence with the President of UP-Buenaventura, Jhon Jairo Castro, on 4 January 2013, it appears that there is a new-found consensus amongst the UP to push for its affiliation with the ITF sometime this year.

Port Societies, is a part-public-owned firm, with a percentage of ownership staying with the respective municipal mayor's office where the port is based.

This proposal would not mean transforming unionists into new inspectors per se. Rather, it would involve the Labor Ministry opening up formal avenues for union volunteers' involvement in monitoring and effectuating disciplinary action. There are some novel and interesting examples of such collaboration in the USA. As mentioned by Fine and Gordon,<sup>128</sup> in Los Angeles there are two recent examples of such an initiative in the Los Angeles Unified School District (LAUSD) and the Board of Public Works (LABPW) deputy programs.<sup>129</sup> Based on low-wage, high immigrant workforce industries, these programs have trained and empowered, in the first case, union business agents as Work Preservation Volunteers (WPVs), and in the second, a Janitorial Enforcement Team (JET). One of the central and interesting aspects of these initiatives is that they are based on business approval as they look to rid the pervasive practice of inter-firm destructive competition via the undercutting of wage costs. Furthermore, the teams of trained volunteer work monitors have a "specific knowledge of industry structures and strategies,"<sup>130</sup> something that cannot be expected of labor inspectors who must cover jurisdictional territory rather than sectoral-based industries.

The five key sectors marked for special monitoring and attention by the Labor Ministry of Colombia as part of the Labor Action Plan could be used as a pilot program for the design and implementation of such a collaborative government-union partnership that would count on employer representation, at least in its initial period of design, set-up, and implementation. It would require time, additional resources, and vehement support from the Colombian Presidency and departmental-municipal governments so that its aims do not become squandered by a lack of territorial transferal. If given a political and financial mandate, it could be a novel and deep instance of true dialogue, one that helps to improve the stick of legal rules and everyday business practice. Furthermore, it could help give workers and their unions the chance to actually push forth and consolidate the minute space they have been given via the Labor Action Plan.

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<sup>128</sup> Fine, Janice & Jennifer Gordon. 2012. Op cit., p.200.

<sup>129</sup> Fine, Janice & Jennifer Gordon. 2012. Op cit., p.201.

<sup>130</sup> Fine, Janice & Jennifer Gordon. 2012. Op cit., p.203.