

## Reasons for not ratifying the Free Trade Agreement between the EU, Colombia and Peru

### The human rights situation in Colombia has not improved and the agreement will not contribute to an improvement

In Colombia the human rights situation continues to be dramatic, there have been no significant or structural improvements and on the contrary various human rights indicators continue to increase. Below, we offer just some examples which reflect this serious situation:

- With 35 murders in 2011, Colombia is, ***“once again, the most dangerous country for trade unionists”*** in the world. While the number of trade unionists killed has dropped in recent years, *“since 2007 threats have increased”*. Therefore, it could be that violence itself has not decreased, but that there has instead been *“a transformation of its manifestations”*. Impunity for violence against trade unionists is widespread: Colombia has obtained convictions in less than 10% of the more than 2,900 murders of trade unionists reported by the ENS since 1986. This situation discourages union membership and helps to create an environment conducive to violations of labour rights. For its part, the International Trade Union Confederation (ITUC) reported the imprisonment of 16 trade unionists in 2011.
- **At least 34 indigenous people are at risk of extinction.** The Colombian government has yet to comply with Auto 004 of the Constitutional Court which requires the development, in consultation with the indigenous peoples concerned, of *“safeguarding plans”* and the implementation of a National Guarantee Program. The number of murders of indigenous people rose by 9% between 2010 and 2011, and between January and July 2012, 54 indigenous people were killed. Mega-projects (mining, infrastructure, etc.) are concentrated in particular in the territories of indigenous and afro-Colombian peoples. **Free, prior and informed consent has not been properly applied during the implementation of a single mining project since 2005**, while mining stocks have increased by 300%. The progress of mega-projects in indigenous and afro-descendent territories also exacerbates their socio-economic situation. The reduced availability of arable land, fumigations and pollution from the increased exploitation of natural resources and land affects crops, which in turn increases vulnerability in terms of food security. Some 70% of indigenous children suffer from chronic malnutrition and between January and July 2012 the ONIC reported the death of 15 children due to a lack of medical care or linked to food security. The afro-Colombian population lives in extreme poverty: 80% of the population has their basic needs unsatisfied and rates of infant and maternal mortality double national levels.
- For **Human Rights, Defenders**, during 2012 the situation became worse than in previous years. During the first semester of 2012, 163 individual attacks against defenders were reported (including 81 threats, 29 murders, 3 forced disappearances, 17 arbitrary detentions). Already in 2011 the attacks increased of 36% compared to 2010 as there were a total of at least 239 individual attacks against defenders (including 49 murders and 6 forced disappearances). Of the total reported cases, 50% were allegedly committed by paramilitary groups, 17% by members of the security forces, 4% by the guerrilla and 29% by unidentified aggressors.
- Many more human rights violations continue to occur in Colombia amidst almost total impunity. **Internal displacement** has increased every year (between 155.692 and 259.146 in 2011), reaching the enormous figure of between 4 and 5.5 million people, depending on sources. **Enforced disappearances** continue, with up to 18,638 people

forcibly disappeared among the 74,631 disappearances officially registered in the National Institute of Legal Medicine. **Extrajudicial executions**, which reached 3,512 victims between 2002 and 2010, have not been entirely eliminated as the government has claimed. In 2011 there were at least 38 new cases.

- Unfortunately, instead of taking the appropriate measures to combat these human rights violations, the Colombian government has promoted a series of reforms to the justice system which have a high risk of further consolidating impunity in Colombia. One clear example of this is the decision to extend the scope of the military justice system which represents a setback of at least 20 years in terms of human rights. For this reason, in an unprecedented statement, eleven UN human rights experts called

for the reform to be withdrawn and expressed *"should this reform be approved, it could seriously undermine the administration of justice for cases of alleged violations of human rights and international humanitarian law, including serious crimes, by military or police forces (Fuerza Pública)"*.

- Neither the Human Rights Clause included in the trade agreement nor the road map presented by the Colombian government guarantee an improvement in human rights. The Human Rights Clause is a general clause which does not place any real pressure upon the Colombian State to take the necessary measures to correct the situation. The road map, among other aspects, does not place any binding conditions on the implementation of the trade agreement.

## The Free Trade Agreement and its economic consequences

- This trade agreement could be damaging for the economies of Colombia and Peru. EU services suppliers, which have a large competitive advantage, will have access – since the EU has gained far reaching market access and national treatment - to, Colombian and Peruvian markets on the same terms as local services suppliers leading to their economic disadvantage. The Colombian government will no longer be able to favour local producers above foreign ones. The Trade Sustainability Impact Assessments (TSIA) show that the FTA will bring about negative effects for Colombia and Peru in terms of output and employment in the services sector, under pressure from EU firms and import.
- The Agreement foresees wide-ranging liberalisation in the services sector. This liberalisation prevents control on the flow of capital, favouring Spanish companies in key service sectors, including telecommunications, water, oil and others. With concessions related to market access and national treatment, Colombia has granted many facilities to the EU, including the establishment of companies investing in the agricultural, forestry, mining and oil sectors.

- The Agreement considerably strengthens the protection afforded to investors as the European Union could bring forward possible claims for alleged violations of the equal treatment principles under the Agreement's dispute settlement mechanism and demand compensation. The Colombian government thus forfeits considerable political scope, e.g. for the promotion of local investors, producers and products.
- The Free Trade Agreement extends the protection of intellectual property which could have serious impacts on access to medicines and seeds. This will have a direct impact for citizens of the two Andean countries, affecting their access to healthcare and their food security, particularly in the case of vulnerable sectors with low incomes.
- More foreign investment does not mean development. Despite the fact that Foreign Direct Investment tripled in Colombia between 2005 and 2008, inequality levels increased, especially for the most vulnerable populations.

## The Free Trade Agreement and its consequences at the socio-environmental level

- For Colombia and Peru the TSIA predicts that the sectors likely to benefit the most are those of sugar, fruits (particularly bananas), mining and hydrocarbons. Therefore, these economies will further rely on primary product exports, a strategy that has proven to be non-conducive to sustainable development. It is important to highlight that in addition, these sectors require large areas of land and if they continue to rapidly expand, land grabbing for the purpose of developing large-scale agricultural production for export will be intensified, resulting in an increase in violent conflicts in rural areas and putting even greater pressure on small farmers.
- In the case of the TSIA commissioned by the European Commission on trade with the Andean Community, "the Trade Agreement results in the increased production of agrofuels for export and it is to be expected that deforestation will increase as woodlands are cleared for the expansion of sugar cane and palm oil." The study adds that environmental impacts may threaten the lifestyle of those living in poverty.
- The European Union is the main destination for Colombian coal exports (in 2009, 56% of total mineral sales were to the European Union) and it is of note that Colombia exports 94% of its coal production (globally, the percentage of its coal production trade is 18%). 97% of coal production in Colombia was carried out by five foreign companies, BHP Billiton, Anglo American and Xstrata (Glencore), Drummond and Glencore. There are numerous reports of rivers being diverted, environmental pollution, appalling working conditions, dispossession of land, and violations of the right to free and informed prior consultation.
- Other studies show the possible negative impacts of this agreement on access to drinkable water by the inhabitants of rural areas in the Andean countries. A crucial shortcoming of the FTA is the weakening of possibilities for sanction in disputes concerning labour and environmental standards. Violations of these standards are excluded from the dispute resolution mechanism provided and sanctions such as the temporary suspension of preferential tariffs cannot be applied.

## Financial liberalisation will lead to a lack of control on the flow of capital

- The power of authorities to apply controls on capital flows are being restricted by the FTA. However, there are no particular articles in the agreement that ensure that instruments and regulations are in place to effectively prevent and halt illicit flows. This contrasts with other trade agreements the EU has signed, which have stronger commitments of cooperation and implementation of actions against money laundering, crime and tax evasion or avoidance.
- Although some EU countries have jurisdictions with a high level of tax evasion by companies and individuals, the FTA has no firm commitment to reducing evasion or avoidance. On the contrary, the FTA provides for greater freedom in the movement of capital, without control, the liberalization of services trusts and tax advisory services, and does not fully exclude that foreign investors can establish themselves in order to evade taxes. The use of tax havens in the EU results in a significant loss of revenue for signatory governments that could be used for debt reduction and sustainable development.
- Although a wide range of sometimes risky and speculative financial services are being liberalized by the FTA, there are no particular mechanisms established by the FTA to ensure strong regulation or joint supervision of these financial services. This could weaken the financial sector and financial stability.
- The FTA rules do not permit the EU and its two counterparts to regulate the financial sector and control capital. Several EU financial reforms are already in contrast with the FTA rules on market access and domestic regulation. The FTA rules do

not allow for full application of the lessons from the

financial crisis and reforms that could not have been foreseen in the past

### **This agreement affects ongoing regional integration processes**

- Strengthening the sub-regional integration process was one of the key objectives set out by the EU for this Agreement and was presented as a significant difference compared to FTAs negotiated with the United States. However, as the negotiation developed there was inconsistency in this regard. Agreeing to continue negotiating with only two members; Peru and Colombia; has exacerbated existing tensions between member countries of the Andean Community of Nations.
- The agreement has negative effects on regional integration and encourages competition among

Andean countries for access to markets and to attract foreign investment. One example of this is the impact that the agreement has and will have on Ecuador in terms of the Banana Tariff. On the one hand, incorporating into the agreement a more advantageous reduction in the tariff than the one agreed in the WTO between the EU and Latin American countries, has become a significant tool to pressure the government of Ecuador to negotiate with the EU. On the other hand, once the Agreement enters into force, the Ecuadorian banana market in the EU is at risk of being overtaken by Colombian bananas.

#### **Reference sources and reports:**

International Trade Union Federation  
Human Rights Watch – World Report 2012  
Reports from the United Nations System  
Letters and communiqués from the CUT, CGT, CTC  
Reports and communiqués from the ONIC  
Government figures  
OIDHACO: “Trade at Any Price”  
Briefs from European Networks on Water, Milk, Agro-Fuels  
Justice for Colombia: “Human Rights or Free Trade”  
“Free Trade Agreement EU – Colombia & Peru: Deregulation, illicit financial flows and money laundering” SOMO – GUE  
Reports from international and Colombian coordination groups for the Universal Periodic Review of Colombia  
“Commercial Interests before Human Rights”  
“Evaluation of the impact on the sustainability of trade between the EU and Andean countries” – UE  
“European Union: “Trade Agreement” with Colombia and Peru” - UE  
ABColombia  
Programa somos defensores (We are Defenders Program)  
Recalca  
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