

Business Interests before Human Rights

The EU Free Trade Agreement with Colombia

From an Association to a Free Trade Agreement

The Free Trade Agreement (FTA) between the European Union (EU) and Colombia and Peru was signed in Madrid on 19 May 2010 during the EU-Latin America and Caribbean Summit. For the Agreement to enter into force, however, it must be endorsed by the European Parliament and the Peruvian and Colombian Congress. It seems likely that additional ratification by the parliaments of the EU member states will also be required. The European Parliament is expected to hold its crucial debate on the ratification of the FTA in early 2011.

The Free Trade Agreement, in its present form, is the outcome of several years of negotiations which initially aimed to produce an Association Agreement between the European Union and Bolivia, Peru, Ecuador and Colombia. Although its main focus was on free trade, it was also intended to promote political dialogue and development cooperation. However, views quickly diverged on the Agreement's content and objectives. The EU concluded that reaching an agreement with the four Andean countries was no longer possible, and excluded Bolivia from the negotiations. Talks continued with Colombia, Peru and Ecuador, but by then, the EU was only interested in concluding a trade agreement. The two other pillars envisaged for the Association Agreement were now dropped completely. As a result, Ecuador withdrew from the talks in July 2009.

A dangerous setting: human rights violations in Colombia

In Colombia, systematic human rights violations have been occurring for decades: forced displacements, murder of trade unionists, extrajudicial executions, torture and enforced disappearance of social activists are common and widespread.

During Alvaro Uribe's presidency (2002-2010), the number of massacres decreased, but for human rights defenders and leading social activists, the situation worsened, with targeted threats against them, smear campaigns and even murder. The police and the military were – and are – involved in a significant number of human rights violations, either directly or indirectly through alliances with paramilitary groupings. However, the guerrilla movements fighting against the government also continue to perpetrate systematic human rights abuses and are responsible for murders, abductions, forced recruitment and displacements.

Evidence of the state's deep involvement in systematic human rights violations was provided by two scandals: in 2006, the *parapolítica* (paramilitary politics) scandal brought to light the very close ties between members of the Colombian parliament, local office-holders and paramilitary groups. The Colombian secret service (DAS), which reports directly to the President, has also used unlawful practices against members of the Colombian opposition both at home and abroad. This was the conclusion drawn by the Colombian Attorney General's office in 2010, based on documents which it had obtained.

For trade unionists, Colombia is still the most dangerous country on Earth. In the last two years alone, almost 100 trade unionists have been murdered in Colombia. This violence is closely associated with the virulent anti-trade unionism which is part and parcel of daily routine in Colombia's factories.

The most widespread human rights abuses in Colombia are forced displacements. Since 1985, more than 4.6 million people – 10 percent of the population – have been violently expelled from their homes and lands, mainly by paramilitary groups. Many victims were the lawful owners of the land. In some regions, the direct connection between displacement and economic interests is clear: the seized land mainly benefits the expanding cattle industry or the extraction of minerals such as coal or gold, or is used for the cultivation of palm (for palm oil), sugar cane and cocoa on agro-industrial plantations.

The new President Juan Manuel Santos, who entered office in August 2010, appears to attach greater priority to dialogue: indeed, he has tabled three items of draft legislation to resolve the problems of displacement and land grabbing and the issue of compensation for victims. However, these draft laws do not go far enough, and none of the persons directly affected by these issues were consulted during the preparation of the legislation. What is more, the number of massacres has soared again since August 2010. When it comes to protecting small farmers and displaced persons, the government still has no answers.

The Free Trade Agreement and its impacts

Expanding trade with a country where business activities are so often associated with massive human rights violations is highly problematical. Indeed, it is not only Colombia's human rights organisations which fear that the implementation of the Free Trade Agreement will further worsen the human rights situation in their country. In order to attract investors to Colombia, especially for the agricultural and energy sectors and the extractive industries, the Agreement is intended to lower trade barriers and offer better legal stability for investors. However, a significant proportion of the areas of interest to these three industries – in some cases as much as 50 per cent – is located in the territories of the indigenous and Afro-Colombian communities. Mega-projects are being carried out without the “free, prior and informed consent” of the affected communities which is a requirement of the United Nations Declaration on the Rights of Indigenous Peoples. There are plans for a ten-fold increase in the amount of land being used by the extractive industries alone, which could massively increase displacements and the pressure on small farmers to sell their land cheaply. The Free Trade Agreement not only bears witness to the failure of the bi-regional Association Agreement initially aimed for. It will also exacerbate the conflicts within the Andean Community and undermine efforts to achieve deeper regional integration. Furthermore, the Agreement is likely to reinforce the traditional division of labour between the European industrialised nations and the Latin American commodity suppliers, as the following examples make clear.

Liberalisation of trade in goods

Under the Agreement, the European Union is opening its markets to agricultural imports from the Andean countries, which at first sight might appear as a positive step: it offers duty-free market access for crude palm oil and commits to continuously lower its tariffs on bananas until 2020. It also pledges to open up duty-free beef and sugar quotas and offers free market access for ethanol and biodiesel. However, these trade concessions are likely to do Colombia's rural population more harm than good: 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. The demand for land for palm plantations, for example, is already soaring – partly due to the growing demand for this product from Germany. With a share of around 40 per cent, German companies are currently the main destination of palm oil exports from Colombia.

The requirement to liberalise will apply not just to the EU but also to Colombia. For example, Colombia must fully open its markets for milk and milk products within 15 years of the Agreement's entry into force. This means that exporters from the EU can then sell their milk products on a duty- and quota-free basis in the Colombian markets. This is likely to result in bankruptcy for numerous small dairy farmers in this Andean country, who will be unable to withstand the competition forced upon them by these milk imports; such outcomes have been experienced in many other developing countries before.

Services and investment

The Agreement envisages wide-ranging liberalisation for many service sectors, notably the movement of capital. Colombia is to safeguard free movement of capital for European investors. This will not only facilitate the smooth repatriation of profits; it also impedes the use of capital controls aimed at preventing the abrupt withdrawal of capital in times of crisis.

Spanish companies, which already dominate certain key areas of the economy in Colombia, will benefit particularly from liberalisation in other sectors: examples are Telefónica (telecoms), Endesa (energy), Repsol (oil) and Agbar (water), as well as Banco Santander (banking).

Colombia has also made major concessions to the EU on market access and national treatment with regard to the role of investors in the agriculture, forestry, mining and oil industries. This will benefit German companies which are already importing large amounts of raw materials from Colombia. Colombia is the second largest supplier of coal to Germany, for example.

Overall, 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 or suspend the trade concessions granted under the Agreement. This means that companies are granted rights without accompanying obligations, such as, for instance, a requirement to comply with labour and environmental standards. The Colombian government thus forfeits considerable political scope, e.g. for the promotion of local investors, producers and products.

Intellectual property rights

The Free Trade Agreement extends the protection of intellectual property rights. This again may appear, on the face of it, to be a positive move, but it soon emerges as a threat, for example as regards access to drugs and seeds.

The Agreement contains a five-year exclusivity period for the test data of pharmaceutical companies. This constrains the production of cheaper generic versions of licensed drugs. If generic producers want to obtain an earlier approval for their equivalent drugs, they have to repeat the same trials already done by the producers of the original medicine – an expensive procedure only prolonging the monopoly of pharmaceutical corporations. The UN Committee on Economic, Social and Cultural Rights has warned that this may result in an increase of prices of medicines and negatively impact on the enjoyment of the right to health, in particular of those with low income.

More stringent protection of intellectual property rights also threatens farmers' access to seeds. At present, the development, exchange and selling of seeds not only safeguards the diversity of crops but also the livelihoods of farming communities. The proposals to strengthen the rights of commercial breeders put this traditional seed system at risk: the development and multiplication of seeds generated from protected varieties will then only be permitted by authorisation of the rights-holders, i.e. the commercial breeders, with farmers required to pay royalties to them. The main beneficiaries would be European transnational corporations (TNCs) operating in the seed industry, such as Germany's Bayer CropScience, a TNC which produces and sells seed and pesticides in Colombia.

The Andes are one of the planet's biodiversity hotspots, harbouring around 10 per cent of the world's plant species. Indigenous and local communities in Andean countries have extensive traditional knowledge about medicinal plants. This is arousing the interest of the pharmaceutical and biotech industry. The Free Trade Agreement responds to these interests and requires Colombia to simplify the patenting process for biological and biochemical material. The basis for this process is the 1977 Budapest Treaty, which allows companies to obtain patent protection for a wide range of plants and microorganisms much as if they were their own inventions. As a result, these companies can ensure that they have exclusive rights of use for e.g. medicinal plants by patenting such plants, without having to share the profits with local, mostly indigenous, communities.

Toothless social and environmental standards: no one benefits

A major flaw in the Free Trade Agreement is the weakening of sanction mechanisms, especially in relation to disputes over labour and environmental standards. Although respect for human rights, as laid down in the Universal Declaration of Human Rights, is stated to constitute an "essential element" of the Agreement, the same does not apply to labour and environmental standards, such as the ILO's core labour standards. Violations of these standards are therefore excluded from the FTA's dispute settlement mechanism, and sanctions such as temporary withdrawal of tariff concessions or, indeed, the suspension of the entire Agreement cannot be applied here. Even complaints about human rights violations can only be referred to the Council on Trade and Sustainable Development – a body whose decisions have no binding force. Furthermore, non-governmental actors cannot turn to the Council at all – that right is reserved exclusively for the participating governments.

In reality, the Free Trade Agreement is a retrograde step, behind existing sanction options. Under the generalised system of preferences (GSP), the EU already has the opportunity to temporarily suspend trade concessions in the event of Colombia's serious and systematic violations of the provisions of human rights and labour conventions or international environmental conventions. The effect of this is uncertain, given that the EU has never yet made use of this opportunity. However, with the entry into force of the Free Trade Agreement, the GSP and its – at least theoretical – sanction options against Colombia would no longer be valid. The social and environmental standards proposed in the Agreement would be largely ineffective.

Stopping ratification

It is obvious that the Free Trade Agreement will primarily benefit European and Colombian corporations and Colombian agro-industry. There is also a strong risk that the Free Trade Agreement will undermine regional integration among the Andean countries and accelerate the exploitation of their natural resources and the privatisation of public goods. Social divisions are likely to widen, and opportunities for self-determined sustainable development may be massively obstructed.

Summing up, the Agreement entails major social and ecological risks and lacks effective sanction mechanisms which could be applied in the event of violations of international norms. It ignores both the precarious human rights situation in Colombia and the requirement for participation by civil society.

The Agreement is therefore overwhelmingly opposed by trade unions, social movements and non-governmental organisations. In November 2009, more than 200 organisations from the Andean countries and Europe issued a joint statement in which they called for negotiations to be suspended. The situation is not entirely hopeless, as examples from the US, Norway and Belgium show: in these countries, efforts to block similar agreements have been successful, primarily due to the precarious human rights situation in Colombia.



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e urge Members of Parliament not to ratify the EU-Colombia Agreement as it stands for the reasons stated above.

The Agreement is to be regarded as a "mixed agreement" and early implementation should be rejected, in order to avoid creating a de facto situation which preempts parliamentary debate and decision-making in the individual EU Member States.

We call on Parliament to undertake a comprehensive assessment of the human rights impacts of the Agreement, focussing not only on political but also on economic, social and cultural human rights.

Recommendations

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