

Time for Europe to put values and human rights above commercial advantage

Policy Brief: Why EU–Colombia/Peru Free Trade Agreements should not be ratified



Fruit vendors in a street of Boca Grande, Cartagena, Colombia

Over 200 civil society organisations and the International and European Trade Union Confederations are opposing the EU-Colombia/Peru FTA because it will:

- *Reward a Colombian government responsible for the highest level of trade unionist assassinations worldwide and ongoing disappearances and forced displacement.*
- *Expand investment in areas of mining and biofuels, which the European Commission's (EC) own evidence suggests will increase land grabbing and further forced displacement.*
- *Undermine indigenous rights in Colombia and Peru, in particular those under ILO Convention 169 that require prior, free and informed consent by indigenous peoples.*
- *Prevent Peru and Colombia from imposing essential capital controls or taking necessary measures to boost employment in local industries during a period of global financial and economic instability.*
- *Further undermine regional integration in Latin America's oldest regional trading block, which has already been divided by the EC's refusal to negotiate flexibly with the region and its member countries' particular needs and contexts.*
- *Destroy Peru and Colombia's dairy industries and threaten the livelihoods connected to other agricultural industries.*
- *Damage European Union's international reputation. The US, the European Free Trade Association (EFTA) and the Flemish regional government have refused to ratify agreements with Colombia; the EU should not either.*

1. Introduction

Inter-regional trade has traditionally received strong support in the European Union for its potential to increase investment, create jobs and build linkages and mutual ties between regions. However, it is widely agreed that commercial needs can not take precedence over human rights, tackling poverty and environmental degradation, and the need for sustainable development. The European Union's own documents assert this: "Within the broad context of EU policy making, coherence is a multidimensional commitment which needs to take place within the overall framework of the EU sustainable development strategy. Non-development policies [trade, agriculture, fisheries, food safety, transport and energy] should respect development policy objectives..." (European Commission, 2005:3).

That is why the European Trade Union Confederation (representing 60 million members from 36 countries) along with more than 200 civil society organisations and social movements from Europe and Latin America are shocked that the EC is prepared to sign deals with Colombia and Peru – which will legitimise a country responsible for the highest levels of assassinations of trade unionists, and exacerbate violations of indigenous rights across the Andes and the Amazon.

If the European Union wants to show that its rhetoric of 'policy coherence' and respect for human rights is more than empty words, it needs to draw the line somewhere and say 'no' to the EU-Colombia/Peru FTAs. At the very least, these agreements must be opened up to a Europe-wide debate by elected politicians, which can be done if these agreements are declared 'mixed agreement'.

2. Background

After failing to negotiate an Association Agreement on a region-to-region base with the Andean Region, the EU went ahead and negotiated bilateral Free Trade Agreements (FTAs) with Peru and Colombia alone. These FTAs would replace the preferential scheme for Colombia and Peru, the General System of Preferences, known as GSP+.

The formal negotiations closed in March 2010 but the agreements are yet to come into force. Once the final texts are initialled by the negotiators, the Commission will submit them to the Council for formal approval. The FTAs will then be submitted by the Council to the European Parliament for its consent¹. Furthermore, if the agreements are declared "mixed", national Parliaments of the 27 EU Member States would also need to ratify the agreements. According to the legal services department of the European Parliament, when National Parliaments are consulted, their vote refers to the whole Agreement and not just to the part that is of their competence. Therefore, if one National or local Parliament decides not to ratify, the agreement would not enter into force. Finally, ratification is also needed by the Peruvian and Colombian Congresses.

Classifying whether the agreement is "mixed" or purely "commercial" is key to define who has competence to ratify. According to the leaked version of the negotiated text (European Union-Colombia-Peru, 2010), these agreements contain provisions that are not part of the common trade policy of the EU: disarmament and non-proliferation of weapons of mass destruction (Art.2), a democratic clause (Art.1) and some provisions on environment. The inclusion of these clauses constitutes the legal basis for the agreements to be considered of "mixed" nature. Furthermore, the agreements will have repercussions in areas that are non-commercial, such as public health, essential services, the capacity of States to promote sustainable development and human rights, and therefore National Parliaments should be consulted.

While the legal services departments of the European Commission, European Parliament and the Council have yet to produce legal opinions on the issue, parliamentarians of Germany, UK and Ireland have all presented motions demanding that the agreement with Colombia and Peru be declared mixed and therefore be discussed and put for ratification by their respective national parliaments.

The motion by German MPs insisted on the German Bundestag's right to assess and ratify the FTA between the EU, Colombia and Peru. They called on "the Bundestag to exercise its legislative duty of taking a decision on the ratification of a free-trade agreement between the EU, Colombia and Peru which, rather than dealing exclusively with trade policy, also deals with issues relating to structural, constitutional and human rights policy" (German Bundestag, 2010). In a similar tone, the motion by UK MPs, called on the Government to accept that the EU FTA with Colombia and Peru is a mixed agreement, and therefore "has to be expressly ratified by each member state, including the UK" (UK Parliament, 2010).

The signing of the agreements by the Council and the beginning of the ratification process is likely to take place in 2012, and the conclusion much later. However, the European Commission will almost certainly propose the provisional implementation of the FTAs at the time the European Parliament is supposed to give its consent.

¹ After the entry into force of the Lisbon Treaty, EU Trade agreements need the consent of the European Parliament

3. Why civil society, trade unions and many parliamentarians reject the EU-Colombia/Peru FTAs

3.1 These FTAs are undermining regional integration processes in the Andean region

3.2 These FTAs will have serious negative socio-economic and environmental impacts

Trade Unions from Colombia and Europe, including the European Trade Union Confederation (ETUC) and the International Trade Union Confederation (ITUC), as well as civil society organisations from Latin America and Europe have repeatedly presented evidence of the socio-economic and environmental impacts of these FTAs² and exposed as unacceptable the willingness of the European Union to enter into FTAs with countries where clear abuses of human rights and trade union rights are committed, in some cases with the complicit support of the government³. Furthermore, recently, they have denounced the Colombian government for its attempts to mislead the international community, and the European Parliament in particular, on the advances made by the Santos Administration regarding the situation of human rights.

Some Latin American and European parliamentarians have voiced similar concerns and have rejected the FTA signed by the EU with Colombia and Peru for prioritising European investments in the region above any other social or human rights concerns. Several MEPs have raised concerns with the European Commission in relation to human rights violations in Colombia and the displacement of farmers and indigenous communities due to land grabbing, among others (Ferreira and Sârbu, 2009-2010). A cross-party group of MEPs that visited Colombia said, in a joint letter in December 2010, that there is no evidence that Colombia is tackling the abuses of human rights and trade union rights which President Santos had promised to address when he spoke to the European Parliament in July 2010 (MEPs, 2010).

These concerns and demands have been largely ignored by the European Commission (EC). In a speech to the International Trade Committee of the European Parliament (INTA) on 16 March 2010, European Commissioner for Trade Karel De Gucht (2010:2), presented his vision on the EU Trade Agreement with Colombia and Peru, arguing that these agreements “will generate new opportunities for economic operators and act as an incentive for Andean countries to push through their reform agenda but also – more importantly – to develop the means to offer improved social protection. This would ultimately contribute to the alleviation of poverty”. This briefing presents the evidence that contradicts the assumptions made by Mr. De Gucht and also summarises the reasons why trade unions and civil society organisations are calling for the non-ratification of these FTAs.

Strengthening of regional integration in the Andean region has been a declared core objective of the European Union since negotiations with Andean countries started in 2006. Both the negotiating mandate for an Association Agreement with the Community of Andean Nations (CAN) (European Commission, 2007) as well as the European Commission’s Regional Strategy Paper for the Andean Community 2007-2013 (European Commission, 2007a) explicitly stated that supporting the strengthening of CAN integration system was crucial to creating political stability, economic growth and sustainable development in the region.

By refusing to allow for a differentiated approach as agreed by CAN countries at their meeting in Tarija in June 2007, the European commission caused a breakdown of negotiations with all CAN member states. The EU decision to pursue bilateral negotiations with Peru and Colombia, has aggravated the already existent tensions within CAN, and will almost certainly affect the advance of the Andean integration process – one of the oldest regional blocks in Latin America. This is evidence of the lack of policy coherence between the trade and cooperation aims of the EU.

Finally, the text agreed with Colombia and Peru, includes an accession clause stipulating that any future negotiation with other Andean countries will be on the basis of the agreement with Colombia and Peru. This clause limits the flexibility of Ecuador and Bolivia to negotiate agreements with the EU based on a different trade model.

The European Commission argues that the agreement is a good deal because it requires ambitious commitments from all sides. It assumes that EU, Colombia and Peru are equal partners, yet there are huge asymmetries between the EU on one side and Colombia and Peru on the other. For example, the gross national income (GNI) per capita of the EU is 3.3 times the GNI per capita of Colombia and 3.6 times the one of Peru⁴. According to the EU-Andean Sustainability Impact Assessment (SIA, 2009: 24, 27), “by 2000, it was estimated that 45 percent of children in Colombia live in poverty. High income inequality and demographic transitions are among the most significant factors that help to explain this pattern”. The report also noted that “widespread inequality was observed in terms of income, poverty rates and most related social indicators (for instance, access to healthcare and educational services)”.

2 See Declarations of social movements from Latin America and Europe rejecting EU-Colombia/Peru FTA negotiations: <http://www.enlazandoalternativas.org/spip.php?article867> (November 2010); <http://www.enlazandoalternativas.org/spip.php?article511> (September 2009); <http://www.enlazandoalternativas.org/spip.php?article315> (November 2008)

3 See Declarations of ETUC/ITUC and Colombian Trade Unions: <http://www.etuc.org/a/7257> (May 2010); <http://www.ituc-csi.org/colombia-letter-from-the-ituc-and.html> (February 2010); <http://www.etuc.org/a/6736> (December 2009); http://www.ituc-csi.org/IMG/pdf/LASCENTRALES_def.pdf (May 2009);

4 According to the World Fact Book published by CIA, the EU GNI - per capita (PPP): \$32,900 (2010 est.), Colombia’s GNI - per capita (PPP) is \$9,800 (2010 est.) and Peru’s GNI is \$9,200 (2010 est.) - <https://www.cia.gov/library/publications/the-world-factbook/index.html>

Decreasing these differences among and inside the regions was to be a priority of the negotiations. However, the agreements do not incorporate effective mechanisms that take into consideration the existing wide asymmetries. Rather, they are likely to increase these inequalities. This concern has been expressed by the UN Economic and Social Council that in 2010 referring to Colombia stated:

“The Committee is concerned that bilateral and multilateral trade agreements signed by the State party may affect the enjoyment of economic, social and cultural rights, in particular of disadvantaged and marginalized groups, such as indigenous and Afro-Colombian peoples and persons living in rural areas” (UN, 2010a:3).

The Colombian Federation of cattle farmers has warned that by signing the FTA, 400 thousand small producers will be bankrupted by the inundation of European milk.

Colombia and Peru FTAs with the EU contain provisions related to investment, intellectual property, competition policy, government procurement and services in addition to demands for trade liberalisation. The inclusion of far-reaching demands in these areas will require crucial changes in national law and policy in these developing countries. Furthermore, it will likely reduce Colombia and Peru's policy space to promote policies of sustainable and equitable development in these critical areas.

Trade liberalisation will decrease tax income and undermine agricultural sectors in Colombia and Peru

Because import taxes in Peru and Colombia for EU products are higher than EU import taxes, the FTA requires substantially more effort from these Latin American countries in reducing tariffs. As a consequence governments will see large reductions in tax income that they could have otherwise used on social expenditures. In the case of Peru, it is expected a decrease in tariff revenues of 27.8 percent. Furthermore, many domestic sectors will be affected negatively by the increased competition from abroad, as shown in the simulations carried out by the International Food and Policy Research Institute, particularly in the area of agricultural products and some manufactured goods (Bouët, Mevel and Thomas, 2008).

There is one sector which will particularly suffer: dairy farmers. The EU is the main milk producer and the main exporter of dairy products in the world. The EU provides high levels of subsidies to dairy producers which lead to overproduction in the European Union. This compromises the feasibility of a sustained milk sector in Peru and Colombia and constitutes a danger to food security and food sovereignty in the region. (Grupo Sur, Aprovech and ALOP, 2010; Elejalde, 2010). In 1994, the Andean region introduced the “Andean price range system” (*Sistema Andino de Franja de Precios*) as a mechanism to stabilise the import prices of agricultural products and defend national producers and consumers from fluctuation and distortion of prices caused by subsidies in other countries (CAN, 1994). The EU FTA with Colombia and Peru will dismantle this mechanism. The Colombian Federation of cattle farmers, FEDEGAN (2010), has warned the Colombian government that by signing the FTA, 400 thousand small producers will be bankrupted by the inundation of European milk.

Liberalisation of services will threaten public services and capacity to regulate financial flows

The services and establishment commitments obtained from Colombia and Peru by the European Commission match the interests of key European corporations, by granting increased access to many services sectors, including sensitive public services and financial services markets, limiting the ability to apply performance requirements, and offering powerful multinational companies equal treatment with smaller domestic companies ('National Treatment' principle). The agreements will also liberalise many, but not all, capital movements between the parties.

These commitments will seriously undermine Colombia and Peru's possibilities to provide public services for all sectors of society. Furthermore, in the midst of the current global economic crisis, the agreement's rules and commitments will limit Colombia and Peru's policy space to regulate financial services and to apply preventive measures against financial speculation and volatility (Vander Stichele and van Os, 2010). Indeed, all national prudential measures e.g. to protect the stability of the financial system of a party, should be “not more burdensome than necessary”. However, the crisis has shown that measures judged sufficient before the crisis were clearly not able to prevent a huge financial crisis. The agreement encourages all the countries to give to all those interested the opportunity to comment before a new financial law is decided. This provides an institutionalised channel for the financial industry to lobby against national laws it does not like. The EU, Colombia and Peru are all liberalising risky speculative trading in derivatives, including food commodity derivatives and even the very opaque trade ('over-the-counter') trading in derivatives, which hugely contributed to the financial crisis. This contrast with new EU legislation that is under way since September 2010 to limit and where possible forbid such derivatives trade.

Liberalisation of public procurement will reduce important government support for SMEs

These FTAs give the EU access to procurement markets. EU operators will benefit from full access to the procurement of local municipalities, equal access as domestic firms (national treatment) in service concessions and airports as well as purchases of engineering services and printing services (Colombia). As engineering services are often coupled with construction works, EU companies will have an overwhelming advantage in their bids for contracts for public works in Colombia and Peru. This would seriously undermine Colombia and Peru's policy space to support Small and Medium Enterprises. This is particularly critical during times of economic recession (as we have seen in stimulus plans throughout Europe, Asia and the US) where government procurement remains an important tool to boost domestic production.

The new government of Colombia has launched a campaign to clean up their image in terms of violation of human rights and labour rights in particular. However this attempt at ethical-washing can not obscure the fact that the current president of Colombia, Manuel Santos Santos Calderón, was the Defence Minister- in charge of military and national police forces - during Uribe's term, when some of the most atrocious human rights violations took place. It was during his term that 500 trade unionists were killed. The European Commission argues that the new government of Santos, despite his track record, has genuine intentions to improve the human rights situation. However, evidence by international human rights groups and UN institutions clearly show that Colombia's appalling track record on human rights is not improving and the conditions and structures that could lead to improvements are not being put in place. In 2010, extra judicial executions, assassinations of trade unionists, forced displacement, torture and forced disappearances were all on the rise. The European Commission's decision to ignore these concerns and prioritise commercial interests above anything else is a deeply disturbing precedent for the European Union and its reputation worldwide.

Assassinations of trade unionists

Colombia is the world's most dangerous country for trade unionists. According to ITUC Annual Survey of Trade Union Rights Violations (2010), a trade unionist has been murdered on average every 3 days over the last 23 years. Colombia in 2009 was yet again the deadliest country in the world with 48 trade unionists and labour activists murdered.

PENS (Escuela Nacional Sindical), the most reliable source for monitoring labour laws in Colombia, estimates that in the first six months of the year (January - August 2010) there were at least 35 murders committed (Sanjuan et. al., 2010).

Forced Displacement

According to the reliable non-governmental watchdog CODHES, by 2010, 4.9 million people, nearly 10% of Colombia's population, had experienced forced internal displacement (CODHES, 2010). United Nations High Commissioner for Refugees (UNHCR, 2009) noted that as recently as 2007-2009, more than 740,000 persons had been forcibly displaced.

The government is failing to recognise the magnitude of the disaster. While CODHES estimated that 290,000 people had been forcibly displaced in 2009, the government registered only 120,000 people that year (IDMC, 2010). In 2011, UNHCR concluded that "the level of risk and vulnerability among [internal displaced people] (IDPs) remains high due to precarious living conditions, the absence of durable solutions and threats and selective killings, particularly related to the issue of land restitution" (UNHCR, 2011:304).

Extrajudicial executions and forced disappearances

Even though Colombia has signed the UN "International Convention for the Protection of all persons from Enforced Disappearance", it has still to ratify it (UN, 2011). Meanwhile, Colombia remains the country with one of the highest levels of forced disappearances in the world.

According to the Latin America Working Group Education Fund and U.S. Office on Colombia (2010:3), "as of November 2010, Colombia's official government statistics list over 51,000 disappearances". More than 1130 new cases of forced disappearance have been officially registered in the last three years. However, the full total remains unknown. Many cases have yet to be entered in the database, and many disappearances are not registered at all.

3.3 Colombia and Peru: countries that violate human rights should not be trade partners of the EU

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In Colombia, vulnerability among internal displaced people remains high due to precarious living conditions, the absence of durable solutions and threats and selective killings, particularly related to the issue of land restitution, UNHCR concluded in 2011.

In June 2009, UN Special Rapporteur on extra-judicial executions noted Colombia's government's failure to investigate extrajudicial killings and the involvement of Colombia's security forces in a significant number of unlawful killings.

EU-Colombia/Peru FTAs include weaker commitments on human and labour rights than the ones included in the current GSP+ scheme.

The expansion of biofuels and mining as a result of the FTAs, will likely cause further displacement of peasants and indigenous people indicated the Sustainability Impact Assessment.

In June 2009, UN Special Rapporteur on extra-judicial executions Philip Alston carried out a fact-finding mission to Colombia (UN, 2010) that noted the government's failure to investigate more than 885 cases of alleged extrajudicial killings (out of a reported total of 2,276 according to the Colombian Commission of Jurists -CCJ). Alston concluded, "It is clear from my investigations that members of Colombia's security forces have committed a significant number of unlawful killings and that the *falsos positivos*⁵ pattern has been repeated around the country". He also clearly pointed to the failure of proclaimed laws, such as the Justice and Peace Law (JPL) passed in 2005, to tackle impunity: "The JPL has not been an effective tool for justice or truth. Although paramilitaries have confessed to over 30,000 crimes, including 20,675 homicides, only 136 cases have been referred for trial and not a single person has been sentenced. There has been no account given of how such massive numbers of crimes came to be perpetrated, by whom or under whose command".

Peru: a deteriorating situation for human rights

The situation in Peru is also worrisome. The last years have seen increased criminalisation of protests and social movements, particularly indigenous communities, which have led to killings and disappearance by government forces and abuse of detainees by police and security forces.

In June 2009, repression of protests by the Indigenous populations of the Peruvian Amazon (against 11 legislative decrees adopted by the Peruvian Government to comply with the Free trade Agreement (FTA) with US) led to 33 deaths. Peru not only failed to live up to its obligations under the ILO Convention 169 and the UN Declaration on the Rights of Indigenous Peoples, which requires the government to conduct consultations with Indigenous communities before adopting decisions that can affect their lives; they instead responded brutally (Amnesty International, 2010).

Accusations of threats and intimidation of human rights defenders and journalists; abuse of detainees and inmates by police and prison security forces, including torture; restrictions on media freedom, among others have also been documented in annual reports between 2008 and 2011 by Amnesty (2010), Human Rights Watch (2011) and the US Department of State (2008).

Will FTAs help to improve human rights situation in Colombia and Peru?

One of the main arguments by the European Commission in favour of the FTAs with Colombia and Peru is based on their incorporation of a "solid human rights clause" (De Gucht, 2010). However, the leaked version of the negotiated text shows that what is included in Art1⁶ is a General Declaration of Principles completely lacking in enforcement mechanisms and binding rules. The European Commission has also recognised this: "In so far as human rights and democratic values are concerned...the trade agreement will not regulate those issues in detail" (European Commission, 2010: 9-10).

Furthermore, the FTA is weaker than the current commitments on human and labour rights that are part of the current GSP+ scheme. For example, the International Covenant on Economic Social and Cultural Rights is not included. Also, the FTA text does not demand that Colombia and Peru ratify and implement ILO Labour core standards (TUC, 2010).

It is clear that the 'human rights clause' is little more than window dressing. The real concern however is that these FTAs could actually worsen the situation for human rights in some cases.

Human rights organisations in particular have pointed to the likelihood of European investments in extractive industries like mining, energy and agriculture worsening existing forced displacement (Fritz, 2010). The EU-Andean Trade Sustainability Impact Assessment (SIA), commissioned by the European Commission, drew attention to the fact that the expansion of biofuels and mining as a result of the FTAs, was likely to cause further displacement of peasants and indigenous people (SIA, 2009).

The EC's SIA also noted the likelihood of increased violence and repression of indigenous communities by their governments due to the fact that FTAs promote "the easing of entry conditions for large foreign investments in indigenous territories" (SIA, 2009:54). Previous experience shows that Colombia and Peru are willing to give up these lands without prior consent of indigenous communities, required under ILO Convention 169.

5 False positives (*falsos positivos*) are unlawful killings of civilians, staged by the security forces to look like lawful killings that took place in combat with guerrillas or criminals.

6 Art 1 "As established in Article 1(1) of the Political Dialogue and Cooperation Agreement signed between the European Community and its Member States of the one part, and the Andean Community and its Member States of the other part ("the Political Dialogue and Cooperation Agreement"), respect for democratic principles and fundamental human rights, as laid down in the Universal Declaration of Human Rights, and for the principle of the rule of law, underpins the internal and international policies of the Parties. Adherence to these principles constitutes an essential element of this Agreement."

Evidence is compelling in showing that the FTAs between the European Union and Peru and Colombia will:

- have negative socio-economic and environmental impacts in Colombia and Peru in key sectors.
- Legitimise and potentially exacerbate ongoing human rights violations in Colombia and Peru

Countries like US, as well as the European Free Trade Association (EFTA) composed by Iceland, Norway, Switzerland, and Liechtenstein, have halted their FTAs negotiations with Colombia. Furthermore, in March 2010, the Flemish regional government announced they would no longer pursue the ratification of a Bilateral Investment Treaty (BIT) agreement that Belgian and Luxemburg had signed with Colombia on 4 February 2009. A few weeks later the Walloon government followed suit, suspending the ratification process of the Colombia BIT.

The EU and member states should also send a clear message that they will not reward or be complicit with governments that commit systematic human rights violations. It is time for the European Union and its member states to draw the line and reject ratification of the EU-Colombia/Peru FTAs. At the very least, it must open up the debate for a rigorous assessment of the agreement to examine whether it meets the EU's declared goals of policy coherence and respect for human rights.

4. Conclusion and Policy proposals

What Members of Parliament from all EU Member States can do:

- Call on the European Commission to declare these FTAs 'mixed agreements'.
- Present motions in Parliament demanding national competence to decide on the ratification of these agreements (in a similar way that parliamentarians have done this in UK, Ireland and Germany).
- Demand no provisional implementation of these FTAs until European Members States' processes of ratification is completed
- Vote No to EU-Colombia/Peru FTAs during the ratification process.



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Design: Ricardo Santos

Photo: Luz A. Villa (flickr.com/photos/luchilu)

March 2011

The authors are grateful to Myriam Vander Stichele for her analysis of the impacts of financial services liberalisation commitments based on EU-CAN negotiation text and to Enrique Daza, Alejandra Alayza and Paul-Emile Dupret for comments on draft versions of the text.

Published by: Transnational Institute (The Netherlands)

Co-published by: AITEC (France), ATTAC (France), Ecologistas en Accion (Spain), FDCL (Germany), Glopolis (Czech Republic), MAIS (Italy), Power Shift (Germany), Vedegylet (Hungary), WEED (Germany)

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