



Trade at any price:
The conditions for the Trade Agreement between the European Union and Colombia do not exist.



Oidhaco 
International Office
for Human Rights -
Action on Colombia

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Summary

This report provides a summary of aspects of the Trade Agreement between the European Union and Colombia, currently in the process of being ratified, which are of deep concern to many sectors across Colombian civil society and international human rights organisations.

Before negotiating a trade agreement with Colombia, the EU must ensure that human rights¹ are being fully respected there, and that a trade agreement will not exacerbate the human rights crisis. In this document we present overwhelming evidence of the lack of human rights guarantees in Colombia, the continuance of the armed conflict and the grave situation in relation to poverty and social inequality. We ask the European Union and its member states if they know for certain whether the agreement currently on the table will support the fulfilment of human rights or if, on the contrary, it would contribute to making the situation worse.

Of particular concern are the many and continuing human rights violations in Colombia, the vast majority of which remain unpunished. There are grave fears that the violent usurpation of millions of hectares of land in Colombia through human rights violations could be legalised through international investment. This could lead to a situation whereby European economic interests benefit from the human rights violations of the past, present or future by their use of land and other property which has, or will be, stolen through the violation of human rights, as a way of paving the way for agro-industrial or other projects which would profit from the new export opportunities to the EU. What guarantees are there that European Union companies, which would benefit from the treaty, would not be legitimising human rights violations which have helped them gain access to land and resources?

Addressing social inequality in Colombia involves ensuring that Colombian civil society is able to participate in the decisions that affect it. Does the European Union consider that Colombian civil society has had the opportunity to give its opinion on the treaty? We can not forget that the population is experiencing mass violations of its human rights and a seriously weakened rule of law.



*EU policies must aim to protect the biodiversity of the Colombian rainforest.
Photo: Conchita Guerra*

In this report we argue that there are not the conditions to proceed with the ratification of the trade agreement. We ask European Union parliamentarians and member states to join the growing number of voices from civil society and democratic institutions expressing serious misgivings about the agreement. We believe that the treaty must be subject to a transparent and genuinely democratic process, which takes full account of the human rights of the Colombian population as a whole.

We urge the European Parliament:

- Not to ratify the Free Trade Agreement (FTA) with Colombia because of the serious human rights situation in the country, the limited transparency of the whole process as well as the negative impacts which the FTA may have on vulnerable populations in Colombia. In this way, it would show that the EU's foreign policy is coherent and ethical, and that human rights take precedence over economic interests.
- Demand that the European Union and its External Action Service monitor the human rights situation in line with UN recommendations and the indicators agreed with Colombian civil society.

We urge all European Union institutions:

- To re-examine and pay greater attention to the worrying evidence highlighted in the *EU-Andean Trade Sustainability Impact Assessment* on the negative effects on the rights of the most vulnerable populations and the environment, as well as to the recommendations of the UN Committee on Economic, Social and Cultural Rights. On the basis of this, re-orientate its trade policy so that it does not deepen poverty and inequality for the most vulnerable populations and does not have irreversible environmental impacts for the whole of humanity.
- To meet its own objective of encouraging regional integration, recommence transparent political and trade negotiations in the South American region, in consultation with representative civil society organisations in both the Andean region and the European Union.

We urge the European Union and its member states:

- To put in place mechanisms which will help to ensure that aid policy is not financing economic projects responsible for or profiting from serious human rights violations or abuses.
- Request measurable results from the Colombian government regarding improvements in the human rights situation in Colombia, in line with the recommendations of the UN and its rapporteurs and special mechanisms who have visited Colombia in recent years. Stress to the Colombian government that new laws must meet measurable international human rights standards, including the victims' rights to truth, justice and reparation.
- Ensure that civil society has guarantees that it can express an opinion in favour or against state policies, including the agreement referred to in this document.
- Insist that the Colombian government takes urgent measures to begin dialogue on a political and negotiated solution to the internal armed conflict, prioritising full respect for human rights and international humanitarian law, and that there is support from the international community for the process, with the EU and the UN acting as its sponsors, to achieve a lasting peace for the whole of the Colombian population.

- Support projects for small-scale farming in Colombia in order to increase food sovereignty, as part of the EU Country Strategy Paper for 2014 – 2020.

We recommend to the member states of the European Union:

- That they insist that this trade agreement is treated as a mixed agreement due to the democracy clause and the clause on the non-proliferation of weapons of mass destruction. Within a genuine democratic process, member states should be able to subject the trade agreement to rigorous scrutiny given the grave human rights situation in Colombia.

What type of agreement is in the process of being adopted, and how has it been negotiated?

The European Union (EU) was created under firmly democratic principles, restated with the entry into force of the Lisbon Treaty in 2010. According to this treaty the EU *'shall contribute to peace, security, the sustainable development of the Earth, solidarity and mutual respect among peoples, free and fair trade, eradication of poverty and the protection of human rights, in particular the rights of the child, as well as to the strict observance and the development of international law, including respect for the principles of the United Nations Charter'*.²

In 2007, the EU began to negotiate a regional Association Agreement with the CAN (*Comunidad Andina de Naciones* – Andean Community of Nations) – Bolivia, Colombia, Ecuador and Peru, which had three pillars, political dialogue, trade and cooperation, with one of the fundamental aims being to foster Andean regional integration³. However, Bolivia and Ecuador walked out of the negotiations expressing concern at the free trade component and its implications for the rights of their citizens and increased social inequality. In May 2008, the President of Bolivia, Evo Morales, stated, "We want fair trade. The presidents of the CAN can not privatise basic services, or patent biodiversity or our looted natural resources. We are going to remain united and I would like to ask the European Union not to divide us"⁴. However, instead of continuing with the democratic negotiations, the EU took the decision to put the regional association agreement to one side and to start negotiating a new Multi-party Trade Agreement – a bilateral agreement with the governments of Colombia and Peru, two countries with grave human rights crises. With this move, a message was sent to the countries of the region - for the EU, trade was more important than democratic negotiations and regional integration.

The negotiations between the EU and the Colombian and Peruvian governments formally ended in May 2010. The 'consultation' meetings held during the negotiation process were not inclusive



200 organisations present a manifesto to the European Parliament expressing their opposition to the FTA.
Photo: Telebraille

and were influenced by commercial interests rather than the wishes of civil society. The European Parliament will debate the treaty in 2011. Under the Treaty of Lisbon, the European Council decides whether the agreement is mixed (that is, if it covers areas under the jurisdiction of the national parliaments of EU member states) or purely commercial. We believe that the treaty has

A message has been sent to the countries of the Andean region that, for the EU, trade is more important than democratic negotiations and regional integration.

to be considered as mixed because it is essential to have wider democratic debate on the agreement. It has a *Democracy Clause* and a *Clause on non-proliferation of weapons of mass destruction*, elements requiring democratic control on the part of each EU member state.

The presence of these provisions means that the agreement is much more than simply a trade document, and it should therefore be examined by all European Union countries. Parliamentarians in Germany⁵ have already tabled a motion, insisting that *"the legislature should exercise its powers to decide on the ratification of a free trade agreement between the EU, Colombia and Peru which does not solely govern trade issues but also covers structural, constitutional and human rights issues"*⁶. The organisations in the ODHACO network are urging each one of our parliamentarians to fulfil their legislative duty by going over the treaty with a fine tooth-comb and by not decoupling human rights from foreign policy and trade. Only by doing this will our countries be true to the fundamental principles of the Universal Declaration of Human Rights and other international human rights standards which they have ratified.

Rule of law and civil and political rights

According to the European Union: *“Human rights, democracy and the rule of law are core values of the European Union. Embedded in its founding treaty, they have been reinforced by the adoption of a Charter of Fundamental Rights. Countries seeking to join the EU must respect human rights. So must countries which have concluded trade and other agreements with it”*.⁷

Words without deeds

The new government of Juan Manuel Santos has made positive changes to its public rhetoric on human rights, with his declaration in August 2010 that *“The defence of human rights is a firm and binding commitment”*⁸, and promising to place emphasis on human rights during his term of office. Although this change is welcome, no actual changes have been seen in practice. Despite these declarations on human rights, in the first three months under the new government, 32 civil society leaders were assassinated, including trade unionists, human rights activists and indigenous leaders⁹. A recent report highlights the fact in the first three months of 2011, 9 human rights defenders were assassinated, 68 received death threats and 4 were disappeared¹⁰. The continued human rights violations have led many human rights and civil society organisations to question whether the President’s rhetoric is going to translate into real changes. Or perhaps what lies behind it is simply the desire to sanitise Colombia’s image in the eyes of the international community in order to encourage investment and trade agreements. The grave human rights situation in Colombia, with many decades of systematic and structural violations, can not be changed by rhetoric alone – it requires firm action and decisive public policies, including full compliance with the UN’s recommendations on human rights. Below we summarise some of the most serious issues over the past few years. Colombia continues to be the most dangerous country in the world for exercising trade union rights, accounting for over 60% of all trade unionists assassinated throughout the world, with an average of 1 trade unionist murdered every 3 days¹¹. Human rights defenders and judges who have denounced the mass violation of the human

rights of Colombians and seek justice in these cases have been systematically stigmatised, threatened and murdered in Colombia¹². Extrajudicial executions committed by the Colombian armed forces



The right of Colombian trade unionists to defend human rights must be protected as a matter of urgency
Photo: Jochen Schuller

have been described as a systematic practice by the UN’s Special Rapporteur on extrajudicial and summary executions and High Commissioner for Human Rights¹³.

The *Coordinación Colombia-Europa-Estados Unidos* (Colombia-Europe-United States Coordination Group) has reported that over 1,122 extrajudicial executions were committed between 2002 and 2007, to date all of them with impunity. Colombia is one of the countries with the highest number of recorded cases of ‘forced disappearance’ in the whole of Latin America. As revealed by the UN’s Representative in Colombia for Human Rights, the *Fiscalía General de la Nación* (Public Prosecution Service) is investigating 27,300 cases of forced disappearance¹⁴. It is a cause for alarm that there have been 1,130 new cases reported over the last three years, meaning that more than one person is forcibly disappeared every day. Although a reduction has been recorded in the number of extrajudicial executions over the last year, there has been an increase in the number of cases of forced disappearances. According to the Annual Report of the UN High Commissioner for Human Rights, *“The number of registered cases of disappearance increased almost 40 per cent compared to 2009”*¹⁵. Firm and immediate action is needed on the part of the Colombian state to ensure that violations committed by members of the security forces are

fully punished, including extrajudicial executions and forced disappearances. The new Military Justice Code (Law 1407 of 2010) has failed to exclude human rights cases from military criminal jurisdiction¹⁶. The United Nations Human Rights Committee and the Inter-American Commission on Human Rights have noted with concern that the military justice system continues to assume jurisdiction for cases of extrajudicial executions in which the alleged perpetrators are the armed forces¹⁷.

The DAS Scandal

In 2009, a scandal broke which raised serious concerns about the true nature of democracy and free expression in Colombia, representing as it did a direct attack on the rule of law. Colombian human rights defenders discovered that the DAS (*Departamento Administrativo de Seguridad* – Administrative Security Department), the state intelligence agency which reports directly to the President, had conducted a widespread campaign of illegal phone-tapping, e-mail interceptions and surveillance of human rights defenders, judges, opposition politicians and journalists in Colombia, seriously affecting their work and the independence of the judiciary. One example of

Firm action and decisive public policies are required to change the grave human rights situation, including full compliance with the UN's recommendations on human rights.

the shocking incidents related to this case is that of Soraya Gutiérrez, a lawyer with the renowned human rights organisation, the José Alvear Restrepo Lawyers' Collective, who received through the post a beheaded doll covered in blood with the message, "You have a lovely daughter, Don't sacrifice her", a threat sent by DAS officials¹⁸. Furthermore, the DAS carried out surveillance in Europe of organisations and individuals working on human rights, particularly in Belgium and Spain. The European Parliament's Human Rights Sub-Committee was also the target of illegal interceptions.



Victims demand truth, justice and reparation for the crimes committed against them, including the return of their land. Photo: Alessandra Miraglia

There are serious concerns about the Colombian state's Protection Programme, a programme whose objective is to guarantee the safety of human defenders. In March 2011, several organisations were forced to reject the so-called 'security schemes' provided by the state because of what they describe as 'the government's silence in the face of [...] repeated requests for increased protection measures'¹⁹. The organisations have also expressed their distrust of the private security firms proposed by the State to carry out this protection work and the fact that the Ministry of the Interior's Protection Programme has been "used to persecute us and monitor our activities as human rights defenders"²⁰. These factors place the human rights defenders affected in a highly vulnerable position.

Paramilitary groups continue to operate

Despite the supposed demobilisation of paramilitary groups, there are frequent reports of paramilitary activities in highly militarised areas, and it is reported that paramilitary groups continue to operate in 29 of the country's 32 departments²¹. Recent statistics from the CNRR (*Comisión Nacional de Reparación y Reconciliación* - National Reparation and Reconciliation Committee) indicate that there are currently 6,000 armed men belonging to one or other successor group to the paramilitaries²². According to Human Rights Watch, "toleration of these successor groups by members of the public security forces is a main factor in their growth"²³. The justice and peace process has been criticised²⁴ by civil society organisations because it was not designed in line with the norms of truth, justice and reparation to disman-

tle the structures, sources of finance, and support from the political classes and civil society for the criminal activities of the first generation of paramilitaries. By November 2010, over five years after the law was passed, there had only been two convictions²⁵. It is essential to guarantee victims' rights to truth, justice and reparation, with decisive action by the Public Prosecution Service to conduct an in-depth investigation into the phenomenon of paramilitarism and effect its complete eradication, including its political and financial structures. This would be the only way of combating impunity and making progress towards guarantees of non-repetition.

There are no guarantees that the European Commission has not provided funding for economic projects which could see supposedly demobilised paramilitaries living alongside a civil population which may have been the victims of their actions. These projects could even involve land and other property usurped through human rights violations committed by these groups and serve to legalise impunity. These fears are even more well-founded within the context of the trade agreement, given that the lack of firm action by the EU to criticise the failings of the justice and peace process could prove to benefit European economic interests. The EU must ensure that this does not happen.

The problem of land

The expansion of paramilitarism in the 1990s which caused intense periods of mass forced displacement, has contributed significantly to land concentration and promoted the implementation of mining, oil and infrastructure megaprojects in Colombia. To give just one example, the planting of monocultures and the dispossession of land through the actions of paramilitary groups are closely linked. On the land of Afro-Colombian populations, "In Curvaradó, a municipality in the Chocó department, in the east of the country, the communities have lost 29,000 hectares through the actions of the paramilitaries, of which 7,000 are planted with African palm"²⁶. The illegal seizure of the land of rural populations has enabled certain resources to be made available to multinational companies. In fact, it is estimated that there are between 3.3 and 5.1 million forcibly displaced people in Colombia, or in exile in borde-



Monument to the victims from the San José de Apartadó Peace Community, examples of the millions of victims throughout the country. Photo: Alessandra Miraglia

ring countries²⁷, a fact which in human terms constitutes a humanitarian crisis. The Colombian Constitutional Court has declared the internal displacement situation in Colombia unconstitutional and issued a series of *Autos*²⁸ (judicial decrees) in 2009, declaring an "unconstitutional state of affairs" in view of the lack of a vigorous response to the issue of forced displacement. It demanded that the state develop serious and effective public policies to prevent it, and to assist the displaced population, particularly the most vulnerable populations such as women, Afro-Colombian communities and indigenous peoples.

What guarantees are there that European Union companies, which would stand to benefit from the treaty, would not be legitimising human rights violations which may have helped them to gain land and resources?

To date, the Colombian state has not complied with any of the *Autos*. Forced displacements continue to happen daily and so the crisis is ongoing: according to the respected Colombian organisation CODHES, there were 280,041 new forced displacements in 2010 alone²⁹.

Over the past 30 years, 6.6 million hectares have been illegally appropriated in Colombia, according to the *Comisión de Seguimiento a las Políticas Públicas sobre Desplazamiento Forzado* (Monito-



Women from the Embera indigenous people in the department of the Chocó. According to the Constitutional Court, 34 indigenous peoples are at risk of extinction. Photo: Julian Arango

ring Commission on Public Policies on Forced Displacement)³⁰. According to the CNRR's own figures, in the five years since it was established, only 1,500 hectares have been returned out of the 5 million usurped by the paramilitaries³¹. This phenomenon is linked to the crisis of internal displacement and has led to agrarian counter-reform on a huge scale. 0.43% of landowners hold 62.91% of rural property, while 57.87% own 1.66% of the land. Regarding land use, it is estimated that the country has 12 million *campesinos* (peasant farmers) but land use for agriculture is 4.7 million hectares³², as compared to the 40 million hectares devoted to extensive livestock rearing.

If the Colombian government fails to take effective measures to return illegally usurped land to their rightful owners, European Union compa-

nies operating in Colombia may find themselves legitimising the legalisation of lands appropriated through war crimes, crimes against humanity and forced displacement. Although the government has stated that it wishes to prioritise the restitution of land to the victims of dispossession, there has been a worrying increase in death threats and murders of people demanding the return of their land³³. The alarm sounded by the High Commissioner for Human Rights is relevant here: *"Of particular concern are the homicides, threats and harassment against those advocating for the rights of displaced persons...and for the restitution of lands"*. In the last 3 years over 50 such murders have been committed³⁴, and it is a tragedy which continues under the new government: on 23 and 24 March 2011, 3 leaders were assassinated, 2 in the Urabá region and 1 in Sucre department³⁵.

The Victims' Law

Although a new victims' law is in the process of being adopted which includes land restitution, this element has been called into question by human rights organisations for various reasons. The law should deal with the issue of dispossession since the beginning of the 1980s, the start of the paramilitary violence which caused many displacements. It should also guarantee the restitution of all the land usurped – over 6 million hectares - in all 32 of the country's departments. It is not clear what conditions there would be for the victims' return to their land, particularly in terms of their protection and their food sovereignty, to allow them to practise small-scale subsistence farming and resist future displacement.³⁶ It is important to clearly establish the true amount of land stolen from the Colombian population by drawing up a national land register as ordered by the Constitutional Court (Judgment T-025 of 2004). The international community could contribute to the process of identifying displaced people's land, crucial to ensuring that European economic interests do not run the risk of investing in and thereby helping legalise land stolen through human rights violations and abuses.

The armed conflict

Although the government has assured the international community that Colombia will soon enter a post-conflict phase, human rights defenders and many sectors of civil society, both urban and rural, continue to report repeated violations of human rights and international humanitarian law (IHL) by the parties to the conflict. In the event of the possibility of peace negotiations between the Colombian government and the guerrilla movement, the international community could play an important role by insisting that any such process should prioritise respect for human rights and IHL as the only way of creating the conditions for a sustainable process, which must include the democratic participation of civil society in its formulation and implementation, to lead to a lasting peace.

As Human Rights Watch has stated in its 2010 annual report “*In the absence of the demonstrated political will by abusive governments to make change, governments of good will need to apply pressure to end repression*”.³⁷ The European Union could take decisive action to ensure that the Colombian government addresses the human rights crisis, with this including full implementation of the UN recommendations. The application of these recommendations is an absolute necessity for ensuring effective rule of law. The rule of law is a prerequisite for ensuring that civil society can express its support, opposition or criticisms of any trade agreement. The non-ratification of the trade agreement by the European Union and its member states would exert heavy pressure on the Colombian state to respect human rights.

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Furthermore, the application of these recommendations, which include firm action against impunity for human rights abuses, are essential for ensuring that the EU and EU companies seeking to benefit from the trade

agreement do not profit from situations in which land and other property has been stolen through human rights violations and abuses. Any trade agreement with a country faced with a human rights crisis must take into account the fact that, not only is there the danger that the agreement could result in further human rights abuses, but also the danger of exposing the EU and its companies to the possibility of profiting from human rights abuses committed before the agreement was signed. It is important to emphasise this risk given that the increase in land concentration achieved through human rights abuses has run in parallel with a long process whereby successive Colombian governments have promoted the export sector to take advantage of the new opportunities provided by free trade.

What impacts would the agreement have on economic, social, cultural and environmental rights? How would it impact on the collective rights of indigenous peoples and Afro-Colombian communities?

Poverty and inequality

Representatives of the European Union argue that the Agreement would help Colombia to alleviate poverty, but so far this assumption has not been borne out by the evidence. At the moment, it is not clear that increases in investment have helped to mitigate poverty, and therefore nor is it necessarily the case for the FTA. On the contrary, we believe that it would aggravate the situation for certain sectors as, despite a tripling in direct foreign investment in Colombia between 2005 and 2008, levels of social inequality have increased, for the most vulnerable populations above all. According to the 2010 World Development Report, Colombia registered 0.585 on the GINI index, which means that it has risen from being the 9th to the 6th most unequal country in the world. These are some of the most striking statistics:

- *27.7% of the population have unsatisfied basic needs,*
- *40.8% of households suffer from food insecurity,*
- *20% of children are outside the school system,*
- *Colombia is the only Latin American country where primary education is not free.*

In rural populations (*campesinos*, indigenous peoples, Afro-Colombian communities), the figures on exclusion are even higher. 62% of Colombia's rural population is poor and 22% lives in extreme poverty³⁹. In urban areas, it is estimated that 200,000 people in the city of Medellín alone are living without access to basic services such as drinking water and electricity because they can not pay their utility bills⁴⁰. While in the 1990s Colombia was able to supply 90% of its domestic food consumption, the country has since had to import food on a massive scale. The neglect of food production explains why over 60% of Colombia's rural population lives below the poverty line and why, in a middle income country, over 500,000 children suffer from chronic malnutrition⁴¹, and why at least five thousand children die from malnutrition each year.⁴²

The economic growth statistics presented in support of ratification hide stories of the poverty and inequality experienced by the most vulnerable people in Colombia. In August 2009, the *EU-Andean Trade Sustainability Impact Assessment* was published, which had been commissioned by the European Union.⁴³ Although significant parts of the draft were apparently suppressed, the final version points to a number of seriously negative effects on the rights of rural populations, the rights of workers in the energy industries, women (the feminisation of poverty), indigenous peoples and Afro-Colombians. It also highlights the negative effects on biodiversity and deforestation, and a potential reduction in social spending as a result of the treaty. It states that there may be major conflicts with both rural and urban sectors which do not agree with a development model focusing on strengthening the export sector without necessarily taking into account the views and aspirations of *campesinos*, Afro-Colombians, indigenous peoples and other sectors anxious to determine their own development model and ways of life and to protect their food security. We summarise below some of the most alarming situations for the most vulnerable populations in Colombia, which should be reason enough not to ratify the agreement.

Indigenous peoples

The United Nations High Commissioner for Human Rights is clear in stating that, “the rights of indigenous peoples and Afro-Colombian communities are still disproportionately violated in the context of armed conflict. In particular, their rights to life, territory and culture are being threatened by the presence of armed actors on their lands”. When James Anaya, Special Rapporteur on the Rights of Indigenous Peoples, visited Colombia in 2009, he concluded that the situation for indigenous peoples continued to be “serious, critical and of serious concern”, and urged the Colombian state to invite Francis Deng, the UN Special Adviser on the Prevention of Genocide, to examine the situation and consider ways of halting this irreversible process⁴⁴. The Colombian Constitutional Court issued *Auto* 004 of 2009 ordering the Colombian state to draw up safeguard plans for 34 indigenous peoples declared by the Court to be at risk of physical and cultural extinction, and a national plan of guarantees for all the country’s indigenous peoples. ONIC (the National Indigenous Organisation of Colombia) has mapped the situation of a further 30 peoples at imminent risk of extinction in the country⁴⁵. ONIC reported that 122 indigenous people were murdered in 2010, an increase compared to 2009 (114 killed).⁴⁶

The extreme vulnerability of indigenous peoples stems in part from their demanding their right to self-determination in their territories, as laid down in the Political Constitution of Colombia. In 2009 and 2010, the UN Special Rapporteur on the Rights of Indigenous Peoples, the UN Permanent Forum on Indigenous Issues and the Colombian Constitutional Court have all expressed concern at the failure to respect indigenous peoples’ and Afro-Colombian communities’ right to free, prior and informed consent regarding development projects implemented by transnational companies in their territories, particularly mining, oil, agro-industry and hydroelectricity. The Rapporteur urged the Colombian state to “bring Colombia’s public policy relating to economic develop-

ment of the country (particularly as regards natural resource extraction and agro-industry and tourism infrastructure “megaprojects”) into line with the indigenous peoples’ rights to land and natural resources, in accordance with the provisions of ILO Convention No. 169 and the United Nations Declaration on the Rights of Indigenous Peoples.”⁴⁷

Integrating into development policy recognition of their right to self-determination on their territories, in line with Colombia’s constitution and ILO Convention 169, is essential if the process of potential genocide of indigenous peoples is to be arrested. The National Development Plan 2010-2014 and the Trade Agreement between the EU

and Colombia are both strongly encouraging the development of extractive industries and agribusiness, which will have very negative effects on indigenous peoples. The UN Declaration on the Rights of Indigenous Pe-

oples could serve as a conceptual framework if it were incorporated into Colombia’s public policy and the European Union’s trade policy, in particular by guaranteeing the right to prior, free and informed consent before licences were granted to companies. The Colombian state and the European Union have the responsibility to act urgently, given the risk of genocide that the Special Rapporteur warns of. Without guarantees of protection in line with international norms on the rights of indigenous peoples, it is difficult to imagine that genuine processes of free, prior and informed consent will be conducted in Colombia.

The environment

A growth in the number of projects by multinationals could cause an increase in conflicts over land and environmental damage such as deforestation in areas of woodland, national parks and rainforest if the development models implemented by various companies continue. The International Mission to Verify the Impact of Agrifuel Production in Colombia, carried out in 2009, found numerous negative effects on the environment and the right to food and water resulting from the mass planting of monocultures for

The economic growth statistics presented in support of ratification hide the stories of the poverty and inequality experienced by the most vulnerable people in Colombia.



Palm oil plantations affect biodiversity and food sovereignty

Photo: Julain Arango

the industrial production of agrifuels. In Meta and Vichada, these projects have a direct impact on the rights of the Kuiva and Sikuani peoples, declared at risk of extinction by the Constitutional Court in *Auto 004* of 2009⁴⁸. For these semi-nomadic peoples the effects on the environment have been disastrous *“the constant tipping of fertilisers into water sources by the palm and sugar cane companies has contaminated the river basins, causing a variety of illnesses in the population, and death and disease in the animals owned by the communities, again putting at risk schemes for food security and sovereignty”*⁴⁹. A treaty which prioritises major development projects such as monocultures and extraction projects will have devastating effects on food sovereignty and small-scale producers and campesinos.

Afro-Colombian communities

Gay McDougall, the Independent Expert on Minority Issues, in her mission report on Colombia of 25 January 2011, highlighted the extreme poverty of Afro-Colombians, 80% of whom do not have their basic needs met, with infant and ma-

ternal mortality rates double the national average, and constant infractions of humanitarian law committed by the parties to the armed conflict, and the actions of paramilitary groups which still seek to displace the communities and usurp their land⁵⁰. The Expert also calls attention to the disproportionate violence against the Afro-Colombian population, reflected in the numerous murders of leaders and women, and in the fact that over a million Afrodescendants have been displaced from their land, more than 12% of the total Afro-Colombian population⁵¹. She also expresses her concern at the extremely high level of impunity for these crimes, which in the case of displacement is 99.8%, and the absence of reparation. Poverty affects Afrodescendent communities living on land with immense wealth – mineral (such as Suárez municipality (Cauca)), agricultural and forestry, such as in Jiguamiandó and Curbaradó and in Carmen de Atrato municipality (Chocó), and those living in places where infrastructure megaprojects are under way, such as the work to extend the sea port and the link to the Pan-American Highway in Buenaventura



Afro-Colombian community on Colombia's Pacific coast, offering peaceful resistance in the face of war and the arrival of transnational companies.

Photo: Jochen Schuller

(Valle de Cauca)⁵². Afro-Colombian communities have not been consulted adequately on major megaprojects and the EU-Colombia Trade Agreement, in terms of their territorial rights, access to natural resources and the protection of biodiversity.

In a landmark ruling, the Colombian Constitutional Court ordered the suspension of the exploratory phase of the Mandé Norte mining project (Judgment T-769, 2009) until social, environmental and cultural impact assessments have been carried out, as well as an adequate process of prior consultation of the Embera people and the Afro-Colombians of Jiguamiandó, who are affected by this project and who will decide if they will grant their prior, free and informed consent to it. However, the Government has not complied with the Court's rulings – quite the contrary, with the Ministry of the Interior and Justice asking the Court to annul Judgment T-769.

Despite already extremely high levels of rural poverty, the FTA could make the situation even worse. A recent study found that 15.2% of the area planted to crops and 7.2% of *campesino* agricultural production would be at risk from heavily subsidised imports from the European Union.⁵³

According to the report by the International Mission to Verify the Impact of Agrifuel Produc-

tion⁵⁴, the Magdalena Medio region accounted for 34.3% of national palm oil production in 2008, while at the same time 61.9% of its population do not have their basic needs met. There is a high level of food vulnerability because people can no longer produce crops, they lose the capacity to grow their own food, while fishing has been affected by the disappearance of rivers and by pollution. The chemicals used in the region for fumigations have led to contamination, skin infections and to people being poisoned⁵⁵.

Workers

The employment conditions in various sectors which will benefit from the Trade Agreement are very poor and it is not clear how the Agreement would help to ensure that these violations of rights did not continue and that the human rights situation did not worsen. In an emblematic case in the banana sector, the company Chiquita Brands International was fined 25 million dollars in 2007, for having paid for the illegal services of paramilitary groups for six years (through extortion, according to the company)⁵⁶. In the flower sector, employment conditions have worsened in recent years:

*"The express prohibition on workers in the flower-growing industry from exercising their right to association; evasion of payment of social security contributions (pensions, health and accident insurance), the imposition of inhuman performance targets (the selection of 300 flowers an hour), causing one of the highest rates of carpal tunnel syndrome of any sector in the country, and the non-payment of overtime, is creating a real humanitarian crisis for those working in the flower industry, especially for women who make up the majority of workers in this sector"*⁵⁷.

The Committee on Economic, Social and Cultural Rights, when it examined Colombia's fifth periodic report on the application of the International Covenant on Economic, Social and Cultural Rights, at sessions on 4, 5, 19 and 20 May 2010, observed:

The Committee is concerned that bilateral and multilateral trade agreements signed by the state may affect the enjoyment of economic, social and cultural rights

*“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”.*⁵⁸

The Committee also advised the Colombian government to prioritise food production in its agricultural policies, currently too heavily orientated towards agro-exports and biofuels. Furthermore, it has recommended a review of the intellectual property provisions of the Free Trade Agreement in order to ensure that products such as medicines are affordable for people on low incomes⁵⁹.

Those in favour of the multiparty agreement have commented that the EU needs to adopt the treaty to combat the economic crisis. It can not be acceptable to us, as peoples and citizens of Europe, to try to solve our problems through the environmental or social destruction of other countries. What is more, the *EU-Andean Trade Sustainability Impact Assessment*, commissioned by the European Union, found that with the implementation of the FTA *“No significant economic impacts are identified for the EU from the proposed EC–Andean countries trade agreement. There is no change in EU27 GDP and the impact on EU trade flows is negligible”*⁶⁰.

On 16 November 2009, in a letter to Commissioner Catherine Ashton, the twelve Irish members of the European Parliament (MEPs), from four different political groups, and the Irish Congress of Trade Unions, asked the European Commission, headed by Ashton, *“to immediately suspend the negotiations for a Free Trade Agreement with Colombia”*. The signatories stressed that, with the suspension, *“it must be made clear to the Colombian authorities that the EU and its Member States do not condone the current situation in Colombia”*. They also called for the *“launch of an open EU investigation into Colombia’s labour and human rights performance”* in that country.⁶¹

On 8 December 2010, a group of 10 MEPs who have been closely following the human rights situation in Colombia issued a joint statement, in which they expressed the following view:

*“We believe that it is unacceptable for the European Union to enter into a free trade agreement with a country that is failing to tackle such clear abuses of human rights and trade union rights. For those who have lost their lives and those who live in daily fear, we believe that the European Parliament has an obligation not to ratify the free trade agreement before concrete improvements on human rights are demonstrated.”*⁶²

As European citizens in solidarity with the Colombian people, we are concerned at the apparent lack of coherence that the EU has shown when applying its human rights and democratic principles, and its policies on cooperation and trade. The EU must apply equal standards so that corporate responsibility and human rights may be applied in the same way both within and outside Europe. We can not accept on other territory what we do not accept on ours. There are other ways for the EU to aid Colombia and its people, by supporting initiatives for grassroots development, food sovereignty, organisational capacity-building, and for peace.



Peace march by the National Minga for Indigenous and Grassroots Resistance, demanding a response to serious violations of their human rights.

Photo: Gert Steenssens

The conditions for this trade agreement do not exist.

Trade can not be done at any price.

Other ways of doing business are possible!

(Notes)

- 1 When we refer to 'human rights' in this report, they should be understood to mean the full spectrum of rights – civil and political rights, economic, social and cultural rights, and collective rights.
- 2 Treaty of Lisbon – accessed at <http://eur-lex.europa.eu/JOHtml.do?uri=OJ:C:2007:306:SOM:EN:HTML>
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- 4 El Comercio.com - <http://elcomercio.pe/edicionimpresa/Html/2008-05-18/acuerdo-comercial-canue-negociara-flexibilidades.html> (in Spanish)
- 5 Heike Hänsel, Jan van Aken, Christine Buchholz, Sevim Dagdelen, Dr. Diether Dehm, Wolfgang Gehrcke, Annette Groth, Inge Höger, Andrej Hunko, Harald Koch, Stefan Liebich, Niema Movassat, Thomas Nord, Paul Schäfer, Alexander Ulrich, Katrin Werner and the Parliamentary Group of the Left
- 6 German Bundestag. 17th period of sessions. Print no 17/1970. 09. 06. 2010
- 7 http://europa.eu/pol/rights/index_en.htm
- 8 http://wsp.presidencia.gov.co/Prensa/2010/Agosto/Paginas/20100807_14.aspx (in Spanish)
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- 13 http://www2.ohchr.org/english/bodies/hrcouncil/docs/14session/A.HRC.14.24.Add.2_en.pdf, Report by United Nations Special Rapporteur on extrajudicial, summary and arbitrary executions, Philip Alston, Addendum – Mission to Colombia, 31 March 2010.
- 14 <http://www.hchr.org.co/publico/pronunciamientos/ponencias/po132.pdf> (in Spanish)
- 15 Report of the United Nations High Commissioner for Human Rights on the situation of human rights in Colombia, A/HRC/16/22, 3 February 2011
- 16 <http://www.colectivodeabogados.org/ONGS-de-nuncian-ante-la-CIDH-que-la> (in Spanish)
- 17 Human Rights Committee, Consideration of reports submitted by States parties under article 40 of the Covenant, Concluding observations of the Human Rights Committee, CCPR/C/COL/CO/6, 4 August 2010, para. 14. and OEA/Ser.L/V/II, 7 March 2011, IACHR 2010 Annual Report, chapter 4, Colombia
- 18 Manual de los seguimientos ilegales, (Illegal surveillance manual), El Tiempo newspaper, June 14, 2009, <http://www.eltiempo.com/archivo/documento/MAM-3484652>
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- 24 See Amnesty International report, "Colombia: The Paramilitaries in Medellín: Demobilization or Legalization?" AMR 23/019/2005, 31 August 2005
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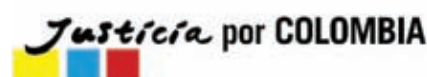
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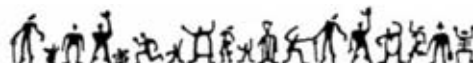
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Comité pour les
Droits Humains
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Agreement between the European
Union and Colombia do not exist.**

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