

Freedom for whom?

The free trade agreement between Colombia and EFTA



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HANDELSKAMPANJEN



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Introduction

November 24th 2008 Norway signed a free trade agreement with Colombia. According to the Minister for business and trade, Ms Sylvia Brustad, the agreement will attend to Norwegian business interests as well as contribute towards increased interest for human rights, social standards and labour rights.¹ In this report we express our concern that reality may be on the contrary in regards to human rights, labour rights and the environment.

The trade campaign is an umbrella organization for organizations that fight for an international trade system that promotes a just and sustainable development. Democratic development depends on the space for political action in countries concerned. In the Soria Moria declaration the Norwegian socialist government express that it is important that an international trade system does not limit the opportunities for development countries to use the same developmental tools as we once used to develop our welfare state. The trade Campaign is of the opinion that free trade agreements are a breach of this aim.

With a desire to give the civil society in Colombia a voice in Norway, the Trade Campaign sent Heidi Lundeberg and Alfredo Holguin to Colombia in October 2008. The aim of their trip was to interview various civil society organizations about their opinion of the agreement. A broad spectrum of organizations were interviewed such as grassroots movements among the trade unions, environmental groups, students, farmers, indigenous peoples and human rights organizations based in Bogota. This report is based on the concerns we heard while in Colombia.

We hope to shed light on this concrete agreement and prevent its ratification. Moreover we aim at showing the lack of transparency and debate around such agreements. Our hope is that this report in the future may contribute towards analyses of consequences as well as open hearings around such agreements. Such analyses and hearings should focus on democracy, balance between trading partners, employment opportunities, labour laws, environmental protection and social equity. We hope that the Parliament will be more involved in both this and in other free trade agreements in the future.

This report is mainly developed before the agreement is made public. This free trade agreement is much more intricate and comprehensive/radical than previous free trade agreements by EFTA. Because of this, the analysis of its consequences is also more complicated than previous analyses of other known previous agreements. The authors of this report have not had the intention to give a comprehensive analysis of the agreement and its consequences. They have rather intended to give the Colombian civil society organizations a voice in Norway about experiences of consequences from previous free trade agreements and how this provides an indication of what consequences this agreement may have.

The agreement was supposed to be discussed in Parliament in June 2009. We appreciate that the government has decided to postpone the ratification process until autumn 2009. The report and the work related to it have created much involvement among Norwegian organizations and movements and we assume that this involvement is the main reason for the postponement of ratification. We would like to thank all who have made this possible. The report will

¹ www.regjeringen.no/nb/dep/nhd/pressesenter/pressemeldinger/Pressemeldinger-2008/ferdigforhandlet-handelsavtale-med-colom.html?id=519321
25.02.09

be translated to Spanish and we hope that this will assist the Colombian organizations in their fight for a good, just and peaceful country.

Summary

In November 2008, Norway signed a comprehensive free trade agreement with Colombia. This report is a message of concern about the consequences of the agreement for Colombia as well as the undemocratic process around development of the agreement. Our main concerns are as follow.

The process around development of the agreement has been as undemocratic in Colombia as it has been in Norway. During the final stages of negotiations, leaders of indigenous organizations who demonstrated against the agreement were wounded and killed by the Colombian police. Norway has negotiated an agreement with a government that suppress opposition and also agreed on business policies with a country where it is highly dangerous to be organized in a trade union.

The agreement will strengthen the relationship between Colombia as a producer of raw materials and the EFTA countries as producers of services and processed goods and thereby prevent Colombia from breaking out of the poverty trap.

The agreement will reduce Colombia's political freedom and therefore its opportunities to use the same tools for its development policy as Norway was able to use in order to build the Norwegian welfare state. Here are some examples of how the agreement limits the political space for Colombia:

- The agreement goes beyond WTO when it comes to immaterial rights and patents, something which will have serious consequences for farmers and people's access to cheap medicine.
- The agreement provides easier access to public procurement for companies from EFTA countries. This has been one of the few areas where developing countries so far have had the opportunity to prioritize local contractors.
- The agreement approves of the right of the Colombian government to use state of emergency as a tool to hit down on opposition.
- The agreement involves the right to establish for foreign companies, something which makes it impossible for Colombian authorities to require local ownership or cooperation with local companies.
- The agreement goes as far as WTO when it comes to liberalization of services and will therefore reduce access to services for poor people.

The negotiations have taken place in secrecy. The content of the agreement was not made public before it was signed. The Parliament will decide whether to approve or disapprove of the agreement without public debate. A real democratic process requires public debate.

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Acronyms

ALCA	The all American free trade agreement
CAN	The Canadian Trade Blockade
CENSAT	Friends of the Earth Colombia
CITES	Convention on International Trade in Endangered Species
EFTA	European Free Trade Association
EU	European Union
UN	United Nations
ForUM	Forum for Environment and Development
GATS	General Agreement on Trade in Services
GATT	General Agreement on Tariffs and Trade
ILO	International Labour Organisation
IMF	International Monetary Fund
ISO	International Organization for Standardisation
LDC/MUL	Least Developed Countries
MOVICE	National Movement for Victims of State Oppression
NGO	Non-Governmental Organisation
NHD	Ministry of Trade and Industry
OECD	Organisation for Economic Co-operation and Development
RECALCA	Colombian Action Network in Response to Free Trade
SINTRAINAL	The National Union of Food Industry Workers (in Colombia)
TRIMS	Trade-Related Investment Measures
TRIPS	Trade-related aspects of intellectual property rights
UNCTAD	The United Nations Conference on Trade and Development
UNECA	The United Nations Economic Commission for Africa
UPOV	The International Union for the Protection of New Varieties of Plants
WIPO	The World Intellectual Property Organisation
WTO	World Trade Organisation

1. Free trade agreements and democracy

The relationship between free trade agreements and democracy is complex. In this chapter we will emphasize how the agreement between Colombia and EFTA will influence democracy in Colombia and that the process around developing the agreement has been dominated by a democratic deficit. First we will clarify what regional and bilateral free trade agreements are and why Norwegian authorities enter such agreements.

a) Why is free trade agreements made?

Regional and bilateral free trade agreements between countries with very different level of development are entered into both between individual countries in the north and south, between blocks in the north and individual countries in the south and between block in the north and blocks in the south. Norway usually negotiates in blocks with other countries in EFTA. The individual EFTA countries do also enter into bilateral agreements with countries in the south on certain topics.² In 2007 EFTA had 16 valid agreements with countries in East-Europe, Middle East, Asia, Africa and Latin America as well as Canada. In Latin America, EFTA has agreements with Mexico and Chile. Except from the agreements that EFTA has with Israel and Turkey, all agreements have been made in the past ten years.³

Entering into bilateral and regional agreements is a relatively new international trend. As the negotiations in WTO stagnate, the different blocks in the north have invested increased resources in bilateral and regional agreements. By negotiating bilaterally, the blocks in the north manage to get interests met that would otherwise not be met in agreements made through WTO. These agreements are therefore more comprehensive and in many ways they go beyond WTO agreements in regards to liberalisation and could be called WTO plus agreements. Breakthroughs in the bilateral agreements contribute towards further liberalisation in WTO agreements. In summary, where they have not succeeded in getting own interests met through multilateral WTO negotiations, stronger states use these bilateral and regional agreements as a strategy to get what they want from developing countries.

The leader of the Third World Network, Martin Kohr, is critical of the increase in bilateral and regional agreements. His opinion is that multilateral negotiations and agreements are preferable. Countries in the south stand in a much weaker position than those of the north in bilateral and regional agreements. There is an imbalanced power relationship mainly due to the fact that countries in the north stand stronger economically and politically. Furthermore, countries in the south often lack the technical expertise required in negotiations as well as weaker interest groups that can lobby and advocate for alternatives. In multilateral negotiations, as opposed to bilateral negotiations, countries in the south can stand stronger together by building alliances. Through such alliances, countries in the south have managed to achieve recognition of the principle for Special and Differential treatment. This involves higher protection of markets,

2 ForUM for development and environment.2007 Bilateral and regional free trade agreements.

3 www.regjeringen.no/nb/dep/nhd/07.12.08

production and work places for countries in the south than in the north.⁴ EFTAs negotiations with Colombia started in June 2007, initiated by the government of Colombia.⁵

During an orientation meeting at the Ministry of Trade and Industry (NHD), Knut Sørli (senior advisor in NHO) expressed that the aim of bilateral agreements must be to achieve WTO plus agreements. This statement was supported by state secretary Rikke Lind (labour party) in NHD.⁶ Areas of controversy that are left out of the WTO agreements due to hard resistance from the south are often included in these WTO-plus agreements. This includes areas such as investment protection, public procurement and legislation on competition. In certain areas that are included also in WTO agreements, the bilateral agreements go further on liberalization, such as in the case of immaterial property rights. On September 24th 2008 the free trade agreement with Colombia was signed.

8

b) The process in Norway and in Colombia

In Norway bilateral free trade agreements are not subjects for public debate as opposed to WTO agreements. After decades of advocacy civil society organizations worldwide have managed to achieve more transparency in WTO: Civil society organizations in several countries are invited as members of the delegations in negotiations, access to information has improved and some governments organise open hearings in order to inform about ongoing negotiations as well as to gather opinions from civil society. According to the Soria Moria declaration (2005-2009) the government aim at “conduct negotiations open and transparent for the public as far as possible”⁷ Although the processes in WTO still have a democratic deficit, the situation has improved. This is not the case for bilateral and regional agreements, which are hardly subject for public debate. The processes for negotiations and ratification could be characterized as secret and the civil society organisations have not mobilized sufficiently in advocating for more transparency.

The agreement with Colombia was not made public before it was signed and usually agreements are not made public until after they have been presented in Parliament. NHD has expressed concerns that a debate around such agreements will delay the process and be unfortunate for both Norwegian and Colombian businesses.⁸ The standard procedure is that the Norwegian delegation in EFTA, a delegation from the Ministry and diplomats take care of the negotiations. The agreements are made public and presented to the parliament after negotiations are finalized and signed. The trade campaign is questioning why the policy decisions around these agreements, which have drastic consequences, do not follow the usual democratic procedures such as consequence analysis and public hearings. The trade campaign has on this background requested a public hearing on the agreement between EFTA and Colombia. The answer from the Ministry of Trade and Industry, Ms Sylvia Brustad was “the trade agreements

4 ForUM for development and environment.2007 Bilateral and regional free trade agreements.

5 The first rounds of negotiations were held in parallel with negotiations with Peru. The agreement with Peru is not yet finalized.

6 Consultation on regional free trade agreements in NHD 29.10.08

7 The Government declaration, Soria Moria 2005:12

8 Letter to the Trade Campaign from Ministry of Trade and Industry 21.10.2008

that Norway signs are usually not presented at public hearings".⁹ Norwegian NGOs did get a 45 minute long meeting with the state secretary where they received information about the content of the agreement and information about the negotiation process. Following the orientation from the Ministry, the NGOs were given a 15 minute time frame to present their concerns. The state secretary, Rikke Lind (labour party) informed the participants in the meeting that the agreement would be ratified and that their inputs were of formal rather than practical use. The invitation for the meeting was sent out one week prior to the meeting and this led to a limited number of participants being present. Despite an open invitation, there were no businesses interests present at the meeting. The Ministry informed that Norwegian business interests in Colombia were mainly related to fisheries and fertilizers, whereas Switzerland has major interests in export of machines and technology with high added value and also on protection of immaterial rights, patent on medicines and chemicals.

We need to add that NHD did invite a few selected organisations for discussion while the agreement was still under negotiation.¹⁰ Nevertheless, such closed meetings with selected organisations may not be called a democratic action. Additionally, NHD admits that no consequence analysis has been conducted, something which has been done prior to negotiations with other countries where there has been reason for concern of the human rights situation.¹¹

The process around the agreement has been similar in Colombia as in Norway. As there has also not been a public debate regarding the agreement in Colombia, the civil society organisations that we spoke with fear that there will not be a sincere decision making process in Parliament. The majority of the organizations that we spoke with had not even heard of the agreement. Only the umbrella organisations RECALA and the Comité Colombia¹² who work specifically with free trade issues and the NGOs ILSA and CACTUS knew about the agreement that Colombia had finalised with EFTA.¹³ The negotiations were finalised after 1.5 years. Diplomatic sources in Colombia informed us that the negotiations went smoothly and that this was a goal in itself. It is of great concern that the negotiating parties see it as a goal that agreements with such considerable consequences should be concluded in the shortest possible time. Democratic processes take time.

Colombian civil society organizations have a long tradition for mobilizing against free trade agreements. The Colombian organizations were central in the Latin American fight against the all American agreement (ALCA) and have also work against the agreement with the US. Under the negotiations with both the US and ALCA the Colombian organisations demonstrated their strength. Central in this work are the two network organizations RECALCA and Comité Colombia de Lucha contra el ALCA y el TLC who join people in movements against free trade representing professions, farmers, environment and indigenous peoples. These two campaigns could be described as successful as both agreements were delayed.

9 Letter to the Trade Campaign from Ministry of Trade and Industry 21.10.2008

10 LO, Unio, Norwegian Refugee Council and Amnesty International were invited for dialogue and wrote a joint letter of concern to NHD www.lo.no 08.12.08

11 Before the negotiations with China started a consequence analysis was conducted

12 Comité Colombia de Lucha contra el ALCA y el TLC

13 Interviews with the organizations in October 2008.

Many of the elements in the Colombia – EFTA agreement refer to the so-called principle of “Most Favoured Nation” which means that Colombia must give the same promises to the EFTA countries as they have to the US. There have been considerable demonstrations in Colombia against the free trade agreement with the US and the principle of Most Favoured Nation. These demonstrations have been against the undermining of worker’s rights, rights of indigenous people, environment and democracy. Despite the difficult democratic situation in Colombia, the civil society aims at preventing the state from losing the country’s sovereignty.

We received very little information (from the government). The negotiations were presented as good, not because the agreement was good, but because they went smoother than the negotiations with the US. Therefore few people were concerned about the agreement; people did not think that it was of any importance. (Interview with Enrique Daza, RECALCA).

The text of the agreement has been made available in one of the national libraries in Bogota. However this should not be referred to as making the report public as visitors get a 40 minutes timeframe to read this technical text in English, without being allowed to make notes or take photos. In reality the report has not been accessible to Colombian civil society organisations that also do not have the fluency in English as required to read the report.

Colombia is a highly polarized society with several large and marginalized groups who feel that the Colombian government does not represent them. The Norwegian labour movement and the grassroots movement of the Norwegian political parties have a long tradition of working in solidarity with these groups. By signing this agreement it appears as if the Norwegian government takes with one hand and gives with the other. The Norwegian government has earmarked development aid to indigenous groups in South America and provided considerable support to the work related to IDPs and human rights in Colombia.¹⁴ The free trade agreement removes the livelihood for the same groups.

There are very few who will benefit from the agreement. There are many organisations and individuals who are against the agreement and it is important to inform about this in Europe. When you talk with the government you are not talking with the people of Colombia. (Interview with Enrique Daza, RECALCA).

According to Diego Martin, former leader of the Colombian student union ACEU¹⁵, this agreement is not about trade but rather about establishing a human rights alibi for the Colombian president Uribe. This alibi he needs for working with the US, Canada and the EU. By ratifying this agreement, Norway and Switzerland will provide such an alibi for the government of Colombia and thereby undermine the important work done by labour unions and social movements in Colombia.

14 Norway has for example supported the peace work of Colombian organisations through the Planeta Paz program (www.planetapaz.org)

15 Klassekampen 13.03.09

Protest among Indigenous peoples against free trade

In mid October 2008, thousands of indigenous peoples marched from Popoyan to Cali under parole "A Peoples' March for a new Country". The protesters tried several times to block the main highway Pan-American but were met by police violence every time. During a few days one person was killed and 75 injured in clashes between protesters and the police. The Colombian government considers roadblocks as a criminal offence, whereas the indigenous groups consider it as their most important form of civil action as they are not provided an opportunity to have a dialogue with the government. The marginalized indigenous groups raised the following five demands:

1. A new economic system: no more free trade agreements
2. No more terror and war
3. Implementation of legislation for alternative development strategies.
4. Respect for and implementation of agreements that are signed and of human rights.
5. Establishment of public mechanisms for sovereignty, peace and participation.

The protesters did not succeed in getting their demands met and therefore they continued marching towards Bogota where they arrived on November 10th. As a compromise they reduced the demands from five to three, but the demand of no more free trade agreements remains on top of the list

c) The situation in Colombia

The human rights situation in Colombia is of concern and there are major challenges related to poverty and conflict. According to Amnesty International more than 70.000 people have been killed the last 20 years. Most of these are civilians. 15.000 to 30.000 people have "disappeared" and more than 20.000 people have been kidnapped.¹⁶ The majority of the killings and the disappearances are politically motivated. Of the groups at greatest risk are the trade unions. While the negotiations on the free trade agreement with EFTA have been held, 41 union officials have been killed (in 2008 only). Colombia is the world's most dangerous country for being organized in a trade union. More than 2670 members of trade unions have been killed in Colombia since 1986. Marginalized groups such as indigenous peoples, afro-colombians and human rights activities are others who are at risk of being killed.

Students in Colombia are also at risk under government policies of labelling all critical voices as potential terrorists. The student organization ACEU has identified 592 cases of violence against students in the period 2002 to 2006. This includes 14 murders, 10 cases of torture, 11 kidnappings and more than 200 arrests.¹⁷

Indigenous peoples and other minority groups are at particular risk of being victims of violence or forced eviction from their land. The abandoned land is

¹⁶ Amnesty International. 2008 leave us in peace www.amnesty.org

¹⁷ ACEU 2008. Human Rights violations against university students in Colombia. Available at: www.saih.no/Artikler/6485.html

thereafter used for industrial agriculture and financial aid projects. Both Norway and Colombia have signed the ILO convention 169 on the rights of indigenous people. This convention secures the right of indigenous people to decide over their own land. However, Colombia systematically breaches this convention by not consulting indigenous people in cases concerning them despite several warnings from ILO. One of the main reasons for the opposition towards the free trade agreement with EFTA among indigenous people is their already fragile human rights situation.

President Uribe came into power in 2002 with promises of demobilizing the paramilitary groups who have been responsible for many of the massacres, disappearances, killings and the internal displacement in Colombia. The demobilization process has been a subject of controversy. Firstly, one questioned how the Colombian government could enter into a “peace process” with armed groups that are seen as part of a government security strategy. One of the critical voices was that of the national movement for the victims of public crimes (MOVICE)¹⁸ The Colombian Commission of Jurists in their newest report write that 11292 people have been killed or been subjected to forced disappearance in Colombia between 2002 and 2006. The organization emphasizes that the state is responsible for 75 per cent of these violations. State actors are directly responsible for 14 per cent of the cases, whereas paramilitary groups have committed 61 per cent of the violations, supported by the state. The guerrilla is responsible for 25 per cent of the cases.¹⁹

During the last few years, 25 per cent of the members of the Congress have been arrested and a considerable number of parliamentary members, including President Uribe, have been accused of having close connections with the paramilitary groups. The top command in Uribe's army has been dismissed due to being accused of having killed civilians instead of guerrilla soldiers. Civilians have been killed and presented as guerrilla soldiers killed in combat, meaning “positive” results of the military offensive against the guerrilla. Local governors and mayors, the prosecuting authority and all parties in the government coalition are involved. The large number of Members of Congress who are involved is now so big that one is no longer talking about single isolated cases but rather an alarming tendency that will most certainly lead to a political and institutional crisis.

Colombia is a polarised country both politically and socially. Historically the guerrilla groups have been connected to left wing political interests and the paramilitary groups have been connected to rightwing political interests. Today the picture is more complex. All the organisations that we interviewed have been labelled as “guerrilla friendly” by the government, regardless of whether they are grassroots’ based farmers associations or NGOs based in Bogota. According to the government, everyone who opposes the government support the guerrilla. The government also accuses the international human rights organisation Amnesty International of sympathising with the guerrilla.

18 www.movimientodevictimas.org 10.01.09

19 www.coljuristas.org/documentos/documentos_pag/CCJ%20INgles.pdf 10.01.09

“No nothing has happened here”

In his Nobel Prize novel “One Hundred Years of Solitude”, the world famous Colombian writer Gabriel Garcia Marquez wrote about the people in the town “Macondo”. Despite the massacre of hundreds of workers at the banana plantation, the people in Macondo denied the fact and claimed that “nothing has ever happened, nothing is happening and nothing is ever going to happen here. This is a happy people”.

**d) The agreements' effect on Colombia's democracy**

The concept of political freedom of action was introduced and established in UN circles at the UN conference on trade and development (UNCTAD) in Brazil 2003 as a result of hard debates between the industrialized countries and developing countries. The industrialized countries wanted the developing countries to open up their borders for free flow of goods, services and capital. However, the developing countries referred to the industrialized countries' own political and financial history where they themselves used various forms of trade regulations. Historical political instruments are again on the agenda due to the global financial crisis. Yet this is not on the agenda for the EFTA-Colombia agreement. The industrialised countries are now using a space for political action which they have prevented developing countries from using through the use of institutions such as the World Bank, the International Monetary Fund (IMF) and free trade agreements.

Space for political action entails the political measures that a country may use in order to ensure national and international goals: Trade agreements, degree of independence from international financial institutions and donors and the real influence in international negotiations with major actors (countries and corporations). The current Norwegian coalition government state in their governmental decree that “the governments will ensure that the WTO framework does not prevent poor countries from using their sovereignty and instruments that were important for us to develop our current welfare state”²⁰ However, it appears that this intention is breached in the agreement that the government and EFTA has signed with Colombia.

Free trade agreements limit the space for political action for future governments. This agreement is no exception to this. This agreement is in conflict with the aim of the current Norwegian government. For example, the agreement requires an investment agreement and liberalisation of services. Such requirements prevent Colombia from using political measures used by Norway, such as the concession acts for the continental shelf, the institute of reversion and requirements for local content in production. By requiring access to public procurement and liberalisation beyond WTO requirements, Norway prevents Colombia from prioritising local contractors, having a progressive industrialisation and employment policy as well as a progressive work environment and environmental policy.

²⁰ <http://www.regjeringen.no/upload/kilde/ssmk/rap/2005/0001/ddd/pdfv/260512-regjeringsplattform.pdf>, page 13

Bilateral trade agreements that go beyond multilateral rules (such as the WTO agreements) contribute in further reducing states' space for political action. One example is the controversial expansion of the legislation on patents and immaterial rights. UNCTAD (2007) emphasise that immaterial rights are the main threats for poor countries' political freedom of action. "Historically, immaterial rights have not created economic and technological development, but rather come as a result of this" (UNCTAD 2007:126). UNCTAD therefore advice that immaterial rights are not part of free trade agreements. By signing the free trade agreement with Colombia, Norway does not follow this advice and rather contribute in weakening Colombia's position in multilateral negotiations in WTO and WIPO.

Bilateral agreements may contribute in undermining regional cooperation, which have a potential of strengthening regional development and cooperation and through this strengthen the positions of developing countries in international negotiations. Colombia is a member of the Andean trade block Comunidad Andina de Naciones (CAN). CAN is an example of how regional economic cooperation can take place without reducing the political space for action for individual countries. As a member of CAN, the states may protect genetic resources against patents.²¹ When Colombia (and Peru) enters agreements with EFTA, EU and the US, which entails opening up of patents (so called TRIPS plus), they breach the contracts that they have with their neighbours. Several of the civil society organisations that we spoke with in Colombia were provoked by how countries in the north disturb and destroy regional integration processes. "the countries in EFTA have no second thoughts about destroying the regional integration which CAN represents" (...) the agreements with EFTA conditions the policy of the country" (interview with Enrique Daza, RECALCA).

Free trade does not create sustainable development. Norway should support social movements and marginalised groups as they did before and also support the regional processes of change. Norway should ensure transparency and inclusion because the agreement that they have signed is not for the people (interview with Juana Camacho, Censat – Friends of the Earth²² Colombia).

The message from the NGO CACTUS is clear: "the Norwegian government should not enter into this agreement. Aid for Latin America implies that one supports the sovereignty (of the countries)".

Furthermore, the free trade agreements involve moving from a democratically governed country to a country governed by laws. Certain parts of the bilateral agreements will be in conflict with national laws. This means that the consequence of ratifying such agreements is the changing of national laws that are developed under more democratic processes. Margarita Flores in the NGO ILSA (interview) points out that national and municipal authority will lose their function under a regime where business law surpasses democratic law. Margarita Flores also claim that those Colombians with a legal profession working in the courts will fall behind in regards to updated legal knowledge as international law increasingly dominate national policy.

21 www.bilaterals.org 24.09.08

22 Norges Naturvernforbund" is the Norwegian counterpart to Friends of the Earth

The agreements as an effect on the challenges of brain drain. Margarita Flores, who is also a board member of the Third World Network, points out that this situation is worsened by the financial consequences of the free trade agreements. The intention that countries in the south should specialise in export of raw materials while the countries in the north should specialise in industry and advanced services will not encourage young Colombians to take higher education. On the contrary, those who already have higher education will look for other countries to move to. The consequence is that Colombians with higher education will struggle to find a relevant job and move out of the country. Such brain drain undermines the country's ability to build a strong state administration and a strong national industry.

Another possible consequence of the agreement is that it in the long run could reduce Colombia's ability to handle the financial crisis. The agreement requires considerable liberalisation of financial services. Today's financial crisis demands a new policy direction. Developing countries that have had a certain level of control over capital movements (such as several countries in Southeast Asia in the 1990s) have managed to rebuild and maintain some control. Colombia has positive experience with some regulations and limitations of capital transactions in order to prevent capital escape²³ and financial instability. Colombia has obtained a breakthrough to maintain these measures under the agreement with EFTA. However, there is some uncertainty as to whether there are intricate references in different chapters and appendices that will be decisive in a conflict.

In the agreement with EFTA, the requirements for Colombia's liberalisation are influenced by the fact that three of EFTA's member countries are tax havens. The demands related to financing of shipping services go beyond Norway's official demands in WTO. Norway withdrew from the joint demands to developing countries under WTO-GATS in 2006, but has now joined the other EFTA countries. This impression is strengthened by footnote 4 in the agreement which says: "To the extent that a market-access commitment is undertaken by a Party in its Schedule of Commitments, and where cross border movement of capital is an essential part of a service supplied through the mode of supply referred to in subparagraph (a) (i) of Article 4.2 (definitions), that Party is hereby committed to allow such movement of capital. To the extent that a market-access commitment is undertaken by a Party in its Schedule of Commitments, and where a service is supplied through the mode of supply referred to in..... that party is hereby committed to allow related transfers of capital into its territory." Such a clause may open up for short sales something which was exactly what undermined the currencies in Southeast Asia during their crisis in 1997.

e) About negotiating with authorities with a democratic deficit

As mentioned earlier, Colombia is a much polarised country with strong opposing interests. Uribe and his government are elected by the people and do well in opinion polls. Despite this, all the organisations that we spoke with questioned the legitimacy of the government. One factor that several of them mentioned is the relationship between the government and the paramilitary groups. Several members of Congress and members of parliament have been suspended and

23 Epstein, Grabel and Jomo. 2004. Capital Management Techniques in Developing Countries: An Assessment of Experiences from the 1990s and lessons for the Future. G-24 Discussion Paper Series, UNITED NATIONS.

arrested after their connection with the paramilitary groups has been disclosed. Uribe is also accused of having close ties with the paramilitary. Negotiations with governments that have been accused of using paramilitary groups are a democratic challenge.

The civil society organisations' main argument for Norway not to sign the free trade agreement with Colombia is that marginalised groups, large sectors of the population, claim that they are not represented by the government. These are groups that are top priority on the development aid agenda of the current Norwegian government: workers, farmers, women and indigenous people.

This is a government that does not have the legitimacy to negotiate independently. Norway should not ratify the agreement as long as it is unclear what type of government they have co-signed with. This government does not have the competence to defend the national interests (interview with Enrique Daza, RECALCA)

During our field trip we understood that the Colombian civil society organisations know Norway as a peace mediator and important supporter of the human rights work being done in Colombia. Many are disappointed that Norway now move away from supporting them to sign an agreement that go against their interests. They are further disappointed of the fact that Norway has not ensured that these organisations that they used to support have been informed or consulted in the process.

“It is very difficult to be in opposition in this country, especially on the issue of free trade. These Europeans who now negotiate free trade agreements with the government have historically supported the peoples' movements in Colombia. The Europeans are shifting positions. They give with one hand and take with the other”. (Interview with Juana Camacho in the environmental organisation Censat – Friends of the Earth Colombia)

“We receive financial and political support from many countries. However we do ask that the Norwegian government understand that to cooperate with the Colombian government means working against the Colombian people” (Javier, president in the trade union Sinatrainal).

2. The effects of the free trade agreement on social conditions, work conditions and environment

The free trade agreement influences the Colombian people's opportunities for fighting for universal rights in several ways. EFTA has come to an agreement with a regime that actively and brutally prevent organisation of oppositional movements. The agreement signed between the US and Colombia includes a paragraph on workers' rights. Despite this paragraph, the US Congress has not approved the final agreement because of the considerable violations of workers' rights in Colombia. In the agreement between Colombia and EFTA, workers' rights are only mentioned with two references in the introduction. This will not be taken into account if conflicts occur regarding the agreement. Furthermore, the EFTA agreement also has a clause on "keeping public order", which we will discuss in the next chapter. This clause has a footnote (paragraph 11) which accepts that Colombia's government may use paragraphs of the constitutions normally used for martial law in cases where workers and marginalised groups demonstrate against violations, free trade agreements, forced removals and the like. Such measures often end in murders, such as in Valle del Cauca in October 2008.²⁴

At the information meeting about the free trade agreement between Colombia and EFTA at the Ministry for Trade and business on November 6th 2008 several organisations expressed their concern that this agreement will increase the number of internally displaced, killing of trade unionists and human rights violations. The representative from the Ministry of Foreign Affairs expressed that the Ministry does not share these concerns.

Norwegian authorities have not paid attention to the opposition towards free trade agreements within Colombia. The demonstrations against the agreement between Colombia and the US were mainly focused at criticising the agreement for undermining workers' rights, the rights of indigenous people, environment and democracy. The civil society in Colombia are concerned about the government losing its rights to govern public services, set their own conditions for private industry, improved working conditions, secure rights of indigenous people and conserve the natural resources for the population of Colombia.²⁵ Issues that the trade unions and civil society organisations have fought against in other agreements are now included in the agreement with EFTA. The agreement between EFTA and Colombia is weaker on rights of workers and human rights. Norwegian trade unions have urged the Norwegian government not to ratify the agreement.

In this chapter we will look closer at potential consequences of the agreement. Our assessment is based on the experiences of the organisations experiences with other free trade agreements, our own assessment of this agreement and other agreements.

²⁴ www.cric-colombia.org/noticias/?content=detail&id=142 20.02.09

²⁵ <http://bibliotecavirtual.clacso.org.ar/ar/libros/osal/osah19/andina.pdf> 20.02.09

a) Liberalisation and access to public services

Public sector and public welfare services are crucial factors for social equality. Development of public welfare services depend on the authorities' willingness to provide such services, financial means and space for political action for policies that ensures equal access for all regardless of financial means. Exposure to competition combined with unequal buying power lead to increased inequality and often contributes in undermining the quality of public services.

Requirements for reduced taxes on export means considerable cuts in public income. As there is a lack of consequence analyses of free trade agreements, we do not know exactly how much this may be. However, the UN has estimated a total loss of income for development countries at 156 billion USD for the ongoing WTO negotiations. This is 14-38% loss of state income depending on the degree of flexibility which is agreed upon.²⁶ In the free trade agreement full liberalisation is required, without flexibility. Moreover, this agreement will increase Colombia's role as export country of raw materials and increase its import of processed goods. Based on experience we know that this will lead to a weaker trade balance for the exporter of raw materials. This again led to reduced funds for public services.

In regards to the service part of the agreement between Colombia and EFTA, the Ministry for trade and business in the meeting on November 6th expressed that the agreement "is understood as having the same conditions as GATS". It is hard to say what this means in reality. The agreement considers private and public service providers as equal and therefore pushes towards market competition. In the governmental declaration, Soria Moria, the Norwegian government promise that the Norwegian development "will not go towards programs that demand liberalisations and privatisation".²⁷ This promise has been used to withdraw previous governments' demand for liberalisation of educational services and water provision in the service negotiations in WTO. Moreover, the agreement between Colombia and EFTA indirectly push towards liberalisation and market competition of public services. The agreement provides for increased customs duty or in other ways limit import of certain goods if an industry is about to collapse due to high level of import. (Article 2.18). This may sound positive, but such a security clause does not come for free. If Colombia chooses to use this clause, Colombia has to negotiate a compensation for the counterpart in EFTA that will lose market shares. Additionally, if such a protection is used, Colombia must liberalise another sector with a similar economic volume. Taking into consideration that the agreement requires that all industrial custom duties are removed, this could in reality mean that the public service-sector is the only possibility to pay for such protection. This clause will put a government in a position of having to choose between loosing workplaces or liberalise public services. Such services may be water and sanitation services, where there are major Swiss actors, or education and health. In the case of balance of payments deficit caused by too fast increasing import, Colombia have to use the procedures of the IMF, something which may lead to even more pressure towards privatisation because of IMF's standard procedures.

26 Santiago Fernandez de Cordoba. 2008. Coping with Trade Reforms: A Developing Country Perspective of the On-going WTO Doha Round of negotiations. UNCTAD.

27 Governmental declaration Soria Moria 2005:10

Colombia's political freedom of action is already weakened by its own government

The meaning of the concept "public services" has been changed in Colombia's constitution in order to adjust to the definitions used in WTO. One example is law number 671 of 2001, which was decided upon in order to create competition and remove the state monopolies. The reform, among other things, led to the bankruptcy of the state owned telecommunications company TELECOM. In this process, people employed in transnational companies worked as financial advisers in the government. Later on it has been discovered that the value of the public companies was grossly underestimated. The companies were divided into public and private entities and exposed to internal competition.

The constitution of 1991 has been changed 28 times in 17 years. The articles that have been changed have mainly been those that define Colombia as a democratic state governed by law and those that secure social rights. The changes have removed some of the most important democratic pillars of Colombia. It has also led to increased privatisation of the public sector and increased power to the President. The reasons given for the changes have been to provide for increased international investments.

The free trade agreement between Colombia and EFTA refers to article XVII in GATT (WTO) which juxtaposes private and public service providers. It will be difficult for the public companies to compete with the transnational companies. Some of the remaining public companies are among the far most competitive in the country. However, if the country unconditionally continues to open up for international companies and juxtaposes public and private businesses, the public businesses will be privatised. The result may be a reduction of public income. Based on previous experience, the area of service will be reduced and costs will increase with privatisation. The groups that are already the least advantaged will lose opportunities for education and health, and the price of electricity and water will increase. Colombia is of the countries in Latin America with highest inequality in distribution of wealth and income. According to CEPAL (The Economic Commission for Latin America and Caribbean) 45 per cent of Colombian children and 17 per cent of youth live in poverty.

b) Environment, administration of resources and internally displaced people

The development of industry in Colombia is to a large degree based on agricultural production in plantations, extraction of minerals, oil and hydropower. Colombian civil society organisations are concerned about further development of these sectors is based on concerns of environmental and social consequences. Environment and development is used as reasons to forcibly remove people from land, and start-up of mega projects that destroy the environment. The organisations that were interviewed are concerned about how the free trade agreement enforces the negative trends that are dominant in today's Colombia.

Three elements of the free trade agreement reinforce the development of megaprojects. The agreement opens up markets for agricultural products to the

EFTA countries, but at the same time it prevents Colombia from using export control of their export and secures the right of international investors to invest and establish themselves. In this way market relations are created that may increase the expansion of land areas that are used for agriculture for export and large scale monoculture instead of local food production and rainforest. Moreover, the agreement may lead to foreign investments in production of ethanol and agro fuel, reducing Colombians own right to administer their own land and water resources. Investment protection together with export orientation of raw materials, liberalisation of import control and prohibition on export restrictions may contribute to increased numbers of internally displaced people due to increased conflicts around land, rainforests and water. Investment protection in free trade agreements entails that large international companies have the right to establish mega projects based on extraction of natural resources, dam projects etc. These include extraction of biological and genetic material, large scale agriculture for export, plantations, telecommunication, transport, dam constructions and mining where capitalistic interests control properties, water and habitat of indigenous peoples.²⁸ Mega projects are often located in areas of complex eco systems. Juana Camacha in Censat – Friends of the Earth points out examples of how various mega projects disturb the weather system because they are located in mountain areas or rainforests that play a crucial role in how cloud formations are created. Chopping of rainforest in order to establish dam projects or road construction is in itself a major problem because of the important role that rainforests have in absorbing CO₂ and by this mitigating the global climate change, Juana Camacha explains.

Several of the civil society organisations mention pollution and destruction of water reservoirs as some of the most worrisome consequences of the plantations and the mega projects. During the past 20 years, water sources have been reduced by 45 per cent (interview with Angelica Chaparo, CACTUS). The plantations require enormous amounts of watering. Extensive use of water at the plantations reduces the amount of available water for the population. Aggressive use of fertilisers and pesticides pollutes the water sources. Many water sources have also disappeared as a result of hydropower developments. Many rivers have been laid in tunnels in order to export power.

There are many environmental concerns related to development of plantations and mega projects. Censat – Friends of the Earth Colombia are nevertheless most concerned about the relationship between environment and society. The establishment of plantations and mega projects force people to move away from their land.

Environmental protection or business as usual?

Nidia Quinte is a young, well informed woman. I (Heidi) meet her as a representative of the Via Campesina organisation Fensuagro. Nidia live in Putumayo, a region in the south of Colombia that borders to Ecuador. Putumayo is the gateway to the rainforest and is therefore a geostrategic region. In the 1960s and 70s, internally displaced people moved to this region. They were displaced from Colombia central and settled in Putumayo to grow coca plants. Life was good for the newcomers. However,

²⁸ Serrano, Hernando Gomez, *América del sur: La gran mercancía. Megaproyectos y geopolítica amazónica*. In *Alternativas y acciones en la lucha contra el ALCA*. Comité Colombia de Lucha contra el ALCA y el TLC. 2003. Bogotá. Colombia.

shortly after the drug mafia followed. They built roads to the neighbouring countries and started producing cocaine. “The farmers and the indigenous peoples were not participating in this” Nidia says. “The drug cartels from Medellin were responsible for the business”. Again life became insecure for the farmers and indigenous people. I first thought that I misunderstood when Nidia says that he husband and son have been killed by the paramilitary. She is so young. However Nidia says that many of the women in the region are widows. Fensagro organises the widows that continue as farmers in this turbulent region.

Nidia says that both men and women are victims of this neoliberal policy. According to Nidia, liberalisation is for developed countries. “Developing countries first and foremost need social investments, investments in roads, education, health and infrastructure”, Nidia says disappointed with the policies of the government. Mega projects are a major threat to the small scale farmers because they are driven away from their land when dams and the like are constructed. The government has recently approved of a transnational company establishing a hydropower plant in the Aymayme River despite major protests from the local population. “The Colombian government has, together with the Congress made a series of laws that opens up for these kind of projects without concern of whether the population is for or against, without concern of whether the population is expelled from their land and without concern of whether they population get anything in return”. In Putumayo, the government has protected land with the aim of clearing space for transnational extractive industries, such as mines. Putumayo is located in the Amazonas and is therefore a region with vast biological diversity and strategic natural resources. Nidia supports protection of vulnerable areas and states that those who have been cultivating in such areas should adjust to regulations. However, the establishment of reservoirs and national parks does not appear to save the rainforest. After the national government has protected the areas and small scale farmers have left, transnational companies have been given license to extract natural resources. This is not a problem exclusively for Putumayo. There is hardly a national park in Colombia without the presence of a transnational company. “We have had to leave our areas in order for national parks to be established, but afterwards transnational companies have established in the same area”. Putumayo is a centre for global megaprojects. A new hydropower plant is underway; three rivers that have traditionally been important for transportation for the local population are now being regulated in order to export power. Additionally, Nidia informs, the IMF have financed a giant road project that will ensure transportation of resources from the rainforest to the ports. “Now there is talk about eco tourism in Colombia in zones that are strategic for such tourism. But who will run the eco tourism? The transnational companies?”

Nidia’s message to the Norwegian government is: “you must not enter into this agreement with the Colombian government without consulting the people. (...)We are against these expansionist plans. We have to resolve our problems, but not with a free trade agreement which will only gain the financial sector. We need development based on the farmers and agriculture of Colombia.”

In the meeting at the Ministry of Trade and Industry in November 6th 2008, the political leadership informed the participants that Norway did not have any vested interested in Colombia. Relevant trade relations were fertilisers and fish. The government claimed that they believed that the trade patterns between Norway and Colombia would not change as a result of the agreement. On December 23rd 2008, Statoil Hydro announced that “Statoil Hydro has entered into an agreement with the Colombian oil company Ecopetrol America Inc to form a joint research team to search for oil in the American part of the Mexican gulf and drill three or more boreholes in the coming years”.²⁹ Energy provision and investment protection is one of Norway’s offensive interests in WTO.³⁰

c) Food security – food sovereignty

Prioritisation of agriculture for export leads to a focus on monoculture. Monoculture again leads to depletion of the soil and environmental degradation. “We are not against export, but we are against being told that we should only produce goods for export”, says Jairo Rubid, director of the small farmers’ organisation Fenacoa. He is of the opinion that Colombian farmers should prioritise producing for the domestic market and produce for the export market as second priority. The global food crisis also affects Colombia and its effects are worse on those that already survive with small margins. Fenacoa is a member organisation of the international farmers’ movement Via Campesina that fights for principles of food sovereignty. Food sovereignty means that all countries should have the right to protect food production for its domestic market and goes against the principles of pressure for liberalisation in multilateral and bilateral free trade negotiations. Colombia is a large producer of sugar, coffee and bananas. These products do not cover the food requirements of the country and the production of these goods are mainly focused on the export market.

“We have always produced raw materials, such as coffee, sugar and oil and will always remain as long as the government does not develop a plan for food sovereignty and autonomy. If this agreement aims at securing us the right to export raw materials, which we already do – then we do not need this agreement”. (Interview with Jaire Rubid, Fenacoa).

Jaire Rubid states that he does not believe that these agreements are about Colombia’s access to markets in the north. He is more concerned that these agreements will open access to Colombian markets for subsidised food from the north and thereby squeeze Colombian goods off their own domestic markets. “This is of serious consequence to the food sovereignty of this country. There is always a winner and a loser to such agreements”, Jaire Rubid says. He adds that he “views Europe as an enemy that treat us well, but we know very little about the agreement with the EU and even less about the agreement with EFTA”.

The right to food, as defined by the UN, involves the right to sufficient, healthy and culturally acceptable food. The right to food is established in the Universal declaration on Human Rights of 1948 and is also part other binding

29 www.statoilhydro.com/no/NewsAndMedia/News/2008/Pages/23DecGOM.aspx 20.02.09

30 Hering, Linn 2009. The trade campaigns report on Norway’s offensive interests within the energy provision, role in trade negotiations and its relations with the development aid policy (in press)

UN resolutions such as the Convention on economic, social and cultural rights (1989). Still, there remains a need to secure this right in practice. Towards 2000, the number of people suffering from hunger was reduced, but today we see a reversal of this development. In 2008, the number of people suffering from hunger increased by 100 million, to a total of 950 million people. Food prices have increased by 25 percent.³¹ The worldwide organisation for food producers and farm workers, Via Campesina³² fight for food sovereignty and the right to have domestic policies that secures food for its own people. They work against an international regime for food production based on free trade principles.

The public debate on trade is often focused on developing countries' access to the markets in wealthier countries and problems of subsidies and food dumping in these wealthy countries. In future negotiations on the worlds' food resources there will be an increased focus on the fight for land, water and genetic resources under the theme food and climate crisis. There will also be an increased focus on intellectual property rights for genetic resources and agricultural chemicals. The fight for resources of the sea and control over ocean-based fish farming should also be considered in the question of the right to food. We will here look at how the free trade agreement influences the right to food and food sovereignty for the Colombian people.

It is worth noticing that the EFTA countries have different interests in the negotiations than large agricultural exporters such as the US, EU, Brazil and Australia. The EFTA countries are joined in their efforts to protect national agricultural production. The multifunctional role of agriculture is a concept developed by Norwegian negotiators and refers to the right to subsidise and protect sensitive goods in national markets. Internationally this has met understanding as EFTA countries and their allies in Japan and Israel are net agricultural importers. When farmers and civil society in Colombia fight for the same rights and claim they rights to food security, they too ask for the right to protection of domestic markets against import.

The EFTA countries are not searching for markets for their own agricultural products which are mainly produced for domestic markets. Good from Colombia, such as sugar, tropical fruits, coffee and cooking oil, do not compete with production from EFTA countries and are subject to few restrictions other than those related to health and environment. Hence, the matters that are usually subject to conflict in such agreements are not an issue in this concrete agreement, there is no potential conflict between farmers in the north and south. The negotiations are mainly concerned about cooperation in regards to regulations on health and environment for import to EFTA countries. One refers to ISO standards that Colombia and other developing countries have not been party in developing. In other issues, the EFTA countries choose to keep a low profile, such as in the issue of Colombia's right to protect its domestic markets against import of agricultural products.

The fight for raw materials is central in this agreement. During the period of 1007-08, when food prices increased dramatically, many developing countries introduced control of export in order to stop the export industry from exporting necessary food items. EU countries with large processing industries developed panic mode as a result of this. International trade regulations (WTO) do not regulate restrictions on export, only import as one has always assumed that all countries wish to sell their raw materials. The European countries made them-

31 www.unicef.org 20.02.09

32 http://viacampesina.org/main_en/index.php 20.02.09

selves dependent on cheap raw materials from the colonies and through current bilateral trade agreements they continue a policy that provide them the same cheap access to raw materials for own industry. In the agreement with Colombia, the EFTA countries have included a clause (Art. 2.8 and 2.9) that forbid export restrictions such as custom taxes on export, quota restrictions or stop in export. This prevents Colombia from protecting its own people in case of a future food, water shortage or raw material crisis. Wealthy actors in EFTA countries may secure their own right to production of raw materials and export of this. It looks as if EFTA have their own interests at stake here in order to secure their own access to raw materials (for example Nestle and the fish farming in Norway) or agro fuel. This trade agreement does not support the interests of small scale farmers, farm workers, indigenous peoples and the environmental movement in Colombia who are concerned about the development of rainforests into areas of agriculture for export and monoculture.

Farmers' right to propagate from own crop is a controversial issue that Norway has supported. The governmental declaration says that "farmers' right to use propagating material from their own crops shall not be weakened" (Governmental declaration Soria Moria 2005:21). However, in the negotiations with Colombia, Norwegian negotiators have given in to the pressure from the interests of large Swiss corporations. The agreement contains a comprehensive list over agreements that the parties should adhere to, including indirectly demanding to follow UPOV, which undermines the farmer's right to use propagating material from own crop. We will come back to the regulations regarding immaterial rights in chapter 4.

The fish farming lobby in Norway have influenced Norway's policy towards developing countries. Even if the EFTA countries demand multifunctional principles for agriculture, the same principles are not valid for fishing and food from the sea. Norway's interests are dominant in this field. Norway's official strategy is that fish farming will take over as the main export industry when the oil reserves are empty. Based on this we see that Norway is very active in aiming at securing these interests at a maximum.

Norway has four main interests when it comes to aquaculture, which may prevent Colombia from having a multifunctional fishing policy. Norway has had a multifunctional fishing policy with raw fish regulations, Participation Act and other measures to secure equalising, resource administration and regional policy. Norway's interests related to the fishing industry in trade agreements are:

- Most important is market access for fish farming, without import taxes.
- Norway wishes to have access to fish fodder, such as schools of fish and fish oil. Norway has become a net importer of fish and need approximately 5-7 kilograms of fish as fodder in order to produce 1 kilogram of farmed salmon. Today, fish farming consume more than Norway actually fish at sea. Therefore the government strive to ensure that the fish processing industry shall be guaranteed a stable access to raw materials. Prohibition of export restrictions is therefore an effective measure.
- Furthermore, the government aim at securing access to free investments and investment protection in coastal regions for fish farming. Norway plays a dominant role in fish farming in Chile through the company Cermac. Intensive operations at Cermac have led to diseases and pandemics among the farmed fish that escapes and thereby spread diseases to the wild salmon

stock. There have also been reports on violations of worker's rights at Cermac. The Norwegian Confederation of Trade Unions (LO) have shown solidarity with Chilean workers in the fish factories financed by Norwegian interests for adherence to the ILO convention paragraph 98, which was ratified by Chile in 1999.³³

- Norway has surplus capacity in its trawler fleet and is searching for new areas to trawl.

Colombia is not a major actor in any of these fields as of today but may be so potentially. The EFTA- Colombia agreement was negotiated parallel with the EFTA Peru agreement in its first phase. Peru is the world's largest exporter of fish and fish oil as fodder. The agreement with Colombia may work as a tool in further negotiations with Peru. Even if Colombia's current fish industry is limited, the coastal line may be of interest when the demand is big enough or when other areas are infected with diseases and pollution.

Other trade agreements have their curiosities. In this agreement one finds that it is forbidden to import whale products from EFTA to Colombia. This has very small practical implications for the agreement, but express that the UN environmental agreement "Cites" has priority.

d) Work conditions and salaries

Development is closely connected with employment and development of real wage. This again is closely connected with the strength of workers' organisations and their right to organise and negotiate. As illustrated in chapter 1, this right is violated by the Colombian government. The free trade agreement between EFTA and Colombia challenges these conditions and may contribute to a further degradation of this situation. We will now look at some of the workers' rights and conditions that the EFTA- Colombia agreement is expected to help improve. In chapter 4 we write more in detail about processes that lead to degradation of production and work and its consequences for employment and real wage development. In summary:

- Specialisation on export of raw materials and agricultural produce almost always contribute to a reduction in real wage levels. Demand for profit from investors undermines wages, workers' rights and the environment.³⁴ Increased pressure for agricultural export lead to cutting of rainforest and displacement of indigenous people and others. Increased focus on patents prevents transfer of knowledge and technology.³⁵ This makes it increasingly difficult to develop policy that contribute towards development of industrial interests and economic growth that support workers rights, the environment and human rights.
- There will be reduction in production and increased unemployment. The consequence analysis made by the UN Economic Commission for Africa (UNECA)³⁶ as well as UNCTAD studies³⁷ show that cuts in customs in EU's free trade agreements with Africa will lead to increased unemployment, increased concentration of agricultural production, reduced industrialisation

33 www.lo-oslo.no 20.02.09

34 Reinert, Erik 2004: *Global Økonomi (Global Economy)*. Spartacus Publishers, Oslo.

35 Unctad 2007 and NOU 14: 2008, "Together for development"

36 UNECA 2005

37 UNCTAD 2008

in almost all sectors and regions. Furthermore, the trade between Africa and the EU will be drastically imbalanced with increased liberalisation. No similar research has been made for Colombia. However, there is no reason to believe that the situation for Colombia will be different that for other developing countries that experience imbalance in their trade relationships with wealthier countries. People in Colombia may therefore experience a drastic deterioration of their rights and possibilities.

Workers' rights in Colombia, in theory and practice

The Colombian job market is not controlled and extremely brutalised. 57 per cent of the workers in Colombia work within the informal sector and approximately 12 per cent are registered as unemployed. There are large wage disparities in Colombia. Minimum salary today is at NOK 1400, which does not cover regular expenses. Those who work in the informal sector earn less than the minimum wage and stand without any rights. Workers have the right to get 50 per cent extra salary in December and ten per cent of annual salary as holiday bonus. However, very few have these rights met by their employer. There is little chance that such cases are taken to court as taking an employer to court for not paying these dues takes time and is too expensive for most people. During our visit to Colombia, we met the sugarcane worker Libardo Santa Cruz who among many others was on strike due to bad working conditions. "We have a wage which leads to starvation. We get \$439.375 pesos (NOK 1.339) per month, but the expenses for one household are more than double this amount. Nothing is left of our salary because we also pay for health insurance, family pension and taxes. As you will understand it is this exploitation which forces us to go on strike."

In a situation with high unemployment rate, many people are satisfied with whatever the employer is willing to give them, even if it is below minimum wage, as the alternative is getting no salary at all. Even if the working hours are regulated by law, most people work 7 days a week and 14-16 hours a day. Those who work in the formal sector have the right to health insurance and pension. There is however no guarantee that their employer will follow this, nor is there any jurisdiction that ensures this right. In case of illness and health insurance has not been paid in time last month, people are denied healthcare unless it is a case of a life threatening situation. Many people experiences that their salaries are deducted for health insurance and pensions which they later discover were not paid. Workers in Colombia have few rights and those that they have they have to really fight for. According to the annual report on violence against trade unionists in Colombia in 2008, it is dangerous to get organised in trade unions and many do therefore accept the injustice and exploitation in the job market.

The clear message from the sugarcane worker Libardo Santa Cruz to the Norwegian people is that:

"From Cali, Colombia I send a greeting to the Norwegian people. I say to those that are responsible to negotiate a free trade agreement with Colombia that Colombia is not like you have been told. The real Colombia under president Uribe is a country in hunger and poverty and where workers are treated as slaves. When industrialised countries sign free

trade agreements they contribute towards more suffering and conflict. We are not the only ones on strike today; indigenous people are also marching as well as those who work in the legal system, the truck drivers and those working at the public universities.”

Whilst workers’ rights has been a central issue in the negotiations of a free trade agreement between the US and Colombia, workers rights has only been mentioned in the preface of the agreement between EFTA and Colombia. The Norwegian Union of Municipal and General Employees (NUMGE), Norwegian Civil Service Union (NTL) Norwegian Union of Industry and Energy Workers (IE) reacted to this and sent the following message to Prime Minister Jens Stoltenberg:

The agreement strengthens Colombia’s role as producer of raw materials and contributes towards segmenting the existing bad working conditions in this sector. There is a great danger that this agreement will lead to increased poverty and increased inequality in the Colombian society. We wish to point out that there are already 4 million internally displaced people in Colombia. These are people who have been displaced from their land because of large investment projects that do not pay attention to the local population.³⁸

The agreement includes three of “the four freedoms” – free flow of goods, services and capital. The “fourth freedom” free flow of capacity for work is not valid for Colombians. Colombian workers may only work in an EFTA country if they follow a company that have activities in that country.³⁹ Colombians must go through the strict Schengen system in order to obtain a visa. On the other side, all inhabitants in EFTA countries may travel freely to Colombia.

Swiss Companies in Colombia

EFTA requires investment protection, but the agreement does not set any requirements for the responsibility of companies or requirements for EFTA’s legal responsibility to hold companies that are registered in their area accountable.

The two Swiss multinational companies, Nestle and Glencor have been accused of having ordered and paid for murders of trade unionists. One of the victims of Nestle is the trade union leader from SINTRAINAL, Luciano Enrique Romero Molina. According to the autopsy he died as a result of severe torture. Paramilitary under the command of “Jorge 40” were responsible, but Nestle is accused of being accomplice to the murder. According to the human rights lawyer Alirio Uribe, the multinational companies are not only responsible for murder of individuals; they are also accomplice to the humanitarian crisis in the country. (Interview with Alirio Uribe, Collective de Abogados).

38 www.fagforbudnet.no/index.php?article_id=34086 20.02.09

39 See article 4.9, page XXXIII www.efta.int

3. Justice under free trade agreements

Through entering into free trade agreements, states give off some sovereignty to a joint set of rules and regulations. When such agreements become valid, they limit the opportunities for the population to put pressure on policies that contradict the trade agreements. Measures that limit foreign actors' work in a country are examples of measures that may be illegal or require liability for compensation to these companies and states that are parties to the agreement. This may happen even if the measures were taken in order to protect human rights, workers' rights or in order to protect the environment. In other words, the consequence of such agreements is less political space for action. The judicial system or a litigation panel will decide the political space of the population, not the country itself. Theoretically the countries may of course withdraw from the trade agreements, but the diplomatic and political costs related to this will be considerable.

A recurring issue throughout analysing the agreement is that trade agreements such as this free trade agreement limits the role of national policy to control or influence the market. Instead, litigation mechanisms take over and consider only the conditions in the free trade agreement.

In this chapter we will look at two of the conditions in the free trade agreement between Colombia and EFTA that covers the rule of law in such agreements.

- The litigation mechanisms in the agreements influence national law and policy as well as UN law.
- This specific agreement touches upon Colombian legal practice of oppression of public resistance and organisation.

f) Litigation – rules for competition nationally vs. internationally

Disagreements about the agreement and its follow up should be dealt with by a litigation panel. According to the agreement, a company should either contact the government in which country it is registered to ask for litigation or it may go through the litigation mechanism at WTO. Alternatively a company may take the host country to court in the national courts with reference to the regulations of the free trade agreement or with reference to obligations under WTO. Litigation takes place state against state and in this case it follows WTO. The party that raises a case to court and wins should be given compensation and the rules should be changed according to the courts verdict. If this is not followed, the state that raised the case has the right to increase its customs on the product at question – this is called punitive duty. The agreement also includes trade sanctions, similar to the WTO system of litigation.

The agreement does not include litigation between investor and state and this is the most controversial type of investment protection.⁴⁰ With a state to state litigation it is more difficult for a private company to take a state to court if they believe that they lose future income due to regulations for environmen-

⁴⁰ See answer to hearing on the Governments suggested model agreement for bilateral agreements for investment at: www.regjeringen.no/nb/dep/nhd/tema/hendelsavtaler7investeringsavtaler.html?id=438845 20.05.09

tal concern or workers rights. A government will most probably make a thorough assessment before they sue another state. In most situations it would (except for some countries) be more important for a country's government to have good diplomatic relations than to represent the interests of one company.

Litigation with economic sanctions may contribute to fewer adherences to political goals and international law within poor states or states with a weak civil society. As a worst case scenario this may lead to other states having vested interests in states with weak trade unions and civil society.

g) Footnote 11 – the devil is in the details

In the agreement's article 4.15, under general exceptions⁴¹, it states that none of the parties shall be prevented from taking measures:

“Necessary to protect public morals or to maintain public order”. This is specified under footnote 9 that says: “The public order exception may be invoked only where a genuine and sufficiently serious threat is posed to one of the fundamental interests of society.” (Free Trade agreement EFTA-Colombia, English version, page XXXIV). As shown in chapter 1, human rights and workers' rights are violated and opposition is brutally oppressed in Colombia. In this context such a clause is problematic. Article 5.8 in the agreement refers to footnote 11, which is worth a closer look:

“Colombia reserves the right to adopt measures for reasons of public order pursuant to Article 100 of the Constitución Política de Colombia (1991), provided that Colombia promptly provides written notice to the Joint Committee that it has adopted a measure and that the measure is applied in accordance with the procedural requirements set out in the Constitución Política de Colombia (1991), such as the requirements set out in Articles 213, 214 and 215 of the Constitución Política de Colombia (1991).”

(Free Trade agreement EFTA-Colombia, English version, page XLI).

“Martial law” as described in the constitution is inherited from Parliaments and governments that used these paragraphs as tools for oppression, social control and self enrichment from the era of military dictatorships. The use of martial law contradicts the introduction to the constitution that states that Colombia is a social state that uses the order of law.⁴² In the same way as it was used before the changes to the Constitution in 1991, martial law is used with the aim of suppressing social protests and to violate the most basic rights of workers.⁴³ Law 100 has also been used against foreigners. During the last demonstrations, the authorities expelled foreigners that cooperated with indigenous peoples' organisations and who showed solidarity with the trade unions of the sugarcane workers.⁴⁴ Other foreigners are unfairly accused by president Uribe of cooperating with terrorists. Among these we find human rights activists in internationally recognised organisations such as the UN (Nancy Pillany), Amnesty International and Human Rights Watch (Jose Miguel Vivanco).⁴⁵

41 Restrictions to Safeguard the Balance-of-payments

42 www.vanguardia.com/archivo/17381-gobierno-levanto-la-conmoción-interior 20.02.09

43 www.elespectador.com/noticias/judicial/audio-extranjeros-infiltrados-protestas-fueron-expulsados-del-pais 20.02.09

44 Ibid

45 www.elcomercio.com/noticiaEC.asp?id_noticia=233507&id_seccion=5 20.02.09

4. Neo-colonialism as poverty trap

The Governmental declaration Soria Moria, states that “the government’s basic position is that WTO rules must not deprive poor countries of the management right and means that have been important in developing our own society into a welfare society” and “to work for countries in the south being given sufficient freedom of action to choose development strategies that take into consideration their special needs and development level”. This policy does not appear to be valid for bilateral free trade agreements. The agreement that Norway has signed with Colombia divides the international market into raw material exporters from the south and exporters of industrial goods from the north. The agreement covers regulations for public procurement, patents and investment protection that will further diminish Colombia’s political freedom of action.

b) International delegation of responsibilities

... because people in the colonies, if they were to be tempted by a free market for all their raw materials in Europe, will do all in their power to produce such raw materials in order to satisfy the large market demand that such a free trade would create, their focus on industrialisation will disappear, and this is the only point where our interests are in conflict with those of the colonies. (Matthew Decker. 1744. Causes of the Decline of the Foreign trade. In Reinert 2004:144)

Within the neo-liberal development paradigm, trade is the key to development. From a neo-liberal perspective, trade liberalisation will make all countries specialise in the products of which they have competitive advantages. The theory is based on the assumption that access to external markets, establishment of transnational companies and foreign investments will create economic growth and technological development. Furthermore that this development will benefit the masses and raise countries from poverty. However, the supporters of these theories do not take into account that different goods provide different returns. There is more profit in industrialised goods than in raw materials. The more processing of a commodity the more value it has. The UN organ for Trade and Development (UNCTAD), states that “it is crucial to identify those activities providing higher returns along the value chain in order to understand the global distribution of value added” (UNCTAD 2007:21). Added value is gained by industrialisation.

The question is whether the Norwegian Government is of the opinion that removal of trade barriers, investment protection for foreign investors and liberalisation of public procurement will stimulate industrialisation in countries like Colombia. Historic knowledge tells us the contrary: that trade liberalisation in developing countries with small or limited industry will rather lead to a larger gap between poor and rich countries. The majority of the countries that struggle with poverty are previous colonies. During the colonial era, these countries lost their valuable resources and were forced to produce exotic raw materials to the colonial powers. The colonies enabled the industrialisation to take place in the north and while the colonisers became industrialised, the colonies specialised in production of raw materials. According to UNCAD (2007), developing countries have problems in specialising within the global trade that provide high returns and rather specialise in those trade areas that provide lower returns (such as raw materials and low wage workers without education and rights). The trade pattern between Colombia and EFTA is an illustration of this problem:

Colombia exports materials such as minerals, oil, metal, precious stones, coffee, tea, cacao, spices, fruits, nuts, sugar, plants and fish to the EFTA countries, whereas EFTA primarily exports processed goods such as electronics, medical instruments, machines, watches, glass, pharmaceutical products and cosmetics to Colombia.⁴⁶ Free movement of goods, services and capital as well as foreign investments have not contributed towards technological development for the poor countries in the South:

“There is little evidence of a significant contribution by FDI to technological capability accumulation in LDCs” (UNCTAD 2007:41).

UNCTAD (2007) here refers to the least developed countries, but the industrial structure in Colombia is similar to the one in LDCs: Colombia mainly produces and exports raw materials. The countries that are the main supporters of free trade are not mainly producing raw materials even if they did have a competitive advantage in relation to certain raw materials. From a free trade perspective, Australia should have specialised in wool production. However, the Australian economists were afraid that an overproduction of wool would reduce the price of wool at the international market. Moreover they were afraid that sheep farming would spread to less suitable areas.

There would be no floor for the salaries and the country would produce itself to become poorer and with an impoverished productivity in wool production. Because of this, Australia insisted on establishing own industry, even if this industry would not be able to compete with British or American industry. A national industrial sector would create an alternative salary level which would prevent raw material production from producing on marginal land... The same argument – the increasing profit of industry and decreasing profit of raw materials – was one of the main arguments for Europe’s and America’s industrialisation in the 20th century (Reinert 2004:136).

However, it does not look as if Colombia is allowed to use the same development strategy as used by Australia, the US and the countries in Europe. The agreement between EFTA and Colombia involves zero custom on industrialised goods from EFTA countries from the day one. Colombia is exempted from this for certain goods, but this industrial protection should phase out after some years. Such exceptions are often valid for certain parts of a commodity. Specifications of sub-contractors does not open up for the possibility of establishing industry clusters where different producers benefit from each other through so called “vertical integration”. Facilitation of such industrial clusters has been an important developmental tool in Norway. The Norwegian oil bids from 1971 are a good example of how local producers and service providers could be prioritised.⁴⁷

Trade agreements may give preferential treatment to south-partners and stimulate for industrialisation. Agreements that aim at non-reciprocity based on developmental level make sense when the parties’ developmental levels are very different. As stated above, Colombia’s exception from liberalisation is to be

46 Of processed goods, Colombia exports half processed textiles, chemical products and other half processed goods; medical instruments, machines, chemicals and watches to EFTA. EFTA also export some raw materials to Colombia such as oil, fish, salt, stone, soil and organic chemicals. Source: www.efta.int 09.12.08

47 ForUM for development and Environment. 2007 ”gjør som vi sier ikke som vi gjorde” (“Do as we say not as we did”). Norwegian requirements to liberalisation of energy services under WTO.

phased out after some years. This means that future governments will not have the possibility to protect national industry or conduct active employment policies.

Norway's interests in this particular agreement are fish and fertilisers. According to the Ministry of Trade and Industry, we have achieved zero custom on these commodities.⁴⁸ As investment protection is also part of this agreement, we have to assume that Norway also have interests in this financial area. The fishing industry in Colombia is already bought and controlled by transnational companies and national fishermen have been pushed out of the industry. However, this agreement remains problematic because it limits future governments and makes it difficult for Colombian authorities to bring the fishing industry back to public ownership if they should wish so in the future. Through its offensive interests as concretised in the agreement, Norway will contribute in reducing Colombia's political freedom of action.

Full mutuality between countries in the north and south would in reality mean asymmetric agreements favouring the countries in the north as they have a stronger position than the countries in the south. ForUM points out that the agreements are made in such a way that they are actually strengthening those countries that are already strong: "The free trade agreements between industrialised countries in the north and developing countries in the south are about to replace the structural adjustment programs as important instruments to force poor countries to reduce public sector, liberalisation and privatisation of services as well as using market principles as basis for production and sales of food" (ForUM 2007:2)

The Minister for trade and industry; Sylvia Brustad (labour party), confirms our concern that Norway has not had any developmental goals with this agreement; the state secretary confirms that this agreement focus on Norwegian business interests.⁴⁹ This focus is a contradiction of the Soria Moria declaration that states that "The Government will work to promote an international trade regime in which decisive importance must be attached to the environment, vocational and social rights, food security and development in poor countries"⁵⁰ It is positive that the state secretary is honest, but of major concern that this agreement contributes in exacerbating the problems that we aim to help resolve through development aid. Colombia is one of the prioritised countries for Norway's development aid. Approximately 70 million Norwegian Kroner goes to Colombia each year to assist in work for poor people and IDPs.⁵¹ We do not contribute towards development for the majority of Colombians by taking with one hand and giving with the other as Norway's official trade and development policy appears to do. We cannot accept that Colombia's poorest suffer because the current Norwegian government has an inconsistent policy.

48 Meeting at the Ministry of Trade and Industry 06.10.08

49 Meeting at the Ministry of Trade and Industry 29.10.08

50 Soria Moria Declaration 2005:11, English version)

51 Meeting at the Ministry of Trade and Industry 06.10.08

Degradation of production in Colombia

Adjustments to an open, international market in 1991 led to a drastic reduction of half processed products in Colombia. Free trade agreements will lead to removal of custom duty on products that today gather 15-35 per cent taxes. This will force many factories to become part of the maquilaindustry. During 1990-2005 Colombia has lost 72.000 workplaces in small and middle sized companies as a consequence of the adjustments to the market. Trade unions are therefore correct when they state argue that introduction of free trade agreements do not lead to increased number of jobs.

Metal- and chemical industries have survived thanks to a custom duty of 10-20 per cent within CAN and 35 per cent for the car industry. When these duties are removed these goods may be replaced by export of more traditional products that collect 5 per cent custom duty. From Colombia's side it is not worthwhile to close down industry when 90 per cent of exported goods to other countries in the Andes region are industrial goods with high added value. If Colombia closes down their industry, others will take over their market share in neighbouring countries such as Venezuela and Ecuador. Through the free trade agreement with Colombia, all custom duties on industrial products from Colombia is removed and 87.5 per cent of the custom duty on industrial products from EFTA. Zero custom duty is of no benefit to Colombia when they will be invaded by cheap industrial products from EFTA countries rather than producing industrial products themselves.

c) Investment protection

Investment protection, which refers to foreign investors' rights, is a largely controversial issue. During the 1990s, wealthy countries tried to have an agreement on investment protection as part of the WTO regulations. The multilateral investment agreement (MAI) faced major resistance and public mobilisation globally. Developing countries were of the opinion that such rules would hinder their development. We will come back to this issue later. In 1998 the negotiations on MAI collapsed and the parties agreed to the less comprehensive agreement on Trade-Related Investment Measures (TRIMS). However, the wealthy countries did not give up the fight for investment protection. They tried to get another agreement through in the Organisation for Economic Co-operation and Development (OECD). The aim was to get the developing countries to join later and the issue was raised at the WTO ministerial meeting in Cancun in 2003. Again the developing countries together with global social movements managed to stop the negotiations.

Despite the clear message from the countries in the south that they do not wish agreements on investment protection, countries in the north, including Norway have continued their pressure. Last year the current Norwegian government sent out the model for agreements on investments for comments. Not unexpectedly, the agreement met massive resistance. Many consultative statements were submitted – with a clear message: such agreements are a hindrance

to development.⁵² Despite this resistance, investment protection is still included in what is incorrectly named bilateral free trade agreements. The agreement between EFTA and Colombia includes the right for establishment for foreign investors and producers of goods. This means that the authorities cannot prevent foreign companies from establishing their business in Colombia. The authorities may set requirements for concessions, but they have to adhere to WTO clauses on access to markets party to both service and investment agreements. These clauses make it impossible to set requirements of local content (for example requiring local sub-contractors); limitation of capital transactions or requirements to business organisations (such as cooperatives or so called joint ventures – cooperation between foreign and national companies). The clause on right of establishment weakens Colombia's toolbox for development policy. The agreement goes against the Soria Moria declaration, which states that countries in the north "must not deprive poor countries of the management right and means that have been important in developing our own society into a welfare society"⁵³ Licensing requirements that include use of local sub-contractors and joint ventures with local companies – which were central requirement in development of the Norwegian oil industry – will not be allowed under the agreement between Colombia and EFTA.

d) TRIPS

The UN organ UNCTAD emphasise that immaterial rights are the largest threat against developing countries' political freedom of action. "Historically, immaterial rights have not created but rather come as a result of economic and technological development (UNCTAD 2007:126). UNCTAD's recommendation is therefore that immaterial rights should not be included in free trade agreements. The Norwegian government has not followed the recommendations from the UN organ in relation to the agreement with Colombia. We see it as problematic that Norway negotiates an agreement together with Switzerland. Several large transnational corporations within medicine, agricultural chemicals and genetically modified organisms have their headquarters in Switzerland. Switzerland is therefore one of the countries with large vested interests in securing patents. This is visible in the agreement between EFTA and Colombia. In WTO, immaterial rights are regulated through TRIPS (Trade-related aspects of Intellectual Property Rights), that set minimum requirements for protection of immaterial rights which WTO countries must use. The agreement between EFTA and Colombia oblige the parties to have stronger protection that required by the TRIPS agreement. We may therefore call this a TRIPS plus agreement.

In relation to production of medicines, the agreement refers to the Doha declaration of 2001 that says that member countries have the right to "use measures to protect public health". This include the use of so called forced licenses for production of cheap medicine as well as parallel import that gives states the right to import medicines from producers that have a lower price. Although it may be difficult for most countries to use this clause, it does provide for a certain freedom of action. Forced licenses is therefore a theoretical possibility under this agreement, "of course" one may say, as Norway through WTO has promised that countries in the south should have the possibility to use this means for public health measure. It is however important to examine the TRIPS –factor "confidential information", also called data exclusivity, in order to get an

⁵² www.regjeringen.no/nb/dep/nhd/08.12.08

⁵³ Soria Moria declaration, 2005: 11, (English version)

overview this agreements' importance to production of medicine. Data exclusivity mean that tests made in development of a product may not be used by other producers unless the data has been made public. The agreement between Colombia and EFTA includes data exclusivity 5-10 years after expiration of patents. This does actually mean an extension of the time of patent. Forced licensing will in reality be difficult to implement under the agreement between EFTA and Colombia. Producers of medicines will have to continue undergo costly and time consuming research (for example research on side effects) even if such research has already been conducted by other companies. In reality it will be difficult for small pharmaceutical companies to produce cheap medicine in short time, even though forced licensing is legal in cases of national pandemics and the like. In a multilateral context, data exclusivity has proved difficult to use. The clause is not included as a part of the WTO agreement and in The World Intellectual Property Organization (WIPO); negotiations repeatedly break down over this issue, which is mainly raise by a few medicine and chemical producing countries. The agreement between EFTA and Colombia refer to the principle of "most favored country". As data exclusivity has been one of the main issues of the US in the negotiations with Colombia, the issue is included in the agreement between EFTA and Colombia.

In regards to immaterial rights on food plants, the EFTA-Colombia agreement includes TRIPS-plus elements. The TRIPS agreement is flexible in regards to whether countries use patents protection on plants. If a country does not accept patents protection on plants, it shall introduce a so called sui generis system for protection of species of plants (article 27.3, b). Exactly what this means is not defined. This flexibility in the text provide WTO countries with a possibility to introduce legislation that for example combine protection of species of plants with farmers' right, as India has done. The EFTA-Colombia agreement oblige the parties even further by 1) Placing extra pressure on Colombia to introduce patents protection on plants⁵⁴ 2) demand that parties are members of UPOV, which is The International Union for the Protection of New Varieties of Plants. As Colombia is already a member of UPOV, this obligation only prevents Colombia from exiting UPOV in the future; and 3) it requires that parties become members of the Budapest treaty for deposit of micro organisms in order to facilitate patents protection of these.

Norwegian authorities base their approval of the TRIPS-plus element in that Colombia has already accepted these requirements in their agreement with the US. This is a weak explanation for several reasons: firstly, the agreement with the US will most probably not be ratified.⁵⁵ Secondly, most of the requirements in a free trade agreement focus on securing best possible conditions for national businesses, such as zero customs duty on fish export. Usually, countries will negotiate for the same benefits as other countries have already achieved. However, immaterial rights are different from other requirements because when a country has introduced patent protection for plants in their legislation it provides all who apply for patent protection a right to get this approved, regardless of the nationality of those who apply. Therefore, if Colombia introduces patent protection of plants because of pressure from the US, this will automatically become a benefit to potential patent applicants from EFTA countries.

54 ... A Party that does not provide for patent protection for plants shall undertake reasonable efforts to make such patents protection available... "(Article 6.9 in the agreement).

55 www.bilaterals.org 29.10.08

There is no need for EFTA to include TRIPS-plus mechanisms in its agreement (EFTA companies will have the same rights to apply for patents as American companies). Thirdly, the only reason for EFTA to include TRIPS-plus elements in their agreement is for EFTA to be able to sanction Colombia if they do not adhere to their part of the agreement.

Additionally, we cannot see that Norway will have any formal interest in including immaterial rights in trade agreements in order to secure Norwegian actors in relation to protection of species and patent protection of plants and animals. As stated by state secretary Dag Terje Andersen in the parliamentary session on November 21st 2007, "The aim of including immaterial rights in trade agreements is to efficiently protect Norwegian actors' immaterial rights." After three years use of patent protection on plants and animals in Norway, the Norwegian Industrial Property Office in 2007 had received 200 applications out of which none were from Norwegian applicants. It does not appear to be very realistic that Norwegian businesses will apply for patents on plants and animals in developing countries when they have not had the need or desire to apply for such patents in Norway. The likelihood that Norwegian processing industry are interested in exporting its plants to countries outside of the Nordic and Baltic countries is close to zero as these species have been developed for the Nordic climate.

In the chapter on immaterial rights, the EFTA-Colombia agreement has an interesting paragraph on biological diversity. The paragraph focuses on harmonizing the patents regime with the parties' obligations under the Convention on Biological Diversity (CBD). One of the main critiques on the use of patents on gene resources, plants and animals is that patents do not consider whether the obligations in CBD are fulfilled regarding access and distribution of returns. To inform about the origins of the gene resources that are part of the object one applies patent for is the first step towards securing the adherence to CBD. The EFTA-Colombia agreement does not require that parties ensure that patents pay adherence to the CBD obligations. It is rather a bilateral confirmation that the parties will implement what they have already included in national legislation regarding informing about place of origin, respect of states' regulations for access to gene resource and local knowledge related to these.

e) Public procurement

Limitations of Colombia's freedom of action for development policy are the most serious consequence of liberalisation of public procurement. Public procurement refers to municipal, county or national procurement of goods and services. Ability to favour small and newly established local companies is one way of securing local production, sovereignty and employment. Local paper producers, auditors, local banks and contractors are examples of businesses that public authorities may prioritise in order to secure employment and income from taxes. Freedom of choice in public procurement has proven useful in times of recession. Public sector has contributed to employment in times when the private sector has not been willing or able. The countries in the south have denied including public procurement as part of the WTO negotiations. "To say that Colombian companies will gain access to public procurements in EFTA is a joke", says Enrique Daza from RECALCA, "the high standards for hygiene that exist in EFTA and the EU will prevent us from entering their markets. Uribe has already admitted this, and he says that the agreement's main importance is in relation to investments" (interview with Enrique Daza, RECALCA).

European and American service providers are capable of competing with any service provider from Colombia. Large and dominant transnational corporations have considerable market power.

Regarding public procurement, this agreement is more comprehensive than what developing countries have ever accepted during negotiations in WTO. Countries from the south have repeatedly denied this issue being part of WTO.

List of interviews

Nidia Quinte, Small farmers association Fensagro 13.10.08
Jairo Rubid, Small farmers association Fenacoa, 13.10.08
Group interview Student organisation ACEU 13.10.08
Dag H. Nylander, Norwegian ambassador in Bogota 14.10.08
Juana Camacha, Censat – Friends of the Earth Colombia 14.10.08
Margaritha Flores, the NGO ILSA 14.10.08
Group interview with the umbrella organisation Comité Colombia Lucha contra
ALCA y el TLC 15.10.08
Leadership in the national organisation CUT (meeting) 15.10.08
Alirio Uribe, the human rights organisation Colectivo de Abogados 15.10.08
Enrique Daza, the umbrella organisation RECALCA 16.10.08
Libardo Santa Cruz, Sugarcane worker on strike 17.10.08
Javier, The National Union of Food Industry Workers, Sinatrainal 17.10.08
Angelica Chaparro, The NGO CACTUS 20.10.08

Relevant websites

About the agreement and Norwegian trade policy:

www.efta.int

www.odin.no

Resources on bilateral and regional agreements:

www.handelskampanjen.no

www.forumfor.no

www.bilaterals.org

www.evb.ch

www.twinside.org

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Statements about the agreement in Norway:

www.fagforbundet.no

www.ntl.no

www.industrienergi.no

www.dagsavisen.no

www.klassekampen.no

<http://0803.sonitus.org>

www.lo.no

www.velferdsstaten.no

On the Human rights situation in Colombia:

www.amnesty.org

www.coljuristas.org

www.movimientodevictimas.org

www.latinamerikagruppene.no

www.nrc.no

www.saih.no

