

EU Trade Agreements with Central America, Colombia and Peru:

**WATER
FOR LIFE
OR FOR TRADE?**





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Is Water for Life or for Trade?

The European Union's Association Agreements, Free Trade Agreements and their Impacts on the Human Right to Water in Latin America

Thales of Miletus, the first Greek philosopher was as well-known for his brilliance as for his absent-mindedness. His thinking on the essence of the natural world, led him to conclude that all things are made from water, yet, his wisdom was not always in harmony with his day to day reality. Plato, another great Greek philosopher recalls a story of how one night Thales was gazing at the sky and walking deep in thought when, suddenly, he fell into a ditch. A poor servant girl lifted him out and said to him "How do you expect to understand what is going on up in the sky if you do not even see what is at your feet?"^[1]



INTRODUCTION: TRADE AND THE HUMAN RIGHT TO WATER

THE SITUATION

During the second semester of 2012, the European Parliament (EP) will be given the opportunity to analyse and consent to implement an **Association Agreement (AA) between the European Union (EU) and the region of Central America**ⁱ as well as a **Multi-Party Free Trade Agreement (FTA) between the EU, Colombia and Peru**. These two agreements, with the common denominator of being focused on trade, cannot be changed or modified by the EP and consent can only be given by simple majority of the 27 EU members on a 'take it or leave it' basis.ⁱⁱ However, if these trade agreements were to be accepted by the European Parliament it would have **serious adverse impacts on the right to water in these countries and the worst affected will be the poor and vulnerable**.

THE EUROPEAN PARLIAMENT'S POSITION

"Water is the essence of life" summarizes the United Nations' fact sheets on water as a human right. For this reason, the UN has included access to safe drinking and water as a key part of the objective of the **Millennium Development Goal (MDG) N° 7 "Ensure Environmental Sustainability"**ⁱⁱⁱ and has stated that "Safe drinking water and sanitation are indispensable to sustain life and health, and fundamental to the dignity of all"^{iv}

In line with this, the **European Parliament Resolution on the 5th World Water Forum of 12th March 2009 on water** declared that: "water is a shared resource of mankind and access to drinking water should constitute a fundamental and universal right; calls for all necessary efforts to be made to guarantee access to water for the most deprived populations by 2015; [...] Water is considered as a public good and should be under public control, irrespective of whether it is managed partly or entirely by the private sector;"

Additionally, ahead of the **2010 UN Summit to review progress towards the MDGs**, the **European Union** reiterated that it is "firmly committed to the Millennium Development Goals (MDGs) and is working hard to eradicate poverty and improve living conditions by 2015. (...) Economic development should not come at a cost to the environment (...)".

"Access to safe water, sanitation and hygiene are key factors

for improved health and broader livelihood benefits. The Commission works with partner countries in ensuring that all peoples' needs for water and sanitation are taken into account. Aware that scarce resources can lead to conflict, the Commission also supports cooperation between countries in sharing resources."^v

THE AIM OF THIS PAPER

In the context of this upcoming crucial decision-making process of the European Parliament, the aim of this paper is to draw to the attention of European and national parliamentarians **how these EU's trade agreements (AA and FTA) will negatively impact the human right to access clean water**, particularly for the poor and vulnerable people on the *bottom rung* of society. The paper is divided into three parts:

1. The **context** in which these agreements have been discussed;
2. The **potential impacts** that these agreements will have on the human right to water and
3. The **possible steps forward** to change this policy's negative outcomes.

EXECUTIVE SUMMARY

The EU's trade agreements —the AA with Central America and the Multi-Party FTA with Colombia and Peru— will impact poor and vulnerable people's human right to water. Three sets of reasons are given:

► **'WATER BLINDNESS' OF TRADE AGREEMENTS AND TSIAs:** Securing sustainable and clean water access for all as a human right is a *non-negotiable* principle of human development. It must be included when evaluating the impact of trade agreements and this has not been done. The context of social vulnerability and ongoing violations to the human right to water have been ignored and excluded from the texts of the agreements and their respective Trade Sustainability Impact Assessments (TSIA), hence they are fundamentally flawed. They ignore how these water intensive trade agreements will worsen people's sustainable and clean water access. Likewise, absent/weak water institutions, water specific problems country per country, hydro-impact mitigation measures are not included

in these trade policies. Furthermore, no explicit exclusion of water privatisation schemes is reflected in the texts.

► **ADVERSE & INACCEPTABLE IMPACTS ON PEOPLE'S WATER SECURITY:** The poor 'water-blind' design of the agreements and their respective TSAs will increase violations of this human right especially affecting the poor and the vulnerable and this is not acceptable. Moreover, these States will lose degrees of water governance power, policy freedom and sovereignty in relation to the overarching legal framework of the trade agreements which prioritize trade over human rights. As the option to modify these trade agreements is not available for European Parliamentarians and the only choice is to 'take it or leave it', the ethical choice should be 'to leave it'.

► **LACK OF DEVELOPMENT COHERENCE & ETHICS:** The agreements and their TSAs lack ethical and sustainable development coherence because of flawed participation processes and the inexcusable omission of proper impact evaluations in people's water access. Hence, a coherent sustainable development action should reject and ask for a review of the proposed trade agreements with Central America, Colombia and Peru; reject all laws and policies that violate the human right to water and explicitly prioritise this human right over the rights of corporations and trade.

1 LATIN AMERICAN CONTEXT

1.1 INEQUALITY IN ACCESS TO WATER

Evidence shows that in Latin America, access to water is defined within a context of multiple inequalities. These Agreements must take into account the following reality:

High social inequality: Latin America is ranked today as the most unequal region in the world [2]. In addition, the majority of the proposed Latin American trading partners in these Agreements, i.e. Guatemala, Panama, Colombia and Honduras, rank among the most unequal countries within the most unequal region of the world. Moreover according to the UNDP's latest multidimensional poverty index for 2010-2011, the poor in Latin America are not just income deprived, but are also deprived of multiple other conditions needed to secure a minimum quality of life, including access to clean water. Honduras, Nicaragua, Guatemala and Peru [3] rank among those most affected by multidimensional poverty and most afflicted by clean drinking water deprivation.

Extreme water access inequalities: In terms of State provided water access in CA, Colombia and Peru, the challenge is double: not only is the gap between the rich (who have secured access to water) and the poor (who experience water scarcity) very wide, but it is in fact among the highest in Latin America. For instance, in El Salvador, Colombia and Peru the difference in water access between the richest 20 per cent and the poorest 20 per cent of the population is among the highest in the region and has consistently widened throughout the mid-1990s until the mid-2000s [4]. For example, in terms of opportunities to access water, there is wide variation in water access across the countries in the Latin American region. Poor children born in Nicaragua, Peru and El Salvador are for example, three times less likely to have guaranteed access to water from the State than, for example, Costa Rica which allocates most of its available resources to secure this right for its children [5].

1.2 ABSENT/WEAK STATE BASED WATER INSTITUTIONS AND LAWS

The causes of clean water scarcity in Latin American countries relate to inequality in power relations and lack of institutions and laws [6]. For instance, the percentage of the population in Peru with access to water and sanitation is among the lowest in Latin America. However, according to UNDP, the reason for this lack of progress can be attributed more to a lack of institutional capacity, planning and quality control rather than to a lack of economic means [2]. As Table 1 illustrates, the water laws in the region are non-existent, outdated, or consider water as an 'economic good' in their legal framework [7-9]. This lack of enforcement of the human right to water, leads to the non-fulfilment of this right.

TABLE 1: ABSENT/WEAK LAWS & INSTITUTIONS TO DEFEND THE HUMAN RIGHT TO WATER IN CA, COLOMBIA & PERU

Country	Is there a national water law? (year)	Is water defined as an 'economic good' in current water laws?
Guatemala*	No	Ambiguous definition
El Salvador*	No	Ambiguous definition
Honduras*	Yes (2009)	Yes
Nicaragua*	Yes (2007)	Yes
Costa Rica*	Yes (1942)	Ambiguous definition
Panamá*	Yes (1966)	Ambiguous definition
Colombia**	No	Ambiguous definition
Peru**	Yes (2009)	Yes

1.3 RECOGNITION OF THE HUMAN RIGHT TO WATER

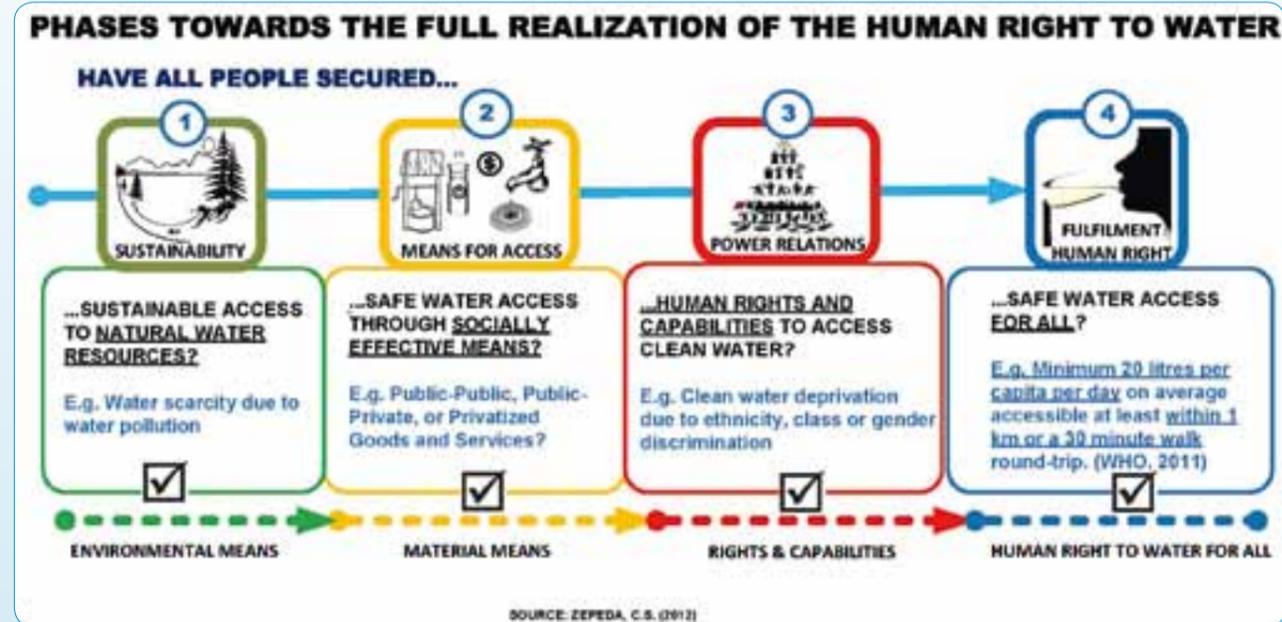
A legally binding human right: Access to safe and clean drinking water was declared a legally binding right by the UN Human Rights Council (UNHRC) in October 2010 [10]. Thus, it acknowledged that water security for all is a priority and an obligation for all States to defend, as all life depends on water.

A common public good: Water is a fragile, finite natural resource and a common public good. This is because it is essential not only for life and health, but also for leading a life in dignity, for sustaining livelihoods and other social, economic and cultural processes. In summary, as stated by Catarina de Albuquerque, UN Special Rapporteur on the human right to safe drinking water and sanitation: "The right to water and sanitation is a human right, equal to all other human rights, which implies that it is justiciable and enforceable" [11].

A State obligation: Legally, States have the primary and direct responsibility of ensuring the full realization of this right as it is enshrined in existing human rights treaties. Among many things, this human right calls upon States to: (i) assess and review whether "all existing legislative and policy framework is in line with the right to safe drinking water, and to repeal, amend or adapt it in order to meet human rights standards and principles" [12]; (ii) consider water for life (personal and domestic uses) that always precedes in priority other uses of water, including livelihoods; (iii) Water should be primarily treated as a social and cultural good and "not primarily as an economic good" as it is sometimes portrayed; and (iv) Water for life should meet certain requirements in availability, quality and accessibility [11].

Key phases of the human right to water: The human right to water framework allow us to identify and evaluate its violations in a given policy-making context such as FTAs. The human right to water "entitles everyone to sufficient, safe, acceptable, physically accessible and affordable water for personal and

domestic uses." [14]. A summary of the key phases needed to secure this human right is illustrated in Fig. 1: In other words, the State must ensure that FTAs will not impact any of these phases of the right to water and if they do, that proper mitigation mechanisms are put in place to correct this.



1.4 IS THE HUMAN RIGHT TO WATER FULFILLED IN LATIN AMERICA?

Wide differences in access to water: How have the States of Central America, Colombia and Peru performed in fulfilling the human right to water prior to the implementation of these Agreements with the EU? The majority have done it very badly or not at all. According to the UNDP 2006 Report [6] and World Bank Development indicators [15] today in most of Latin American countries we observe huge differences in the access to water: large amounts of the population living in poverty (commonly the poorest 40% of the population) suffer lack of access to water vs. an extreme abundance of water (typically enjoyed fully by the richest 20% of the population). The human right to water in Latin America is violated in all its phases and those living in poverty are the worst affected.

A 'socially constructed' water scarcity:

Geographically, Latin America is one of the most water-rich areas of the world. But the root of the problem of water scarcity in Latin America lies not in the natural availability of water, but in its socially constructed availability (see table 1). In other words, human relations determine how water is distributed, accessed and used. As the UNDP 2006 human development

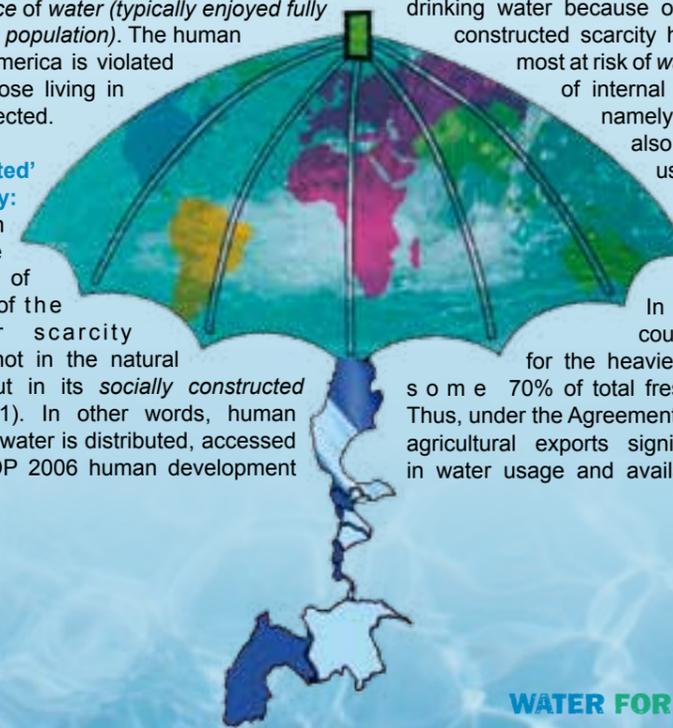
report states: "[T]he scarcity at the heart of the global water crisis is rooted in power, poverty and inequality, not in physical availability" [6].

Latin America, water abundant and yet water scarce:

Consider for example, that Central America, Colombia and Peru all have abundant internal freshwater resources: 672; 2,112; and 1,616 billion cubic metres (m³), respectively (see table 1). Colombia has more than double the amount of internal fresh water resources available than in the whole Euro area and its population is approximately 7 times smaller in comparison. Yet Colombia is still far from providing all of its citizens with clean drinking water because of inequality. Likewise, the socially constructed scarcity has made El Salvador the country most at risk of water stress [16], with the lowest amount of internal fresh water resource per person, namely 2.907 cubic metres per capita but also with the highest yearly fresh water usage (7.2% of what is available) in the whole Central American region and higher than in Colombia and Peru.

Water intensive exports:

In the majority of Latin American countries, agriculture is responsible for the heaviest usage of water, accounting for some 70% of total freshwater withdrawals in the region. Thus, under the Agreements with the EU, which would multiply agricultural exports significantly, strong adverse impacts in water usage and availability are expected. In particular,



Guatemala, Honduras, Nicaragua and Peru already exceed the threshold whereby agriculture accounts for almost 80% of all withdrawals. Any AA or FTA would exacerbate the already precarious situation in these countries. Table 1, below, shows that water productivity (the efficiency by which each country

utilises its water resources) in Central America, Colombia and Peru is low. For example, Nicaragua and Peru are at least eight times less efficient in water productivity than the Euro area. This fact worsens when water intensive goods are exported with no water regulations in place.

TABLE 2: AVAILABILITY AND EXTRACTIONS OF WATER RESOURCES IN LATIN AMERICA

Countries	Internal freshwater resources		Annual Freshwater Withdrawals					Water Productivity GDP/water use 2000\$ per cubic meters (2007)*	Access to an Improved Water Resource	
	Flows Billion Cubic Meters (2007)	Per capita Cubic Meters (2007)	Billion Cubic Meters (2007)*	% of Internal Resources (2007)*	% for Agriculture (2007)*	% for Industry (2007)*	% for Domestic (2007)*		% of Rural Population (2008)	% of Urban Population (2008)
Guatemala	109	8,177	2.0	1.8	80	13	6	12	90	98
El Salvador	18	2,907	1.3	7.2	59	16	25	13	76	94
Honduras	96	13,372	0.9	0.9	80	12	8	12	77	95
Nicaragua	190	33,912	1.3	0.7	83	2	15	4	68	98
Costa Rica	112	25,209	2.7	2.4	53	17	29	9	91	100
Panama	147	44,094	0.8	0.6	28	5	67	21	83	97
Colombia	2,112	47,611	10.7	0.5	46	4	50	13	73	99
Peru	1,616	56,685	20.1	1.2	82	10	8	4	61	90
Latin America & Carib.	13,425	24,001	264.9	2.0	71	10	19	10	80	97
Euro area	955	2,932	200.2	22.0	38	48	15	34	100	100

*Data are for the most recent year available
Source: Own construction based on World Bank Development Indicators (2011)

2 POTENTIAL IMPACTS OF THE AGREEMENTS ON HUMAN RIGHT TO WATER

Association Agreements have three pillars: political dialogue, cooperation and a free trade agreement. The strongest component of the EU's AA is its free trade pillar. It took most of the time of the negotiation process and it has also the greatest impact. In parallel, the original ambition of the EU was to sign an AA with the Community of Andean Nations, but this ambition was reduced to a mere FTA with Peru and Colombia. Ecuador and Bolivia seriously disagreed with the content and approach of the agreements.

2.1 POTENTIAL IMPACTS DUE TO CONTENT OF TRADE AGREEMENTS

There are seven dispositions found in the texts of the EU's trade agreements with Central America, Colombia and Peru which will affect poor people's water access:

Blindness to people's water deprivation and social vulnerability: CA, Colombia and Peru are characterized by high indexes of water access inequality, social power inequalities (including class, gender and ethnic exclusions in water access) and multidimensional poverty. Yet, this analysis is absent from the texts of the Agreements —including its sustainable development chapters— and it is poorly acknowledged in the TSIA's.

Blindness to acknowledge inexistent/weak water institutions: The Agreements and their TSIA's do not address the absence/weakness of a water governance framework of institutions, laws and policies in CA, Colombia and Peru securing their citizens' human right to water. No guarantees or mechanisms of accountability on proper water usage are put in place,

especially for water intensive FDI and trade initiatives. Likewise no real water democracy at the national level is sought as a goal in order to defend citizens from the overwhelming lobbying and legal power that corporations are offered in the Agreements.

'One size does not fit all' content distortions: the text of the agreement does not recognize particular differences in water exclusion in different countries and regions within these countries. This worsens the erroneous diagnosis of water access at a general level. In fact, specific countries have specific problems in water access and the Agreements do not address this. Countries like El Salvador are bound to suffer water stress from added pressures related to the Agreements and this is not even discussed in the TSIA's commissioned by the EU.

Triple blindness on water as a human right: This human right is excluded from: (a) the trade pillar of the agreements including its sustainable development chapters; (b) in the political and cooperation pillars in the case of the AA; and (c) in the methodology and recommendations of the TSIA's. Water is a legally binding universal human right and it is not included in the formulation, implementation and impact evaluation of the Agreements, not even in the institutional framework of rules, laws or policies of the political and cooperation pillars. Further still, there are no mechanisms either to raise objections to or modify this.

Water intensive trade agreements: The trade pillar chapters of the Agreements concentrate on water intensive economic activities which are predicted to rise due to the rise in exports of primary products and increasing competition for land and water, e.g. agro fuel plantations, mono-cultivations and extractive industries in Central America, Colombia and Peru. This will put at risk the human right to water of the already vulnerable and water scarce rural populations as it is not conducive to the

sustainability of hydro resources, but especially so, when no provisions are made to secure alternatives toward more environmentally sustainable export schemes e.g. diversification towards less water intensive goods.

Agreements open door to water privatisation schemes:

There is no explicit exclusion of water privatisation schemes in the services and investment chapters and no guarantee that water shall remain under all provisions of the agreement, a public common good. In fact, the Singapore issues of investment, competition, government and trade facilitation are included which means that under the current services and investments chapter of both trade agreements the Central American, Colombian and Peruvian sides could be under pressure to accept the EU's investment in the water provision space and be forced to accept it. The threat is real as the world's largest water services providers are multi-national corporations from the EU.^[16] Consenting this 'water blindness' would run against the EU's own official position of respecting water as public good. The negative impact of privatization schemes raising the price of water provision services is already a reality in Latin America and should be avoided.

Absence of hydro-impacts mitigation mechanisms: Regulatory measures to protect the human right to water are practically inexistent, e.g. sanctions or taxes to punish water pollution, export taxes for sustainability, etc. For instance, in article 285 of the trade and sustainable development chapter of the AA-EU-CA promotes the "right to regulate and levels of protection" but leaves it open to the Parties "to establish their own levels of domestic environmental and economic conditions and consistent with the internationally recognised standards". However, water management standards and the human right to water are not included at all and if any were to be applied, it would have to be not in "a manner that would constitute a means of arbitrary or unjustifiable discrimination between the Parties or a disguised restriction in international trade". In sum, the right to trade is more important than people's human right to water access, no matter its consequences. Corporations cannot be held accountable for their human right to water violations. They would be protected under the legal umbrella of the trade agreements.

2.2 POTENTIAL IMPACTS DUE TO FLAWS IN METHODOLOGY OF THE TSIA'S

Trade Sustainability Impact Assessments (TSIA's) are mandatory in the negotiation process of the EU trade agreements. In general, the impacts on natural resources highlighted by the TSIA's are underestimated. The aim of the TSIA's has generally been "to identify economic, social and environmental impacts of a trade agreement"^[17]. However, several flaws have been found in the approach of TSIA's to water related impacts, including the following:

Blindness to people's multidimensional interrelationships with water: Water is more than a mere economic 'good'. The TSIA's do not incorporate the complex nature of people's cultural and social dependencies on water. Consequently, the agreements exclude the socio-cultural impacts of trade in water management. E.g. indigenous populations' complex relationship with river basins (spiritual, cultural, social) displaced by mega-projects like hydro-electric power dams.

Flawed water analysis methodologies: the TSIA's do not include water relevant information such as: (a) power relations over access to water and water scarcity^[18, 19], (b) the incorpo-

ration of the human right to water and other inter-dependent human rights^[20], (c) water specific methodologies for evaluating impact, e.g. water poverty footprints^[21, 22] and virtual water analysis^[23], water sustainability measurements, water legal rights, etc. In other words, these TSIA's are fundamentally flawed in their water analysis and would mislead the trade and sustainable environmental impacts chapter. For example, in the final report of the TSIA's for Central America^[24] and Colombia/Peru^[25], the concepts the "human right to water"^{xx}, "water footprint"^[21], "virtual water"^[23, 26], among other water-evaluation terms are not even mentioned.

Water treated as an economic good not a common public good:

The absence of proper rigorous measurement of multi-dimensional water impacts in the TSIA's methodologies is conducive to support a reductionist vision of 'water as an economic good'. The whole exercise of the TSIA is a matter of 'economics'. The European Commission itself states that "the Trade SIA consultant (is) expected to deliver an economic analysis of the projected results of the negotiations"^[27]. Important issues are not measured and not everything that is measured or economically quantifiable is important.

Participatory deficiencies: The methodologies and indicators used to prepare the TSIA's have been heavily criticized for their poor participatory mechanisms and their superficial and fast-track analysis of information.

2.3 POTENTIAL IMPACTS ON PEOPLE'S WATER ACCESS AND ENVIRONMENT



2.3.1 Potential impacts on water sustainability

As reminded by the United Nations Committee on Economic, Social and Cultural Rights (CESCR): "States parties have to respect the enjoyment of the right in other countries. International cooperation requires States parties to refrain from actions that interfere, directly or indirectly, with the enjoyment of the right to water in other countries" And... "Where water services (such as piped water networks, water tankers, access to rivers and wells) are operated or controlled by third parties, States parties must prevent them from compromising equal, affordable, and physical access to sufficient, safe and acceptable water"^{xx}.

These issues are triggered because of:

Increasing freshwater withdrawals:

FTAs are designed to increase and multiply exports. However exports that are based on manufacturing and large-scale agriculture —like those promoted by the EU in Latin America— are also intensive in their use of water, hence affecting sustainability. An example of this is the unsustainable water withdrawal rate under NAFTA^{xi}. This FTA promoted the growing production of crops such as corn, which led to the parallel expansion of irrigation. When crops spread to dry areas many aquifers were affected and conflicts over water scarcity and water overexploitation escalated^[28]. This water sustainability problem has been confirmed by the two TSIA's commissioned by the EU to evaluate the potential impacts of the AA in Central America^[24] and the FTA with Colombia and Peru^[25] respectively. Water withdrawals in the agriculture sector originate from the increase

of exports on vegetables, fruits & nuts and in the manufacturing sector from the increase in exports of electronic equipment, processed foods, beverages and tobacco. In the case of Colombia and Peru the impacts would come from the rise in exports such as sugar, fruits (particularly bananas), mining and hydrocarbons.^[29] The absence of institutions and suitable regulations to ensure proper water usage at the national level^[30] will worsen the impacts. The case of El Salvador's vulnerability to 'water stress' illustrates this scenario^[31]. This is not just because its exports are water-intensive, but also because of its legal environmental and because water regulations are virtually non-existent.

Exacerbating water pollution problems

Likewise, FTAs increase water pollution due to unregulated export-driven growth in processes for the production and distribution of goods. This is especially true in developing countries where environmental regulations are weak (or non-existent) and where there is a lack of institutions capable of applying them.

The CAFTA experience with mining: The Central American FTA with the US has caused water polluting foreign direct investments (FDI) in large scale development project, e.g. mining. But because the FTA legal framework is stronger than the weak national environmental laws it has been very difficult to stop activities which could lead to pollution. In 2007, the State of El Salvador denied a corporation (Pacific Rim) the permits needed for their El Dorado mine because of its potential negative impacts on water pollution from cyanide, the chemical used for mining production and water extraction (30,000 litres a day). In response, the company launched a \$77 million US-CAFTA challenge in 2008 that is still being negotiated to date^[32].

According to the EU-CA TSIA, the expected water polluting impacts lie in the production processes of fruits, vegetable and nuts (e.g. using chemicals like pesticides); in the illegal logging from timber-hungry FTA exports—which exists already in the region^[24] contributing to water scarcity and reduced water quality through salinization—and in the increased production with chemicals in the textile industry as well as in heavy industries (i.e. chemical areas, construction and petroleum refineries) attracted by FDIs. For the TSIA in Colombia and Peru, the key sources of pollution would originate from mining activities and agricultural runoffs^[25].

Increasing degradation of the water cycle due to environmental impacts FDI in water-intensive megaprojects can impact the hydrological cycle of water from projects relying on hydroelectricity (large river dams), irrigation, deforestation and productive sectors based on motor vehicles. For instance, the territorial hydrological cycle in countries like Colombia and Peru may be negatively affected by the EU's FTA through the ways of production and processing in agriculture in particular in relation with the increased production of raw materials for biofuels^[33]. This is expected due to the fact that these two sectors systemically exert heavy pressure on water and land usage and deforestation. This fact is confirmed by the TSIA for Colombia and Peru^[25]. For example, Peru is expected to lose water sustainability due to increased hydrocarbon exploitation and the expansion of FDI in resource extraction projects.

2.3.2 Potential impacts on the material means to access clean water



Commodifying water: from concessions to privatisation

Colonizing public services: FTA legal frameworks can collide, override or reinforce national legislations. In this case, the FTA rules of the game often give overwhelming power to transnational corporations that see water as a tradable commodity, i.e. an economic good susceptible of being privatised as a service^[33]. Hence, under the framework of these Agreements, corporations can claim the right to 'invest' in water management and distribution services. Moreover, because of the supranational legislative frameworks contemplated in the Agreements, States trying to stop corporations (entitled by FTAs to enter the public water sectors for profit) could be sued in bodies like the International Centre for Settlement of Investment Disputes (ICSID). In other words, under these legal frameworks *water is always at risk of being privatised*. In the decision making on the negotiation mandate for the European Commission, France succeeded in excluding public social services from being privatised through FTAs. But in the FTAs water is also mentioned in the chapter on environmental services, hence they are in practice open to privatisation under FTAs.

No efficiency gains: The experience of nations that have privatised their water sectors concludes that the theoretical 'efficiency gains' of privatisation never become real and that prices tend to rise in almost all cases disproportionately affecting the poor. E.g. in Cochabamba (Bolivia) water prices doubled overnight after privatisation^[34] and in Colombia after all its privatisation processes, the price of water increased. Now people living in a slum in Barranquilla, Colombia, would have to pay almost three times the price for the water they get than people living in London (fig. 2).^[35]



Negative impacts in Colombia: Some forms of privatization include *concessions* - where the private sector finances its own investments with its own resources - and *public-private partnerships (PPPs)*^[36] where corporations benefit from State subsidies. Colombia for instance from 1996 to 2007, granted more than 40 water and sanitation service provision contracts to private or mixed companies nationwide. However, the impacts of this privatisation trend for the poor, especially for those living in rural areas, have been largely

negative.^[36] According to public opinion surveys like *Latinobarometro*^[37] the rising unpopularity of water privatisation in Colombia and many other countries in Latin America has been due to its negative effect on rising water prices.

Negative impacts in the EU: Another example comes from Brussels, the heart of the EU and headquarters of the European Commission. The risks of PPPs were underscored when Aquiris, a subsidiary of French multinational Veolia Water, charged with treating waste water in Brussels, stopped operating on December 2009. Untreated water of 1.1 million citizens polluted the river Zenne during 10 days, after which the company was forced to start up operations again. Research carried out by the *Corporate Europe Observatory (CEO)* revealed that the company was seeking more money from the public authorities, could not fulfil its contract and had exaggerated its technological capacities in its response to the tender.^[38] Brussels is now burdened with the contract and pulling out will be extremely costly. If this had happened in a developing country it would have had a crippling impact on its citizens. In this case a private corporation used public money to develop a new technology for the sole profit of the company. Yet the investment *went wrong* and became the costliest water PPP in Belgium^[38]

If even rich nations are vulnerable to FTA induced privatisation waves, developing nations are even more exposed. This is why PPPs have rapidly declined in popularity and many of them have cancelled their operations in Latin America.^[39] However, the potential risk of water privatisation is ever present in the framework of the Agreements between the EU, CA and Colombia/Peru respectively. This was even admitted in the TSIA commissioned for Central America: "*Privatisation of certain public services, such as drinking water, may mean some vulnerable groups have reduced access.*" TSIA for CA^[24]

Many European multinational corporations in the water sector already operate in Latin America prior to the EU's trade agreements. Colombia and Honduras stand out as examples of this (see table 3 below). With the trade agreements this list may be expanded.

Multinational / Home country	Contracts in 2007: Country/City
Aguas de Barcelona (Spain/France):	<ul style="list-style-type: none"> ✓ Chile (Santiago) ✓ Colombia (Cartagena) ✓ Cuba (Habana, Varadero) ✓ Mexico (Saltillo)
Proactiva/Veolia/FCC (Spain/France)	<ul style="list-style-type: none"> ✓ Colombia (Monteria, Tunja, San Andres) ✓ Mexico (Aguascalientes) ✓ Brazil (Sanepar)
ACS/Urbaser (Spain)	✓ Argentina (SAMSA - Misiones)
Iberdrola (Spain)	✓ Chile (Essal)
Sacyr Vallehermoso/ Valoriza/ AGS (Spain)	✓ Brazil (Sanear, Aguas Mandaguahy)
Canal Isabel II (Spain)	<ul style="list-style-type: none"> ✓ Colombia (AAA) ✓ Ecuador (Amagua)
Acea (Italy)	✓ Honduras (San Pedro Sula)

Increasing inequality in water access infrastructure FTAs impact a person's material means to access water in unequal ways. Those living in poverty cannot benefit from access to water on equal terms with other people with higher incomes in society. Privatisation and rising water prices lead to less access to this vital liquid by the poor and disadvantaged in a given society. For example on a global scale, two million tons of sewage, industrial and agricultural waste are discharged into

the world's waterways and at least 1.8 million children under five years-old die every year from water related disease, that is, one every 20 seconds.^[40] Much of this contamination comes from industries and export zones that have not guaranteed proper infrastructure and investment to treat water sewage. Latin American countries follow this pattern.

2.3.3 Impacts of power relations on access to clean water



Access to clean water is already deeply affected by unequal power relations (e.g. poor women, children, the elderly and disadvantaged groups like indigenous populations suffer more the systematic lack of clean water scarcity). FTAs exacerbate this by legitimizing the rights of corporations over the human rights of people. This is the heart of the problem. Weak or absent State regulatory institutions in Latin America cannot adequately defend the human right to water from the threat to natural resources posed by FTAs.

Loss of state sovereignty in water governance States that have signed FTAs tend to lose sovereignty in domestic legislation processes. With FTAs, corporations are empowered to run their 'business as usual' economic practices freely and States, on the contrary, become disempowered and have 'their hands tied' unable to apply defensive measures against the negative impacts of these practices. For instance, trying to stop companies from damaging the environment and its water resources may mean facing up to costly trials 'for denial of or interference with investment opportunities' in international trade regulation courts. Examples of this weak institutionality are found in El Salvador, Guatemala and Colombia, where the formulation and/or implementation of a National Water Law is still pending due to a lack of institutions and/or legal frameworks to enforce them.^[31, 41]

Increasing the deterioration of rights & freedoms to access clean water

FTAs impact right to water and its interdependent rights: All States in order to guarantee sustainable and equitable access to clean water for all need to ensure that the required set of environmental, social, economic, political and cultural conditions are met. This is crucial because securing access to clean drinking water and sanitation help to ensure essential human rights and well-being included in the Millennium Development Goals targets^[6] and human rights such as

the rights to *health, life and development*. It means for example that the 77,600 children aged less than five years old that die each year in Latin America from water-borne diseases such as diarrhoea and its consequences, (200 deaths every day)^[42] could be avoided. Further examples that illustrate how in Latin America the conditions needed to secure the right to water are continuously breached are:

Rights violations: For example, research presented at the Permanent People's Tribunal (PPT)^{xvi} —on the activities of 25 of the largest European transnational corporations (TNCs) — has revealed systematic violations of rights in Latin America including water as a human right. Throughout its sessions in 2006, 2008 and 2010, the Tribunal considered 48 cases of TNCs from 12 sectors operating in Latin American and Caribbean countries.^[42] The cases presented at the Tribunal exposed the violation of human rights that European TNCs are committing with their economic activities^[42]:

Attacks on physical integrity:

- Evidence of the use of military, police, paramilitary and private security companies by Impregilo in the river Sogamoso (Colombia), Cerrejón in la Guajira Colombia, Monterrico in Peru, BP in Colombia.
- Kidnappings (Holcim and Monterrico), murder of social and community leaders (Union Fenosa and Holcim in Guatemala and Colombia),
- The criminalization of communities opposed to the exploitation of natural resources (mining, cement, energy) in the case of Holcim and Gold Corp. (Guatemala)
- Use of a “state of siege” by Union Fenosa, Pluspetrol in Peru and BP in Colombia suspending rights and undertaking arbitrary arrests.

Destruction of the environment and vital resources:

- Environmental damage caused by the Mining Company MAJAZ, which, if it continues to expand, would be seriously detrimental to the Amazon Basin (Peru, Brazil)
- aquifer overexploitation (Aguas de Barcelona in Mexico), impacts of dam on the river Sogamoso (Impregilo in Colombia).
- deforestation and water pollution through pesticide spraying: cases of Canal de Isabel II in Colombia, Holcim in Colombia, Mexico and Guatemala, Pluspetrol and Perenco in Peru, Repsol in Argentina,
- The Spanish multinational Pescanova’s activities in Nicaragua on fishing exploitation which is damaging the Nicaraguan mangrove swamps.

2.3.4 Impacts in the fulfilment of the human right to water for all



There are three aspects of the trade agreements that impact the evaluation of the attainment of water access for all:

No evaluation of fulfilment of the human right to water: The EU's trade agreements with CA, Colombia and Peru, and the TSIA's made for them, lack evaluation mechanisms to measure the impact of trade in the human right to water access and other human rights violations. Holistic methods of analysis which go beyond mere volumetric measures and investment statistics need to be taken into account to consider whether people will *actually gain access to clean water*.

No participation of affected water stakeholders: A proper impact evaluation of these trade agreements in the fulfilment of the human right to water should leave space for the empowered participation of those stakeholders primarily or potentially affected by these economic activities. Under the current structure of the participation mechanisms of the agreements there has been no space for this in the past and will continue to be like this in the future. Currently, the trade and sustainable development chapter is limited to one civil society meeting once a year in the case of the AA between EU-Central America and restricted to certain topics. This excludes the discussion on water rights and is limited to be more of an informative forum. The same happens in Peru and Colombia, where the annual dialogue is restricted to the same topic.

Lack of coherence with development ethics: Trade impacts override all concern with securing the human right to water. The content of the agreements will affect poor and vulnerable people's water security. However, there is no flexibility to correct this by making modifications to the agreements. This is the contrary to what the European Parliament has advocated in its resolutions on the World Water Forum and the MDGs.

3. WAYS FORWARD

3.1 Reject and Review the Trade Agreements & their TSIA's

The United Nations' *Human Development Report of 2011* states that: “Disadvantaged people are the focus of human development. This includes people in the future who will suffer the most severe consequences from our activities today”^[2].

The problem with the European Union's trade agreements with Central America, Colombia and Peru and their TSIA's is that the analysis is partial and fundamentally flawed when evaluated from the higher level strategy of water, human rights and sustainable development goals. Almost 40% of the poorest population of these developing countries is already suffering or is at risk of clean water scarcity.

A matter of life or death: Securing sustainable and clean water access as a human right for all is a *non-negotiable* principle of human development. It is in fact, a matter of life or death to all people; hence it has to be included. However, the option to modify these trade agreements is not available for European Parliamentarians. If the choice is to ‘take or leave’ therefore the right, ethical choice is ‘to leave’.

An opportunity to act: Based on this we ask the European and national parliaments to:

- Reject and ask for a review of the proposed Trade Agreements with Central America, Colombia and Peru,
- Reject all laws and policies that violate the human right to water and
- Explicitly prioritise water as a human right over the rights of corporations and trade.

3.2 10 Key Reasons on why to say no to these agreements

POTENTIAL IMPACTS DUE TO ‘WATER BLINDNESS’ IN DESIGN OF AA-FTA & TSIA's

- 1. Blindness to water as a human right:** There is a glaring omission of people's water deprivation and their social vulnerability reflected in the texts the AA-FTA & TSIA's. There is an added blindness to acknowledge inexistent/weak water institutions.
- 2. TSIA's methodological flaws:** The Trade Sustainability Impact Assessments are fundamentally flawed in their water analysis in the environmental impacts section. The absence of proper rigorous measurement of water impacts in the TSIA's methodologies including participatory deficiencies and blindness to people's multidimensional interrelationships with water (e.g. absence of water footprint, virtual water analysis, indigenous legal rights to water, water sustainability measurements, gendered water deprivation, etc.) give testimony of this.
- 3. ‘One size does not fit all’ content distortions:** this is the case of the wrong diagnosis of water access at a general level, specific countries have specific problems in water access and the Agreements do not address this problem. Countries like El Salvador are bound to suffer water stress from added pressures related to the Agreements and this is not even discussed in the TSIA's commissioned by the EU.
- 4. Trade agreements are primarily water intensive:** The trade pillar chapters of the Agreements are concentrated in water intensive economic activities which put at risk the

human right to water of the already vulnerable and water scarce rural populations

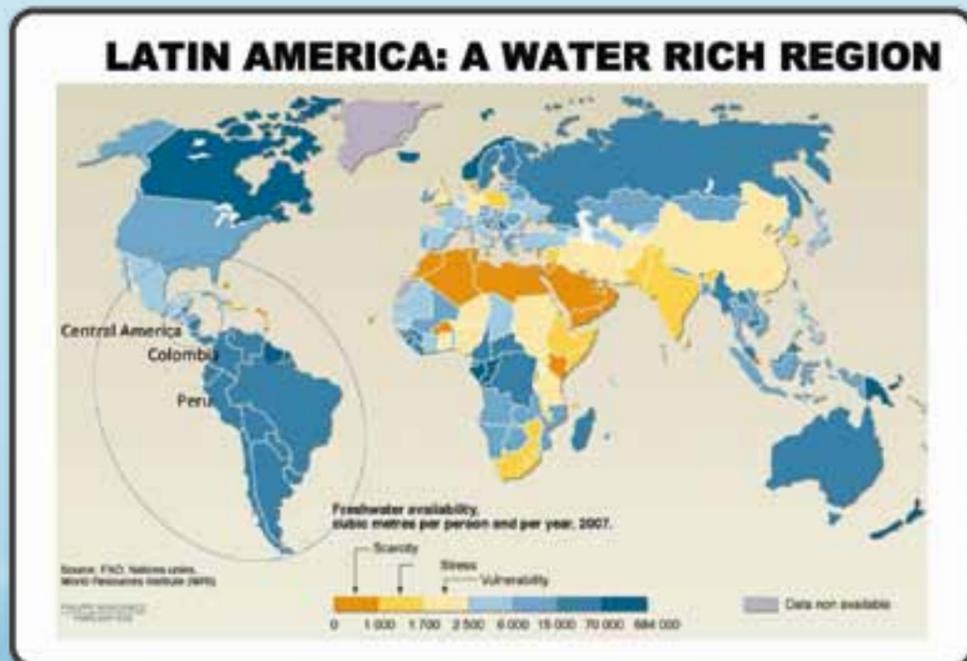
5. Agreements open door to water privatisation schemes: water treated as an economic good not a common public good: There is no explicit exclusion of water privatisation schemes in the services and investment chapters and no guarantee or official acknowledgement that water shall remain under all provisions of the agreement, a public common good. The negative impacts of PPPs in raising the price of water provision services are already a reality in Latin America and should be avoided.

6. Absence of hydro-impacts mitigation mechanisms: Absence of water governance policy-making procedures and legal/institutional rules in relation to trade on how to secure the human right to water and water sustainability in relation to trade, e.g. incorporating in the trade and Sustainable Development chapter the UN Convention Water as a Human Right, taxes for water pollution, export taxes for sustainability, etc.

AA/FTA's POTENTIAL IMPACTS ON PEOPLE'S HUMAN RIGHT TO WATER

- 7. On water sustainability:** increasing freshwater withdrawals, exacerbating water pollution problems, increasing degradation of the water cycle due to environmental impacts
- 8. On the material means to access clean water:** commodifying water and risking its privatisation, increasing inequality in water access infrastructure
- 9. On capabilities and rights to access clean water** Loss of state sovereignty in water governance; Increasing the deterioration of rights & freedoms to access clean water
- 10. On the fulfilment of the human right to water for all:** there is no evaluation of fulfilment of the human right to water; no participation of affected water stakeholders; lack of coherence with development ethics.

DO YOU SEE THE REALITY AT YOUR FEET? WATER IS FOR LIFE, NOT FOR TRADE.



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Endnotes

i Central America is politically defined as an integrated region that includes the countries of Guatemala, El Salvador, Honduras, Nicaragua, Costa Rica and Panama. For these negotiations with the EU, Panama has assumed the role of an 'observer' with the specific objective of joining the trade agreement at a later stage.

ii In the case of the AA with Central America all parliaments of the 27 EU member states will have a decisive say in the ratification process.

iii For more information see <http://www.mdgmonitor.org/goal7.cfm>

iv Office for the High Commissioner for Human Rights, The right to water, Fact Sheet n°35 <http://www.ohchr.org/EN/Issues/Water-AndSanitation/SRWWater/Pages/SRWWaterIndex.aspx>

v Brochure by the European Commission, EU contribution to the millennium development goals, 2010, http://ec.europa.eu/europe-aid/what/millennium-development-goals/index_en.htm

vi See <http://www.righttowater.info/catarina-de-albuquerque/>

vii The World Health Organization (WHO) defines as 'basic access' to drinking water the minimum provision of approximately 20 litres per capita per day on average and that it should be water that is within at least 1 km or a 30 minute walk round-trip. Anything below this threshold is defined as 'no access' to water. 13. WHO, Guidelines for Drinking-water Quality. 4th ed2011, Geneva: World Health Organization (WHO) http://whqlibdoc.who.int/publications/2011/9789241548151_eng.pdf.

viii Water scarcity is typically evaluated by looking at the population-water nexus. An area is said to be experiencing water stress when annual water supplies drop below 1,700 m3 per person. When annual water supplies drop below 1,000 m3 per person, the population faces water scarcity, and below 500 cubic metres "absolute scarcity".

ix The term 'human right' is mentioned only once in the CA SIA final report and it is in relation to labour. 24. ECORYS, Trade Sustainability Impact Assessment of the Association Agreement to be negotiated between the EU and Central America. Final Report, 2009, ECORYS Research and Consulting for the European Commission, DG-Trade: Rotterdam. p. ECORYS Research and Consulting.

x Committee on Economic, Social and Cultural Rights, General Comment No. 15 (2002) The right to water (arts. 11 and 12 of the International Covenant on Economic, Social and Cultural Rights), E/C.12/2002/11, 20 January 2003

xi The FTA between Mexico, the United States and Canada

xii See the report, http://www.oxfam.org.uk/resources/policy/climate_change/downloads/bp114_inconvenient_truth.pdf

xiii Sometimes referred as P3s or P³ a Public-Private Partnership is used to refer to a government service or private business venture which is funded and operated through a partnership of government and one or more private sector companies

xiv <http://www.corporateeurope.org/water-justice/content/2010/02/aquiris-veolias-lost-bet-brussels>

xv <http://www.colombiassh.org/gtmi/wiki/index.php/Diarrea>

xvi The PPT is an international "opinion tribunal" independent of State authorities. It succeeded the tribunal for crimes against humanity committed by the United States in the war against the Vietnamese people (the Russell Tribunals). See more in <http://www.tni.org/archives/act/18545>

EU Trade Agreements with Central America, Colombia and Peru:

WATER FOR LIFE OR FOR TRADE?

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