

Human Rights in International Trade

- *Summary of a Seminar held in Stockholm 5th April 2005* –



Frivilligorganisationernas
FOND för MÄNSKLIGA
RÄTTIGHETER

Frivilligorganisationernas fond för mänskliga rättigheter
Swedish NGO Foundation for Human Rights
Drottninggatan 101, 113 60 Stockholm, Sweden
Tel: +46 8 5454 99 70
Direct: +46 8 5454 99 71
Fax: +46 8 30 30 31
Hemsida: www.humanrights.se

Human Rights in International Trade

Introduction

On the 5 of April 2005 the Swedish NGO Foundation for Human Rights arranged the open seminar "Human Rights in International Trade" in Stockholm in order to raise awareness of the value of human rights in relation to the trade policies of national, regional and international institutions.¹ The seminar was held in conjunction to a meeting of The International Council of the Swedish NGO Foundation for Human Rights where three of the seminar participants are members.

Presentation of the participant speakers

The first participant to speak was Francisco Soberón, member of The International Council of the Swedish NGO Foundation for Human Rights and Executive Secretary of the *Coordinadora Nacional de Derechos Humanos* (CNDDHH) in Peru. He has also been the Director of one of the major human rights organisations in Peru and Latin America, *Asociación pro Derechos Humanos* (APRODEH). Mr. Soberón gave a presentation on the topic of "Human Rights in the Process of Economic Integration in the Americas".

The second speaker was Sybilla Fries who is in charge of reviewing human rights clauses in EU trade agreements at the Legal Services at the European Commission. The title of her presentation was "Human Rights Clauses in EU Trade Agreements".

Third to speak was Shripapha Petcharamesree, member of The International Council of the Swedish NGO Foundation for Human Rights and Director of the Office of Human Rights Studies at Mahidol University, Thailand. She is also a Lecturer at Mahidol University and Guest Lecturer at Thammasat University. Furthermore, she is working on a research project where she is trying to assess a human rights based approach to poverty eradication. At the seminar she gave a presentation about "Going bilateral – the Case of Thailand".

Ebrima Sall, the fourth speaker, is a member of the of The International Council of the Swedish NGO Foundation for Human Rights and Head of the Research and Documentation Department at the Council for the Development of Economic and Social Research in Africa, CODESRIA, in Dakar, Senegal. Earlier, he was a guest researcher and programme co-ordinator at the Nordic Africa Institute in Uppsala, Sweden. The title of his presentation was "Economic Partnership Agreements from a West African Perspective".

Last but not least was Henning Melber. He is Research Director at the Nordic Africa Institute in Uppsala, Sweden, and the Vice-President of the European Association of Development Research and training Institutes (EADI). Previously, he was Director of the Namibian Economic Policy Research Unit (NEPRU) in Windhoek, Namibia. Mr. Melber gave a presentation on the topic of "Trade as Aid? – Economic Globalisation and Human Rights in Africa".

¹ Invitation letter

The discussant of the seminar, Åsa Romson, is a board member of the Swedish Green Party with particular responsibility for issues of law and social policy. She previously worked at the Policy Unit of Forum Syd in Stockholm, Sweden.

Why a seminar on trade and human rights?

In her opening speech, Anita Klum, Secretary-General of the Swedish NGO Foundation for Human Rights, explained that this seminar was taking place because the relation between trade and human rights has become a burning question. She pointed out that bilateral and regional trade agreements are increasing in number, but that until recently the human rights movement did not pay much attention to trade policies. And vice versa; trade policy makers were not paying much attention to human rights.

However, since the WTO ministerial meeting in Seattle in November 1999 the relations between human rights and trade have slowly but steadily entered the international agenda. Parallel to the WTO framework, regional, subregional and even bilateral trade agreements are increasing throughout the world, but human rights are still far from mainstreamed in these processes.

Ms. Klum summarised the theme of the seminar with three questions:

- How can a rights based approach improve the negotiation and implementation of trade policies?
- Who are the actors in trade policy negotiations and in the international trade itself?
- What opportunities appear when assessing the relation between human rights and trade?

Human Rights in Trade Negotiations and Trade Agreements

The relation between trade and human rights

The theory behind free trade is that it will improve economic growth and increase opportunities in developing countries. Until recently there had not been much research done on the impacts of free trade in relation to human rights, but according to Mr. Soberón, and most of his fellow participants, there are now indications that free trade agreements have had negative rather than positive impacts on many people's lives.

Human rights in American trade negotiations

Mr. Soberón introduced the audience to the economic integration processes that are taking place in the American hemisphere. Apart from a number of bilateral free trade agreements and trade negotiations, there is also a process of integrating all economies of the Americas into one single free trade area through the "Free Trade Area of the Americas" (FTAA) trade agreement, which is currently in the drafting stage.²

In 2004, a coalition of several social and human rights organisations sent a petition to the Inter-American Commission of Human Rights stressing the importance of including human rights in the process of economic integration of the Americas. The petition led to a hearing that was held with the Commission in October 2004. In that hearing, two aspects of human rights in trade negotiations were discussed; firstly, the primacy of state commitments to human rights over commitments to trade agreements and, secondly, the importance of transparency in trade negotiations.³ After the hearing, the coalition has continued putting pressure on the Commission and the Special Rapporteur on Freedom of Expression to explore the effects of the issues that

² www.ftaa-alca.org

³ Hearing before the Inter-American Commission on Human Rights

were brought up in the petition. The coalition is also monitoring the work that is taking place in the Commission. Even if there is still a lot of work to be done, Mr. Soberón expressed some optimism with regards to the process of including human rights in trade negotiations in the Americas.

Transparency in trade negotiations

Mr. Soberón also brought up the problem of lacking transparency in trade negotiations. Often they occur in confidential circumstances and only the negotiators themselves are allowed to see the documents that are produced during the negotiations. The civil society and even their representatives in parliament have a very restricted, if any, access to these documents. As an example of how strict this confidentiality is, Mr. Soberón mentioned an incident that occurred in Peru just a few weeks before the seminar in Stockholm. A health expert that took part in trade negotiations was thrown out, not only from the discussions but also from the country, after it was revealed that he had circulated a certain document to unauthorised people.

The trade negotiations in the Americas are not the only ones that are lacking in transparency. Ms. Petcharamesree witnessed about the secrecy of negotiations between Thailand and Australia. In Thailand it has even been hard to get hold of the actual trade agreement document. Not until it was published and had gone public in Australia it was translated to Thai.

Human rights in trade agreements

Like Ms. Klum mentioned in her opening speech, the human rights approach is rather new in trade negotiations and trade agreements. It has, however, become more common lately. Sybilla Fries gave an exhaustive presentation on human rights in treaties and trade agreements of the European Union. Human Rights are explicitly mentioned in articles 6 and 11 of the Treaty on European Union from 1991 (the "Maastricht Treaty") and if the EU constitution enters into force, human rights will become EU hard law.

The EU human rights clause

According to Ms. Fries, human rights inform all economic relations in the EU. Since 1995 human rights are systematically included into all framework agreements of the EU through the non-negotiable human rights clause. (It is not included in sectoral agreements, such as agreements on textiles and agricultural products, since they are seen as too narrow to contain a human rights clause.) The human rights clause allows for suspension of an agreement in case of human rights violations, and Ms. Fries added that the EU is primarily concerned with civil and political rights. It is possible to suspend only parts of the agreement in order to be able to continue with those parts that are deemed to directly benefit the population. Before a party suspends the agreement it has to address the suspension with the other party according to the provisions of discussions that are set up in the human rights clause.

This clause originated from the crisis in Yugoslavia in 1991. At that time Yugoslavia had a trade agreement with the European Community, but there was no clause in the agreement that allowed for stopping the trade due to human rights violations. Therefore, when Yugoslavia started violating human rights, the EC had no other alternative but to turn to the rules of international law in order to suspend the agreement.

Conditionality

In order to protect human rights, the European Union uses different approaches. In some cases they use positive measures, for example by giving financial support to certain human rights oriented projects. In other cases they use negative measures, for example by stopping financial support in the event of human rights violations in the receiving state. The most prominent

approach, however, is to use conditionality measures. This means that the EU puts pressure on the receiving state to meet certain conditions, or else financial support will be withdrawn.

The Cotonou Agreement

The Cotonou Agreement is a partnership agreement between the European Community on the one hand and the Group of African, Caribbean and Pacific States (ACP) on the other hand. This agreement entered into force on 1 April 2003.⁴ It contains the human rights clause in its 9th article and directions of consultation in case of human rights abuses in its 96th article. As of today, the human rights clause has been applied in a few cases; it has not happened very often yet since it is a rather new phenomenon. In those cases where the human rights clause has been applied, it has been due to massive and systematic violations of civil and political rights.

Which human rights should be addressed?

According to Mr. Sall, the objectives of the Cotonou Agreement are aid, trade and human rights, in particular poverty reduction, economic co-operation, elimination of corruption, the relation to non-state actors and integration to the global economy. Yet, in contrast to the objective of protecting human rights, Mr. Sall claimed that the whole process of Cotonou has been "an exercise of human rights violations", at least concerning economic and social rights. For example, poverty has increased since the introduction of the agreement. Since it went into force, the number of countries that are labelled "Least Developed Countries" (LDCs) has risen from 30 to 39 in the ACP area.

Mr. Soberón and Mr. Sall both stressed the importance of guaranteeing economic, social and cultural rights in trade agreements. Clauses and conventions do contain human rights, Mr. Sall said, but the implementation of them means that human rights are getting worse off in practice. "The economic, social and cultural rights are *the* rights we need to focus on", he emphasised

Incoherence in trade policies

According to Mr. Melber there is a lack of coherence in EU trade policies. He claimed that there is an unequalitarian trade structure and that the human rights clause does not help. Ms. Fries also gave an example of incoherence in the application of the human rights clause. A few years ago there were serious problems of child labour in Myanmar and in Pakistan. In the former case, the EU reasoned that the problems were best addressed by cutting its financial support to the country. However, in the latter case, the EU decided to keep giving financial support to projects in Pakistan in order to overcome the problems.

Another example was brought up by Magnus Walan, Diakonia, in the audience. He mentioned Israel where the protection of human rights has decreased dramatically. There are examples of collective punishment and expropriation of land, but still EU is trading with Israel and co-operation is even increasing. In this case, Ms. Fries explained that the EU prefers a dialogue. "Would no more trade mean better respect for human rights?"

The role of civil society

Mr. Soberón stressed that civil society movements and human rights movements need to cooperate on issues concerning human rights and trade and called for mobilisation and a plan of action among these groups. Also Mr. Sall pointed out that more participants should be involved in a much earlier stage of trade negotiations, both representatives from the parliament and the civil society. A consultative process with NGOs, he believed, would lead to greater chances that human rights – understood as an integrated whole of civil, political, economic, social and cultural

⁴ http://europa.eu.int/comm/development/body/cotonou/agreement/cotonou_sit.pdf#zoom=100

rights - become a central part of negotiations. NGOs are, indeed, consulted in trade negotiations, Ms. Fries affirmed; in many processes of the EU there are regular meetings with NGOs. Ms. Petcharamesree explained that, even if it is not as obvious as in the EU, this is also the case in Thailand where the government often consults NGOs "behind the scenes". Consulting NGOs is, however, not inherently positive. Like Mr. Melber pointed out, some NGOs represent elite interests and the risk of co-optation should not be overlooked. Moreover, Ms. Fries stressed that NGOs must realise their responsibility to provide correct and relevant information in the consultative process.

Four Examples of Negative Impacts of Free Trade Agreements

Mr. Sall stated that NGOs are calling for fair and equitable trade, but that is not enough. One has to ask the question "What *precedes* the trade exercise itself?". It could be abuses of women and children, forced labour or any other kind of human rights violation. As mentioned above, some examples have indicated that free trade could have rather negative impacts on human rights. At the seminar, a number of examples confirming these indications were presented.

Which human rights are affected in the exercise of trade?

A number of specific human rights were mentioned in relation to the exercise of trade during the seminar. The confidential process of trade negotiations shows that there is a lack of democratic participation in decision making and access to information in the drafting stage. Negotiation procedures and the implementation of trade agreements also show that they reproduce inequalities in and between countries. Moreover, a number of trade agreements have implied threats to health, human lives and ecosystems.

The Case of Metalclad in Mexico violating the Right to Health

Mr. Soberón mentioned the activities of the Los Angeles based Metalclad Corporation in the municipality of Guadalucazar in a rural part of Mexico.⁵ In contrast to the primacy of human rights that the coalition of social and human rights organisations in the Americas called for in the hearing with the Inter-American Commission on Human Rights, this case showed that, in reality, human rights had to give way to the rules of a free trade agreement.

In accordance with the North Atlantic Free Trade Agreement (NAFTA) the corporation was allowed to set up a toxic waste confinement in 1995. Despite recommendations from human rights organisations and demonstrations that were held in connection to the opening, the corporation did not inform neither workers in the confinement nor the population living in the area about the toxic impacts that the confinement would have on their health and environment. Due to the uncertainty of the impact of the waste confinement, the municipality refused to let the corporation continue its operations in 1997. Metalclad responded by claiming compensation from the Mexican government for the investments they had made. In the end, Mexico was compelled to pay a \$16 million compensation fine in accordance with the rules of investment in chapter 11 of NAFTA.

The case of Namibia

Similarly, Mr. Melber gave a concrete example of the negative impacts that seemingly generous trade incentives could have in developing countries in Africa. Ramatex, a Malaysian textile

⁵ www.worldbank.org/icsid/cases/mm-award-e.pdf

company, started operations in Namibia in 2001⁶ in order to export its products under the African Growth and Opportunity Act (AGOA). This investment turned out to have devastating results.

African Growth and Opportunity Act (AGOA)

AGOA is a U.S. law that aims at increasing trade between Africa and the U.S. It was a one-sided initiative from the Clinton administration that was never negotiated with the beneficiaries, i.e. the African countries. According to Mr. Melber, the "beneficiaries' had to take it or leave it".

The AGOA has been extended by the Bush administration, which coined the expression "trade as aid". The logic of this expression is that the trade opportunities that arise thanks to AGOA are a better means of development than traditional aid. However, Mr. Melber believed that it is just a way of legitimising the fact that the U.S. is not living up to the OECD commitment to put aside 0.7% of GDP to development aid.

The oil market is one of the major markets of exports in AGOA and today about 20% of the U.S. crude oil imports originate in Africa. Another large export market is the textile and apparel market, in which some African countries receive preferential benefits towards the U.S. market through AGOA.

Ramatex in Namibia

When the Malaysian textile company Ramatex came to Namibia, the Namibian government provided all the infrastructure and material that they needed. They were also allowed to produce their textiles tax free for the first twelve years in order to be able to compete on the U.S. textile market. Moreover, the production took place in an Export Processing Zone (EPZ) where Namibian laws, such as labour and union laws, were not applicable. The subsidiaries that were granted to Ramatex were paid by Namibian tax payers and corresponded to three years of full salaries of all Namibian Ramatex workers.

Mr. Melber remarked that just after a decade after independence it is ironic that Namibia hosted such abuses like those conducted by Ramatex. In 2004, the company illegally imported hundreds of workers from Bangladesh. They had to live in appalling conditions and were poorly paid..

When the international WTO Agreement on Textiles and Clothing (ATC) came to an end earlier this year the African textile industry got greater competition from large producers like China and India. If the competition gets too strong Ramatex may be bound to close down its operations in Namibia.

The case of Ramatex shows that the supposedly beneficial trade opportunities have implied a number of negative impacts in Namibia. Moreover, it has resulted in great costs for Namibian tax payers and grave violations of the human rights of those who are employed by the company. If Ramatex would decide to close down it would take them literally twenty-four hours to move out of the country, leaving thousands of workers unemployed. In the end, it has resulted in economic benefits for a foreign company rather than beneficial investment in the domestic industry.

Subsidies in Nigeria affecting equal access to Education

Mr. Sall explained how the principle of most favoured nation (MFN) in the General Agreement on Trade in Services (GATS) affects universities in Nigeria. Since 2004, sixteen new private

⁶ <http://www.agoa.info/?view=.&story=news&subtext=490>

universities have been established in the country and there are hundreds of applications, mostly from profit-seeking investors, waiting to be processed. Universities are a big market, but the MFN clause poses a threat to Nigerian public universities. The clause implies that the government has to treat private universities the same way as they treat public ones. In practice this means that it would be obliged to subsidise all universities, private or public, which threatens to result in the closing down of public universities due to lack of funding.

Reduction of trade tariffs between Thailand and Australia

The bilateral free trade agreement between Thailand and Australia from 2004 focuses on the elimination of tariff barriers on goods and the liberalisation of trade in services. Ms. Petcharamesree described some negative impacts that this free trade agreement has already had in Thailand.

In Thailand there are 40 000 families who work in the dairy industry. The vast majority are small farmers with herds of 10-20 cattle each. In Australia, on the other hand, the average size of herds lies at 200 per farmer. According to the free trade agreement, trade tariffs will be cut to zero on dairy products by 2020. This means that there will be direct competition between the small farmers of Thailand and the large dairy producers of Australia who are able to produce much cheaper products. The free trade agreement between Thailand and China has already showed that Thai producers of garlic have been forced out of business because of the competition and Ms. Petcharamesree feared that dairy farmers will be going the same way when trade tariffs on dairy products are eliminated.

Who Benefits From Free Trade Agreements?

Characteristics of free trade agreements

There are some common characteristics of most free trade agreements. Both Mr. Soberón and Ms. Petcharamesree mentioned five characteristics, namely services, intellectual property rights, investments, liberalisation of trade and, finally, access to markets through the elimination of trade tariffs. Another common principle of free trade agreements is that of the "most favoured nation", which means that a party of a free trade agreement is obliged to treat all parties equally.

In the interest of the developed world

According to Ms. Petcharamesree the characteristics of free trade agreements are the core interests of developed countries. As she spoke at the seminar in Stockholm, her colleagues in the organisation "FTA Watch" were protesting in Thailand because of the impending consequences that Thai free trade agreements have for their interests and livelihoods. Their special concerns were that the Thai government should not allow intellectual property rights and genetically modified organisms (GMOs) in its trade negotiations with the U.S. According to Ms. Petcharamesree if the trade agreement would still allow them, it would threaten the Thai farmers' right to food sovereignty, i.e. sovereignty in terms of giving priority to local production and thus avoid dumping. If this right is not protected in trade agreements she feared that there will be a situation where less developed countries like Thailand would be economically occupied by developed countries like the U.S.

Right to choose alternatives and the power of definition

Many of the seminar participants expressed a fear of less self-determination and lack of alternatives for developing countries in current trade agreements. Mr. Melber mentioned the European Partnership Agreements (EPAs) that in his view seem to undermine regional integration and impose a "shrinking of development space". Mr. Soberón could see the same problems in the Americas where some civil society organisations have acquired protest signatures from the public against the ongoing trade negotiations and for an alternative process of economic integration.

Mr. Sall stressed the importance of raising questions like: "How is development conceptualised? Should one have a market based strategy for development?". According to Mr. Sall the ACP countries are forced to adjusting to the market with no option of an alternative development. Tove Zetterström from Diakonia, who was in the audience, shared her experiences of influencing trade agreements on intellectual property rights. In her experience, there has been a number of suggested alternatives, but the African proposals have not been considered seriously by the European Union. According to Ms. Zetterström, Europe has had the power of definition so far.

Mr. Melber agreed to the perspective of differences in the power of definition. If those in power of definition introduce a human rights clause, which of the ACP countries would choose not to agree? What are their options?

He pointed out that there is a structural legacy of colonialism and eurocentric values in the world market. An illustrating example of the structural inequalities between North and South was the 2004 ministerial meeting of the European Partnership Agreement (EPA) between EC and the Southern Africa Developing Countries (SADC) that took place in Windhoek, Namibia. The European Community sent highly professional delegates to the meeting, whereas the SADC could at best contribute with one professional out of a total of three people that worked with questions concerning the EPA. Naturally, the delegates debated in their own interests, but obviously, the European delegates had better opportunities, which meant that the structural inequalities of the parties were reproduced in negotiations from the outset.

In the interest of the elite

If trade agreements are not benefiting the people in developing countries, why do they exist? Ms. Petchamesree could see some reasons why Thailand had been so eager to engage in bilateral trade agreements. She believed that the government enthusiasm had more to do with politics than with economy. Politicians see the free trade agreements as a good way of promoting themselves in the international arena. Another reason that she could see is that the prime minister's family owns a large part of the stocks on the Thai stock market. Thus, the prime minister has a private interest in the liberalisation of the Thai market.

Mrs. Agnes Aboum, another member of the International Council, sitting in the audience, pointed out that the power of definition differs not only between North and South, but even within the African context the power of definition is limited to a small elite acting in its own interest and not for the benefit of all its citizens.

Mr. Melber added that this pattern is reproduced also in NGOs. He believed that there is a risk that NGOs start representing the elite rather than grassroots, and he could already see this happening in another field of international advocacy, namely the NGO Coalition for an International Criminal Court.

A normative human rights framework

Another question that was brought up during the seminar was the question of a normative human rights framework. Ms. Petchamesree did not believe that a normative human rights

framework would be enough, since the rule of law most often is not the rule in practice. Ms. Fries, on the other hand, pointed out that the Thai farmers who are suffering from Thai trade agreements would have better chances of achieving justice in court if they had access to a human rights system. Mr. Sall also highlighted a few cases in Africa, which indicated that the normative human rights framework has meant better possibilities of holding political leaders accountable for human rights violations.

A Fruitful Seminar

The seminar participants agreed that fora like the seminar in Stockholm are needed in order to share experiences and acquire deeper knowledge. Ms. Petcharamesree could give a telling example of the added value of these kinds of exchange. She explained that some time ago, when she visited Malaysia, she bought a T-shirt that was made in Africa, unaware of the human rights violations that Asian companies had conducted there. "If I was not here today, I would never have learned about how Malaysian companies are abusing workers in Namibia. We need fora like this!"

./.