

KEY BENCHMARKS FOR A HUMAN RIGHTS IMPACT ASSESSMENT FOR THE CANADA-COLOMBIA FREE TRADE AGREEMENT (CCFTA)

“An independent, impartial, and comprehensive human rights impact assessment should be carried out by a competent body, which is subject to levels of independent scrutiny and validation; the recommendations of this assessment should be addressed before Canada considers signing, ratifying and implementing an agreement with Colombia.”

Standing Committee on International Trade (CIIT),
Recommendation 4 of the Final Report, June 2008

SUMMARY

The CIIT recommendation for a human rights impact assessment (HRIA) for the CCFTA has generated significant national and international commendation and interest. As of May 2009, all three of Canada's opposition parties are calling publicly for the HRIA to be undertaken as an essential step of due diligence. CCIC's Americas Policy Group commissioned Dr. James Harrison, an international expert at the Centre for Human Rights in Practice at the University of Warwick, to provide recommendations for a credible and effective HRIA process, reflecting a commitment to human rights principles. This briefing note summarises some of the key issues raised in that paper.¹

BACKGROUND

Human rights impact assessments are increasingly used to assess the impact on human rights of policies, programmes, projects and interventions. The aim of an HRIA is to help prevent, or otherwise address, violations of human rights. All HRIAs are concerned with attempting to measure concrete human rights impacts through evidence-based analysis (as opposed to a purely theoretical hypothesis).

The Canada-Colombia Free Trade Agreement HRIA was recommended as an *ex ante* assessment – undertaken before or during the negotiation of a new rule or policy. An HRIA of the CCFTA would address what will be the likely concrete human rights impacts, on affected populations, of various aspects of the agreement.

¹ The full document is available at http://www.ccic.ca/e/docs/003_apg_2009-02_hr_assess_of_cfta.pdf. For further information, the Human Rights Impact Resource Centre provides details of many assessments, as well as methodological guidance on how HRIAs might be carried out. <http://www.humanrightsimpact.org/>

A CCFTA human rights impact assessment will not be able to address some of the more fundamental ideological schisms which may be present in debates about this agreement. It cannot effectively engage in a discussion about the overall merits or disadvantages of the current free trade agenda. Nor will it be able to pass judgment on whether a country should be *eligible* for a trade agreement.

But a human rights impact assessment can ensure trade policy-makers confront a range of issues that would not normally be part of the mainstream trade agenda, such as the impact of the agreement on small farmers' access to food, land, and livelihood, or access of the poor to education, health care and housing.

KEY BENCHMARKS OF AN EFFECTIVE HRIA

1. The Legal Obligations and Key Principles of Human Rights must be Central to the Assessment; Content and Process should be Examined

The CCFTA human rights impact assessment must be based on an explicit evaluation of the impact of trade law obligations on relevant, codified human rights obligations that apply to the Colombian State.² Guidance from expert bodies, such as the General Comments of the UN Committee on Economic Social and Cultural Rights, should be used to “flesh out” the content of obligations. The impacts of trade law obligations must then be measured against the relevant human rights standards to see if violations of human rights will occur.

The HRIA should consider the substantive provisions of the CCFTA as well as key procedural mechanisms of the negotiation process and the extent to which the process promoted transparency and participation in accordance with key human rights principles.

2. Competent and Effective Oversight Committee and Assessment Teams must be Struck

To meet the recommendations of the CIIT, an oversight body for the HRIA needs to be created that is demonstrably independent from those making decisions with regard to the Colombia-Canada FTA. The Oversight Committee must involve those who have competence and authority with reference to trade and human rights policy. Even a streamlined oversight body should contain at least one representative from both Canadian and Colombian civil society to be present at all meetings to ensure transparency of the oversight process. The civil society representatives would not have decision-making powers.

The oversight body would identify an interdisciplinary team of experts to conduct the assessment. The experts should be sufficiently experienced and knowledgeable in human rights and trade to be able to make reasonable judgments that will be widely respected. The assessment team should have full operational independence to develop an appropriate methodology for conducting the HRIA, and the team's report must be made publicly available.

² It is generally assumed throughout that the focus of the HRIA will be on the human rights impact of the FTA in Colombia rather than Canada. This was the focus of CIIT and there does appear to be a far greater range of potential human rights impacts of the FTA in Colombia as opposed to Canada. The methodological approach would not change should the focus be instead on the potential for human rights violations in Canada.

3. HRIA Findings should be Focused on Impacts of Specific Provisions within the Trade Agreement

The oversight committee should be empowered to undertake an initial scoping study of those aspects of the Canada-Colombia FTA most likely to lead to human rights violations (e.g. investment provisions, agricultural trade liberalisations provisions). The scoping study could also recommend analysis of the extent to which provisions aimed at protecting and promoting human rights are likely to be effective (e.g. the Labour Side Accord). The HRIA team could then study in detail only the human rights impacts of the provisions identified in the scoping study.

4. Issues in Measuring Human Rights Impacts: The Importance of Participatory Methodologies

The Canada-Colombia Free Trade Agreement HRIA must have a robust methodological framework. A set of indicators will be developed to measure impacts.³ Methods used to measure human rights impacts should be suited to the specific provisions being analysed (e.g. investment/labour provisions), and to the timeframe available.

Mechanisms to consult with potentially affected individuals and groups are vital to ensure the HRIA is conducted according to human rights principles.

Details of the human rights impact assessment should be widely publicised and accessible and channels of communication opened, so that individuals and groups can contact the assessment team to make unsolicited submissions.

5. The Importance of Including Appropriate Recommendations for Action

The Canada-Colombia FTA human rights impact assessment must include precise conclusions and recommendations. Findings should not be limited only to mitigation measures, but to amendments required to the text of the agreement, or recommendations that it should not be ratified in its current form.

The human rights impact assessment must be carried out before the Canada-Colombia FTA has been ratified, as recommended by the CIIT, so that the findings can be taken into account in the decision to ratify/amend the FTA.

³ A starting point for this is the work of the Office of the High Commissioner for Human Rights on this issue. E.g. see Office of the High Commissioner for Human Rights, OHCHR, *Report on Indicators for Promoting and Monitoring Implementation of Human Rights* (6 June 2008) HRMI/MC/2008/3.