



October 18, 2016

The Honourable Chrystia Freeland  
Minister of International Trade  
125 Sussex Drive,  
Ottawa ON K1A 0G2

**Re: Concerns of the Americas Policy Group (APG)<sup>1</sup> with regard to the Fifth Annual Report Pursuant to the Agreement concerning Annual Reports on Human Rights and Free Trade between Canada and the Republic of Colombia and request to meet**

Dear Minister Freeland,

The Americas Policy Group (APG) is writing to you regarding the fifth Annual Report Pursuant to the Agreement concerning Annual Reports on Human Rights and Free Trade between Canada and the Republic of Colombia. While we are pleased that the government solicited input from civil society organizations in Canada and Colombia and included a number of our concerns in the report, we remain concerned about significant flaws in both the report itself and the process used to produce it. We have detailed our concerns below and call on you as Minister of International Trade to implement changes without delay so that the annual reporting requirement on the Canada Colombia Free Trade Agreement can fulfill the objective of accurately assessing the impact on human rights of Canadian trade and investment promoted by the agreement, so as to enable decision-making to ensure commercial relations that uphold human rights.

### **Consultation process**

As noted in the report, for the first time the government actively consulted with civil society organizations both in Canada and Colombia in the lead up to the report's publication. The APG believes this was a step forward that enabled disturbing human rights indicators to be discussed. The report acknowledges civil society concerns over the human rights situation in Colombia, including violations of labour rights, the emergency situation for Indigenous Peoples, and an increase in death threats and killings of trade unionists, journalists, land activists, Afro-Colombian and other community leaders, amongst others.<sup>2</sup> Yet the report also states that "... Canada recognizes the considerable progress made by the Colombian government with respect to human rights..." without providing any evidence to support this statement.

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<sup>1</sup> The Americas Policy Group is a Canadian civil society policy group focused on development and social justice issues in the Americas. It brings together approximately 40 international human rights groups, labour unions, research institutions, faith-based organizations and solidarity groups.

<sup>2</sup> See Section 7, Consultation with Stakeholders.

While we recognize that the government made an effort to consult for this report, the disconnect between the concerns raised during the consultation process and the report's conclusions is troubling. As in the past, the APG continues to urge the government to provide ample timing to consult a broad range of civil society organizations in both Colombia and Canada, develop an impartial, credible and effective process to analyze those findings and incorporate them into the conclusions of the report, and subsequently take action to address any negative findings.

### **Scope and methodology**

As with the first four reports on human rights and the Canada-Colombia Free Trade Agreement (CCOFTA), the APG finds the scope of the fifth report unjustifiably narrow. The APG and its member organizations have consistently called upon the government to widen the scope of the report to include, amongst other things, an assessment of the impacts of Canadian investment in Colombia. The narrow parameters of the report are an impediment to a thorough, credible and transparent assessment of the impacts of the CCOFTA on the human rights situation in Colombia. The government had the option of changing the current parameters of the report, as Article 4 of the Agreement allows for amendments to process. It is very disappointing that the current government chose to utilize the same approach as the previous government; that is, looking only at tariff changes, and ignoring the impacts of corporate investment promoted by the CCOFTA.

Even within the narrow parameters of tariff reductions and their relation to increases or decreases in trade, the report contains contradictory information and neglects to examine several issues. For example, the report concludes that "tariff reductions taken under the CCOFTA are working as intended in terms of liberalizing and stimulating trade between Canada and Colombia". Yet this is contradicted by the report's consultation with industry, which attributes trade fluctuations to macroeconomic factors such as commodity prices or devaluation of the Colombian peso.

The report also states that there have been no disputes and no mechanisms for dispute resolution have been utilized to date. The report fails, however, to include any discussion of what type of legal advice or support the Trade Commissioner and/or GAC/DFATD may have provided to companies that announced legal suits or intention to sue Colombia under the CCOFTA in early 2016. Specifically, Cosigo Resources (Canada) announced a possible future claim under the CCOFTA due to Indigenous opposition to their project in Vaupés and the establishment of the Yaigoji Apaporis national park, which has prevented their project from proceeding. Concurrently, Cosigo and its affiliates Cosigo Resources Sucursal Colombia and Tobie Mining and Energy, Inc. launched a US\$16.6 billion claim under the US Colombia Trade Promotion Agreement. Similarly, Eco Oro Minerals Corp issued a Notice of Intent to arbitrate under the CCOFTA due to the fact that its project in the Páramo of Santurban has been stalled because of massive downstream opposition, failure to obtain an environmental permit, and the illegality of operating a large-scale mine in the sensitive Páramo ecosystem, which according to the Constitutional Court will result in environmental impacts that outweigh any economic benefits.

Even with the narrow focus on tariff reductions, the report appears to lack rigour in its assessment of whether or not they have had any impact on human rights. Instead, it simply reports on tariff reductions implemented and trade flows, with the conclusion that: "Despite concerns regarding the human rights situation in Colombia, as in past years, it has not been possible to draw a direct link between the tariff reductions taken under the CCOFTA and human rights." This conclusion is unreliable given the narrow scope of the report, the lack of credible human rights impact assessment using benchmarks recommended by UN and other experts, as well as the failure to examine the impact of support for Canadian investment in Colombia, particularly in the extractives and agro-industrial sector.

As the report itself states, the CCOFTA “provides greater stability and predictability for Canadian exporters, service providers *and investors, including expanded opportunities in a broad range of sectors, particularly oil and gas, mining, agriculture and agri-food, and manufacturing*” (emphasis ours). In spite of this, the report fails to study the impacts of support for and stimulation of Canadian investment. This is of particular concern given ample evidence from credible, respected sources that demonstrates a clear link between grave human rights violations, including forced displacements, and increased investment in the extractives and agro-industry sectors.

Land rights have been a fundamental factor in Colombia’s internal conflict and human rights violations. At least 8 million hectares of land have been forcibly abandoned or appropriated as a result of the conflict. Much of this land has been used for agro-industrial, extractives, or infrastructure projects. Even if economic interests did not play a direct role in these displacements, they frequently benefit from forced displacements of communities from resource rich regions.

In this context, it is very troubling that the government continues to insist that the expanded opportunities and stability for Canadian investment in the extractive sector in Colombia under the CCOFTA lies outside the scope of evaluation and analysis in the annual human rights reports. Given the importance of Canadian investment in the extractive sector in Colombia, we believe this raises serious questions as to the credibility and meaningfulness of the 2016 report.

### **Canada’s advocacy and programming in Colombia**

Section 8 of the report states that “both Canada and Colombia recognize that Colombia faces challenges in the area of human rights, including those that are in direct relation with the development of its economic activity.” The report then summarizes the various programming and bilateral engagement undertaken by Canada, both in the context of the agreements on Labour and Environment Cooperation, and bilateral programming. The report appears to conclude that this programming addresses the many serious human rights concerns raised by civil society organizations who took part in the consultations. The APG would take issue with such a conclusion, particularly with regards to the extractive sector.

The APG finds it particularly troubling that the manner in which corporate investment in the extractive sector is addressed is through entirely voluntary measures. The APG and its members have called for the establishment of an independent extractive sector ombudsperson and legislating a right of access to Canadian courts in cases of Indigenous and non-Indigenous communities whose rights have been affected by Canadian corporations operating overseas, as voluntary measures have not proven sufficient to protect land and environmental rights or to redress abuses. As documented by Amnesty International’s 2015 report *Colombia: Restoring the Land, Securing the Peace*, Canadian-based Continental Gold has opposed possible cancellation of the company’s mining interests in Alto Andágueda as a result of a court decision that included the suspension of all mining activities in the absence of community consent. It is our understanding that court orders have not been implemented, and mining activities and titles, including that of Continental Gold, have not been suspended. In light of cases such as this, the report’s positive assessment of Canada’s efforts around voluntary corporate social responsibility initiatives is disappointing and unsatisfactory.

### **Recommendations for the future**

As the member organizations of the Americas Policy Group have stated on numerous occasions, promoting trade and investment through free trade agreements carries significant risks of exacerbating or benefiting from human rights violations, especially in conflict zones. Given the vulnerable situation created by rejection of the peace agreement in Colombia’s October 2 plebiscite, Canada’s actions moving forward are all the more important. With this in mind, we urge you to mandate a comprehensive, independent human rights impact assessment (HRIA) that

complies with UN benchmarks<sup>3</sup> and assesses important sectors, including resource extraction and investments promoted by the free trade agreement. It is only with such an assessment, as was recommended by Liberal members of Parliament's Standing Committee on International Trade<sup>4</sup> but rejected by the previous government, that the government can make sound, responsible decisions to ensure that Canadian commerce in Colombia is not contributing to or benefiting from human rights violations.

Therefore, in the spirit of collaboration, we would like to request a meeting with you to discuss Canada's role regarding trade and human rights issues with Colombia and the region.

In anticipation of a favourable response to our request, please accept, Minister Freeland, our best regards.

Sincerely,



Rachel Vincent  
co-chair  
Americas Policy Group



Steve Stewart  
co-chair  
Americas Policy Group

Cc:

David Lametti, Parliamentary Secretary to the Minister of International Trade

Brian Clow, Chief of Staff to Minister of International Trade

Sarah Hussaini, Policy Advisor to Minister of International Trade

Yvonne Zadra, Trade Commissioner, South America, Latin America & Caribbean Bureau

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<sup>3</sup> Report of the Special Rapporteur on the right to food, Olivier De Schutter: Guiding principles on human rights impact assessments of trade and investment agreements; online at [http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session19/A-HRC-19-59-Add5\\_en.pdf](http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session19/A-HRC-19-59-Add5_en.pdf) and CCIC Briefing Note: Key Benchmarks for a Human Rights Impact Assessment for the Canada Colombia Free Trade Agreement; online at [http://www.ccic.ca/files/en/working\\_groups/003\\_apg\\_2009-06\\_cafta\\_hr\\_assess\\_of\\_cfta\\_note.pdf](http://www.ccic.ca/files/en/working_groups/003_apg_2009-06_cafta_hr_assess_of_cfta_note.pdf)

<sup>4</sup> Standing Committee on International Trade (CIIT), "Human Rights, The Environment and Free Trade with Colombia", June 2008, Recommendation 4; online at <http://www.parl.gc.ca/HousePublications/Publication.aspx?DocId=3580301&Mode=1&Parl=39&Ses=2&Language=E&File=141>

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