

**Summary:**

On May 15<sup>th</sup> 2012, the Conservative Government is required to table a report in Parliament on the human rights impacts, both in Canada and in Colombia, of the Canada-Colombia Free Trade Agreement (CCOFTA).<sup>1</sup> This is an opportunity to debate whether Canada is taking the necessary steps to ensure that its FTA with Colombia doesn't exacerbate the ongoing human rights crisis in the Latin American country.

**Background on the Canada-Colombia FTA and the Human Rights Impact Report**

Canadian Prime Minister Stephen Harper and Colombian President Alvaro Uribe signed a free trade agreement in November 2008. It came into force in August 2011. In the spring of 2008, the Standing Committee on International Trade conducted a study to address the widespread concern that this FTA could worsen the already fragile labour and human rights conditions in Colombia. The Committee's report recommended that Canada not sign an FTA with Colombia until an independent, impartial and comprehensive human rights impact assessment (HRIA) had been conducted and the recommendations of that assessment had been addressed.<sup>2</sup> Instead, the Canadian government committed to producing a yearly human rights impact report once the deal was in force.

Civil society organizations are concerned that this post-FTA human rights impact report runs the risk of glossing over realities on the ground since the government is assessing its own actions; that it lacks a follow-up mechanism to that ensure action is taken to address problems that are identified and prevent human rights violations in the future; and that the process thus far breaches several of the UN Guiding Principles for Human Rights Impact Assessments for Trade and Investment Agreements (see Annex 1). It is in this context that the Americas Policy Group (APG) and a team of Colombian researchers and civil society organizations are collecting baseline data that will offer benchmarks for assessing the impacts of the trade agreement on human rights in Colombia. The APG will assess the meaningfulness and credibility of the government's report based on the following criteria:

**1. Acknowledgment of the Ongoing Human Rights Crisis in Colombia:**

**Labour:** Violations of labour rights and violence committed against unionized workers are among Colombia's foremost human rights challenges. Colombia is characterized by a deep-seated anti-trade union culture, and continues to be the most dangerous place in the world to be a trade unionist.<sup>3</sup> According to a survey by the International Trade Union Confederation (ITUC), 49 of the 90 trade unionists murdered worldwide in 2010 were killed in Colombia. 29 trade unionists were murdered in 2011 and 17 have been killed since the CCOFTA came into effect in August 2011.<sup>4</sup> Impunity for violence against trade unionists remains high. Less than 10% of the cases of murdered unionists have resulted in convictions, despite pledges by the Colombian government to tackle impunity. In 2007, Colombia's Attorney General's Office set up

a specialist sub-unit dedicated to anti-union violence. However, of the 195 murders that took place between the start of the sub-unit's operations and May 2011, only 6 resulted in convictions. The unit did not obtain a single conviction for the 60 homicide attempts, 1,500 threats and 420 forced displacements in the same period.<sup>5</sup>

**Displacement:** Colombia now has the world's highest level of internal displacement, followed by Sudan. Paramilitary groups frequently use violence to displace people from their lands for lucrative projects. The Consultancy on Human Rights and Displacement (CODHES) reports that 259,146 people were displaced in 2011, bringing the total number of people displaced in Colombia since 1985 to 5.4 million.<sup>6</sup> Although Indigenous and Afro-Colombians make up only 3% and 7% of the overall population, they account for a disproportionate number of Internally Displaced Persons (IDPs): 6% of IDPs are indigenous people and 23% are Afro-Colombians.<sup>7</sup> 32 of Colombia's 85 indigenous groups are currently at risk of extinction due to the long-lasting armed conflict.<sup>8</sup> Only 11% of IDPs have access to adequate housing; fewer than 5% have opportunities to generate income, fewer than 5% receive humanitarian assistance, and about 50% experience food insecurity.<sup>9</sup> In 2011, the government implemented the "Victim's Law", which includes measures to restitute land to IDPs. However, attempts to restitute property to IDPs were met with violent resistance, and 21 proponents of land restitution have been assassinated since.<sup>10</sup>

**Threats against Dissident Voices:** Threats, attacks and stigmatization against leaders of displaced communities and human rights defenders continue in Colombia, despite promises by the Santos government to address these issues. Since the beginning of the Santos administration in June 2010, threats against and killings of leaders of displaced communities seeking the return of their lands have increased.<sup>11</sup> 50 land leaders have been killed since 2002, but 20 (40%) of these murders took place during the Santos government's first year in office.<sup>12</sup> Widespread impunity continues to be both a cause and a consequence of serious human rights abuses.<sup>13</sup>

## **2. Analysis of how Key Sectors are Affected by the FTA**

**Agriculture:** Agriculture accounts for close to 22% of employment in Colombia.<sup>14</sup> Many agricultural producers in Colombia are small-scale and informal. Small-scale Colombian farmers could be undermined by the competitive edge of Canada's industrialized agricultural sector. It is estimated that 12,000 livelihoods will be undermined by Canada's industrially-produced wheat and barley exports. The value of domestic wheat production in Colombia is expected to drop by 32%, leading to losses of 44% in employment levels and wages.<sup>15</sup>

**Extractive Industry:** The context of Canadian investment in Colombia continues to be one of grave concern and there is a risk that Canadian companies could directly or indirectly contribute to, aggravate, or benefit from serious human rights violations. Canadian extractive-sector investment in Colombia is significant: CIDA sponsored a technical assistance project to help the Colombian government reform its mining law,<sup>16</sup> Canadian companies make up 52% of Colombia's mining sector,<sup>17</sup> and the Canadian Embassy has estimated that mining investment in Colombia is around \$3 billion.<sup>18</sup> Regions rich in minerals and oil have been marked by violence, paramilitary control, and internal displacement. It is estimated that these resource-rich regions are the source of 87% of forced displacements, 80% of violations of human rights and international humanitarian law, and 83% of assassinations of trade union leaders in the country.<sup>19</sup> Engaging in resource development in a context of deep inequality, forced

displacement, and threats and violence against unionists, human rights defenders and indigenous and afro-Colombian leaders inevitably carries a high risk of contributing to, or profiting from these violations. Such risk requires the highest standard of due diligence, both from the corporations involved and from the governments that promote this investment. Despite this, mineral and oil concessions have been granted across an estimated 40% of Colombian territory<sup>20</sup> and institutional controls are notoriously weak.<sup>21</sup> Meanwhile, Canada lacks effective mechanisms to hold companies accountable for the impact of their operations abroad.<sup>22</sup> In contrast, the CCOFTA's investment chapter accords investors new, substantive rights that are directly enforceable through investor-state arbitration in international tribunals to which affected communities lack access. There are already numerous examples of human rights abuses associated with Canadian companies' operations in Colombia since the implementation of the FTA (see Annex 2).

### **3. Existence of a Sound and Credible Methodology**

Foremost experts on this topic such as Olivier De Schutter, UN Special Rapporteur on the Right to Food, and James Harrison, Professor at the University of Warwick, suggest that the methodology of a human rights impact assessment can be evaluated based on the following criteria<sup>23</sup>:

- Does it establish the baseline situation prior to the trade agreement? Effective monitoring requires baseline data that offer benchmarks for assessing the impact of the trade agreement.
- Is it based on an explicit evaluation of the impact of trade law obligations on relevant, codified human rights obligations? If not, there is a danger that human rights could become merely “window-dressing” for the assessment.
- Are its limitations clearly explained? It is difficult to prove cause and effect in a complex chain of activities. Where there is evidence that the human rights situation is improving or worsening, a number of alternative causes may exist. These need to be acknowledged and explored.
- Did it involve consultation with experts and with the full range of potential rights-holders? Communities directly affected by the trade agreement should play an active role in generating ideas and deciding whether there has been a change in their situation.
- Are there clear indicators to justify the judgement that is made about the human rights impact of the trade agreement?
- Is there both quantitative and qualitative evidence of what has occurred as a result of the trade agreement coming into force?
- Does the report contain mechanisms for dealing with any adverse impacts of the trade agreement? It is important that mechanisms not be focused exclusively upon mitigation measures (i.e. dealing with negative impacts). Instead, amendments should be made to the agreement to prevent negative impacts in the future.
- Does it provide a transparent audit trail for others who want to question the methods or results or redo the analysis with different assumptions? This is necessary to ensure that the government producing the report can be held to account by rights-holders and other interested actors.
- Does it put in place a procedure to ensure that impacts are assessed on an ongoing basis, and that recommendations are implemented? A human rights impact assessment

should not be a one-time policy but rather an ongoing and dynamic process.

**Recommendations:**

- That the government's report be referred to the Standing Committee for International Trade and the Subcommittee on International Human Rights.
- That MPs make public statements about the ongoing human rights crisis in Colombia.
- That MPs question the independence, transparency and methodology of the government's human rights impact report during question period.
- That MPs seek to amend the Implementation Act of the CCOFTA to include consequences (such as termination of the agreement; amendment of the agreement; insertion of safeguards in the agreement) to any negative findings in the human rights impact report.
- That MPs refer to shortcomings of the CCOFTA human rights impact report to call for a human rights impact assessment prior to the ratification of the Canada-Honduras FTA, given similar human rights concerns there.

## How the Canadian Government's Process thus Far Breaches UN Guiding Principles for Human Rights Impact Assessments for Trade and Investment Agreements

Olivier De Schutter, UN Special Rapporteur for the Right to Food, has elaborated UN Guiding Principles on Human Rights Impact Assessments for Trade and Investment Agreements. Even before seeing the government's human rights impact report for the CCOFTA, it is evident that many of these principles have not been respected:

- Guiding Principle 1.1 says that *"all States should prepare human rights impact assessments prior to the conclusion of trade and investment agreements"*<sup>24</sup>. Since States are bound by pre-existing international treaty obligations, it is their duty to identify any potential inconsistency between pre-existing human rights treaties and subsequent trade or investment agreements, and to refrain from entering into such agreements where such inconsistencies are found to exist. This is why the Standing Committee on International Trade recommended that Canada conduct a human rights impact assessment prior to signing the FTA. However, the government disregarded this recommendation, choosing instead to report after the FTA was in force.
- Guiding Principle 3.3 states that *"[...]based on the results of the human rights impact assessment, a range of responses exist where an incompatibility is found, including but not limited to: termination of the agreement; amendment of the agreement; insertion of safeguards in the agreement; provision of compensation by third-State parties; adoption of mitigation measures"*.<sup>25</sup> However nothing in the text of the Canada-Colombia Free Trade Agreement Implementation Act provides assurance that negative results will have any consequence.
- Guiding principle 4.4 states that *"the procedure should be guided by a human rights-based approach, and its credibility and effectiveness depend on the fulfilment of the following minimum conditions: (a) Independence; (b) Transparency; (c) Inclusive participation (d) Expertise and funding; and (e) Status"*.<sup>26</sup> However, many of these criteria were not fulfilled in the case of the Canada-Colombia FTA human rights impact report. It is not independent since the government is writing it. There has been very little transparency or participation in the methodology and it has been virtually impossible to get information despite repeated contact with DFAIT and embassy officials.

The Americas Policy Group (APG) will be responding to the government's human rights impact report once it is tabled in Parliament on May 15<sup>th</sup>, in order to evaluate how well its methodology corresponds to the recommendations laid out by experts.

## Select Examples of Human Rights Abuses Associated with Canadian Extractive Industry Operations in Colombia Since the Implementation of the FTA

- In September 2011, just two weeks after the CCOFTA came into effect, Father José Reinel Restrepo, parish priest of the Colombian municipality of Marmato was murdered. Restrepo was an outspoken opponent of Canadian mining company Gran Colombia Gold's proposal to construct an open-pit gold mine in the department of Caldas that would require the displacement of the entire town. He had recently traveled to Bogotá and spoken out on television about his position.<sup>27</sup>
- In October 2011, the traditional authorities of the Cañamomo Lomaprieta Indigenous Resguardo in Caldas, Colombia complained that representatives of Gran Colombia Gold had arrived unannounced on their territory with the apparent intention of collecting samples without respect for the community's right to free, prior and informed consent (FPIC). The right to FPIC for indigenous peoples in Colombia is enshrined in article 330 of the country's Constitution, as well as in the ILO Convention 169, which Colombia has ratified. The jurisprudence of Colombia's Constitutional Court, such as judgment T-1045A of December 2010 and judgment T-129 of 2011, along with international jurisprudence of the Inter-American Court of Human Rights, recognize that prior consultation leading to free, prior and informed consent of ethnic peoples should be sought even prior to the granting of mineral concessions on their ancestral territories.<sup>28</sup>
- Canadian oil company Pacific Rubiales singled out union leaders as "armed criminals, forcing work stoppages," during the course of a labour dispute regarding precarious working conditions for subcontracted workers which began in July 2011.<sup>29</sup> Grievances include poverty wages, sub-standard housing, poor sanitation and transport, degrading treatment and month-long contracts. Area communities have also complained about environmental degradation, high local unemployment and lack of local social investment.<sup>30</sup>
- The Colombia Accompaniment and Solidarity Project (PASC by its initials in French) issued an urgent action in March 2012,<sup>31</sup> citing lack of adequate consultation, divisive hiring tactics, and aggression on the part of Gran Colombia Gold's private security at its Mazamorra Gold project in the department of Nariño. Confrontations had already taken place at the site culminating in the occupation and burning of two mining exploration camps in October 2011. Based on recent field research, PASC fears that heightened tensions could lead to violence should the company resume exploration.
- An international fact-finding mission with representatives from more than 15 countries found an increase in the number of mining companies publicly singling out communities that speak out against the possible impacts of their operations. It also found that there

have been numerous cases of mass detentions against those protesting mega-projects, such as mines.<sup>32</sup>

- Daniel Aguirre Piedrahita, the General Secretary of SINALCORTEROS, Colombia's Nation Union of Sugar Cane Cutters, was assassinated on April 27<sup>th</sup> 2012, as he accompanied his wife, Helena, to make a telephone call in the Valle del Cauca department in west-central Colombia. He was shot twice in the head only 70 metres from his home. In a statement, SINALCORTEROS said the cold-blooded murder occurred in a continued context of violence and intolerance of trade union work in Colombia. It urged members and activists not to let this "reprehensibly violent action torpedo our union" and derail activities, but rather to "reaffirm our actions and our mission."<sup>33</sup>

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## BRIEFING NOTE ENDNOTES

<sup>1</sup> Canadian Council for International Cooperation: [Making a Bad Situation Worse - An analysis of the text of the Canada-Colombia Free Trade Agreement](#) (2009)

<sup>2</sup> Canadian Council for International Cooperation: [Making a Bad Situation Worse - An analysis of the text of the Canada-Colombia Free Trade Agreement](#) (2009)

<sup>3</sup> Canadian Council for International Cooperation: [Making a Bad Situation Worse - An analysis of the text of the Canada-Colombia Free Trade Agreement](#) (2009)

<sup>4</sup> Unpublished statistics from the [Escuela Nacional Sindical](#) (2012)

<sup>5</sup> Upside Down World: [Progress or Promises? Free Trade and Labor Rights in Colombia](#) (2012)

<sup>6</sup> CODHES: [Boletín No 79 - Desplazamiento creciente y crisis humanitaria invisibilizada: la situación en 2011](#) (2012).

<sup>7</sup> Internal Displacement Monitoring Centre: [Colombia: Improved government response yet to have impact for IDPs](#) (2011)

<sup>8</sup> Amnesty International: [Indigenous People Struggle to Survive in Colombia](#) (2010)

<sup>9</sup> Internal Displacement Monitoring Centre: [Internal Displacement in the Americas](#) (2011)

<sup>10</sup> Internal Displacement Monitoring Centre: [Colombia: Improved government response yet to have impact for IDPs](#) (2011)

<sup>11</sup> Toronto Star: [Canada's Tainted trade partner](#) (2011).

<sup>12</sup> U.S Office on Colombia : [Against all Odds - The Deadly Struggle of Land Rights Leaders in Colombia](#) (2011)

<sup>13</sup> Upside Down World: [Progress or Promises? Free Trade and Labor Rights in Colombia](#) (2012)

<sup>14</sup> Canadian Council for International Cooperation: [Making a Bad Situation Worse - An analysis of the text of the Canada-Colombia Free Trade Agreement](#) (2009)

<sup>15</sup> Canadian Council for International Cooperation: [Making a Bad Situation Worse - An analysis of the text of the Canada-Colombia Free Trade Agreement](#) (2009)

<sup>16</sup> Mining Watch Canada, CENSAT-Agua Viva and Inter Pares: [Land and Conflict: Resource Extraction, Human Rights, and Corporate Social Responsibility - Canadian Companies in Colombia](#) (2009)

<sup>17</sup> Mining Watch Canada, CENSAT-Agua Viva and Inter Pares: [Land and Conflict: Resource Extraction, Human Rights, and Corporate Social Responsibility - Canadian Companies in Colombia](#) (2009)

<sup>18</sup> Mining Watch Canada, CENSAT-Agua Viva and Inter Pares: [Land and Conflict: Resource Extraction, Human Rights, and Corporate Social Responsibility - Canadian Companies in Colombia](#) (2009)

<sup>19</sup> [Peace Brigades International Colombia: Mining in Colombia: At what Cost? \(2011\); The Walrus: The Only Risk is Wanting to Stay \(2011\)](#)

<sup>20</sup> Peace Brigades International Colombia: [Minería en Colombia: a qué precio?](#) (2011)

<sup>21</sup> Fox News Latino: [Fragile Páramo Ecosystem in Colombia Threatened by Coal and Gold Rush](#) (2011)

<sup>22</sup> North American Congress on Latin America: [Canadian Mining: Still Unaccountable](#) (2010)

<sup>23</sup> James Harrison: [Human Rights Impact Assessments of Trade Agreements: Reflections on Practice and Principles for Future Assessments](#) (2010)

## ANNEX 1 ENDNOTES

<sup>24</sup> Human Rights Council: [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](#) (2011)

<sup>25</sup> Human Rights Council: [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](#) (2011)

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<sup>26</sup> Human Rights Council: [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](#) (2011)

## **ANNEX 2 ENDNOTES**

<sup>27</sup> MiningWatch Canada: [In response to murder of priest in Colombia, Canadian civil society calls for stronger protection of human rights defenders](#) (September 2011)

<sup>28</sup> MiningWatch Canada: [Civil Society Organizations Call on Canadian Mining Companies to Respect the Right to Consent in Colombia](#) (November 2011)

<sup>29</sup> International Federation of Chemical, Energy, Mine and General Workers' Unions: [Colombian Oil Workers Continue Battle for Rights](#) (October 2011)

<sup>30</sup> Projet Accompagnement [Solidarité Colombie: Conflict with the Canadian oil company Pacific Rubiales](#) (October 2011)

<sup>31</sup> Projet Accompagnement Solidarité Colombie: [Heightened possibility of violence at Gran Colombia Gold's mining exploration project in Nariño](#) (March 2012)

<sup>32</sup> Agencia Prensa Rural: [Informe Preliminar de la Misión Internacional de Verificación sobre la situación de la defensa de los derechos humanos en Colombia](#) (December 2011)

<sup>33</sup> International Federation of Chemical, Energy, Mine and General Workers' Unions: [Coward Guns Down Colombian Sugar Cane Cutters' General Secretary on 27 April](#) (April 2012)