

Executive Summary

Preliminary Conclusions of a Baseline Study on the Human Rights Impacts of the Canada-Colombia Free Trade Agreement

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Introduction

This document provides a partial summary of the preliminary conclusions of a 155-page baseline study on the human rights impacts of the Canada-Colombia Free Trade Agreement, with an emphasis on the mining section, which is a dominant concern. The study was conducted by a group of Colombian civil society organizations, union leaders, women, ethnic groups and NGOs, under the coordination of the Escuela Nacional Sindical (National Labour School) and the Colectivo de Abogados José Alvear Restrepo (José Alvear Restrepo Lawyers Collective).

Commercial relations between Colombia and Canada have been increasing over the last decade. Local Colombian products such as coal, flowers, and petroleum are now Canada's third most important imports from Latin America. In 2010, the value of these imports was approximately USD\$ 532,126 million. Investment flows from Canada to Colombia were irregular during the 1990s, but they increased significantly in the year 2000, in the form of USD\$ 800 million destined to the telecommunications sector. Canadian investment in Colombia has remained at relatively constant levels in recent years, and is now estimated to be in the range of USD\$ 1 billion. This shows that economic relations between the two countries were quite significant even before the signing of the Free Trade Agreement, which came into force in August, 2011.

Canadian multinationals have a strong presence in Colombia and their work has been concentrated in activities related to the extraction of natural resources, such as gold and oil. These multinationals have established themselves in the country by the way of subsidiary companies which carry out exploration and extraction of all kinds of resources throughout Colombia's national territory. Importantly the Canadian government notes on its website that Canadian investment stock in Colombia is projected to grow rapidly over the next two years. Former President Alvaro Uribe had hoped the signing of the FTA with Canada would spur additional oil mining and gas exploration across half of Colombia's territory.

Strategy

The strategy to monitor and track the impacts of the Canada-Colombia Free Trade Agreement on human rights was structured in several phases. First, we brought together a coalition of civil society organizations, trade unions and NGOs interested in this topic and who were already involved in prior research and human rights work on the impacts of foreign investment. This coalition defined the political and technical elements of the strategy. A team of experienced researchers designed the methodology that would be used to begin tracking the impacts of the agreement.

As a starting point, we proposed to create a baseline on the state of human and environmental rights in Colombia, which would serve as a benchmark against which to measure changes in the situation, and which could be used as an appropriate analytical tool in the future, and which could provide some contextual information on the current state of Canadian investment in Colombia.

Baseline methodology

1. Construct a map of the presence of Canadian multinationals in Colombian territory, especially in areas inhabited by specific ethnic and cultural groups.
2. Carry out a base diagnosis of the mining and oil projects of highest impact.
3. Identify processes of negotiation and consultation with communities, as well as other strategies related to the implementation of mining, oil and agricultural projects in Colombian territory. Document the agreements reached between multinational corporations and communities, and take note of unfulfilled promises or broken agreements.
4. Locate the main legislative changes that cleared a path for the implementation of the FTA with Canada, permitting Canadian multinational corporation impunity in terms of human rights -- especially labour rights -- violations.

The methodology is primarily qualitative, combining semi-structured interviews with key actors with a literature review of sources from various institutes and media channels (news reports, human rights reports, maps, public and private documents, local magazines and journals, chamber of commerce documents, etc).

Fieldwork took place in two regions in which there is a high concentration of Canadian extractive sector investment. The research team decided to undertake case studies as a means of developing a deeper understanding of the impacts of these investments. The first case study took place in Puerto Gaitán (Department of Meta), where Canadian oil company Pacific Rubiales Energy has been located for many years. The second case study was conducted in Marmato (Department of Caldas), where Canadian mining company Gran Colombia Gold has established itself and wants to begin an open pit gold mining project.

The first case study focused specifically on the impact of the Canadian investment project on labour rights, while the second case study focused on the social and environmental effects of the company's intervention in the daily lives of the inhabitants of this town and on the physical structure of the municipality. On the ground, the research team undertook in-depth interviews as well as discussions with social leaders, human rights defenders and members of the affected communities. This was done as a means of developing a general idea of the issues that can stem from the establishment of investment projects in such

territories. We documented processes and actions of resistance to company strategies that revolved around destabilizing the social order in these communities. We put together a narrative of the implications of the promises and social expectations that were created via the CSR programs of these two companies, as well as the impacts deriving from the non-fulfilment of these actions.

The Situation of Labour and Trade Union Rights.

In spite of the fact that the issue of labour rights is the subject of one of the parallel or side agreements to the trade deal, it has not given rise to the creation of protection mechanisms for workers or the establishment of structural regulations to prevent labour and union abuses carried out by multinationals. In general the parallel Labour Cooperation Agreement remains merely a diplomatic document of good intentions, the purpose of which was to remove obstacles to the negotiation. An overview of the labour situation in the country shows that rather than advancing the protection and guarantees for workers, the trend is towards increased precariousness. The following are some economic data that need to be monitored to assess the changes in the labour situation in Colombia:

- ⤴ the richest 10% of the population holds half of the National Domestic Product, while the poorest 10% barely receives 0.6 %, locating the country in third place for the highest levels of inequality in the world;
- ⤴ the labour market maintains a high level of informality, unemployment and underemployment with women, youth and unskilled workers filling the lowest quality jobs;
- ⤴ **there has been no job creation in the mines and quarries sector of the economy, a sector with the highest concentration of Canadian investment, despite its enormous earnings.**
- ⤴ The majority of self-employed workers in the informal sector representing 43.6% of the workforce is excluded from comprehensive social protection such as health, pensions, and living wages;
- ⤴ unemployment rates for both urban and rural women, and youth are highest.

Minimal trade union rights:

- ⤴ There remains a deeply ingrained anti-union culture, a lack of effective protection mechanisms, inspectors and judges and it takes years to resolve labour rights conflicts;
- ⤴ the rate of unionization dropped from 4.5% of the EAP to 4.4% in 2011, one of the lowest rates in the planet;
- ⤴ there is a high rate of impunity for violation of the right to collective bargaining which is regularly carried out by companies;
- ⤴ high rates of discrimination and criminalization of strikes negatively impacts social dialogue;
- ⤴ anti-union discrimination and the intention to eradicate the trade union movement persist;

- ⤴ 2917 trade unionists have been murdered since 1986 to the end of 2011;
- ⤴ statistics of other human rights violations against trade unionists (physical attacks, threats, kidnapping, arbitrary arrests, etc) remain extremely high pointing to a systematic and intentional attack against trade unions and trade unionists;
- ⤴ of the 30 murders which took place in 2011, only one perpetrator has been identified.

Summary of Case Study Findings

Case Study #1: Pacific Rubiales' Operations in Puerto Gaitán

- Stigmatization of unionists affiliated to USO (Unión Sindical Obrera); mass firing of workers who belonged to this trade union and who participated in social mobilizations; restriction of workers' free expression on the issue of the right to trade union membership; coercion by the Canadian company to oblige its workers to withdraw their membership from the USO trade union and to join the union promoted by the company.
- The living conditions in the workers' camps are inhumane. The services provided are inadequate: there is not enough water to allow all workers to wash themselves; the sanitary pumps are well below adequate standards and are very unhygienic; there is not sufficient time or privacy to allow workers to satisfy their physiological needs.
- The workers sleep in bunks, which are containers allocated by the company in which small mattresses are arranged side by side. These mattresses and the pillows provided are of such poor quality that workers cannot rest sufficiently. There is no ventilation in the bedrooms.
- Work contracts are precarious. They are offered for specific projects or fixed periods of time, and often renewed on a monthly basis. Workers must commit to 21 days of work, followed by 7 days of rest.
- Contracting is done through a consolidated employment agency (ASOJUNTAS) that provides Pacific Rubiales and its contracting firms with a steady supply of workers. Workers are often required to make a payment as a means of ensuring that they are contracted.
- Some workers must labour for more than 12 hours at a time without receiving any overtime payments.

- Two rest days are used for the transportation of the workers from the oil camp to their place of residence in the municipal area, and the firms that hire them do not offer any compensation for this.
- The food provided is insufficient and sometimes arrives in a putrid state.
- Workers for some contracting firms (for example, DUFLO) work between 13-14 hours per day, but are only paid for 9.
- Many workers are required to undertake tasks that are more advanced than those for which they are paid, which means that they are not being compensated adequately for their work.
- The salaries paid by the multinational corporation do not reflect the cost of living in the municipality of Puerto Gaitán.
- The indigenous communities (Sikuanis) located in the area, have been displaced from their ancestral habitats due to the expansion of the oil project.
- The project has also generated a major wave of migration of people from other parts of the country, which has caused disruptions to the local economy and to the social fabric of the community.

Case Study #2: Gran Colombia Gold's Operations in Marmato

- A major concern is the potential relocation of the municipality's urban centre, which will need to be demolished before the open-pit gold mining project can begin. This would entail the displacement of the local population to a nearby area, which would still be extremely close to the area of exploitation, generating enormous health risks.
- There is potential for enormous environmental impacts, especially with regard to water sources. These would face grave threats due to the proximity of the mines to the Cauca river (one of Colombia's most important rivers).
- The indigenous population (Cartama) would be forced to abandon their ancestral place of settlement.
- There has been a growing stigmatization of artisanal mining, which has been undertaken by the local community for nearly four centuries.
- Concerns also include destabilization of the local economy (rise in the price of a family basket, as well as housing and rental costs).

Other Observations:

- The Colombian government, through its weak legislative framework, has put in place the conditions for Canadian extractive corporations to establish themselves in regions of the country where natural resources are concentrated. These legislative changes have been occurring progressively since the beginning of Canadian foreign direct investment in Colombia. These changes do not correspond exclusively to the FTA's commencement date but would be reinforced as a result of new investor state provisions of the CCOFTA.
- The increase in Canadian mining investment in Colombia has corresponded to a significant escalation in reported cases of human rights violations in some regions. Some of these worth mentioning are:
 - The Afro-Colombian community from the Council of La Toma, in the department of Cauca;
 - Families from the district of Cañada Alta, municipality of Guamo, Tolima; and
 - The community of Guamocó in the southeast area of the San Lucas mountain range, in the department of Bolívar.
- The strategies used by companies against the local communities are diverse and generally attempt to influence the economic vocation of the areas of interest, as a way of indirectly affecting the ways of life of the inhabitants and generating the social tension necessary to fulfill the companies' economic objectives.
- These companies have taken advantage of the loopholes and irregularities in Colombia's Labour Code, in order to derive profits from low-cost labour. This Labour Code has been gradually refined to attract foreign direct investment, as can be illustrated in the case of Pacific Rubiales, which had been present in Colombia prior to the signing of the FTA with Canada, and whose sub-contracting practices has prevented employees from enjoying the conditions necessary to lead a dignified life.

Final Considerations

As it has been less than a year since the Free Trade Agreement between Colombia and Canada came into effect, a reading of its impacts on human, labour and environmental rights requires specialized criteria. We need to consider the technical capacity to carry out such a complex measurement, access to information and the political will of the governments involved.

In this regard, we must point out that the Colombian government has not taken seriously its obligation to establish a rigorous monitoring process that documents the human rights impacts of the agreement. To date, there is no public information on these impacts. The most affected communities have not been consulted, and civil society has been excluded from the evaluation process. Neither the obligation to produce a government-authored report, nor the establishment of mechanisms to monitor agreements on labour and environmental issues, have translated into meaningful action by the governments involved. This demonstrates a deep lack of political will on the part of both governments to address human rights issues. They used the human rights, labour and environmental clauses to facilitate the ratification of the trade deal, while paying lip-service to serious ethical and moral questions related to labour and union rights. Following the ratification of the agreement, these parallel clauses have become merely, diplomatic documents lacking teeth and impact.

One of the greatest obstacles to measuring the FTA's impacts on human rights in Colombia is the absence of public information pertaining to Canadian investment, multinationals, their subsidiaries, and their strategies. The main problem is the strategy by which companies fragment and compartmentalize themselves into a series of subsidiaries, permanently changing their names in ways that create overlapping owners and investors as well as the regular use of tax havens by Canadian companies. Apart from rendering the data-gathering process difficult, this strategy enables companies to hide their responsibility in cases of human rights violations.

The lack of political will to protect the human rights of communities affected by the agreement and by Canadian investment becomes evident when one examines how the Colombian government deals with charges filed, resistance movements and questions from affected communities and individuals. The Colombian government has treated the majority of these cases and individuals negatively, or as though they were enemies of war. Territories where social mobilization is common have been militarized. The movements have been discredited and their intentions twisted. As a method of denial, and to justify the use of force, the government has used outdated images of war that associate social resistance to subversion, guerrilla manipulation and infiltration. In this way, the government has tended to lend strong support to foreign investors and demonstrated that its interests are synchronized with those of the multinationals. It dismisses the importance of communities' requests with a blunt message: the government cares more about the profitability of companies than about the cultural rights of traditional indigenous peoples and Afro-Colombians, subsistence agriculture, or the survival of traditional mining.

This business mentality is overriding environmental and cultural rights. In exchange, multinationals offer gifts and charity, promoting themselves as socially responsible companies. Meanwhile, the health and livelihoods of indigenous communities, peasant farmers, and Afro-Colombians are negotiated through the construction of unsustainable infrastructure, publicity campaigns, gifts of school

supplies, and economic rewards to mayors and politicians. Companies take advantage of high levels of corruption at the level of local government. In the majority of the cases studied, multinationals had developed strategies to divide communities' interests by buying-off some of their leaders and seducing others with job offers. This makes the mechanism and obligation of "prior consultation" easier and prevents companies from being accused of violating communities' non-material patrimony, sacred territories and water sources. Notably, in the majority of the territories where Canadian investment and multinational presence is concentrated, the communities have not benefited from the companies' success. Their lives and socio-economic conditions continue to be precarious and, in fact, are at greater risk than ever due to the rising costs of living caused by the presence of multinationals, and the forced abandonment of traditional agricultural processes.

Although it is not easy to establish a direct relationship between the presence of Canadian multinationals and the exacerbation of the armed conflict, the relationship found between them in each of the observed mining projects is concerning. There has been an increase in irregular military activity, increased presence of different armed groups (guerrillas, paramilitaries, and gangs) and multiple human rights violations in these communities. This issue must be examined from two perspectives. First, there are cases of violations against community leaders that are specifically associated with the establishment of new mining exploration projects. In these cases, paramilitary groups have been used to reduce resistance from the communities. These cases, reviewed in the report, should be thoroughly investigated in order to determine who is responsible. Second, Canadian investment in many territories has resulted in the increased presence of irregular actors in the armed conflict (paramilitaries and guerrillas), an increase in military activities and, as a result, communities today are more vulnerable. Forced displacement has increased and state responses have been insufficient or nonexistent.

Open-pit mining is causing permanent negative impacts on the environment. Waterways and soil continue to be contaminated, vegetation and fauna has been lost, and the local population is affected. Once a mine is closed, only highly contaminated environmental liabilities will be left behind which will continue to affect the area. It is not possible to carry out a complete restoration of the area; only limited rehabilitation can be achieved. Open-pit exploitation in Marmato may last 20 years, generating numerous benefits for the mining company while leaving the region with long-term poverty, contamination, a modified landscape, displacement, degraded natural resources and environmental liabilities.