

Response to the Report on the operation of the CCFTAIA

**Written Submission from Dr James Harrison,
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Dear Sir/Madam

I have written extensively in relation to the relationship between human rights and international trade agreements, including a number of publications on human rights reporting on international trade agreements.¹ I have worked with UN actors, governments, civil society actors and others on developing human rights methodologies for reporting on trade and a range of other economic issues.²

I have previously given evidence to the Standing Committee on International Trade (CIIT) of the House of Commons of the Parliament of Canada in Ottawa in relation to the human rights reporting mechanism in the Canada-Colombia Free Trade Agreement. I was also a “member the Advisory Panel on the development of a methodology proposal for the Canada-Colombia Free Trade Agreement - Human Rights Agreement Report”.

I have had the opportunity to review the ‘Annual Report Pursuant to the Agreement concerning Annual Reports on Human Rights and Free Trade between Canada and the Republic of Colombia.’ I limit myself to a few brief observations on the report in this short response, as I only became aware today that I would be giving evidence to the Committee in writing rather than orally.

My overall reaction to this report is one of disappointment. While it is the first year of this reporting process, and so one would expect that processes will take time to develop, there are a number of limitations, assumptions and flaws with this reporting process that raise considerable questions for the future. The Committee should ensure these issues are addressed at the outset so that a valuable and robust process is set in train for the future. My main comments are set out below:

1. First, this report seems to benefit very little from the work which was undertaken to draft a methodology for an Annual Human Rights Report for the Canada-Colombia Free Trade Agreement – where I acted as a Member of the Advisory Committee. In the current report we have a methodology that is no more than a page in length. It is therefore inevitably brief and uninformative in relation to what the final reporting process will be like. It is a great shame that the draft methodology which was originally developed has not been published as part of this current process. The current reporting process also falls short of the recognised standards which are contained, for instance, in the UN Guiding Principles on Human Rights Impact Assessments of Trade and Investment

Agreements and other methodological guidance on how to conduct such a reporting process.

2. Second, in terms of the methodological steps that do appear in this report, although there is insufficient detail to understand how the reporting process will actually operate, there are still concerns about the steps as they are currently outlined. Most significantly, the methodology envisages identifying relevant sectors, and clustering them for annual tracking (steps 2 and 3) ‘preparing a report’ on ‘significant economic sectors affected by CCOFTA’ at step 4. This report will then form the basis of consultation with stakeholders (step 5). This is worrying for a number of reasons.
 - A. It suggests that consultation and participation of affected persons will not be central to the process of assessing the impact of the CCOFTA. Rather, consultations will take place ‘ex post’ on the concluded report (as well as in relation to the initial methodology). This is clearly contrary to fundamental principles of effective participation set out in human rights reporting processes, e.g. the UN Guiding Principles on Human Rights Impact Assessments of Trade and Investment Agreements (Principle 4). See also my own work on this issue.³
 - B. The methodology appears to imply that the ‘report’ produced will be a desk-based exercise which can be undertaken only as a result of the annual tracking that will be undertaken (step 3). But in order to measure the human rights ‘effect of the measures taken’ under COFTA (Article 1 of the Agreement), it will be necessary to do far more than simply track economic data in relation to particular sectors. As the UN Guiding Principles on Human Rights Impact Assessments of Trade and Investment Agreements (Principle 7) and my own research has also shown, the process of evidence gathering needs to be informed by an actual assessment of the human rights impacts of particular trade obligations/liberalisations *on the ground*. For example, how has the influx of particular agricultural products from Canada to Columbia affected the human rights of farmers on the ground in Colombia? How have investment protection provisions in the investment chapter of the agreement affected the conduct of investors on the ground in Canada/Columbia? Such an exercise requires in-depth evidence gathering based on a range of qualitative and quantitative research methodologies.⁴
 - C. Given what has been said above, my strong recommendation (as previously made on several occasions), is that all relevant sectors should be tracked on an annual basis. But most importantly, one annual in-depth study should then be undertaken in relation to a sector where potential human rights issues have been identified as a priority. This would allow effects of one sector of the agreement to be properly analysed each year. Otherwise there is a strong danger that what will emerge will be a very superficial annual report of a range of sectors, that will be incapable of measuring human rights effects in any meaningful way.
 - D. There is no discussion in the methodology or elsewhere in the report to define the human rights standards that will be the basis for the annual reports, or indicators by which those standards will be measured. Again, this is fundamental to undertaking a robust and meaningful impact assessment process as the UN Guiding Principles make clear (Principle 5).

3. The introduction to the report makes no explicit reference to human rights standards (see point 4 above), but appears to make a reference to a series of positive social impacts that CCOFTA will have. The point of an annual human rights reporting process is to undertake a neutral and unbiased assessment of the effects of the Agreement from a human rights perspective (both positive and negative). The inclusion of vague and completely unreferenced language in relation to the overwhelming benefits of the agreement in the introduction set a dangerous precedent. It is likely to affect the perceived independence and robustness of the process, which will undermine its credibility among key stakeholders.⁵

These are brief observations that have been set out in considerable haste. I am very happy to elaborate further on any of the points above if it is helpful to the Committee. I am also happy to assist in the future development of the methodology.

Yours sincerely

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¹ See e.g. Harrison, J. and Goller, A, .(2008) 'Trade and human rights: what does 'impact assessment' have to offer?', *Human Rights Law Review*, 8 (4), 587 - 615 (1461-7781); Harrison J (2007) *The Human Rights Impact of the World Trade Organisation*, Hart Publishing; Harrison J, *Human Rights, Trade and Investment, A Special Issues Report for The UN Office of the High Commissioner for Human Rights* (forthcoming, 2013); Harrison, *Human Rights Impact Assessments of Trade Agreements: Reflections on Practice and Principles for Future Assessments A Background Paper for the Expert Seminar on Human Rights Impact Assessments of Trade and Investment Agreements*, June 23-24, 2010 Geneva.

² See the description of some of this work on my Centre's website at <http://www2.warwick.ac.uk/fac/soc/law/chrp/projects/humanrightsimpactassessments/>

³ See e.g. Harrison, J. and Goller, A, .(2008) 'Trade and human rights: what does 'impact assessment' have to offer?', *Human Rights Law Review*, 8 (4), 587 – 615 at 611.

⁴ See e.g. Harrison, *Human Rights Impact Assessments of Trade Agreements: Reflections on Practice and Principles for Future Assessments A Background Paper for the Expert Seminar on Human Rights Impact Assessments of Trade and Investment Agreements*, June 23-24, 2010 Geneva at p.9.

⁵ See e.g. Harrison, J. and Goller, A, .(2008) 'Trade and human rights: what does 'impact assessment' have to offer?', *Human Rights Law Review*, 8 (4), 587 – 615 at 608