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**COLOMBIA**

# **The Human Cost of Oil:**

A Human Rights Impact Assessment on the Activities of Pacific Exploration & Production Corp. in Puerto Gaitan.

Executive Summary

Cover photo: The waste water discharged in the Rubiales river continues to contain muddy sediments and oil, which has generated multiple complaints about pollution and makes the water unusable. © PHOTO/ CCAJAR

# Introduction

The petroleum sector, characterized by frequent and pronounced booms and busts, is one of the largest sources of revenue in Colombia<sup>1</sup>. More than half of the country's oil is produced in the department of Meta, where the majority is extracted in the municipality of Puerto Gaitan.

However, the social and economic context in Puerto Gaitan is marked by poverty<sup>2</sup>, a lack of access to public services such as education and health care, unemployment, inadequate working conditions, social conflicts, repression, the criminalization of community leaders and trade unionists, corruption, environmental damage, and the acculturation of indigenous communities living in reserves located near oil installations.

This study documents and analyzes the impacts that oil exploration and extraction activities have had on the human rights and the environment of local communities in Puerto Gaitan, with a particular focus on the Rubiales-Piriri (hereinafter Rubiales) and Quifa oil concessions, carried out by the Canadian company Pacific Exploration & Production Corp. (hereinafter Pacific) in association<sup>3</sup> with the Colombian company Ecopetrol<sup>4</sup>.

On July 1, 2016 operations at the Rubiales concession were turned over in their entirety to the majority state-owned company Ecopetrol. Due to the drop in oil prices, among other factors, Pacific has entered into insolvency proceedings in Canada to avoid bankruptcy. This transition, combined with a lack of state initiatives, has raised deep concerns regarding accountability and possible reparations for social and environmental liabilities incurred over the previous years.

## Methodology

The present study is a human rights impact assessment conducted using the methodology known as **Getting it Right**, which relies on the active participation of affected communities. This process seeks to empower all affected groups and foster dialogue with public and private stakeholders to measure impacts, assign responsibility, and make recommendations in order to ensure access to reparations and guarantee full the protection and effective enjoyment of human rights<sup>5</sup>.

In order to conduct an accurate analysis of the human rights situation in Puerto Gaitan, the research team interviewed affected sectors of the population by means of group discussions and more than 450 surveys with residents of the rural settlements of Rubiales, Santa Helena and Puerto Triunfo, employees at Pacific and its subcontracted partners, and indigenous communities. Meetings were also held with national, regional, and local authorities, embassies, international institutions, unions and NGOs, one subcontracting company, and representatives of Ecopetrol and Pacific (who were also provided with the opportunity to comment on the report). Research was carried out by the Jose Alvear Restrepo Lawyers Collective (CCAJAR) and the Project for Accompaniment and International Solidarity in Colombia (PASO), with the support of the FIDH.

## Findings

### Violations of labor rights and union rights

Despite the expanded economic activities generated by the oil industry, Puerto Gaitan's residents face **obstacles to employment** as a result of irregularities in job placement processes for unskilled labor that involve Communal Action Boards (Juntas de Accion Comunal - JAC) and ASOJUNTAS.

**Violations of the right to freedom of association** observed include: 81% of the employees surveyed were of the opinion that their employer did not allow for free and voluntary union membership, and 79% thought they could be fired in retaliation for joining the Union Sindical Obrera (USO). Information regarding the existence of unions in the industry is not made available to employees and **obstacles to unionization**, such as perks, promises, or the termination of employment, are used to discourage membership at USO. Factors that limit workers' freedom of expression were also documented, as was a general lack of opportunities for dialogue and organization.

1 In 2015 the country produced 1'009,000 barrels of oil per day. *Produccion Mensual de Petroleo* (ANH, September, 2015).

2 Approximately 65.5% of the municipality's residents live in poverty.

3 Pacific carries out more than one third of its production in the Rubiales and Quifa oil concessions, in consortium with Ecopetrol. The latter participates with a 40% stake according to contracts with the former.

4 Ecopetrol is Colombia's largest company, and is 88% owned by the Colombian government.

5 See FIDH, *Las evaluaciones de Impacto en los Derechos Humanos impulsadas por las comunidades locales,; y Derechos & Democracia, Todo Derecho – Guía de Evaluación de Impacto en los Derechos Humanos*.

It was also found that the subcontracting models employed by Pacific amount to **illegal outsourcing**. Some 92% of the employees surveyed were subcontracted, mostly hired via fixed-term contracts (término fijo), contracts bound to the extent of time required for a specific project (obra o labor), or service-provision contracts (prestación de servicios), despite the core, permanent nature of the activities they perform, according to the investigation team. Often these activities were the same as those performed by direct employees at Pacific. Subcontracted workers have strong links to Pacific, and often rely on the latter for pay, recruitment or job placement, and training. Labor outsourcing can also result in preventing unionism, and provides weak job security for workers.

Finally, an analysis of 'union contracts' (contratos sindicales) between Pacific and the union UTEN, particularly when they involve workers who perform core, permanent activities, revealed the violation of labor standards in that these agreements restrict employees' rights to strike, freely join unions, and carry out collective bargaining.

## **Criminalization, an Imbalanced Justice System, and Abuses at the Hands of Security Providers**

An increase in social, labor, environmental, and trade union conflicts between oil companies, local communities, and industry employees in Puerto Gaitan has coincided with a phenomenon in which **individuals involved in social protest have increasingly become the subjects of criminal proceedings**. Scenarios were documented in which illegal persecution and an excessive use of force have been employed by state and private agents, especially targeting trade union leaders, human rights defenders, and others who organize protests in response to labor conditions, environmental mismanagement, contracting models, and the social investment policies implemented by private companies.

An **imbalance is also evident within the justice system** in which allegations of murder and physical aggressions targeting demonstrators are met with a weak judicial response, and tend to remain in impunity, while investigations in which private companies are allegedly the victims advance with speed and agility.

This is a worrying situation, especially when one takes into consideration the existence of **Cooperation Agreements** between the companies (Ecopetrol and Pacific) and the Colombian Prosecutor General's Office, the National Police or diverse units within the armed forces. The terms of such agreements are not available to the public, have been denounced as fomenting corruption, and lack a clear regulatory framework – all factors that increase the risk of abuses by authorities to the detriment of the rights of affected communities. In addition, the **direct funding** by oil companies of the armed forces and the Prosecutor General's Office, calls into question the impartiality of the justice system, the military, and the police.

Lastly, abuses were documented in which ISVI, a **private security company** contracted by Pacific, hindered the free movement of trade unionists, members of Congress, community leaders, and residents, as well as the employment of intelligence strategies to investigate workers and community members.

## **The Distortion of the Prior Consultation Process and the Social Disarticulation of Indigenous Peoples**

Members of affected indigenous communities indicated that their proximity to oil operations has caused a **transition away from their traditional way of life**, resulting in a loss of culture and spirituality, changes in the means of production, a loss of autonomy and self-sufficiency, and social disarticulation following the intervention of oil companies in their territories.

The purpose of **prior consultation**, ostensibly as a means to obtain the **free, prior and informed consent** of indigenous communities with regards to oil-related activities, has become distorted. Although Pacific has in theory followed protocol throughout the various stages of prior consultation procedures, irregularities are evident, such as lacking information regarding the impacts of the oil industry in indigenous territories, a lack of action or inadequate mitigation efforts in response to certain environmental impacts, and a perception in which these processes forward individual benefits or foster corruption and divisions within communities. State oversight agencies have been absent in the consultation processes, and have failed to provide technical assistance to indigenous communities, generating profound asymmetries of power and preventing genuine dialogue.

The failure of the state to act according to its responsibility to ensure the proper use of prior consultation procedures largely explains the distortion of this right.

## Environmental Impacts and Land Issues

Due to high levels of water within the oil reserves of this particular region, the extraction of each barrel of oil produces approximately 20 barrels of wastewater. Therefore 300,000 barrels of wastewater are discharged daily into Rubiales Creek (Caño Rubiales) without proper treatment resulting in the **contamination** of water sources available for human consumption. This situation illustrates deficiencies in monitoring and wastewater treatment systems in place at Pacific as well as control mechanisms employed by environmental authorities. The latter have also demonstrated **negligence in their duty to monitor and sanction** environmental violations. It was found that Pacific **failed to comply with its environmental license** by discharging 47% more water than was allowed.

Pacific also disposes of wastewater underground by means of reinjection. Simultaneously, seismicity has increased drastically; **more than 976 earthquakes** have occurred in Puerto Gaitan during the last three years, a situation which has caused serious damages and inconvenience to local inhabitants as well as falling levels of ground and surface water. Although the direct causal link between the oil industry and increased seismicity has not been established with certainty, temporal and geographical coincidence indicates a high probability that reinjection is linked to increased tremors. There is also **no clear regulatory framework** with regards to reinjection, indicating an additional failure on the part of the State with regards to its duty to monitor reinjection activities, determine their consequences, and take measures to prevent damages, thus putting at risk the collective rights of affected communities such as their right to a healthy environment.

Finally, several irregularities were revealed surrounding a project known as Agrocascada, promoted and designed by Pacific to reduce the discharge of industrial wastewater through water-treatment and reuse in the irrigation of African palm oil fields. The investigation points out that Pacific would have exceeded the authorized surface area for planting as well as the permitted amounts of water used for irrigation. Meanwhile, irregular proceedings have been denounced regarding the acquisition of the land used for palm operations, which would violate agrarian reform laws. Finally, appropriate measures were not taken to mitigate risks associated with palm cultivation such as contamination, the loss of biodiversity, and ecosystem destruction, in turn threatening the ability of people living near these plantations to produce sustenance crops.

## Conclusions

The human rights violations documented throughout the present study can be largely explained by inadequate, ambiguous, and in some cases nonexistent regulatory frameworks, pointing to the failure of the **Colombian state** with regards to its obligation to provide control, oversight, preventive measures, and reparations through the administration of research and sanctions.

In its activities in the Rubiales and Quifa fields, **Pacific** has failed to comply with labor, environmental and consultation standards. Oil activities are indirectly related to abuses and criminalization suffered by trade union and community leaders as a result of the conduct of its private security company and funding of law enforcement agencies.

**Ecopetrol** has failed in its responsibility to act with due diligence by neglecting to conduct proper verification with regards to human rights before the Rubiales field changed hands, for example by means of a public and transparent impact assessment. In addition, the Colombian government, as the majority shareholder of Ecopetrol, has a shared responsibility for the violations and omissions here described.

**Canada**, where Pacific is based, also bears responsibility due to its international obligations with regards to human rights and in light of those set forth in the Free Trade Agreement between Colombia and Canada. On the other hand, Canada has ignored its obligation to protect human rights by failing to require the Canada export credit agency Export Development Canada to act with due diligence before financing for Pacific (in 2014) and Ecopetrol (in 2016), although both companies have been denounced for alleged human rights violations.

# Recommendations

## Recommendations to the Colombian Government

- Appropriate legislative measures should be taken to identify, prevent, mitigate and punish negative impacts concerning human rights as a result of business activities, to ensure that the companies that operate in its territory are required to conduct human rights impact assessments with regards to investment projects (before, during and after activities take place), and to monitor the behavior of these companies, ensuring their act with due diligence and meaningfully engage with human rights defenders and those whose rights are being affected.

### *The following measures are recommended with regards to the free exercise to defend human rights:*

- Criminal law should not be used as an instrument to weaken the efforts of groups or individuals, such as trade union and community leaders, journalists, and members of NGOs who choose to exercise their right to freedom of expression and denounce or criticize the impacts of projects carried out by business interests.
- Cooperation agreements between the armed forces/oversight agencies and companies should be avoided.
- Government agents (members of the police, inspectors, prosecutors, and judges) and private interests involved in the abuse or criminalization of workers, union leaders, or human rights defenders should be investigated in an effective, transparent and independent manner and punished; state security forces should be trained with regards to the use of force and respect for human rights.
- Victims should be guaranteed access to justice and reparations.

### *The following measures are recommended with regards to labor rights:*

- Pacific, and the companies with which it has business relationships, should be investigated by means of administrative procedures for the violation of the right of association and fundamental labor rights, including illegal outsourcing and the use of 'union contracts' (contractos sindicales).
- Legislative reforms should increase penalties for crimes that violate the rights to assembly and association, and ensure the right to strike in the oil sector.

### *The following measures are recommended with regards to the rights of indigenous peoples:*

- The principle of transparency should be applied in order to ensure the free flow of information with regards to the effects of mining and oil operations in territories inhabited indigenous peoples, as well their effects on access to water and other resources on which communities' development depends.
- Constitutional obligations and international standards should be complied with as they relate to the rights of indigenous peoples to be consulted in order to attain to their free, prior and informed consent with regards to administrative or legislative decisions that affect their communities.
- The participation of the Inspector General's Office, the Ombudsman's Office and the High Council for Human Rights should be guaranteed in consultation processes, to ensure that they effectively defend indigenous communities' rights and in order to avoid an imbalance between the influence of communities and private companies.
- Oil industry-related activities should be suspended until negative impacts on indigenous peoples have been adequately mitigated and consultation has been carried out in accordance with international standards.
- The Interior Ministry, specifically, should establish a team with technical expertise in anthropology in order to identify indigenous peoples' territories according to the terms set forth by Colombia's Constitutional Court.

### *The following measures are recommended with regards to environmental protection and access to land:*

- Periodic, independent oversight should be conducted regarding Environmental Compliance Reports issued by businesses, with a particular emphasis on issues as requested by the members of affected communities.
- Real-time monitoring mechanisms should be installed to measure the quality and quantity and of crude oil and water produced as a result of oil extraction activities, as well as amounts of reinjected water. These should be accessible to the members of the affected communities.
- Reinjection activities should be suspended until adequate research has been carried out in order to identify a possible correlation between increasing seismicity and oil operations and, if needed, determine appropriate mitigation measures.
- A regulatory framework regarding the reinjection of industrial water should be adopted, based on the geological characteristics of the Colombian territory.
- The National Environmental License Authority (ANLA) should advance efficient punitive administrative procedures, within a reasonable time frame, in order to ensure access to reparation measures for members of communities affected negatively by the companies in question, for example in cases in which waterways have been contaminated as the result of pollution or damaged infrastructure caused by earthquakes.

- Processes in which private companies gain access to the use of public lands, or purchase formerly public lands, should be investigated, especially when the area of this land exceeds that of a Family Agricultural Unit and is subsequently used to carry out agro-industrial projects.
- Detailed studies should be conducted in order to prevent the loss of biodiversity caused by agro-industrial projects, such as palm oil cultivation.

### **Recommendations to Pacific and Ecopetrol**

*With regards to individuals' ability to defend human rights openly and freely, we recommend the following:*

- The rights of human rights defenders, including those who work in the defense of the right to land, should be fully respected.
- Those who defend human rights should not be the object of any form harassment, illegal monitoring, undue pressure, or violence.
- The companies in question should collaborate with judicial bodies in good faith in cases that involve alleged human rights violations as a result of their direct behavior. Information that describes investment projects, including contractual documents and impact assessments, should be made available in good faith to the public to support those who work to defend the right to land and prevent conflict.

### *Specific Recommendations to Pacific:*

- The justice system should not be used to impede the defense of human rights.
- Security companies contracted by Pacific should not be instructed to carry out intelligence activities with regards to the movements of trade union and social leaders, nor should these movements be obstructed. Pacific should ensure that the companies with which it works do not engage in such activities.
- The files that contain the information described in the previous point should be made public, and Pacific should clarify to what end this information was gathered.

### *The following measures are recommended with regards to union and labor rights:*

- The full respect for the exercise of trade union freedoms should be ensured at Pacific and the firms it contracts.
- Venues for dialogue and negotiation with all unions should be fostered.
- Workers who carry out core, permanent activities should be hired directly.
- Sectorial collective bargaining should be promoted.

### *The following measures are recommended with regards to environmental protection and access to land:*

- Environmental Impact Assessments and Environmental Management Plans should analyze areas of influence as established by Colombia's Constitutional Court with regards to untitled indigenous territories.
- Real-time monitoring mechanisms should be installed to measure the quality and quantity of crude oil and water produced in oil operations, including water that is reinjected. These should be accessible to affected communities.
- Reinjection activities should be suspended until the possible correlation between these and increased seismicity activity throughout recent years has been examined.
- Pacific and Ecopetrol should conduct reliable studies regarding the cause of earthquakes and the disruption of water supplies in the region as a result of the STAR project and water reinjection.
- Responses should be offered to the communities in detail and in good faith, and general answers to specific questions regarding a healthy environment should be avoided.

### **Recommendations to the Canadian Government**

- Clear binding standards should be established to ensure that companies registered or domiciled in Canada, or which have their main place of business or substantial business activities in Canada are held accountable when evidence is presented that points to environmental damages or human rights violations associated with their activities, as recommended by the Standing Committee on Foreign Affairs and International Trade in 2005. Such standards should include the following measures:
  - Mechanisms should be established to ensure respect for the rights of indigenous peoples on the part of the states in which Canadian companies operate; these include the right to self-determination and free, prior and informed consent before any natural resource extraction activities are carried out in their territories.
  - Legislation should be strengthened in order to address the liability of companies registered or domiciled in Canada, or which have their main place of business or substantial business activities in Canada, with regards to their global activities, and should include the requirement that such companies act with due diligence, including by carrying out human rights impact assessments before and after the implementation of investment projects.

- Effective access to justice in Canadian courts should be guaranteed for victims of alleged human rights violations that involve Canadian companies abroad, so that they have access to justice and effective remedies.
- An Ombudsperson Office should be established to independently investigate alleged human rights violations linked to the global operations of Canadian extractive companies.
- Canadian export credit agency Export Development Canada, should be required to act with due diligence to ensure that their clients respect international human rights and environmental standards prior to being granted financing.
- The Free Trade Agreement and cooperation agreements between Canada and Colombia should be reformed in order to ensure that they recognize the primacy of States' obligations to human rights and environmental protection over the interests of investors, and establish effective mechanisms for the implementation of these obligations that are accessible to victims. International arbitration structures should be discouraged and at the very least include elements to prevent companies that have committed human rights violations from access to such arbitration.





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Director of  
publications:  
Karim Lahidji  
Editor: Antoine  
Bernard  
Authors: Colectivo  
de Abogados "José  
Alvear Restrepo",  
PASO, Escuela  
Nacional Sindical  
(ENS), FIDH.  
Design: CBT.

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## CONTACT US

FIDH

International Federation for Human Rights

17, passage de la Main d'Or

75011 Paris

CCP Paris: 76 76 Z

Tel: (33-1) 78 56 90 54

Fax: (33-1) 45 67 32 12

[www.fidh.org](http://www.fidh.org)



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FIDH works for the respect of all the rights set out in the Universal Declaration of Human Rights: civil and political rights, as well as economic, social and cultural rights.

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