

A Cry for Justice:

The Human Face of NAFTA's failure in Mexico

Canadian church leaders' delegation to Mexico

March 11 - 19th, 2005

KAIROS: Canadian Ecumenical Justice Initiatives



www.kairoscanada.org

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Executive Summary

As people of faith, we have a vision motivated by the economy of God, an economy of life and abundance that promotes sharing, globalized solidarity, dignity of persons, and care for the integrity of creation.

Since the implementation of NAFTA in 1994, Canadian churches have closely monitored the human rights situation in Mexico. From March 11-19th, Canadian church representatives from across the country travelled to Mexico as part of a KAIROS organized delegation to witness first-hand the ongoing impacts and consequences of NAFTA (North American Free Trade Agreement) signed by Canada, Mexico and the US in 1993 and implemented in 1994.

The Canadian government does not connect its international human rights commitments and obligations with its approach to trade. Rather than promoting these obligations with trading partners and ensuring they take precedence, the government chooses to de-link trade and human rights.

In Mexico, the free trade model that our government supports has resulted in conditions of poor pay, massive migration, desperate conditions and human rights violations that continue with impunity.

NAFTA, it appears, has failed the majority of Mexicans.

The delegation focused on two cases of structural impunity: the case of a massacre in Acteal and the systemic murder of young female workers in Ciudad Juarez. In both instances the ongoing lack of resolution has resulted in the cases being brought to the Inter-American Commission on Human Rights (IACHR). These cases demonstrate the contradictions between Mexico's international image as a country that respects, defends, and cares about human rights and the reality of human rights abuses, an ineffectual justice system, and ongoing impunity. Delegates found that because Canada has not ratified the American Convention on Human Rights its regional voice on human rights is weakened. Canada urgently needs to demonstrate the appropriate political will to become a more active participant in the IACHR.

It is clear that human rights violations are systemic in Mexico. In Chiapas, we heard how there is still a strong military presence. In Ciudad Juarez we learnt of several cases of torture, and we heard how human rights lawyers continue to be assassinated with impunity. Alarmingly, Erendira Cruz Villegas, CENCOS Director and KAIROS partner, has been targeted with anonymous threats and intimidation for her work with indigenous communities. All of these crimes, we were told, continue with impunity. In order for justice to reign and human rights to be respected in Mexico, the government of Mexico needs to respond to the recommendations in the UN Human Rights Diagnostic. Furthermore, Mexican human rights organizations are calling on their government to expand the mandate of the Office of the High Commissioner of Human Rights (OHCHR) in Mexico to include monitoring and follow up on these recommendations.

We were surprised to hear about ongoing incidences of torture, political assassination and human rights violations. We see this lack of movement on fundamental human rights issues as the consequence of an unjust trade and investment model.

We heard from indigenous groups in Chiapas and Oaxaca that indigenous rights including a community's right to land, resources (water, energy sources, etc.) and to self-determination need to be urgently recognized and respected. NAFTA directly threatens these collective rights. As KAIROS partner, Human Rights Centre Miguel Agustin Pro Juarez states, "The recognition of indigenous peoples continues to be on hold."

The delegation bore witness to the disastrous effects of NAFTA on small farmers. We heard how accelerated tariff liberalization, a cutback in internal supports and open markets have resulted in a flood of corn, beans, coffee and other crop imports that have historically been produced in Mexico. The crumbling agricultural sector has left farmers in dire straits. In order to survive, indigenous and campesino farmers have begun migrating internally and further north in unprecedented numbers.

In Ciudad Juarez and El Paso, Texas, we heard of the dangerous conditions under which migrants travel to reach the border towns, how under duress they abandon their land and come to work in maquilas, and how many, having no other option, trek north through an increasingly militarized border.

Canada relies on Mexican migrant farm workers. The Seasonal Agricultural Workers Program often creates a situation of "unfree labour" for migrants. Their mobility is restricted, there are no health and safety standards often leading to pesticide exposure, they work long hours, they pay into government programs which they can't access, and employers can send them home under any pretense.

The massive flow of Mexican migrants internally, and further north into the US and Canada, can be directly connected to the NAFTA economic model. We were shocked to hear Canadian Ambassador to Mexico, Gaëtan Lavertu, claim that the problem of migrants in Mexico was a Mexican problem. Clearly, Canada as well as the US, bears responsibility for this phenomenon that results from this failed economic model.

At the request of the community of Cerro San Pedro we went to visit the proposed site of an open-pit gold mine owned by Metallica Resources, a Canadian mining company. We were shocked to learn that one of our own companies is pursuing a project that the villagers told us would destroy their homes, damage the unique ecosystem and contaminate the water supply. We learned that the town is close to being recognized as a UNESCO World Heritage site. It is already recognized federally as a national monument and lacks only the Governor's endorsement to be recognized by UNESCO.

Overcoming tremendous hurdles, community activists in Cerro de San Pedro and San Luis Potosí have successfully used the courts to halt Metallica's operations. Regardless, the company is still trying to undermine these victories. Most disturbingly, Metallica Resources has publicly threatened to use NAFTA's notorious Chapter 11 to sue the Mexican government if they are prohibited from proceeding. We are extremely concerned about Canadian corporate activity abroad. This case demonstrates the need for Canada to implement binding obligations for corporations working abroad to ensure accountability.

In Mexico, we heard how the free trade model creates the need to migrate, propagates unsafe working conditions for young female workers, results in countless people working for Fortune 500 companies while living in cardboard box houses, facilitates increasing militarization in indigenous territories, enables human rights violations with impunity,

completely disregards social priorities, and supports extractive corporate activity despite a community's clear opposition. Peoples' lives have been turned upside down by free trade structures. Despite clear language in the UN Charter, free trade consistently overrides human rights, placing corporate gains and rights before people, communities, and the earth.

Canada has always proclaimed itself as a champion of human rights and has recognized promotion and respect for human rights as one of its foreign policy goals. It is time for Canada to address this fundamental contradiction and bring its trade and investment strategy in line with its stated goal to respect and uphold human rights while insisting that its trading partners do the same.

The rule of free trade, taken by itself, is no longer able to govern international relations. Its advantages are certainly evident when the parties involved are not affected by any excessive inequalities of economic power...But the situation is no longer the same when economic conditions differ too widely from country to country: prices which are 'freely' set in the market can produce unfair results. (#58)

-Pope Paul VI, On Development of Peoples

The Mission

"We are here to listen to stories, hear testimonies, and walk in solidarity with our partners."

-Delegates' Reflections

Since the implementation of NAFTA in 1994, Canadian churches have closely monitored the human rights situation in Mexico. Through the work of the inter-church coalitions and now KAIROS, Canadian churches have borne witness to the political, social, and economic consequences of NAFTA through strong partnerships, on-going monitoring and several delegations.

From March 11-19th, Canadian church representatives from across the country travelled to Mexico as part of a KAIROS organized delegation to witness first-hand the ongoing impacts and consequences of NAFTA (North American Free Trade Agreement) signed by Canada, Mexico and the US in 1993 and implemented in 1994.

At the request of KAIROS partners, delegates representing the Canadian Conference of Catholic Bishops (Archbishop Dan Bohan), the United Church of Canada (Wanda West), the Anglican Church of Canada (Rt. Rev. Sue Moxley), the Presbyterian Church in Canada (Rev. Mark Lewis), Canadian Religious Conference (Sister Sheila Moss), the Evangelical Lutheran Church in Canada (Bishop Ray Schultz), and the Chair of KAIROS: Canadian Ecumenical Justice Initiatives (Father Paul Hansen) went to Mexico focusing on three regions: the indigenous region of Chiapas, the northern border town of Ciudad Juarez, and centrally located San Luis Potosí.

Based on our experiences this report recounts our findings, making specific recommendations to the Canadian government.

Trade and Human Rights

The moral measure of any trade agreement should be its positive effect on the life and dignity of families and of poor and vulnerable workers, whose views should receive special attention in this debate.

-Andean Bishops, Feb. 24, 2005

Motivated by our faith commitment, the Canadian churches believe in the primacy of human rights and the integrity of creation. Canada's economic relations - of which trade and investment are key mechanisms - must be placed at the service of human beings and their communities, as dictated by our international human rights obligations.

The UN Charter, Article 103, clearly states that if a conflict arises between a state's obligations to the Charter and any other international agreement, obligations under the UN Charter must prevail. Moreover, at the World Conference on Human Rights in Vienna, in 1993, over 170 governments reaffirmed that the protection and promotion of human rights was the primary responsibility of governments. In that way, Canada is obligated to promote and respect human rights first and foremost and ensure that its trading partners do as well.

Although Canada has always prided itself as a human rights champion there is a clear contradiction between Canada's foreign policy regarding human rights and Canada's foreign policy regarding trade and investment. This contradiction became painfully evident to us in Mexico.

In the eleven years since NAFTA was implemented we have heard how the growth in exports tripled yet wealth was transferred to a small Mexican minority and to foreign corporate interests, mostly found in the maquila sector. Although there was significant growth in exports there was no real corresponding economic growth and neither more nor better jobs were created. As such, there have been few, if any, actual benefits to the Mexican economy. Whereas 47% of exported goods used to be made with Mexican parts now only 2-3% of parts are Mexican as intra-firm trading takes preference over supporting the domestic economy. Over 90% of banks are now foreign-owned. We heard how Mexico exports a great deal but that these exports are not very Mexican. Remittances from Mexicans who have migrated North to the US have become the second largest source of foreign exchange, propping up an economy in which most Mexicans cannot make a decent living.¹

This model facilitates poor pay, massive migration, desperate conditions and human rights violations that continue with impunity. NAFTA, it appears, has failed the majority of Mexicans.

Structural Impunity

The Case of Acteal

"The sense of sadness is still so strong in Acteal."

-Delegates' Reflections

Indigenous peoples in Mexico were amongst the first to resist the free trade model, declaring NAFTA a death sentence on its' date of implementation, January 1, 1994. The uprising led to an intensification of militarization and Chiapas in particular witnessed acute levels of repression and violence. This marked the beginning of a low-intensity war targeting all indigenous communities. A key strategy of the military was to use paramilitary forces to target non-aligned indigenous communities, such as Acteal.

On December 22, 1997, 49 community members were massacred by paramilitary forces in Acteal. The victims were mainly women and children. Since 1997 the Canadian churches have made several visits to the Acteal community. On this occasion the community took us through the town. A survivor pointed out bullet holes in the church, and we visited the tomb

¹ Meeting with Alberto Arroyo, renowned professor of economics, RMALC member.

where the victims are buried. Both are stark memories of this massacre committed against a community dedicated to non-violence.

We were told how the paramilitary attacked the community for six hours while police forces were merely 200 metres away, ignoring the incident. We were told by several human rights organizations that it is generally believed that paramilitary forces are trained and armed by the Mexican military.

To date those responsible for the planning and execution of the massacre have not been brought to justice. Today, the community of Acteal is not only concerned about the ongoing impunity but also about the ongoing presence of the paramilitary. We were told that the paramilitary continue to threaten, harass, and intimidate people and communities.

In February 2005, given the ongoing impunity, Fray Bartolome de las Casas Human Rights Centre, a partner of the Canadian churches, took the Acteal case to the Inter-American Commission on Human Rights (IACHR) at the Organization of American States (OAS). They argue that the massacre constitutes a crime against humanity and genocide, as all victims were Tzotzil Indigenous peoples. This is one of two cases before the IACHR for human rights violations that took place between 1995-2000 in Chiapas.

Systemic Murder of Women in Ciudad Juarez

*"I am thinking about the young girls in the choir who were so full of life and joy.
They are the same age as the young murdered girls."*

-Delegates' Reflections

One of our primary concerns when we arrived in Ciudad Juarez was to understand how so many women, mostly poor workers, could have been murdered (estimates between 300-450) and their murders remain unsolved. We heard that at least one hundred of the murders follow the same pattern where these young women are raped and tortured and their kidnapped bodies are burned and thrown in the desert or a deserted field. During our short stay in the city, we bore witness to yet another victim as another young women's body of between 15-18 years was found in an abandoned field. This targeted violence is carried out with total impunity and permeates cultural, social, and political structures of Juarez. The maquila industry continues to rely on female labour. We heard that while the maquila sector has grown massively since NAFTA was implemented, there has been no corresponding growth of social infrastructure. This type of stark contradiction between meeting economic development objectives and marginalizing social development provides a breeding ground for social violence, particularly targeted against women. In this climate, women's lives have become worth less: women are targeted because they are women.

Most disturbing is that this violence is coupled with an ineffective justice system that has yet to bring those guilty of these crimes to justice. This ongoing impunity is failing the poor women workers of Ciudad Juarez.

Canada's Role

In response to the ineffectual justice system, the ongoing impunity, and the lack of an adequate national response, the cases of the murdered women in Ciudad Juarez, and the

massacre in Acteal, have been brought before the Inter-American Commission on Human Rights (IACHR).

Both these cases demonstrate the contradictions between Mexico's international image as a country that respects, defends, and cares about human rights and the reality of ongoing human rights abuses, an ineffectual justice system, and ongoing impunity.

Canada prides itself as a human rights champion yet in the case of Mexico ---its trading partner --- Canada has been silent in speaking publicly about the ongoing impunity in these cases.

- We urge Canada to publicly express its concern surrounding the ongoing impunity in the cases of the Acteal Massacre and the systemic violence against women in Ciudad Juarez.

In order to influence and support respect for human rights in these cases and others in the Americas, Canada needs to become a more active participant at the Inter-American Commission on Human Rights (IACHR). To demonstrate its commitment to the promotion of human rights and to multilateralism, Canada should ratify all Inter-American human rights instruments, including the American Convention in Human Rights. Canada's ratification of the Convention would strengthen our voice in the hemisphere's human rights institution and improve Canada's capacity as well as the capacity of the IACHR to protect and uphold human rights. It would increase the influence of Canadian organizations and institutions over the rulings of the IACHR and the Inter-American Human Rights Court.

Although Canada has been hesitant to sign the American Convention on Human Rights for, as told to us by government officials, political reasons, several civil society organizations have developed an interpretative declaration to the Convention that would accompany ratification and address all political concerns.² This interpretative declaration to the Convention should accompany Canadian ratification to safeguard Canada's commitment to sexual equality. Other countries including Mexico have already ratified the Convention with a similar clarifying note. This viable solution calls into question Canada's political will to sign the Convention.

- We urge Canada to ratify the Inter-American Convention on Human Rights with the accompaniment of an appropriate interpretative declaration.

Systemic Human Rights Violations

"The apparent impunity for injustices is baffling. What is our government doing to push for an authentic change in the justice system in Mexico?"

-Delegates' Reflections

In Chiapas, we heard how there is still a strong military presence. There are many military bases and an ongoing presence of paramilitary troops. We met with local human rights defenders who spoke of many check points, some mobile, particularly along the Southern borders. Those we met with asked us to raise concerns regarding the increasing power of the

² Interpretative Declaration drafted by Rebecca Cooke of the University of Toronto, letter to Warren Allmand, Jan 29, 2001.

military. The military has been given more police power and retains judicial power despite the numerous recommendations by international organizations.

In Ciudad Juarez we learnt of several cases of torture: a young boy whose only crime was to seek an autograph on a small Mexican flag; a couple accused of murder who spent two years in jail being tortured; and two bus drivers who were incorrectly charged with the murders of the women, one of whom was covered in cigarette burns when he left prison.

We heard how human rights lawyers continue to be assassinated and how there is ongoing impunity in cases like that of Digna Ochoa. Digna Ochoa, a partner of the Canadian churches, was assassinated October 19, 2001 after receiving death threats since 1995. The government claimed that her death was a suicide, which led her colleagues to take the case before the IACHR. As a result of rulings there, the case has now been reopened. Almost four years later the case continues to remain unresolved. Since Digna Ochoa's assassination other human rights lawyers have been assassinated in several states including Oaxaca, Puebla, and Chihuahua.

We met with KAIROS partner Erendira Cruz Villegas, CENCOS (National Centre for Social Communication) Director who told us that while working in Oaxaca she began receiving anonymous threats and two months before our visit on January 15, 2005 her car was attacked.³ Later her house in Mexico City was broken into and the attackers left a dead fish - an obvious attempt to silence her and her work with indigenous human rights organizations in Oaxaca.

All of these crimes, we were told, continue with impunity. In order for justice to reign and human rights to be respected in Mexico, the government of Mexico needs to respond to the recommendations in the UN Human Rights Diagnostic⁴, including the recommendations that call for transformation of the justice system. Furthermore, Mexican human rights organizations are calling on their government to expand the mandate of the Office of the United Nations High Commissioner of Human Rights (OHCHR) in Mexico to include monitoring and follow up on these recommendations.

The people we spoke with felt that the Mexican government's National Human Rights Plan⁵, a response to the UN Human Rights Diagnostic and part of the Technical Agreement with the UN, is little more than a public relations exercise directed at the international community. Not only does the Human Rights Plan entirely exclude indigenous rights and militarization and the strong recommendations around these issues found in the UN Human Rights Diagnostic, it is vague and carries with it no timelines, no budget, and no specific outcomes. In the case of the justice system, in order to truly transform the system in an effective way that addresses pervasive impunity, the judicial system needs to be consistent with international agreements that include the elimination of torture and allow for due process.

We were surprised to hear about ongoing incidences of torture, political assassination and human rights violations. We see this lack of movement on fundamental human rights issues as a consequence of an unjust trade and investment model.

³ Amnesty International Urgent Action, AMR 41/002/2005, Jan 20, 2005.

⁴ Diagnostic on the Human Rights Situation in Mexico, Office of the United Nations High Commissioner on Human Rights, December 2003.

⁵ National Human Rights Plan for Mexico, December 2004.

Canada's Role

- We urge Canada to publicly support the national and international call for a transformation of the Mexican judicial system that includes the elimination of torture, allows for due process and is consistent with all international agreements and conventions.
- The Canadian government must assure that all aspects of human rights are addressed in Mexico, and that the Mexican government responds to the recommendations in the UN Human Rights Diagnostic. These recommendations need to form the basis of the National Human Rights Plan.
- We urge the Canadian government to support Mexican human rights organizations in their call for an expanded mandate of the office of the OHCHR in Mexico to include monitoring and follow up to these recommendations.⁶
- We urge Canada to call on the Mexican government to guarantee the safety and well-being of Erendira Cruz Villegas and all Human Rights Defenders in Mexico.

Indigenous Rights

"These people (the indigenous peoples) have experienced violence but they do not see themselves as victims.

They take on injustice with a strong sense of dignity and rights."

-Delegates' Reflections

We heard from indigenous groups in Chiapas and Oaxaca that indigenous rights including a community's right to land, resources (water, energy sources, etc.) and to self-determination need to be urgently recognized and respected. NAFTA directly threatens these collective rights.

In 1992, the Mexican government changed the constitution allowing for the privatization of communal land, paving the way for NAFTA and leaving indigenous peoples and their rights to land and resources vulnerable. We also heard that indigenous peoples and their collective rights to land are threatened because the Mexican constitution allows for the government to override collective rights if it feels it is acting for the betterment of the nation. This directly contradicts Mexico's obligations under ILO 169, which clearly states that indigenous communities must be consulted in the development of their land and resources⁷. We were told that now, under Plan Puebla Panama, indigenous peoples are witnessing numerous development projects impacting their collective rights; yet, they have not been genuinely consulted.

In August of 2001 the Mexican government passed a reformed indigenous law. Rather than addressing the fundamental rights of indigenous peoples enshrined in the San Andres Accord (signed in 1996) and articulated in the COCOPA proposal, the reformed law violates the principles of collective rights, self-determination, participation and equality.

⁶ Written statement submitted by the Miguel Agustin Pro Juarez Human Rights Centre and the Network of "All Rights for All" at the UN Commission on Human Rights, March 2005.

⁷ Convention 169 concerning Indigenous and Tribal Peoples in Independent Countries, adopted by the General Conference of the International Labour Organization, June 27, 1989; ratified by Mexico.

The UN Human Rights Diagnostic (December 2003) made strong recommendations on indigenous rights including the need, "to reopen the debate on constitutional reform with the objective of establishing the fundamental rights of indigenous peoples in keeping with international legislation and the principles of the San Andres Accord." - a recommendation that was ignored by the government when it developed its National Human Rights Plan.

KAIROS partner, Human Rights Centre Miguel Agustin Pro Juarez states, "The recognition of indigenous peoples continues to be on hold. The structural reforms in place seek to create an infrastructure to attract investment. This puts at risk indigenous land and natural resources because there is no legal framework to protect it."⁸

Canada's Role

- We urge the Canadian government to publicly express its concern over the ongoing lack of resolution surrounding indigenous rights, and Mexico's ongoing violation of the agreements in the San Andres Accord including collective rights, self-determination, participation and equality.
- We urge the Canadian government to press the Mexican government to actively respond to the UN Diagnostic Recommendations regarding indigenous rights and to reopen the debate on constitutional reform with the objective of establishing the fundamental rights of indigenous peoples in keeping with international legislation and the principles of the San Andres Accord.
- Canada's trade and investment agreements need to recognize the inalienable rights of indigenous peoples to their traditional territories, resources and traditional knowledge.
- Canada needs to ensure that all investment and development projects are in keeping with international law and that indigenous peoples are consulted and give their free, prior, and informed consent regarding any developments that impact their traditional territories or communities.⁹

Escalating Migration

"The border seems so close and yet it is completely unreachable to migrants due to the chain-link fence erected by the border patrol. On the Mexican side we saw cardboard box houses, on the US side we saw mansions on a hill."

-Delegates' Reflections

The Case of Subsistence Farmers in Chiapas

We bore witness to the disastrous effects of NAFTA on small farmers. We heard how accelerated tariff liberalization, a cutback in internal supports and open markets have resulted in a flood of corn, beans, coffee and other crop imports that have historically been produced in Mexico. We were told that fifteen million Mexicans (15%) have been affected by

⁸ Written statement submitted by the Miguel Agustin Pro Juarez Human Rights Centre and the Network of "All Rights for All" at the UN Commission on Human Rights, March 2005.

⁹ Convention 169 concerning Indigenous and Tribal Peoples in Independent Countries, adopted by the General Conference of the International Labour Organization, June 27, 1989; ratified by Mexico.

corn imports. Not only are small farmers unable to compete with these imports, many are also Genetically Modified (GM) products.

Mexico is recognized as the centre of origin of Maize with several thousand varieties being found there. Now, due to flooding that NAFTA facilitated, nine GM varieties of corn have been found in the country¹⁰. We were told, "Although they tell us that GM seeds are more productive and efficient, we do not want them. We do not want to be trapped into buying seeds every year. We want to continue to preserve seed as our ancestors have taught us."

The crumbling agricultural sector has left farmers in dire straits. In order to survive, indigenous and campesino farmers have begun migrating internally and further north in unprecedented numbers. Although Chiapas has always been a source of some migration, since free trade those numbers have skyrocketed. Now more than 5,000 indigenous people a month must leave to find work in order to survive. Over the last three years Chiapas has gone from being the 27th to the 11th state with the greatest migration as more and more farmers lose hope in subsistence farming. We heard testimonies in Señor del Pozo of families torn apart by migration.¹¹

The Case of Migrants in Ciudad Juarez

In Ciudad Juarez and El Paso, Texas we met with several organizations working with migrants. We were moved by the countless stories of migrants who were either migrating internally or taking tremendous risks to cross the border simply to ensure their families' survival. We heard of the dangerous conditions under which they travel to reach the border towns, how under duress they abandon their land in Chiapas and come to work in maquilas, and how many, having no other option, trek north through an increasingly militarized border. Remittances are now the second largest source of foreign exchange in Mexico. In 1995 remittances amounted to US\$3.7 billion. By 2004 they had skyrocketed to US\$16.6 billion.

Ciudad Juarez is a city of migrants. While there we witnessed the impact of the tremendous growth of maquila factories with no corresponding rise in development of social infrastructure, because the free trade model does not require any commitment to developing local infrastructure or the domestic economy. The Businessmen's Association confirmed that only between 2-3% of goods used in these assembly plants are Mexican, whereas before NAFTA factories could readily find and use almost all products from Mexican industries. Massive migration and oversupply of labour has led to harsh working conditions at very low pay. Everybody we spoke to declared that the minimum wage was so low that families were unable to survive. According to official cost of living standards, a family's survival depends on three and half minimum wages.

Canada's Role

Canada relies on Mexican migrant farm workers. Under the Seasonal Agricultural Workers Program (SAW), Mexicans can work up to eight months a year in Canada. We heard how this program generally creates a situation of "unfree labour" for migrants. Their mobility is restricted, there are no health and safety standards often leading to pesticide exposure, they work long hours, they pay into government programs like EI and CPP which they can't access, and their employers have the right to send them home under vague conditions outlined in the

¹⁰ "Food, Farmers and Global Trade: The Real Story," KAIROS, Global Economic Justice Report. Volume 3, Number 4, December 2004.

¹¹ Meeting with Miguel Pickard, CIEPAC, March 15, 2004.

“breach of contract” clause. The massive flow of Mexican migrants internally, and further north into the US and Canada, can be directly connected to the NAFTA economic model. Therefore, we were shocked to hear Canadian Ambassador to Mexico, Gatean Lavertu, claim that the problem of migrants in Mexico was a Mexican problem. Clearly, Canada as well as the US, bears responsibility for this phenomenon that results from a failed economic model.

- We urge Canada to ratify the UN International Convention on the Protection of the Rights of all Migrant Workers and their Families.
- We urge Canada to revamp SAW taking into consideration the concerns raised above.
- We urge Canada to recognize that the issue of Mexican migrants is the result of the economic model embodied by NAFTA. As a result, the crisis is the responsibility of all three signatory countries.

Corporate Accountability

“Around Jesus community was formed. Today we formed a community with the people of San Luis Potosí and Cerro de San Pedro with whom we walked. And that community is a witness.”

-Delegates’ Reflections

The Case of Cerro San Pedro & San Luis Potosí

At the request of the community of Cerro San Pedro and the Broad Opposition Front, a community coalition including members from the nearby capital San Luis Potosí, we

went to visit the proposed site of an open-pit gold mine that Metallica Resources, a Canadian mining company, is trying to put into operation. We were escorted by between fifteen and twenty-five community members who shared the story of their struggle with us as we visited the historic town of Cerro San Pedro. The 400-year-old town is still there, including an active church, and a municipal office. We learned that the town is close to being recognized as a UNESCO World Heritage site. It is already recognized federally as a national monument and lacks only the Governor’s signature and political will to be recognized by UNESCO.

We were shocked to learn that one of our own companies is pursuing a project that the villagers told us would destroy their homes, damage the unique ecosystem and contaminate the water supply. Residents say cyanide leaching from the mine operation will contaminate the aquifer that supplies 73 percent of the nearby state capital’s water supply and surrounding towns, a total population of three million people.

This threat to the village is a direct result of NAFTA. When Mexico amended Article 27 of its constitution allowing privatization of communal lands in preparation of NAFTA, it opened the door for companies like Metallica to associate themselves with communal landholders, to exploit those lands. The company’s Mexican subsidiary, Minera San Xavier, came to Cerro de San Pedro when NAFTA was signed a decade ago to develop the mine. Their own research suggests the mine will only operate for six to eight years and employ just 150-200 people, with only fifty of those being hired locally and at minimum wage. It will permanently destroy the village and local ecosystem in the name of profits, which are actually projected to be quite low.

Overcoming tremendous hurdles, community activists in Cerro de San Pedro and San Luis Potosí have successfully used the courts to halt Metallica's operations. Regardless, the company is still trying to undermine these victories. Most disturbing, Metallica Resources has publicly threatened to use NAFTA's Chapter 11 suing the Mexican government if they are prohibited from proceeding.¹²

Persistent Problems with NAFTA's Chapter 11

In Mexico, Chapter 11 has been used 15 times and thus far the government has been required to pay out US\$ 18.2 million dollars of public money. The most well known case was that of Metalclad. In 1994, US-based waste disposal Metalclad Corporation took over a toxic waste dump despite warnings of its history of contaminating local groundwater. Metalclad committed to cleaning up the site before reopening it and conducted an environmental audit. However, toxic waste continued to leak into the water supply from the site. Local residents described it as a "ticking time-bomb." Responding to broad community opposition, the municipality denied Metalclad a construction permit and the Governor declared the site a Protected Area.

Metalclad sued the government for expropriating its future expected profits and ultimately won, with Mexico paying out \$16 million in damages. In this case non-market related risks of investment were shifted from companies to governments.

NAFTA's Chapter 11 has been used in Canada as well to challenge legislation that protects Canadian human and environmental health. To date, the Canadian government has had 11 challenges filed against it and has had to pay US\$27 million dollars of public funds to corporations due to these challenges. The US has not been required to pay anything.

The Metallica case shares several commonalities with the Metalclad case. There is great fear that despite clear community opposition, potential environmental damage, and the fact that Cerro de San Pedro is on the brink of being named a World Heritage Site, the company will push ahead either using Chapter 11 or the threat of Chapter 11, leaving irreparable damage in its wake.

Canada's Role

Since 1995, despite sending a number of communiqués and letters to the Canadian embassy, community members told us we were the first non-mining Canadians to visit the community and witness the potential damage and destruction that would result from the start of mining operations.

We are extremely concerned about Canadian corporate activity abroad. This case demonstrates the need for Canada to implement binding obligations for corporations working abroad to ensure accountability.

Moreover, this case highlights the potential threat of NAFTA's Chapter 11 on a community's health and well-being. We feel that Canada can work to deter the company from filing a claim and call on them to respect the clear and well-articulated wishes of the community. At

¹² Margarita Palma G., *El Financiero*, Monday February 7, 2005. "Metallica Resources amenaza con acudir a los tribunales."

a minimum Canada can guarantee that no public support (monetary or otherwise) will be offered to Metallica Resources and its subsidiary Minera San Xavier.

Canada should press Metallica to pay heed to the recommendations contained in the World Bank Extractive Industries Review that state, "The World Bank Group (WBG) should not finance any oil, gas, or mining projects or activities (including through policy lending and technical assistance) that might affect existing World Heritage properties, current official protected areas, or critical natural habitat...or areas planned in the future to be designated by national or local officials as protected."¹³

Given that Cerro de San Pedro, due to political will only, is lacking the Governor's signature to name it as a UNESCO historical site, the Canadian government should do everything in its power to prevent Metallica from pursuing this mining project which has only served to tarnish Canada's image in the region. Sadly, we witnessed various graffiti directed at Canadians demanding that the " *Foreigners go home.* "

- We urge Canada to recognize Cerro de San Pedro as a World Heritage Site, speaking out publicly in support of the need for the UNESCO determination to be established.
- We urge Canada to ensure that no public support is given to Canadian companies running operations that do not have a community's consent. Ottawa should guarantee that Canadian corporate activity abroad is respectful of local communities and legal proceedings.
- As demonstrated by the case of Cerro de San Pedro, we urge the Canadian government to develop effective legal accountability, standards, monitoring, and compliance to guarantee corporate accountability.
- The case of Cerro de San Pedro, brings to light how NAFTA's Chapter 11 can be used either as a threat or in reality to directly challenge a community's wishes. Therefore, we call on the government to undertake a thorough and comprehensive review of NAFTA's Chapter 11 at Standing Committee of Foreign Affairs and International Trade (SCFAIT). Chapter 11 should be removed from NAFTA and not replicated in any other trade or investment agreement.

Conclusion

*"The Canadian churches have never been opposed to trade and investment.
But, the church has always been opposed to a model that
minimizes people and is fundamentally unjust."*

-Delegates' Reflections

As people of faith, we have a vision motivated by the economy of God, an economy of life and abundance that promotes sharing, globalized solidarity, dignity of persons, and care for the integrity of creation.

¹³ "Striking a Better Balance: The World Bank Group and Extractive Industries." (Final Report of the Extractive Industries Review, December 2003:57).

In Mexico, we heard how the free trade model creates the need to migrate, propagates unsafe working conditions for young female workers, results in countless people working for Fortune 500 companies while living in cardboard box houses, facilitates increasing militarization in indigenous territories, enables human rights violations with impunity, completely disregards social priorities, and supports extractive corporate activity despite a community's clear opposition.

In Mexico, eleven years into NAFTA, we bore witness to peoples' lives turned upside down by free trade structures that disregard a nation's sovereign rights to determine its own national development strategy and policy. Despite clear language in the UN Charter, free trade consistently overrides human rights, placing corporate gains and rights before people, communities, and the earth.

In Mexico, the free trade model fails the poor.

Although Canada has always proclaimed itself as a champion of human rights and recognized promotion and respect for human rights as one of its foreign policy goals, there is a clear disconnect between Canada's approach to trade and investment and its stated commitment to upholding human rights. It is time for Canada to address this fundamental contradiction and bring its trade and investment strategy in line with its stated goal to respect and uphold human rights while insisting that its trading partners do the same.

Canada's Role

- We urge Canada to recognize and address the fundamental flaws inherent in NAFTA and the free trade model that it continues to replicate. Canada needs to reorient its strategy to one that respects people, communities, and the environment first.
- We urge Canada to recognize that, Chapter 11 rules in particular have had disastrous consequences on the people of Canada and Mexico and require a thorough and comprehensive review by the Standing Committee on Foreign Affairs and International Trade (SCFAIT). Chapter 11 should be removed from NAFTA and not replicated in any other trade or investment agreement.
- In order to ensure the respect for dignity of all persons, trade and investment agreements need to recognize the primacy of respect for human rights. This includes all UN declarations and covenants including: the UN Declaration for Human Rights, the Covenant on Economic, Social, and Cultural Rights, and also the ILO169. In order to guarantee that these human rights obligations take precedence on more than paper, enforcement mechanisms that promote compliance and accountability need to be developed and implemented.
- All trade and investment agreements that Canada is involved in need to recognize and respect national sovereignty and the primary responsibility of the state to safeguard the well being of its citizens.

Appendix A Summary of Recommendations

Based on our findings, we call upon the Canadian government to:

Trade and Human Rights

- Promote and respect human rights first and foremost and ensure that its trading partners do so as well.

Structural Impunity

- Publicly express its concern surrounding the ongoing impunity in the cases of the Acteal Massacre and the systemic violence against women in Ciudad Juarez.
- Ratify the Inter-American Convention on Human Rights with the accompaniment of an appropriate interpretative declaration.

Systemic Human Rights Violations

- Publicly support the national and international call for a transformation of the Mexican judicial system that includes the elimination of torture, allows for due process and is consistent with all international agreements and conventions.
- Assure that all aspects of human rights are addressed in Mexico, and that the Mexican government responds to the recommendations in the UN Human Rights Diagnostic. These recommendations need to form the basis of the National Human Rights Plan.
- Support Mexican human rights organizations in their call for an expanded mandate of the Office of the High Commissioner of Human Rights in Mexico to include monitoring and follow up to these recommendations.
- Call on the Mexican government to guarantee the safety and well-being of KAIROS partner, Erendira Cruz Villegas and all Human Rights Defenders in Mexico.

Indigenous Rights

- Publicly express its concern over the ongoing lack of resolution surrounding indigenous rights, and Mexico's ongoing violation of the agreements in the San Andres Accord including collective rights, self-determination, participation and equality.
- Press the Mexican government to actively respond to the UN Diagnostic Recommendations regarding indigenous rights and to reopen the debate on constitutional reform with the objective of establishing the fundamental rights of indigenous peoples in keeping with international legislation and the principles of the San Andres Accord.

- Recognize the inalienable rights of indigenous peoples to their traditional territories, resources and traditional knowledge in Canada's trade and investment agreements.
- Ensure that all investment and development projects are in keeping with international law and that indigenous peoples are consulted and give their free, prior, and informed consent regarding any developments that impact their traditional territories or communities.

Escalating Migration

- Ratify the UN International Convention on the Protection of the Rights of all Migrant Workers and their Families.
- Revamp Seasonal Agricultural Workers Program (SAW) so that migrants are eligible to access government programs they pay into, that their healthy and safety standards are met and their mobility unrestricted.
- Recognize that the issue of Mexican migrants is the result of the economic model embodied by NAFTA. As a result, the crisis is the responsibility of all three signatory countries.

Corporate Accountability

- Recognize Cerro de San Pedro as a World Heritage Site, speaking out publicly in support of the need for the UNESCO determination to be established.
- Ensure that no public support is given to Canadian companies running operations that do not have a community's consent. Canada needs to guarantee that Canadian corporate activity abroad is respectful of local communities and legal proceedings.
- Develop effective legal accountability, standards, monitoring, and compliance to guarantee corporate accountability.
- Undertake a thorough and comprehensive review of NAFTA's Chapter 11 at SCFAIT. The case of Cerro de San Pedro, brings to light how NAFTA's Chapter 11 can be used either as a threat or in reality to directly challenge a community's wishes.

Conclusion

- Recognize and address the fundamental flaws inherent in NAFTA and the free trade model that continues to be replicated. Canada needs to reorient its strategy to one that respects people, communities, and the environment first.
- Recognize that Chapter 11 rules in particular have had disastrous consequences on the people of Canada and Mexico and require a thorough and comprehensive review by the Standing Committee on Foreign Affairs and International Trade. Chapter 11 should be removed from NAFTA and not replicated in any other trade or investment agreement.

- Recognize, in law the primacy of respect for human rights in order to ensure the respect for dignity of all persons in trade and investment agreements. This includes all UN declarations and covenants including: the UN Declaration for Human Rights, the Covenant on Economic, Social, and Cultural Rights, and also the ILO169. In order to guarantee that these human rights obligations take precedence on more than paper, enforcement mechanisms that promote compliance and accountability need to be developed and implemented.
- Recognize and respect national sovereignty and the primary responsibility of states to safeguard the well being of their citizens in all trade and investment agreements they participate in.