



Policy Briefing Paper

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The Cerro de San Pedro Case

A Clarion Call for Binding Legislation of Canadian Corporate Activity Abroad

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This document was presented to the Canadian government in November 2006, as part of its consultation process on the impact of Canadian mining companies operating abroad.

In March 2005, at the request of Mexican human rights partners and the Broad Opposition Front (FAO), a KAIROS church leaders delegation traveled to the community of Cerro de San Pedro, Mexico. The church leaders were the first Canadian delegation not related to Metallica Resources mining operation to visit the community. Delegates heard testimonies of the community's decade-long struggle to stop Canadian company Metallica Resources from continuing its operations that the Mexican courts themselves have repeatedly determined to be illegal.

Since then KAIROS: Canadian Ecumenical Justice Initiatives has maintained a close relationship with community members and grassroots activists who make up the FAO – Broad Opposition Front. In April 2005 KAIROS invited Ana Maria Alvarado, a Cerro de San Pedro and FAO community leader, to Canada to speak to Canadians and the government about the impacts of Metallica Resources Inc. on her community.

Ana Maria Alvarado joined KAIROS in a KAIROS forum on Resource Extraction and Impacts on Local Communities during a return visit in April 2006. While in Canada, KAIROS accompanied her to Ottawa where she met with members of parliament and government departments to address the need for affected communities to be active participants of any roundtable process that discusses Canadian mining in developing countries.

KAIROS feels that the Cerro de San Pedro case strongly demonstrates why the government needs to enact binding legislation to hold Canadian companies accountable for their activity abroad.

Metallica Resources Inc is ignoring the clear wishes and demands of Cerro de San Pedro and the broader community as evidenced in a recent Popular Consultation process. Moreover, the company has ignored Mexican court decisions that have consistently come down in favour of the community.

Community Rights Must Be Respected

One year after the implementation of NAFTA in 1994, Canadian mining company Metallica Resources Inc. announced its intentions for the community of Cerro de San Pedro, San Luis Potosi, Mexico - to establish an open pit gold and silver mine through its wholly owned subsidiary Minera San Xavier (MSX). Local residents soon discovered that the proposed operation would irreparably harm their 400-year old town. Cerro de San Pedro is just one signature short of being recognized as a UNESCO heritage site. That signature belongs to the Governor whose reluctance to sign has been attributed to political alliances and collusion with the company.

Moreover, the company's own environmental impact assessment revealed that the proposed operation would displace the population, cause irreparable dam-

age to the environment and leach harmful cyanide into the water supply of the 1.5 million inhabitants in the surrounding area. Yet the study's "official" conclusion was that this was a safe operation, and so Metallica has tried to forge ahead.

The Cerro de San Pedro operation will use 16 tons of cyanide mixed with 32 million litres of water daily. Metallica has requested a permit from the National Water Commission to use 1 million cubic metres of water a year. The mine and cyanide leaching (the process used to separate the gold from the rock) would take place near the same aquifer which provides 90% of the water to the valley of San Luis and 73% of the water to the nearby state capital. Local food crops and over 1.5 million people rely on this water supply.

150mg of cyanide alone is enough to kill an adult. The community has researched countless examples of how mining companies using cyanide leaching have indeed contaminated local water supply and air, and contributed to the destruction of entire watersheds. In 1998 the state of Montana banned cyanide heap leaching for exactly this reason. Yet, Metallica has already built platforms to house several cyanide tanks.

In addition, Metallica has requested a permit for 25 tons of explosive for daily use in an open pit mine. The explosions threaten to damage the buildings and put residents at risk, yet most have refused relocation. 75,000 tons of earth and rock would be blasted daily and of this 32,000 tons would be used to extract gold and silver. After 8 years, the mining activities would leave a mountain of 80 million tons of toxic waste and 120 tons of acidic sulphur waste.

A state decree known as "*September 23, 1993 State Decree*" recognizes Cerro de San Pedro and the surrounding area as a protected site for at least twenty years because of the unique flora and fauna in the region. The decree outlaws any activity, clearly including preparatory blasting, *that would lead to changes in the subsoil*.

As a result, any explosives permits that Metallica has been granted by the Ministry of National Defense are illegal and unacceptable. On more than one occasion – the most recent being February 2006 – the Mexican courts have annulled Metallica's temporary permit to use explosives because the permit clearly contravenes this state decree. Yet Metallica Resources Inc. has gone ahead with blasting and other operations, in complete violation of Mexican law.

Finally, research (and the company's own website) suggests the mine would operate for only 6-8 years and employ only 80 local people at minimum

wage, thus raising questions about the project's feasibility.

A Community Under Siege Responds

In response to these alarming impacts, the community, local environmental and human rights groups, and the authentic communal landowners formed the Broad Opposition Front (FAO), a broad-based coalition determined to stop Metallica from destroying their homes, village and environment.

For over ten years, the community and the FAO have been engaged in a legal battle with Metallica Resources Inc. The courts have consistently handed down judgments in favour of the community including the recent annulment of Metallica's explosive permit. Most recently on October 31, 2006 Metallica sent out a press release indicating that it could legally proceed with preparatory explosions and has done so – in complete contravention of Mexican law. Yet, community members have informed KAIROS that Metallica's communiqué is untrue and is demonstrative of the ongoing harassment that they have borne witness to for years.

Mexican Judicial System Weak

In the case of Cerro de San Pedro, KAIROS learned that although the law is clearly on the community's side, the Mexican authorities continue to demonstrate a complete lack of political will to enforce the law at different levels of government, beginning with the Governor's unwillingness to sign documents to recognize Cerro de San Pedro as a UNESCO World Heritage site and including various different levels of government including the Ministry of the Environment and the Ministry of Defense.

KAIROS agrees with community members that many of the court developments and events over recent years are contradictory and illogical, given the existing state law and the evidence of the impact that the proposed mining operation would have on the community, the historic site and the fragile biodiversity. These actions appear to undermine the independence and integrity of the Mexican court system.

In the case of Mexico, what is clear is that the judicial system is weak and many officials lack the political will to enforce decisions. This claim is supported by the Office of the United Nations High Commissioner on Human Rights' extensive report, "Diagnostic on the Human Rights Situation in Mexico" that details problems within the Mexican judicial system and "encourages the profound transformation of the justice system." It calls for "the powers pertain-

ing to the Judicial Branch of the Federation (to) encompass the jurisdictional entities that lie under the power of the Executive Branch, including labour, administrative, agrarian and military courts.”

Given these concerns, articulated by the highest international human rights body, the United Nations, KAIROS believes that the decade-long legal proceedings in this case need to be scrutinized by impartial authorities such as the OAS Inter-American Commission on Human Rights to ensure that the *elijido* owners’, community’s, and FAO representatives’ rights have not been violated.

Therefore, the best way to safeguard the community’s wishes and legally recognized rights is through binding legislation back home in Canada that would ensure that companies like Metallica Resources are not taking advantage and the Canadian government is not infringing upon Mexico’s sovereignty.

NAFTA Relationship Prioritizes Corporate Rights Over Community Rights

The North American Free Trade Agreement (NAFTA) has granted corporations rights that have the potential to supercede national courts and constitutions and ignore international human rights legislation and community wishes. In the case of Cerro de San Pedro, Metallica Resources has publicly threatened to use NAFTA’s Chapter 11 dispute-settlement mechanism on several occasions if courts hand down judgments against Metallica. Chapter 11 allows corporations to sue governments over any legislation that inhibits their ability to run their business. In past Chapter 11 suits, federal governments have ended up handing corporations millions of dollars.

In the media, as recently as October, Metallica Resources representatives have threatened to resort to using NAFTA’s Chapter 11 if the courts try to prohibit them from moving their operation forward. Just the threat of such a suit has proven, in other examples, to provide a chill-effect within governments, thus further destabilizing an already weak judicial system.

Community Resistance in the Face of Threats, Intimidation and Violence

Given the reality of the ongoing inability of Mexican officials to protect their rights, their community, and the surrounding fragile ecosystem, residents have added civil resistance to their legal struggle against Metallica.

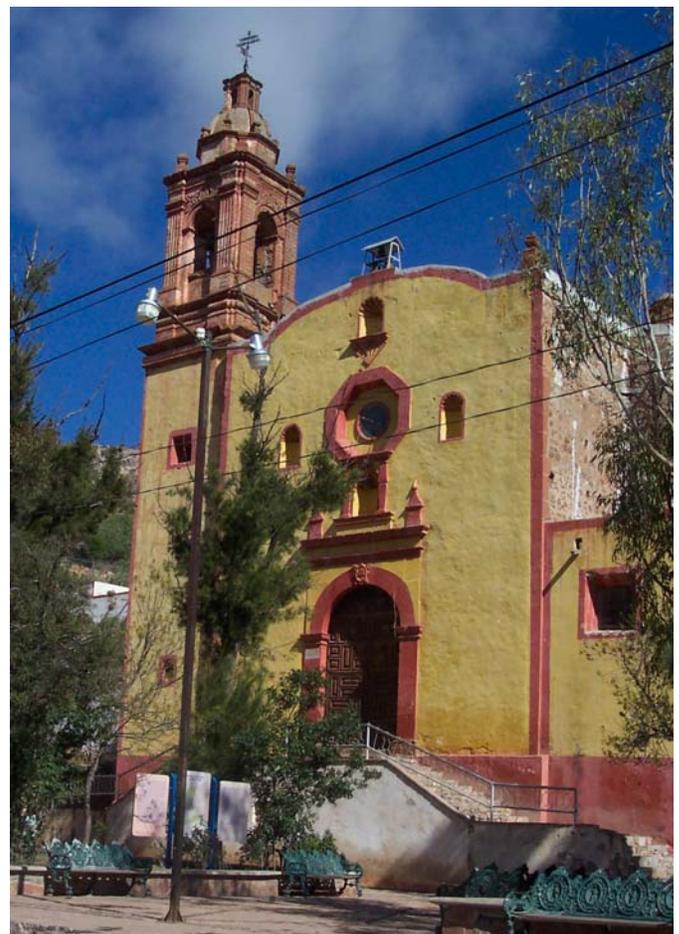
In April 2006 the FAO and community members felt they had no choice but to begin civil disobedience in order to physically stop the mining operation by

peacefully placing themselves in the path of Metallica’s machinery.

This peaceful action was met with violence and harassment. On April 14, employees of Minera San Xavier (MSX) reportedly attacked two members of the FAO. Enrique Rivera Sierra, FAO’s lawyer, was repeatedly struck on the head. Witnesses heard his assailants shout, “let’s see if you continue speaking against Minera San Xavier, my boss will be very happy with my work and if you continue talking, you are going to die....”

Other FAO members have been charged with defamation, invasion and delinquency in an effort to criminalize their legitimate right to protest and resist.

KAIROS is extremely concerned about reports of repression and violence on the part of state security forces and police against community members and the FAO. In a Fall 2005 demonstration, 5 members of the FAO were injured and 20 were arrested as they participated in a peaceful demonstration against the mining operation. In particular, KAIROS is concerned about community spokesperson, Martin Faz who was



*One of two historic churches in Cerro de San Pedro threatened by MSX activities
photo: R. Jeremic*

beaten on September 30, 2005 while video taping the demonstration. In addition Metallica tried to launch defamation cases against 20 members of the FAO. This was a clear effort to intimidate FAO members and infringe on their right to dissent, to protest, and to exercise their full freedom of expression and association. Their testimonies give witness to emerging human rights violations that must be urgently addressed.

Referendum on Metallica Resoundingly Rejects Mining Operation

The Broad Opposition Front continues to find community support for their call for the complete withdrawal of Metallica Resources from the Cerro de San Pedro community.

On October 22nd and 23rd, 2006 the FAO carried out a popular referendum on the status of the mining operations. The State Electoral Commission, the State Government, and the Mining Company were all invited to participate as observers. Beginning in mid-September 50,000 flyers, 3000 official announcements and 1000 posters were distributed alongside paid ads in both print and radio media. There were 68 voting centres located in four municipalities. Participants were asked seven questions regarding the MSX operation with the last question being, "Do you agree with the installation of Mineral San Xavier (Metallica's subsidiary) in Cerro de San Pedro?" Of the 19,608 people that participated 19,050 people voted NO, 486 Yes and 72 ballots were voided. In other words, 97.59% of residents voted against Metallica continuing its operations in Cerro de San Pedro.

Not only is it time for Metallica to acknowledge the community's wishes, but it is also time for the Canadian government to ensure that it does so.

Conclusions and Recommendations

The Cerro de San Pedro case clearly demonstrates how voluntary measures are entirely inadequate in regulating Canadian corporate activity abroad. In this case, the company is ignoring national courts and legislation, taking full advantage of a weak judicial system, threatening irreparable ecological damage, violating human rights and ignoring – for more than a decade now – community rights, demands and wishes.

The Canadian government must stop Metallica from operating in contravention of Mexican law. However, at the moment it has no power to apply any binding environmental or human rights standards to Canadian corporations operating overseas. It is time our government adopted such legislation, based on Canada's existing obligations under international hu-

man rights and environmental agreements, for Canadian corporations operating abroad. Cerro de San Pedro constitutes a clarion call for regulating Canadian corporate activity abroad through binding legislation.

Canada must make incorporation contingent upon ensuring Free, Prior and Informed Consent (FPIC) of the community in question, as well as respect for existing UN human rights and environmental standards.

These international standards must take precedence over any trade and/or investment agreements that Canada signs.

The Canadian government must develop mechanisms to withdraw incorporation if these standards are not met and put in place mechanisms to monitor compliance.

Despite 10 years of tiring legal battles, harassment, and injustice, the community's resolve remains firm: "*They have not defeated us legally or morally. They have not crushed our spirits. Rather we want to expand and amplify this energy and support by building an international front or movement of communities resisting mining operations, so that we are no longer participating as individual struggles.*"

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KAIROS: Canadian Ecumenical Justice Initiatives unites eleven churches and religious institutions in work for social justice in Canada and around the globe. KAIROS Policy Briefing Papers are produced with the support of a grant from the International Development Research Centre, Ottawa, Canada.