

The Accountability Gap:

Highlights from the February 2013 Delegation to Examine Canadian Mining Operations in Mexico



Joshua Berson

Watch the video,
“The
Accountability Gap”
www.usw.ca

Francisco Pacheco Maciel and Maria Isabel Orona Segura. Members of La Sierrita hoped the arrival of Excellon Resources would lead to a better life: It hasn't happened. Francisco had a job in the mine but in 2012, along with 50 others, he was fired by Excellon.

From February 11 to 21, 2013, nine Canadian trade unionists and civil society representatives participated in a solidarity and fact-finding delegation to learn first-hand about the impact of Canadian mining companies on workers and communities in Mexico. The gender-balanced delegation was made up of representatives from the United Steelworkers Union (USW), including activists from a nickel mine in northern Quebec (Raglan Xstrata) and a coal mine in Elkford, British Columbia (Teck), the Communication, Energy and Paperworkers Union of Canada (CEP), the Canadian Union of Public Employees (CUPE), and Kairos: Canadian Ecumenical Justice Initiatives. The unions represented include the largest public sector union in Canada and two of the largest private sector unions, that together represent the majority of workers in



the extractive sector in Canada.

In Mexico City, the delegation met with representatives from REMA – Mexican Network of Mining-Affected Communities, ProDESC (Project for Economic, Cultural, and Social Rights), and the national leadership of Los Mineros (Sindicato Nacional de Trabajadores Mineros, Metalúrgicos, Siderúrgicos y Similares de la República Mexicana). The delegation then divided into two parts.

One group visited the state of Durango and met with the leadership and members of the Ejido of La Sierrita and Section 309 of Los Mineros (Sindicato Nacional de Trabajadores Mineros, Metalúrgicos, Siderúrgicos y Similares de la República Mexicana) where the Canadian mining company Excellon Resources operates its La Platosa silver mine.



Examining Canadian Mining Operations in Mexico



Rosalinda Sanchez (centre) guiding the 2013 delegation in Oaxaca.

The delegation interviewed individual workers who alleged that they were terminated by Excellon Resources because they were exercising their rights to join a democratic trade union, as well as the widow of Paulin Contreras – a worker killed in a workplace accident at the Excellon mine in 2010. The delegation also interviewed individual Ejido landowners from La Sierrita and Banco Nacional. Workers and community members denounced Excellon's breaking of agreements with the Los Mineros miners' union and communal landowners.

The second group visited the state of Oaxaca and met with a number of organizations and community groups, which included the Colectivo Oaxaqueño en Defensa de los Territorios, community leaders and activists in Calpulalpam, where the Canadian mining company Continuum Resources was forced to shut down due to environmental damage in the community, and

CPUVO (Coordinating Committee of the United Peoples of the Ocotlan Valley) in San José del Progreso, where Canadian mining company Fortuna Silver operates. The delegation heard of alleged cases of corruption, environmental damage, murders and physical abuse. The group also met with members of Peace Brigades International (PBI) and one of three priests that PBI has accompanied in the last few years, Father Martin Octavio Garcia Ortiz, a victim of physical violence because of his involvement in an environmental project in San José del Progreso. Finally,

the delegation met with the Sub-Secretary of Indigenous Rights of Oaxaca State, Hugo Aguilar Ortiz.

The delegation requested interviews with representatives of Excellon Resources and Fortuna Silver. Excellon Resources rejected the request, both in writing prior to the delegation's arrival in Mexico, and again when a request was made at the La Platosa mine gate. Fortuna Silver never replied.

Following the visits, the delegation met with officials in the Canadian Embassy in Mexico to report on its observations and convey its concerns with the profound lack of respect shown by Excellon Resources and Fortuna Silver for the workers and communities in which they operate.

The delegation planned to write a report on its findings, and will do so. This document highlights the main observations and initial findings of the delegation.



Excellon Resources' La Platosa mine in Durango, Mexico.



February 15, 2013, Excellon's Security relays the message that no one is available to speak to the delegation.

Fortuna Silver – Community and Indigenous Rights

Fortuna Silver Mines Inc. is a Vancouver-based mining company with operating mines in Mexico and Peru. For the 9 months ending September 2012, Fortuna reported sales of \$123 million, and pre-tax net income of \$37 million.

In 2006, a Fortuna subsidiary, Compañía Minera Cuzcatlan S.A. de C.V., initiated its operations in San José del Progreso, a community in the state of Oaxaca about 50 km south of the city of Oaxaca. Mine production started in 2011 and according to the company employs 450 people. The problem is that, according to many in the community, Fortuna had not properly consulted with the community prior to starting operations. There may have been contact with municipal leaders, and perhaps some parts of the community, but the 2013 delegation did not see any evidence of the kind of community consultative processes that would be called for under international norms such as Convention 169 of the International Labour Organization, or the United Nations Declaration on the Rights of Indigenous Peoples.

Lack of consultation and lack of community involvement was the start of conflict and division in the community. Some community members advocated for dialogue, but both the government and company rebuffed them. Over time, the community polarized between supporters of the mine, and its opponents.

What do you do to get action on your issues?

In Latin America, after you've tried calls and letters, you protest by putting up a road block. On March 19, 2009, 150 residents of affected community members of the CPUVO peacefully closed the road leading to the mine. They stayed for 51 days, demanding that the Ministry of the Environment cancel the mining project due to environmental damage, particularly arsenic and cyanide pollution in nearby rivers. On May 6, 2009, the police violently removed protestors that continued to block the entrance to the mine. Twenty-three were arrested (most released shortly thereafter) and the issues remain unresolved.

Opponents of the Mine Complain of:

- ✗ Noise
- ✗ Toxic dust
- ✗ Dry wells
- ✗ Impacts on fertility of land
- ✗ Contamination of ground and surface water
- ✗ Livestock dying



Fortuna Silver's Mine began production in 2011.



"Yes to life; no to the mine".

Fortuna Silver Brings Conflict to San José del Progreso Padre Martín – Organizes Community – Pays the Price

Joshua Berson



“ When a company has a project, along with the government, it presents it to the community. If the community is interested, the project is carried out, if not, it doesn't.

That is what we want here, nothing more than that. We are not asking for anything else or that the company is shut down. That is not our position. All we want is that you ask the community. In our country, community consultations are never ever taken into consideration. [We are pushing]... so that consultations are adopted as a mechanism to implement those projects, but we haven't had any favourable results.”

Padre Martín Octavio García Ortiz
Catholic Priest at San José del Progreso
(Until he was transferred to a new posting and replaced with a priest reportedly favourable to the mine).

The catholic priest serving the parish of San José del Progreso in the mid 2000s started organizing workshops and forums with community organizations and residents on the impact of mining on the land and water. He was accused of instigating opposition to the mine. He claims that he never spoke out against the mine. He says his only concern was building awareness among community members of the impact of the operation and to help residents deal with it.

Padre Martín reports that the company met with him several times to offer him support for church programs in exchange for his support for mining operations. He also reports that representatives of the Canadian embassy met with him to

try to convince him of the benefits of the mine to the community. His response was unchanged: all that he and the community wanted was proper consultation.

In 2010, Padre Martín was severely beaten and detained for several days, allegedly by a company-funded group in the community called “San José, Defending Our Rights”. A few days later, he was arrested by police and detained without medical attention. He was later transferred to a hospital where he remained, without charges, for 18 days before he was released. To date, there has been no investigation of this case, and no one has been charged with the assault or confinement.

The Impact of Fortuna Silver – Community Divisions

Murder of Two Community Activists Associated with Conflict Over Cuzcatlán Mine

Bernardo Méndez, an anti-mining activist in the CPUVO, was shot to death on January 23, 2012 by a municipal police officer in a confrontation with a work crew installing a water pipe. Members of the CPUVO believed that the pipe would divert water to the mine. When the police fired into the crowd, Abigail Vásquez was also seriously injured.

On March 15, 2012, after continuous threats, **Bernardo Vasquez Sanchez**, leader of the CPUVO and an outspoken opponent of the mine, was assassinated. The crime was perpetrated by an armed group that also seriously wounded Bernardo's cousin, Rosalinda Dionisio Sanchez, and his brother Andres Vasquez Sanchez.

Was the company involved? The company strenuously denies any involvement in the murders, and no evidence linking the company to the murders of Bernardo has come to light (although some members of the community are not convinced by the company's denials).

Clearly, Fortuna Silver's mine has impacted the community's cohesion. Quite apart from any negative impact on the environment and agriculturally-based activity, mining developments often bring competition for jobs and for business opportunities in supplying or servicing the mine. That would not be a surprise. But whose job is it to manage those tensions? Clearly, government has a primary role. But when government isn't able or interested, what is the role of the companies themselves? Do the human rights obligations of Fortuna Silver extend beyond a compliance with local laws?



Inchua Barcom

"They got my husband like they would have gotten a child – he had nothing to defend himself with. I hope you can help us get the mining company out of here".

Dolores Gonzalez, spouse of murdered Bernardo Mendez

"We, as a company, and our team in Oaxaca, are saddened by these senseless and continued acts of violence in the town of San José, related to a long-standing political struggle for local power.It is not the first incident of this nature in the last few years. It is in no way related to our activities or involves company personnel..."

Fortuna Silver CEO Jorge Ganoza, Jan 25, 2012.



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"Bernardo your end has come – Dog" Threat painted on wall before Vásquez's assassination.



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Community Flag of Resistance, with portraits of two murdered activists.

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Rosalinda Sanchez, CPUVO - Coordinating Organization of the United People of the Ocotlán Valley. Shot on March 15, 2012, she now walks with a cane, but continues to resist the mine.



The 3 Pillars in the United Nations Framework for Business and Human Rights:

- State duty to Protect
- Business duty to Respect
- Access to Remedy

“The responsibility to respect human rights requires business to seek to prevent or mitigate adverse human rights impacts that are directly linked to their operations... even if they have not contributed to those impacts”

The UN’s Framework for Business and Human Rights says that companies have a duty to respect human rights, and that a business cannot avoid their responsibilities because a government is unable or unwilling to fulfill its duty to protect human rights. A company’s human rights obligations are not satisfied by simply sitting back and stating that host country laws are being respected. In San José del Progreso, there have been impacts on the human rights of mine opponents and human rights defenders, and arguably on the community as a whole (for example, the right to clean water). When Fortuna Silver arrived in the community, it knew, or should have known, that mining would bring with it community tensions and competition.

Did it do anything to try to manage those tensions? If it did, it was not apparent to the 2013 delegation. On the contrary, by so clearly favouring one part of the community (the part that supported the mine), the company either deliberately or inadvertently created or deepened community divisions, and contributed in a significant way to the creation of a climate of distrust, hostility, and fear. And today, assuming that Fortuna Silver is fully aware of the serious divisions in the community and that there have been threats of violence against mine opponents, and that the lives of community activists may be at risk, doesn’t the company have an on-going obligation to use its resources and its influence to ensure rights are respected and protected?

Joshua Berson



Aunt of the murdered Bernardo Vásquez

Excellon Resources Inc.'s La Platosa Mine

Excellon Resources Inc. is a Toronto-based company operating a silver-lead-zinc mine in Durango, Mexico and a mill in Zacatecas. It also carries out exploration programs in Quebec and Ontario. Excellon reported \$48 million in sales in 2011 (\$27 million for first 9 months of 2012), and pre-tax net profits of \$4 million (\$2 million for 9 months in 2012). Excellon began operations in Mexico in 2004 after entering into an agreement with the Ejido La Sierrita (communal landowners). The Ejido was not prepared for the arrival of a mining company, and the community leaders at that time signed an agreement without the proper community authorization. The community has since engaged in a long struggle to get the attention of the company, negotiate with the company, and then get the company to live up to the agreement. The community has gone from hope, to protest and pressure, to disappointment and frustration. Now many want Excellon simply to pack up and go home.



Joshua Berson

"When the mine arrived our expectations were that we were going to live a little bit better here. We felt encouraged because we thought we were going to improve our community. We thought we'd be able to improve our housing and build a better future for our children, grandchildren, and great-grandchildren. We thought the Ejido, our community would change, but that hasn't been the case".

Maria de la Luz Santa Cruz Calderon
Member of the Ejido La Sierrita



Joshua Berson

"We hoped our children would get a better education because their parent would have a secure job and a better salary. We hoped that students would be able to obtain scholarships so that their education wouldn't have to end after primary school, but they could go on to university".

Maria Dora Alicia Ramirez Soto
Member of La Sierrita's negotiating committee that has tried to get Excellon to live up to the 2008 agreement.



Joshua Berson

Edwin was interested in the 2013 Canadian delegation when they visited La Sierrita. What will his future be? Over the last decade, many from La Sierrita, particularly the men, have left – often to find work in the United States. It was the hope of bringing back home the many from La Sierrita that have left that motivated the community to try to negotiate economic development support from Excellon.

Squanders Initial Good Will and Dashes Community Hope The Ejido now Wants Excellon out



Joshua Berson

Daniel Pacheco, past president, and David Espinoza, current president of the Ejido, review maps showing land ownership with the 2013 Delegation.

"We thought the Canadians would live up to their word. We believed them when they made these promises".

Maria Dora, La Sierrita

In 2008, after a blockade of the mine for failure to live up to a previous contract, La Sierrita and Excellon successfully negotiated an agreement for land use. La Sierrita agreed to sell Excellon some land for the mine and lease for temporary use another 1,100 hectares. The community had high hopes, but it soon became apparent that the company was not going to comply with much of the agreement. After many attempts to talk with the company, the Ejido peacefully blockaded the mine on July 8, 2012. The company claimed it was an illegal action, but the Ejido insists the blockades were on property owned by a neighbouring Ejido and a local landowner. A representative of the Ejido Banco Nacional confirmed to the delegation that he had provided his permission. On August 29, 2012, with the assistance of police and military, Excellon

In a 2008 Agreement, Excellon agreed to a number of things, but it hasn't lived up to many of its commitments

- ✓ Annual rental payments of \$500,000 USD
- ✓ Annual payments of \$50,000 USD to Economic Development Fund
- ✓ 600,000 Excellon shares for Ejido
- ✗ Jobs for members of Ejido
- ✗ Training for Ejido members to progress to better jobs
- ✗ Water treatment plant to treat mine discharge water
- ✗ Concession to provide food services
- ✗ Concession to transport concentrate to mill
- ✗ Contract to transport workers to mine
- ✗ Ask permission for further exploration on Ejido land
- ✗ Scholarships for Ejido students [Excellon initially complied but since stopped]

re-entered the mine. The Ejido, with the support and participation of members of Section 309 of Los Mineros, maintained protest camps. On October 24, 2012, Excellon, reportedly under the watchful eye of Robert Moore, Excellon's COO, forcibly entered the camp, and with the mine's heavy equipment bulldozed the make-shift camp, then set fire to it. For the women who were present at the time, it was a traumatic and humiliating experience. As a result of Excellon's entrenched positions, the Ejido decided that it would take Excellon to court in order to nullify the agreements, on the basis that the company has made no effort to comply with several key terms of the agreement. Excellon made no effort to participate in court-ordered mediation, and the Ejido's lawyers are now preparing their case for the first court date set for late April 2013.

Health and Safety at Excellon Resources' La Platosa Mine

Feb. 2, 2010 – Paulin Contreras is Killed by a Rock Fall Inside the Mine

Did negligence contribute to Paulin's death?

We don't know. Interviews with miners working at the mine suggest that mine supervision knew that the area of the mine Paulin was working in was not safe, and that they knew (or should have known) that it was dangerous to send an inexperienced miner into that area. If that's true, in Canada we would probably be asking for charges to be laid under the Westray Bill.

Was there an official investigation of the accident?

You would think there must have been, but if there was, Paulin's widow is unaware of it. Similarly, Section 309 of the Los Mineros is unaware of it. The Mexican Social Security office must also be unaware of it, otherwise how could the fatality be formally classified as 'non-occupational'?

Would this kind of incident have been handled differently in Canada?

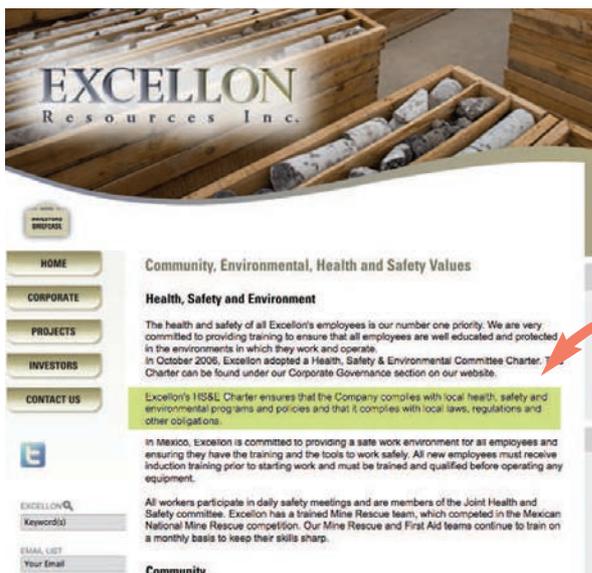
In a USW-organized workplace, several different investigations would have taken place involving the union, the employer, the Ministry of Labour, and perhaps the police. Instead of applying Canadian health and safety standards, at best Excellon appears to be satisfied with processes and structures in Mexico.



Jorge Mora, President of Section 309 Los Mineros (fired by Excellon)

"... I was on the second shift, from 3 to 11. The accident happened on the crew with the following shift ...

The supervisor that I worked with told the other supervisor in that area when we come off shift ... This is really hard for me ... We fill out a report after the shift ... the supervisor said to the one that was coming on that at "crossing" 428 there was a lot of loose material ... 'send someone to work there but make sure they are very careful because the ground is really fragile and could fall'. "This youth that died had been a driller for 6 or 7 months. He didn't have enough experience to be working in that kind of terrain. And the supervisor sent him precisely to that area, supposedly to fix it up and bolt down the loose rock. But because of his lack of experience and training, that he should have gotten from the company, the accident happened to him. ... Interviewer: "we heard yesterday that someone else working earlier refused to work there?" JM: "Yes ... because people that have the experience would know that the section was going to fall. ... During the shift that I was working ... He [name of individual] was the one that refused to go work there... From my crew [the supervisor] learned that the terrain was loose there because the driller that he sent there didn't want to work there."



Excellon's HS&E Charter "ensures that the company complies with local health, safety and environmental programs and policies and that it complies with local laws"



"I'm Isela Alba, I was the spouse of Paulin I'm left very unhappy, more than anything else because of the treatment I received. In fact I have had very little communication with those at the mine. The only thing I received was a pension of \$2,200 [pesos per month or

\$180 CAD] from Social Security. They give me \$38,000 [pesos - \$3,000 Canadian for a death benefit and funeral expenses]. That is all that it was..... I got this cheque and I heard nothing more from them. And then the accident, I asked them how it was, what happened to him, no, they never gave me an explanation.

Q: Was there an investigation?

Nothing was done. Simply Sadly there was this accident, and nothing. No one knew what to say.

Q: Do you have children?

We were married 6 years. I have two kids, a girl that has just turned 8, and a boy of 6 years. Well, more than anything it is they that feel the effects, it is them, because it isn't the same as having a father...

and what he could give. I asked them [the company] for some scholarship for them for their studies, but well no. Nothing has been fixed.

Q: Why did your husband go to work in the mine?

It wasn't for the love of it, it was by necessity, because here well, there really isn't any other work, nothing but the mine. I imagine that this is why they can take advantage of the workers. He wanted to earn a little more to take care of his family.

Q: And the company hasn't tried to do more?

No that was all. I lost communication with them. [The last time I was in contact was] right after the death. And as there was no answer, well yes I also stopped insisting.

Q: Do you have a message for Canadians, for our membership?

Well yes. I have lived through this experience, and in truth, I wouldn't wish it on anyone. And he's dead, but if there were a little more attention for the workers to support them more, and as I have said, for the families that are left with nothing. It is something that they live with every day, and they have to work because there is nothing else.

Monthly Widow pension from state of \$1542 pesos (\$124 CAD), plus \$616 pesos (\$50 CAD) for orphan's pension

Mexican Social Security classifies Contreras fatality as NON-OCCUPATIONAL death

SEGURO DE PENSIONES DERIVADO DE LAS LEYES DE SEGURIDAD SOCIAL
CANTIA VITALICIA POR MUERTE DEL ASEGURADO A CAUSA DE UN RIESGO NO PROFESIONAL
PENSION POR VIJUEZ Y ORFANDAD

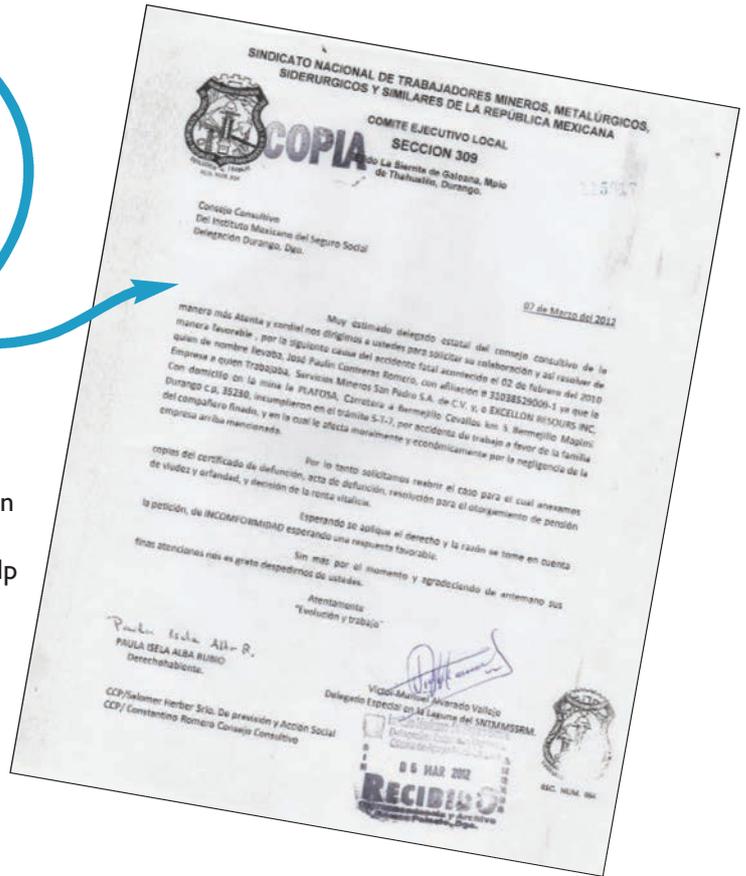
DATOS GENERALES		
NOMBRE DEL ASEGURADO FALLECIDO:	CONTRERAS HOMERO JOSE PAJUN	
NOMBRE DEL PENSIONADO POR VIJUEZ:	PAULA ISEL ALBA HURIO	
NOMBRE DEL (LOS) PENSIONADOS POR ORFANDAD:	ESTADO DE INVALIDEZ DEL (LOS) PENSIONADO(S):	TIPO DE ORFANDAD DEL (LOS) PENSIONADO(S):
1) RHAYAN ALE CONTRERAS ALBA		SENCILLA
2) HANNIA PAO CONTRERAS ALBA		SENCILLA
DOMICILIO DEL (LOS) PENSIONADO(S): AV DONATO GUERRA 73 IFRMREJILLO MPIO MAINAL, DURANGO 35230		
NUMERO DE SEGURIDAD SOCIAL:	31038520079-1	
NUMERO DE RESOLUCION:	100743	
CURP:	CORPMD14H10ANL02	
NUMERO DE FOLIA:	031870	
FECHA DE INICIO DE DERECHO:	FEB. 03, 2010	
FECHA DE INICIO DE VIJUEZ:	MAR. 30, 2013	
FECHA DE EMISION:	MAR. 30, 2013	
BENEFICIOS POR VIJUEZ		
El Sr (a) PAULA ISEL ALBA HURIO recibe:		
1. Una pensión mensual vitalicia equivalente a \$	1,542.85	que se pagará el día 5 de cada mes.
2. Un pago único anual de \$	1,542.85	que se pagará el día 5 del mes de NOVIEMBRE de cada año, o la parte proporcional que corresponda.



Isela Alba, surrounded by members of Section 309 Los Mineros and Canadian delegation, Feb. 15, 2013.

On behalf of Isela Alba, the union appeals the widows pension with Mexican social security, claiming that the company did not properly fill out form S-T-7 required for a workplace fatality.

If the Paulin fatality is accepted as a workplace accident, Isela Alba is entitled to a higher pension from Mexican Social Security. Given the facts of the case you'd think that with the company's help this would be easily cleared up. But apparently not. Union members suspect that the company doesn't want to see its insurance premiums impacted.



Management Discussion & Analysis
(May 14, 2010)

For the three month period ended March 31, 2010

The lower cash cost in the current quarter is due to higher shipment levels, lower production operating expenses and higher by-product prices.

Realized Metal Prices & Average Canadian \$/U.S. \$ Exchange Rates

The following are the average metal prices realized by the Company and average exchange rates for the three months ended July 31, 2009 and 2008 and the years ended July 31, 2009 and 2008:

	Three Months ended 31-Mar-10	Five Months ended 31-Dec-09	Three months ended 31-Jul-09	Three months ended 31-Jul-08
Silver (U.S. \$/oz)	\$ 16.91	\$ 17.16	\$ 14.13	\$ 16.71
Lead (U.S. \$/lb)	\$ 1.01	\$ 1.03	\$ 0.74	\$ 1.23
Zinc (U.S. \$/lb)	\$ 1.03	\$ 0.99	\$ 0.78	\$ 1.01

Excellon's report for the first months of 2010. Lots of discussion of production, reserves, shares, cost, exploration, and so on. Not one word about the death of Paulin Contreras. It's as if it never happened.

January 29, 2010, days prior to the accident, Excellon's press release shares the pride of CEO Crossgrove's award of the Order of Ontario. We can't find any notification or acknowledgement by Excellon of the Contreras fatality that happened a few days later.



Workers Organize at Excellon Resources

The 2010 Contreras fatality was a major spark for a union organizing drive. In interviews with workers in 2013, the delegation found a very widespread concern with health and safety conditions in the mine. We heard a long list of alleged health and safety violations, ranging from lack of personal protective equipment to unsafe storage and transport of explosives, working in flooded conditions, little or no training for new employees, no regular safety inspections, and no joint health and safety committee. We heard one worker report that, although he understands that in Canada Excellon says that there are daily safety briefings, that isn't true. There was a strong view that Excellon put production and profit first, and that safety did not receive sufficient attention.

In response to these concerns, workers started talking about forming a union in 2010. They believed that a union could not only help them address health and safety concerns, but also complaints about arbitrary and heavy-handed supervision, lack of a fair grievance mechanism and economic issues. In November 2010, about 75% of miners formally indicated that they wanted to form a union and elected a union executive. Section 309 of Los Mineros was born.

The Company Retaliates Against Union Supporters

In July 2010, Jorge Mora, the leader of Section 309 was the first fired. According to Excellon, Mora was "dismissed with cause for sleeping on a operating scoop tram underground – a violation of the Company's safety policy and Mexican law" (Nov. 5, 2012 Backgrounder). But that's not the whole story. Mora has never denied that he was sleeping, but he points to mitigating circumstances. The company changed his shifts several times in a row, moving him from day shift to night shift to afternoons, with little time for rest between the changed shifts. Of course he was tired and it was not uncommon for supervisors to look the other way when workers needed a quick rest during shifts. There is a widespread view among workers that the company set a trap for Mora, and created a reason to fire him. Mora has not been able to get his case resolved by the Labour Board.

The 2013 delegation heard numerous allegations of company reprisals against workers suspected of

being union supporters. In the Canadian context, those charges would have led to a hearing at the Labour Board at which time workers could have presented all their evidence and asked the Board to find violations of the law, and order their reinstatement. Seven months later, that hasn't yet happened in Mexico.

"We worked for close to 4 years without a wage increase. We worked for 4 years without getting the profit-sharing that we were entitled to as workers. We worked for 4 years without any rights, some loan, something that the company would offer us. ... they didn't even give the annual increases that there should be. Not even that. The compañeros, harassed and fed up with what the company was doing with us, took the decision to form a union."

Jorge Mora,
President of Section 309 Los Mineros

"There were threats against the brothers... threats that if they didn't vote for the company, for the company union, they were going to fire the people that didn't vote that way. And if you associated with the union they said 'I'm going to change your shift', 'I am going to take your bonus'. They even said that they would hand us over to the organized crime, and our families. I've heard this and I was told this to my face. "

Juan Carlos Medina
Fired Excellon Miner, Union supporter

"I worked at Excellon 21/2 years... I started as a labourer when we decided to form a union, the company started with reprisals. When they found out I was involved in the union they demoted me, they reduced my wages, they changed my shifts, they were looking for an excuse to fire me. My last day of work was July 7th, 2011... we presented ourselves for work, but they didn't let us back into the mine because we were supporters of the National Union"

Cesar Alonso
Fired Excellon Miner, Union Organizer

Excellon Union Avoidance Tactics – Muddy the Legal Waters with Other ‘Unions’

Rather than accepting the miners’ desire to form a union and join Los Mineros, Excellon did what thousands of other Mexican companies do – they found a union willing to give them a collective agreement. It’s called a ‘protection contract’. And although it violates conventions of the International Labour Organization, and has raised concerns by the ILO Committee on Freedom of Association, it’s perfectly legal in Mexico. In a “protection contract”, it is the employer that is protected against union organizing in independent unions. Typically this happens in the back rooms, and workers don’t even know that they are covered by a ‘collective agreement’ and are members of a union. The ‘white’ union registers with the Labour authority, and because only one union at a time can hold bargaining rights, independent unions are effectively blocked from organizing.

That’s what happened at La Platosa. It was only during the visit of the Canadian CSR counsellor in July 2011 that workers learned that in 2005 the company had signed a protection contract with the “Vicente Guerrero” Union, and another (for its subsidiary) in November 2010 with the “Presidente Adolfo Lopez Mateos” Union. Excellon employees had never received a copy of a collective agreement, had never met with a union official, and were completely surprised to learn that they were ‘members’.

The Excellon miners insisted on choosing for themselves which union they would join. On August 15, 2011, the workers conducted a work stoppage. Three days later, the company agreed to recognize Los Mineros as the bargaining agent, and to negotiate a collective agreement. Production in the mine resumed.

The victory was short-lived. Rather than following through on its commitments to negotiate with Section 309, Excellon intensified its union avoidance strategy. On September 28, 2011, just days before Los Mineros and Excellon were scheduled to talk in Mexico City, another group, supporters of the Pavon Union, blockaded the mine. Workers at the mine describe this as a ‘self-strike’ by the company itself. In other words, the company itself organized the ‘strike’, and did it with the support of the Mexican union led by Carlos Pavon (who defected from Los Mineros, and with the encouragement of the Mexican government established his own rival company-friendly national union). The company portrayed the situation as a “power struggle between competing labour unions” (Excellon Press Release Oct. 11, 2011). This new union forced the scheduling of a three-way union representation vote for La Platosa workers between the Section 309 of the Mineros union, the Pavon Union, and the Lopez Mateos union. This set 309 of Los Mineros in an uphill battle against two company-supported unions.

The union representation vote was held at the mine site on July 5, 2012. The results were: Pavon Union 46, Section 309 Los Mineros 45, “Presidente Adolfo Lopez Mateos” union 32. Section 309 has appealed the results of the vote, citing numerous improprieties. There appears to be significant evidence that in contravention of ILO conventions, the company interfered with the workers’ democratic election of a union of their choice. However, the Mexican legal system makes it slow and difficult for the union and workers to prove their case and obtain a remedy.

On the day of the vote, in a clear attempt to intimidate Section 309 Los Mineros supporters and create a climate of fear, the Pavon union brought in between 100-150 men described as ‘goons’ or ‘thugs’. The mob congregated outside of the mine entrance. Excellon workers understood the message: vote for 309 and you risk a beating.

Several Pavon ‘goons’ can be seen in this photo carrying sticks.



Interview with Juan Carlos Medina Najera about his Experience with Company Intimidation around the Time of the Union Vote

"On the day of the vote they wanted to leave us to the end. Before that, inside the mine, the head of the mine Pablo Gurrola and his superintendent harassed us there underground that if we didn't vote for the 'white' [company] union that they had, they were going to fire us or they were going to make us rest [suspend us] or they were going to change our work site.

I said to them: 'I see no reason why I should tell you who I'm voting for. My vote is secret, and I know who I'm voting for'. The boss responded to me 'But it's not like that. **If you vote with us we will give you \$200 [pesos]** in exchange for the vote that you will put in the ballot box.' And I responded to him: 'I don't need the \$200 because I don't sell my dignity as a person for a peso'.

And the superintendent of the mine answered me ... And I don't know if I should say these words. They said 'don't be an asshole. When you came to us we opened the doors so that you could have work'. ... And he said to me again: "well one thing I will say. **If you don't vote for the union we are saying it goes without saying that you will be outside of this company.** I will put myself in charge of sacking you'. Then I said 'don't wait to fire me, get it over with once and for all'.

In a different situation, they told me to come ... 'Look, I assure you that if you vote with us, we will put you into

a position of confidence'. [I said] 'if I get promoted ... I will have to earn it with my own work, from below, not by selling my dignity as a worker'. ... They left angry.

When we arrived at the [common] area... the supervisor talked to me and said 'they want to see you in the offices'. I said to myself, they are going to fire me for having talked to them in that way. I went up again, and they said to me: 'from this moment, you will no longer be drilling helper. You are going to pump.' "I am not firing you right now because you are one of the people that I need, but don't think that you are indispensable, but indispensable you are not.

They sent me to the 'white' [company] union that they had, and they gave me a paper where they were collecting signatures for their union. They gave me the paper and they said: 'take this, your boss orders you to sign this paper'. I refused. Yes [it happened] in the mine. I refused, and the person got down off the truck angry. He went into the office and immediately they again called to talk to me. ...

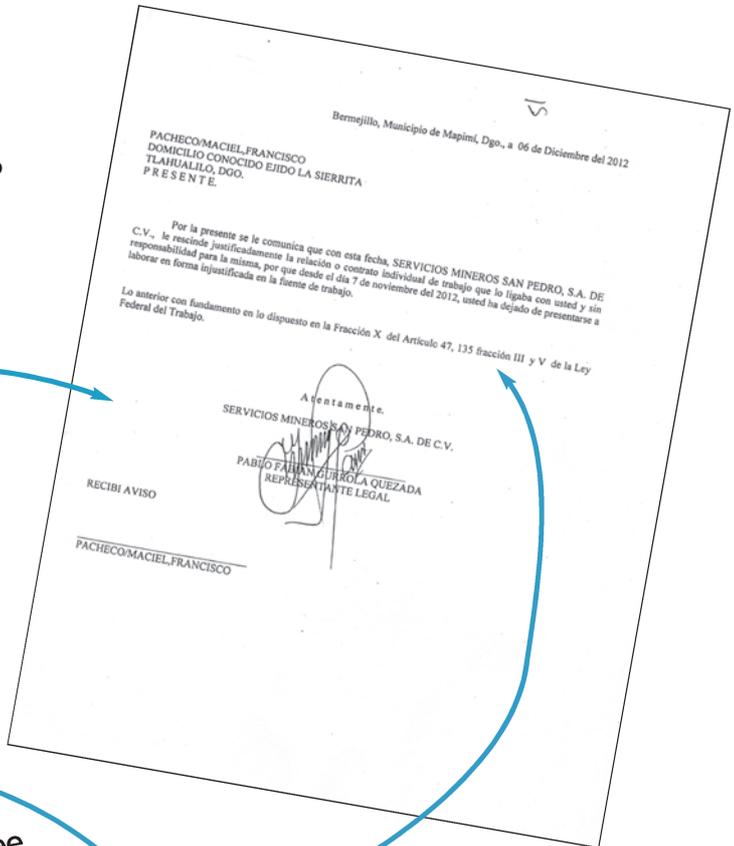
That day [of the vote] my brothers kept an eye [on the voting] and they say that there were strange people who should not have voted. And there were people who should have voted that they didn't let vote.... **We didn't lose by much. It was one vote. And if you exclude the six people from outside we would have had the victory."**



Excellon Fires Union Supporters

Following the July 2012 vote, Excellon made good on their threats to fire union supporters. Close to 50 workers who the company identified as union supporters were refused re-entry to the mine when they attempted to report for work immediately following the re-opening of the mine in late August. Official notification of their dismissal did not come until January 2013. Letters dated December 6, 2012 were delivered to the homes of the workers saying that as of November 7, 2012 they had not shown up for work. The union has appealed the terminations, but the case remains unresolved.

This is what a Mexican notice of termination looks like – when it arrives 6 months after you are fired.



In an attempt to justify the terminations, Excellon cites three reasons under Mexican law for just dismissal:

- Missing shifts (Article 47)
- Theft (135-III)
- Reporting to work under influence of alcohol or drugs (135 -V)

Workers affected are deeply insulted that the company has the gall to allege that close to one-third of its workforce in 2012 was made up of unreliable, drug-addicted or alcoholic thieves. The company has provided no evidence supporting any of the allegations.

The Excellon Case: Failure of Canada's CSR Policy

Commentary by Doug Olthuis, USW National Office

In order to pressure Excellon, and bring it to the table, a request for review was filed with Canada's Extractive Sector CSR Counsellor on April 8, 2011. The office of the Corporate Social Responsibility Counsellor was established in 2009 with a dispute resolution mandate and the goal of bringing parties together to fix problems.

The CSR Counsellor's involvement did not lead to dialogue, and it did not lead to a resolution of the issues. Excellon simply withdrew from the process. A critical weakness of the CSR Counsellor's office is that it is based on the voluntary participation of the company that is party to the review. Excellon was well within its rights to walk away. The CSR Counsellor could do nothing but express regret at a missed opportunity.

But this represents more than a missed opportunity. It represents a significant failure in Canadian policy. A failure that has had serious negative consequences for Mexican workers and the community of La Sierrita.

In July 2011, the CSR Counsellor went on a field visit to La Sierrita. In her October 2011 Report that closed the file, the CSR Counsellor reported on the many concerns raised by Excellon employees and members of the community. Among those, she noted that "workers expressed concern that those who were participating in the union drive were suffering retaliation from mine management" (page 16).

The July field visit was before the August 2011 work stoppage by Section 309 of Los Mineros for union recognition. It was before the July 2012 blockade by the community, before the August, September, and October

confrontations between the protesting community, the company and police, and before close to 50 union supporters were fired by Excellon. Clearly, after the CSR Counsellor's visit, Excellon's relationships with the community and its employees continued to deteriorate, the conflict escalated, and workers and the community suffered.

The policy failure lies in a structural weakness of the Office of the CSR Counsellor, and the lack of tools available to address issues that were clearly evident. If there had been a more effective mechanism, might the company have decided that it was in its best interest to address concerns and invest more effort in consultation and dialogue? If there had been a more effective mechanism, would more recent negative impacts on human rights have been avoided?

In May 2012, a complaint was filed under the OECD Guidelines for Multinational Enterprises. On November 28, 2012, the Mexican authority responsible for the case announced his decision that "the facts do not justify further examination.... [and] not to offer its mediation". It remains to be seen how the Canadian National Contact Point responds, and if this avenue will also fail the workers and community of Durango.



After many attempts to get Excellon to the table, on July 8, 2012 the community of La Sierrita blocks access to the mine and sets up a peaceful protest camp.



Joshua Berson

Daniel Pacheco, past president of La Sierrita, gets a long-distance view of Excellon's exploration activities on rented Ejido lands in a promising deposit known as "Rincon Caída". He might as well be searching for support from Canada's CSR policy.

The Community of Calpulalpam de Mendez in Oaxaca A History of Bad Experience with Mexican and Canadian Mining Creates a Determination to Diversify

Calpulalpam, a Zapotec community located just north of the City of Oaxaca, is marked by the respect of strong traditions and traditional structures. Calpulalpam is also a mining town. Up until 1998, there used to be three mining operations in the Calpulalpam area, owned by the mining company Grupo Mexico. The company declared bankruptcy and fired all of the workers, members of the National Union of Mine Workers. Not only were the workers poorly compensated but many were left ill and with no other job options. Young people left school to work in the mine. The neglect of the land and lack of education resulted in no community development.

In 2006, Continuum Resources, a Canadian-based company, acquired the concession to explore and exploit gold and silver in an area. Continuum Resources and its partners undertook the drilling of tunnels that spread under forest areas and aquifers of the community. According to Benjamin Luna, a community leader, there used to be 14 wells feeding the community that are nowadays all dried or polluted. Only one can be used by the community.

Environmental degradation related to the Continuum operations was so serious that in 2007 Profepa, the Mexican federal environmental regulator, ordered a temporary and partial closure of the mine. Under pressure from regulators and facing intense community opposition, Continuum was not able to continue to operate the mine. The company has since been delisted from the Toronto Stock Exchange and sold the concession.

The community of Calpulalpam, based on the negative social, cultural, and environmental impact left by previous mining, is united in its rejection of any future mining in its territory. The Council has worked very hard to protect its resources, its biodiversity and keep a decent standard of living in the community so that every community members has a job, feels proud of the community and corruption doesn't seep through.

The Council has established programs to take advantage of its forests in a sustainable way by creating small wood businesses and cooperatives. Many of the community members are carpenters. It has developed an eco-tourism centre, a water-bottling business and is promoting the importance of agricul-

ture. It obtained financial assistance from the Federal government to turn the town into a "Magic Town", aimed at rebuilding monuments, renovating buildings and developing attractions to generate tourism revenues for the community and jobs.



Aniceto Perez, former miner of now closed Natividad mine.



Benjamin Luna explaining concept of ecotourism and its benefits at Ecotourism Park.

"We applaud your determination to create alternative economic opportunities, so that you need not be dependent on mining. Calpulalpam in particular impressed us for its community cohesiveness, clarity of purpose, creativity and diversity of initiatives."

2013 Delegation

The Open Letter from the Members on the 2013 Delegation

At the end of the 10-day visit, the 2013 delegation decided to write an open letter to community members, landowners, and workers in Mexico who have been affected by the operations of Canadian mining companies, and in particular to the communities and workers it visited in Durango and Oaxaca.



Joshua Berson

Delegation meeting with PRODESC (Project of Economic, Social and Cultural Rights).

Our visit with you has triggered many emotions.

First, we are profoundly thankful for the time you spent with us, the warmth with which you greeted us, and the honesty, openness and respect with which you received us. We are humbled by your spirit of generosity.

We are deeply touched, and moved to tears by your testimony of the impact on you of the operation of Canadian mining companies. After listening to your stories, there is no doubt in our minds that there have been human rights violations in Durango and Oaxaca.

We are saddened that your hopes and dreams of many of you that mining would bring jobs and better lives for you and your children have been dashed. Instead of opportunity,

“There is no doubt in our minds that there have been human rights violations”

mining has brought community division, conflict, and violence. Access to clean water, so critically important to your communities, has been disrupted. So badly have your hopes been betrayed that many of you have told us that you no longer want

anything to do with mining. Others, having heard about negative experiences with mining in other communities, reject mining from the outset. You just want Canadian exploration and mining companies to stay home, and leave you alone.

We are sorry that the kind respect you have shown us has not been reciprocated by mining companies that are based in our country, and raise capital on markets located in our country.

Open Letter

Instead these companies, in particular Fortuna Silver and Excellon Resources, have shown you a profound disrespect. To us they are not behaving in ways that we, as Canadians, would expect. In the Excellon case, the company has betrayed the trust of the community by not living up to many of the provisions it agreed to in the 2008 lease agreement between the Company and the Ejido La Sierrita. In our experience, a Canadian company that did not abide by the terms of a signed impact benefit agreement with a community in Canada would quickly face consequences, and would find it is unable to continue to operate.

We are troubled by the difficulty workers and communities have in holding companies and other actors accountable. How is it possible that Excellon Resources is able to terminate the employment of close to 50 workers simply for wanting to join a democratic union that might force improvements in health and safety in the mine? How can Excellon do that and face no repercussions, leaving miners without work for more than seven months now? How can the loss of lives in the community of San José del Progreso remain unresolved? The people who died were defending their basic rights to their land and access to water.

Time and time again we heard stories of the failure of Mexican government officials at all levels to protect workers and communities, to effectively enforce legislation, and to properly investigate workplace accidents and incidents of violence. Legal processes that might bring justice to workers and communities appear complicated, subject to corruption, bribery, and political pressure. Legal processes are marked by long delays. Justice delayed is justice denied. It is clear to us that Mexican workers and communities cannot easily access legal mechanisms that would allow them to assert their rights or receive fair recompense for the violations of their rights.

This gap must be addressed. We believe that the Canadian government can and should implement a community and worker complaints procedure for complaints against Canadian mining companies that allows for proper investigation and includes compliance measures (rather than the voluntary complaints mechanism currently in place with the Office of the Extractive Counsellor). Furthermore, Canada must make it easier for individuals who have been harmed by Canadian mining to sue for compensation and damages in Canadian courts.

We applaud your determination to create alternative economic opportunities, so that you need not be dependent on mining. Calpulalpam in particular impressed us for its community cohesiveness, clarity of purpose, creativity and diversity of initiatives.



Marlyne Lachaine, USW Local 9449.

Joshua Berson



Rob Halldorson, USW Local 7884.

Joshua Berson



Sharlene Patterson, CUPE.

Joshua Berson



Janette McIntosh, Kairos representative.

Joshua Berson



Joshua Berson

Delegation meeting with La Sierrita leadership.

We are inspired by your solidarity and courage as you stand with each other in circumstances where it appears that the companies hold all the power, where economic and political pressure is applied against you in an effort to weaken you and make your legitimate claims invisible to the world.

We are worried that the experiences you shared with us about Canadian mining companies' behaviour in Oaxaca and Durango are not exceptional cases, but that, on the contrary, are part of a larger pattern throughout all of Mexico. Indeed, although we did not have the opportunity to see for ourselves what is happening elsewhere we did hear presentations from Guerrero, Veracruz, and San Luis Potosi, and are aware of cases in Chiapas and Chihuahua.

As we consider what strategies may be open to us to advocate for change, we reflect on the fact that many of us belong to, and contribute to, pension funds that own shares in Canadian

"We are troubled by the difficulty workers and communities have in holding companies accountable"

mining companies. Do we have a responsibility and an opportunity to pursue a strategy of shareholder activism to advocate for changes in the practises of mining companies? Would this be one way to promote the implementation of proactive policies and procedures that would respect the rights of indigenous communities to free, prior, and informed consent?

To the NGO's, such as ProDESC, who have taken the struggle for justice and respect of workers and communities and made it their own – you have our admiration, respect, and support.

To the leadership of Los Mineros who daily face the systematic violation of labour rights in dozens of workplaces across Mexico, but who nevertheless continue to feel the sacrifice of each one of the terminated Section 309 members – we know you will continue your fight for your members. We continue to stand with you.

Open Letter



Joshua Berson

Delegation at press conference in Oaxaca.

We are angry. We are angry that the operations of the Canadian mining companies that were the focus of our trip have had such a negative impact on the labour and human rights of Mexican workers and communities.

As we return to Canada we take all of these emotions with us. We take our outrage, our sadness, and our anger. We add to that your hope,

your courage, and your determination. And with all of these we will find ways to act, to make sure that your struggles are not invisible by sharing your stories, to make sure that your rights cannot be ignored, and to make sure that workers and communities are able to construct their victories.

Joshua Berson
Rob Halldorson
Shaheen Hirani
Marlyne Lachaine
Walter Manning
Janette McIntosh
Doug Olthuis
Sharlene Patterson
Laura Ramirez

February 28, 2013

Canadian Mining in Mexico – Canada Needs to Close the Accountability Gap

What conclusions can be drawn? The 2013 delegation has not yet finalized recommendations based on what it saw and experienced in Mexico in February 2013, but several factors are clear:

1. The Accountability Gap

The accountability mechanisms in Mexico that might hold Canadian companies accountable for their actions are fragile and often ineffective. Many workers and communities don't have the power or resources they need to protect and advance their rights, and to get redress for harm done to them.

2. Canadian Mining Investment in Mexico

Mining companies investing in Mexico that do their due diligence will know that there is widespread international concern about the systematic violation of labour rights in Mexico, that the Mexican legal system is confusing, time consuming, and susceptible to political interference and corruption, and that corruption and links to narco-trafficking are serious problems in many parts of the country. Faced with this reality Canadian companies that want to operate at the highest standards have the responsibility to take extra care to ensure their operations don't have negative impacts on the human and worker rights of the communities in which they operate. The 2013 delegation heard stories that lead them to conclude that, on the contrary, some Canadian mining companies are taking advantage of the political and economic situation in Mexico in order to maximize profitability, and contributing to a worsening of the circumstance of workers and communities.

3. Fortuna Silver

Human rights in the community of San José del Progreso have been negatively impacted by the operation of the mine. Fortuna's attempt to portray itself as an innocent bystander dragged into a local political power struggle glosses over the ways in which the company itself has contributed to intensifying community conflict, and has not taken steps to

lessen tensions. More importantly, it ignores the fact that Fortuna failed to properly consult with the community when it established operations.

4. Excellon Resources

There is considerable evidence heard by the delegation that may implicate Excellon Resources in violations of human and worker rights. In the delegation's view, it is Excellon's own actions and inactions that are at the root of its conflicts with the community and with workers. The company's attempt to portray itself as an innocent bystander dragged into a conflict between rival unions is a smokescreen designed to confuse and to avoid responsibility.

5. Canada

Primary responsibility to protect rights lies with the host state, but when that fails (as it has in Mexico), the Canadian government must act to ensure Canadian companies respect their human rights obligations. Two immediate changes that the Government of Canada can and should make include:

- a. Establish an effective and independent non-judicial grievance mechanism (ombudsman) that will have the mandate and powers necessary to investigate complaints and recommend remedy. The current voluntary Extractive Industry CSR Counsellor failed in the Excellon case.
- b. Facilitate access to justice. Canada must adopt legislation that recognizes the right of non-Canadian workers, individuals, and communities to bring civil law suits in Canadian courts against companies registered in Canada, and make it feasible for people affected by the operation of Canadian mining companies outside of Canada to make claims for harm and damages against those companies.

Examining Canadian Mining Operations in Mexico



Joshua Berson