

JUSTICE FOR SAN JOSÉ DEL PROGRESO



CIVILIAN OBSERVATION MISSION REPORT

Oaxacan Collective in Defense of Territory: Servicios para una Educación Alternativa EDUCA A.C.; Tequio Jurídico A.C.; Servicios del Pueblo Mixe, Ser Mixe A.C.; Centro de Derechos Indígenas Flor y Canto A.C.; Centro de Derechos Humanos Miguel Agustín Pro Juárez A.C (Centro Prodh.); Unión de Organizaciones de la Sierra Juárez de Oaxaca S.C (UNOSJO); S.C.); Bachillerato Intercultural Ojo de Agua; Centro de Análisis e Investigación A.C FUNDAR; A.C.; La Asamblea Veracruzana de Iniciativas y Defensa Ambiental LA VIDA; Consorcio para el Diálogo y la Equidad de Género-Oaxaca A.C.; Council Of Canadians; Movimiento Agrario Indígena Zapatista MAIZ; Servicio Internacional para la Paz SIPAZ; Colectivo Casa Chapulín, Centro Autónomo para la Creación Intercultural de Tecnologías Apropriadas C.A.C.I.T.A.; Comité de Defensa Integral de Derechos Humanos Gobixha CODIGO DH A.C.; Hij@s de la Tierra; Witness For Peace; Swefor.

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CONTENTS

1. OPENING STATEMENT

2. INTRODUCTION

3. RATIONALE AND CONTEXT.

- 3.1 Demographic data for San José del Progreso Municipality
- 3.2 Agrarian Matters
- 3.3 The San José Project
- 3.4 Coordinator of the United Peoples of Ocotlán Valley (CPUVO)
- 3.5 Justice for San José del Progreso Civilian Observation Mission
- 3.6 Community Division

4. HUMAN RIGHTS VIOLATED IN THE COMMUNITY

- 4.1. Right to free, prior, and informed consent
- 4.2. Right to public information
- 4.3. Right to collective property and territorial integrity
- 4.4. Right to self-determination
- 4.5. Right to a healthy environment
- 4.6. Right to community health
- 4.7. The rights of children and adolescents
- 4.8. The Rights of Women
- 4.9. The right of free association and assembly
- 4.10. Right to freedom, personal safety, and life
- 4.11. The rights of human rights advocates
- 4.12. Right to the administration of justice

5. CONCLUSIONS AND RECOMMENDATIONS

6. APPENDICES

- 6.1. Conflict timeline
- 6.2. Mining concessions in Ocotlán, Ejutla and Zimatlán districts

1. OPENING STATEMENT

In the early months of 2012, two members of the Coordinator of the United Peoples of Ocotlán Valley—Bernardo Vázquez Sánchez and Bernardo Méndez Vázquez—were murdered after participating in seven year of opposition to the presence of the Cuzcatlán-Fortuna Silver Mines Company. Concerned about the growth in the conflict, different civil society organizations held a civilian observation and human rights mission between the 19th and 22nd of November, 2012. This report is based on that mission.

Throughout 2013, we continue to find cases similar to San José del Progreso where we have detected, among other things: concessions granted without informing the community; corrupted officials; lack of information about the projects; divisions in the community; and threats and attacks against community-based advocates. In particular, the mining presence in Oaxaca has led to serious conflicts within communities where territorial concessions have been granted.

This has led to different organizing processes in response to this development model, and has motivated communities to gather and share their experiences. To date, six Oaxacan communities have declared a prohibition on mining in their territory. While serious repression against those opposed to these mining projects has also arisen, these organizing processes continue.

In this context, the Justice for San José del Progreso Report is intended to establish a precedent for understanding the conflicts triggered by mining in Oaxaca based on the conflict in San José. It highlights the serious human rights violations resulting from the violation of the obligation to respect international agreements recognized by the Mexican government, as well as under national, state, and municipal law. This report is intended for different state, national, and international actors, for the relevant authorities, and for those actors involved in the conflict. Thus, its goal is to ensure that whoever reads this report will become aware of the serious situation in San José and take an active role in the protection of human rights and defense of territory.

In order to organize the information gathered by the Civilian Observation Mission, we separately categorized and based each rights violation according to the testimonies gathered. Still, it is important to mention that all of the rights violated in the community are intimately connected and interdependent. As such, we divided the report into six major sections: Opening Statement, Introduction, Rationale and Context, Human Rights Violated in the Community, Conclusions and Recommendations, and Appendices.

This report is also a collective effort based on many conversations and analysis between the organizations participating in the Mission. It establishes different

options we hope will contribute to a solution to the conflict in San José del Progreso, which we have offered as recommendations. The Civilian Observation Mission continues to urge the officials involved in the matter to consider these recommendations, given that in seven years of conflict generated by the mining company, their intervention has been negligent, meager, and ineffective.

2. INTRODUCTION

The economic model of extractivism is based on the accumulation of capital based on an unrestrained extraction of collective resources. It assumes that private businesses, who have the capital to pay for the plunder of minerals, possess the right to do it anywhere in the world. They do this to promote “economic development” and not for the wellbeing of the people living in the territories where those minerals are found. Under this model, people, animals, and plants are seen as expendable commodities. The temptation to obtain minerals like gold and silver promoted the colonization, plunder, and exploitation of America’s subterranean treasures. This historical process is one of the engines of global capitalism.

Mines are subterranean sites where metals such as gold, silver, titanium, or copper are found. These are in turn used to produce goods and exchange values, providing substantial wealth to the owners of the business that extracts them. Mining refers to the techniques, activities, and industry involved in mineral exploitation through mines.

Subterranean mining and open-pit mining are different. In subterranean mining, ore (the raw minerals from which metals are extracted) exploitation is done underneath the earth’s surface using excavation machines and dynamite to construct ramps and underground tunnels. In open-pit mining, mountains may be razed, leaving behind an enormous toxic and lifeless crater. Enormous machines are used in these mines, such as “haul trucks” (gigantic dump trucks) and bulldozers that can weigh over one hundred tons when empty. Subterranean mines can become open-pit mines when the company has established itself in an area and if this type of exploitation appears more profitable.

In both types of mining, rocks extracted from the subsoil are ground until pulverized in large mills built on the surface, often close to the mine entrance. To extract the desired minerals, pulverized rock is combined with a chemical mixture of toxic reagents like cyanide (used in the leaching process) or “xanthates” (used in flotation processes), among others. Enormous quantities of water and electric energy are expended in the process.

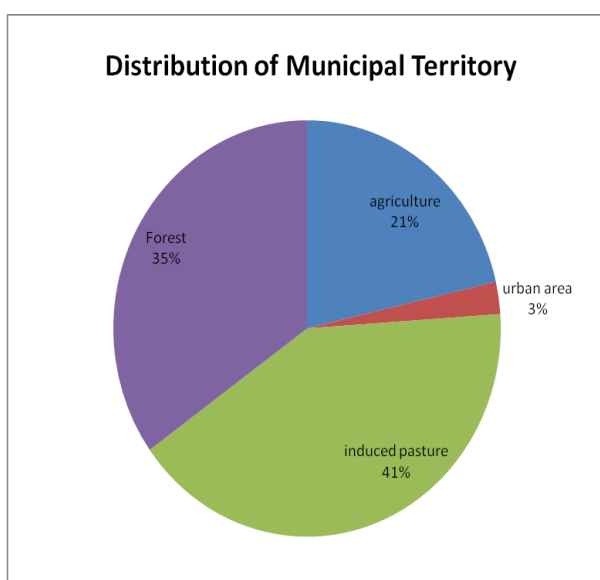
When the mine is depleted, the poisons remain behind in the mine and in what are known as “tailings ponds,” which are a source of pollution for future generations living in the region for dozens of years. Mining is an economic activity driven by governments and large transnational corporations that have systematically violated

the human rights of the populations where these projects are carried out. For these reasons, it is considered one of the economic activities with greatest social, cultural, economic, and environmental impact. This report provides evidence of these negative impacts, abuses, and human rights violations brought about by mining.

3. RATIONALE AND CONTEXT OF THE MISSION

3.1. Demographic data for San José del Progreso Municipality

The municipality of San José del Progreso belongs to the Ocotlán District, located in the Central Valleys region of the State of Oaxaca. It contains 12 population centers: San José del Progreso, Lachilana, San José la Garzona, Maguey Largo, El Porvenir, Rancho los Vásquez, El Cuajilote, El Jagüey, Los Díaz, La Alianza and los Patiño.



According to data from the last National Institute of Statistics and Geography (INEGI, by its initials in Spanish), the total population of the municipality is 6579 inhabitants. According to this source, its productive activities are distributed across the municipal territory in the following manner: Agriculture takes up 21.39% of the territory, urban areas 2.5%, induced pasture 41.20%, and forest 34.91%. It is important to mention that mining activity is not calculated within the official data provided by the INEGI.

According to the CONAPO marginality index (2010), San José del Progreso is in 481st place on the national level, with a high index of marginality. It is worth mentioning that the percentage of occupants in dwellings without running water is 73.19%.

3.2. Agrarian Matters

Locals and peasants from the San José La Garzona Hacienda first went to the President of the Republic in November of 1916 to receive lands, which were given to them 11 years later in 1927 by presidential decree. There was strong opposition to this process from the Mimiaga family, who owned the land since 1880. Years

later, the *ejido* was extended twice, first in 1936 and second in 1986. This established a total *ejido* size of 5,040 hectares, 137 areas, and 89.10 centiares.

In 1999, the *ejido* accepted the Program for Certification of *Ejido* Rights and Land Titling (PROCEDE, by its initials in Spanish). An *ejido* member assembly was convened on June 22nd of that year to do the delineation, destination, and assigning of plots. In that process, a total of 642 *ejido* members were recognized. PROCEDE was accepted by the *ejido* with a particular interest in establishing its boundaries to resolve conflicts it had with the communities of San Martín de los Cansecos, Lachigalla and la Garzona. Still, of these three conflicts, they only signed an agreement with San Martín de los Cansecos lasting until the year 2005.

PROCEDE only accounted for the original *ejido* land and the second extension. The surface area included in the first extension remained uncompleted, and was considered as a compliment to PROCEDE in 2006 through the Support Fund for Un-Regularized Agrarian Nuclei (FANAR, by its initials in Spanish). The assembly for delineation, destination, and assigning of these *ejido* lands was held on December 3, 2006. Of a total of 1,289 recognized *ejido* members, only 248 recognized *ejido* members with full rights remained after the list was purged.

This process recognized Ricardo Ibarra as a resident, who between 2004 and 2005 managed the sale of plots and opened up a property in which artisanal mining activities had taken place between 1900 and 1980. Likewise, there were several irregularities in the submission of land certificates after 1999: the names of a significant number of *ejido* members did not coincide with those assigned to their plots, agrarian conflicts with San Martín and la Garzona were not resolved, and the fate of the *ejido* communal area remains unknown. Moreover, there has been no agrarian authority in the *ejido* ever since April 5, 2009.

3.3. The San José Project

Starting in 2006, the Cuzcatlán mining company, affiliate of Fortuna Silver Mines, signed various usufruct agreements with *ejido* members of San José del Progreso for the use of 30 plots. These agreements establish an average payment of \$200,000.00 MXP for an average of thirty years. In this same year, representatives of the mining company met with municipal authorities to ask for the necessary permits to carry out exploration activities throughout the municipality. The *ejido* members and general citizenry were not informed at any point of the process around the intention to implement a mining project in the community.

Immediately after obtaining municipal permits, the mining company began exploration activities involving drilling and subterranean exploration in pre-existing

excavations¹ for the exploitation and processing of the Trinidad and Bonanza veins.

The San José Project takes up two areas (north and southeast) with a total surface area of 92.01 ha. These consist of the deepening of subterranean excavations and the creation of the necessary infrastructure to carry out the production of silver and gold over twelve years of operation. This does not include the preparation, construction, and completion phases. It includes plans to re-use prior excavations, the construction of a ramp and prior access points, as well as the excavation and construction of tunnels, access chambers, mineral transfer shafts, and ventilation structures. It also includes plans for the construction of processing plant, surface deposits of sterile and fertile earth, tailings dam, drainage system, electricity substation, and a treated water supply system.

Regarding the water that will be used for the mine, the project has plans to use residual water from the Ocotlán treatment plant, which draws water from the Atoyac River, and recycled water from the mine and from different plant access roads.

The project includes plans to exploit and process 1,500 DMT (Dry Metric Tonnes) of mineral per day over 12 years, beginning in 2011.

Finally, in order to carry out the project, the Fortuna Silver Mines company obtained 4 of the following concessions:²

NAME	SURFACE AREA	CONCESSION TITLE	EFFECTIVE TERM
Progreso	284.0000	217626	August 2002 to August 2052
Progreso II	53.8815	217624	August 2002 to August 2052
Progreso II BIS	80.7309	217625	August 2002 to August 2052
Progreso III	283.3877	215254	February 2002 to February 2008
TOTAL	702.00001 HECTARES		

¹ The Cuzcatlán Mining Company took advantage of previous excavations done by the Company Minerales de Oaxaca which reached 150 meters of depth.

² According to information from the Secretary of the Economy in February 2013, the concessions currently belong “Minerales de Oaxaca, S.A. de C.V.”

3.4. Coordinator of the United Peoples of Ocotlán Valley (CPUVO)



After the exploration work done beginning in 2006 by Fortuna Silver Mines, and due to the lack of existing information on the mining project in the community, broad groups of local citizens and *ejido* members of San José del Progreso, Maguey Largo, Cuajilote and the municipality of Magdalena Ocotlán decided to create the Coordinator of the United Peoples of Ocotlán Valley (CPUVO) as a community

organization focused on the defense of territory in the Central Valleys of Oaxaca.

Starting in 2007, CPUVO began a legal defense effort and peaceful social mobilization process against the mining company in which it denounced the violation of the right to free, prior, and informed consultation and consent and the right to territory. This was based on the fact that the mining company and the federal and municipal governments did not provide any kind of information about the project to the community.

According to denunciations from CPUVO, from 2006 until 2010, the mining company has generated a climate of social and political tension in the municipality through acts that have severely damaged the social fabric of the community. Likewise, beginning in 2011 armed groups have threatened, attacked, and murdered sympathizers and adherents of CPUVO. In 2012 the aggressions grew in an alarming way: from only January to June of 2012, 4 attacks from armed groups presumed to be linked to the current municipal authority and the mining company were recorded, resulting in 8 people injured by firearm and 2 advocates murdered.

3.5. Justice for San José del Progreso Civilian Observation Mission

Given the context of the San José del Progreso municipality, human rights organizations decided to carry out a visit to the community in November of 2012 to document the human rights violations committed after the installation of the mining project in 2006. Another goal was to draw attention to the situation of risk and vulnerability that CPUVO members were in, along with citizens of San José del Progreso and nearby communities.

The Civilian Mission was carried out on the 19th and 21st of November 2012 with the participation of 19 state-level, national, and international civil organizations.³

The observation work was based on a participatory research method and was structured according to three main approaches: interviews with affected people, victims, and authorities; visits to locations determined by the community; and a document review of files related to the issue. The Civilian Mission consisted of three stages of implementation:

Preparation Stage: The general plan of the Mission was designed into: objectives, lines of analysis, and interview instruments.

Implementation Stage: This stage consisted of carrying out visits to communities affected by social-political-environmental issues resulting from the mining project. Civilian Mission activities were distributed in the following manner:

On the first day, interviews were done with victims and family members; women; male and female block captains; youth, boys and girls of San José del Progreso; Internal Revenue, Health, Road and Projects Managers; and members of the San José Defending our Rights Civil Association.⁴

On the second day, the Mission visited representative sites and homes affected by the activities of the mining company and the community conflict, including the installations of the mining company, the tailings dam, the location where Bernardo Méndez Vásquez was murdered, a location where threats against Bernardo Vásquez Sánchez were written, among others. Also, the mission interviewed

³ Oaxacan Collective in Defense of Territory; Servicios para una Educación Alternativa EDUCA A.C.; Tequio Jurídico A.C.; Servicios del Pueblo Mixe, Ser Mixe A.C.; Centro de Derechos Indígenas Flor y Canto A.C.; Centro de Derechos Humanos Miguel Agustín Pro Juárez A.C. (Centro Prodh); Unión de Organizaciones de la Sierra Juárez de Oaxaca, UNOSJO S.C.; Bachillerato Intercultural Ojo de Agua; Centro de Análisis e Investigación FUNDAR A.C.; La Asamblea Veracruzana de Iniciativas y Defensa Ambiental LA VIDA; Consorcio para el Diálogo y la Equidad de Género-Oaxaca A.C.; Council Of Canadians; Movimiento Agrario Indígena Zapatista MAIZ; Servicio Internacional para la Paz SIPAZ; Colectivo Casa Chapulín CACITA; Comité de Defensa Integral de Derechos Humanos Gobixha A.C. (CODIGO DH); Hij@s de la Tierra, y Witness For Peace; Swefor.

⁴ The San José Defending our Rights Civil Association was registered with Notary Public 108 on September 24, 2009. According to testimony from citizens of San José del Progreso, the organization is primarily made up of supporter groups of the Institutional Revolutionary Party (PRI, by its initials in Spanish) and has the goal of requesting and obtaining economic resources through the mining Company. It played a significant role in the 2010 municipal elections, and members of CPUVO have denounced that this organization gave resources, projects, and handouts in Exchange for votes in favor of the current president. During 2011 and 2012, CPUVO publicly denounced that this organization also coordinates the existing armed groups in the community.

citizens of the communities of Maguey Largo, El Cuajilote and The Coordinator of Peoples United for the Defense of Water in San Pedro Apóstol.

Lastly, on the third day the Civil Mission interviewed the following authorities: The Coordinator for Human Rights Services of the Oaxacan State Government, the Public Safety Secretary, the Health Secretary, the Human Rights Ombudsman of the People of Oaxaca, the Human Rights Commission of the Oaxacan State Congress, Father Martin, and the Cuzcatlán Mining Company.

The stage of analysis and systematization of results: In this stage, an analysis and systematization of the information was completed, and secondary sources from federal agencies were consulted to complement the information gathered. Below, we present the analysis completed by the Civilian Mission.

3.6 Community Division

During our visit to San José del Progreso, El Cuajilote, and Maguey Largo, we observed a climate of tension and a serious break down in the social and community fabric. From 2006 until November 2012, these communities have suffered systematic violations of their human rights.

After interviewing people who are in favor and in opposition to the mining company, the Civilian Observation Mission listened to testimonies on the existing climate of insecurity, fear, and deep division within San José del Progreso and within families. This has led to deep breakdown of the social and community fabric. The most visible effects of the divisions are manifested in the daily life of families. Where there once was a community system based on collectivity and family unity, now there is a growing tendency toward mistrust, division, and hostility.

Individual testimonies were forceful:

“There is a frightening increase in violent conflicts in recent years that are clearly related to the arrival of the mining company in the community.”

“Since the mining company arrived, we began to have problems between family members, between people and their parents, brothers and sisters. There were confrontations and the whole town [began to] divide. For example, I have a daughter and [she] is not in favor of the mine, but my son in law is. They come over but now it’s not the same kind of [...] conversation. If we talk about the mine, they feel that we are offending them and if they talk about their problems, we feel that they are offending us. So, there is a very deep division between people and their parents. (Woman from San José del Progreso).”

In general, a real sense of confrontation and violence is felt in the community: all political, religious, and cultural activities are held in two large separate groups that even hold priority over kinship ties. To give some examples, in the municipal seat the portion of Catholics connected to the mining company recently built their own church, even though they share the same priest. Likewise, in the agency of el Cuajilote, the division between those in favor and those against the mine is reflected in religious denominations: on one side, the Jehovah's Witnesses working in the mine are in favor of the mining project, and on the other hand is the catholic denomination that is against it.

The divisions caused by the mining company have a greater impact on women and girls and boys, who argue that ever since the mining company arrived they no longer feel safe because of the presence of armed groups: The boys and girls cannot leave their houses at particular times, and when they go out to play or do chores, their mothers worry about confrontations that might take place.

Community divisions are not only manifested in each of the key institutions like the assembly, religious, educational, and cultural events. It is also the case in federal and state programs and institutions like the Health Clinic, the *ejido* member and citizen groups participating in PROCAMPO and OPORTUNIDADES. The degree to which governmental programs and institutions have been captured by interest groups is alarming. In this environment, there is a notable systematic advantage in resources and handouts given to the pro-mining group associated with the municipal present. This evidences that the government institutions responsible for monitoring the nonpartisan and equitable use of public funds allows them to be used toward the interests of the mining company. It is worth mentioning that the population often does not distinguish between resources coming from public administration and those given by the mining company: in this sense, they perceive state institutions as "the right arm of the mining company."

We have found physical and psychological scars in people who have been attacked. Members of CPUVO report having been detained numerous times by members of the state police, and threatened and attacked by armed groups and municipal authorities because of their stance against the mining company.

Likewise, we received testimonies from people who have suffered serious firearm injuries. In light of these cases, the medical services provided by state authorities have been inhumane and negligent, risking the lives of the injured persons.

Finally, the testimonies gathered often report the presence of armed civilians who do not serve as official police. They point out that, beyond the municipal police, there are extra-official paramilitary groups acting as a shock group promoting company interests. This results in a highly confusing environment characterized by impunity in the cases of violation of human rights, and by mining company financing in the municipality.

With the aim of organizing the information gathered by the Civilian Mission, we separately categorized and based each right violated on the testimonies gathered. Still, it is important to mention that human rights are interdependent. That is, all the rights violated in the community are intimately connected.

4. HUMAN RIGHTS VIOLATED IN THE COMMUNITY

4.1. Right to free, prior, and informed consent

Recognized in the International Labor Organization (ILO) Convention No. 169 Concerning Indigenous and Tribal Peoples (Articles 6.1, a), 2, 15, 17.2, 22.3, 27.3, 28.1), the United Nations Declaration on the Rights of Indigenous Peoples (Articles 10, 11, 15, 17, 19, 28, 29, 30, 32, 36, and 38), the Political Constitution of the United Mexican States (Article 2, Section IX, section B).

The International Labor Organization Convention No. 169 Concerning Indigenous and Tribal Peoples in Independent Countries clearly states:

*In cases in which the State retains the ownership of mineral or sub-surface resources or rights to other resources pertaining to lands, governments shall establish or maintain procedures through which they shall consult these peoples, with a view to ascertaining whether and to what degree their interests would be prejudiced, before undertaking or permitting any programmes for the exploration or exploitation of such resources pertaining to their lands. The peoples concerned shall wherever possible participate in the benefits of such activities, and shall receive fair compensation for any damages which they may sustain as a result of such activities.*⁵

According to this Convention, it is the State's duty to consult indigenous communities in good faith and with the goal of reaching an agreement or procuring their consent regarding matters that affect them in different contexts. The right to consultation and participation "constitutes the cornerstone of Convention No. 169 on which all its provisions are based."⁶

The right to consultation is fully recognized in the United Nations Declaration on the Rights of Indigenous Peoples and is applicable to whatever administrative or legislative action that could have an impact over the rights and interests of

⁵ Article 15.2 of the ILO Convention No. 169. (Emphasis ours).

⁶ Cited in the Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous peoples, James Anaya (Doc. UN A/HRC/12/34, July 15, 2009), paragraph 39.

indigenous peoples, such as concessions and authorizations for the extraction of minerals. In this sense, the prior consent of indigenous peoples encompasses not just the use of natural resources, but also any action that could directly affect these communities.

The fundamental component to respecting the right to consultation is that it be carried out before the actions take place, that it be directed to those affected or their legitimate representatives, that it be done in good faith and in an appropriate way, that it include all the information needed for decision making, in particular the existence of impartial and professional social, cultural, and environmental impact statements, that agreement be sought, and, in certain cases, that it be compulsory to procure the free and informed consent from the communities. All of the above must take place through culturally appropriate processes and using the decision-making structures and institutions that they themselves use.

To guarantee a consultation process that meets international legal standards, the government must carry out said consultation taking into account the following principles: good faith; equal opportunity; prior, timely and appropriate information; veracity of the information; integrity of the aspects and issues to be submitted for debate under the process of consultation; opportunity; participation; transparency; territoriality; autonomy and representation through suitable institutions; local and accessible site to carry out the consultation; legality and obligatory nature of consultation; hierarchy; the principle of liability for actions carried out in bad faith; and freedom.⁷

The San José del Progreso community's right to prior, free, and informed consent has been systematically violated. There was no consultation, but rather an imposition from all three levels of government for the installation of the San José Project on their *ejido* land. The Federal Government bears responsibility as it awarded four mining concessions⁸, authorized the environmental impact statement, water concessions, permits for the construction of tailings dams and permits to introduce pipelines for the transportation of treated water to be used by the Cuzcatlán mining company. All these permits were granted without the prior and informed consent of the community.

The Oaxacan state government bears responsibility as it promoted the investment and allowed the imposition of the mining project. The municipal government of San

⁷ Clavero, Bartolomé. CONSULTA Y CONSENTIMIENTO PREVIO LIBRE E INFORMADO A LA LUZ DEL DERECHO INTERNACIONAL DE LOS DERECHOS HUMANOS.

⁸ The concessions were awarded by the Ministry of Economy through the Directorate General for Mines in 2002. The concessions are the following: Progreso I, Progreso II, Progreso II Bis, Progreso III.

José del Progreso and the *Ejido* Lands Commission also bear responsibility. While being interviewed, Quintín Vásquez Rosario, ex-president of the *Ejido* Lands Commission, stated that on March 24, 2007 he held a meeting with thirteen state and federal agencies, during which the mining project was authorized in San José, recognizing that there was no assembly at which the community approved said project. He stated:

“There was no consultation. The Ejido Lands Commission was presented with the project at the state government’s administrative campus before thirteen state agencies and the federal government. The federal government said that the project would go forward because they (the federal government) requested the investment and they granted a concession for fifty years.

Furthermore, Alberto Mauro Sánchez Vásquez, the current municipal president, bears responsibility for this violation as he approved a land use change permit without the approval of a lawfully established assembly and the prior knowledge of the effects that the installation of the mining project in San José del Progreso and its communities would bring. When asked if the assembly had been consulted to approve the changes regarding land use, he said:

“There is a permit for the change of land use; there was an assembly to discuss this matter.”

The awarding of 50-year concessions by the Secretary of the Economy, the Authorization of Environmental Impact Statement by the Environmental and Natural Resources Ministry (SEMARNAT by its initials in Spanish), the Land Use Change Permit issued by the municipal president and the authorization of the *Ejido* Lands Commission without clear information regarding the implications of the mine and without the approval of the community, constitute grave violations to the right to consultation and free, prior, and informed consent. Furthermore, they threaten the ecosystem, the integrity of the land, and the community members’ lives.

Those interviewed asserted that the assembly was not consulted regarding the installation of the mine in lands belonging to San José del Progreso, that this was an agreement between the municipal and *ejido* authorities and the Fortuna Silver Mines company, together with the Federal and State governments. They were also not consulted regarding the granting of the Land Use Change Permit, as they maintained in the following testimonies:

“...The company came to meet with the municipal and ejido authorities only. Never did they hold a community-wide meeting to create agreements under which the mining company could come. When we realized [that something was happening], the mining company was already settled in...”

“...What makes us most indignant is that as indigenous peoples we have the right to consultation and we were never consulted. Not even the local

authority issued this information. And I think that as indigenous peoples we should be consulted. It is our right...”

“...The mining company never explained to us what would be the harm and damages that [...] [they] would cause...”

In an interview with the Civilian Mission, state government representatives recognized that a consultation process was not carried out and they stated that consultations were not well regulated at the federal level. The Oaxacan government recognizes that the source of social division in several of the communities, as in San José del Progreso, is the money that the transnational corporations offer through megaprojects, thereby generating social violence in the State.

According to the above statements, it is very evident that the right of the San José del Progreso Community to consultation established in the ILO Convention No. 169, has been violated, as was its right to free, prior, and informed consent established in the Declaration on the Rights of Indigenous Peoples. Those interviewed stated that they have not seen benefits from the mining company. On the contrary, they have seen the internal life of the community affected, which is divided between those who support the project and those who oppose it. This has triggered, among other negative effects, murders, arbitrary detentions, corruption, and abuse of power by the authorities outlined in this report.

4.2. Right to public information

Since 2002, there has been a law in Mexico guaranteeing access to public information. This law was reformed in 2012 and seeks “to provide what is necessary to guarantee access to all people to information held by the Powers of the Union, constitutional autonomous bodies or those constitutional bodies with legal autonomy, and any other federal agency.”⁹

This law also establishes the principles of transparency that concessions, permits or authorizations issued by the authorities, such as the concession of a mine, must meet.¹⁰

⁹ “Ley Federal de Transparencia y Acceso a la Información Pública Gubernamental” (Federal Law of Transparency and Access to Public Government Information)
<http://www.diputados.gob.mx/LeyesBiblio/pdf/244.pdf> (June 18, 2013 at 13:40pm)

¹⁰ Article 7, Section XII-XVII of the Ley Federal de Acceso a la Información Pública Gubernamental (Federal Law of Transparency and Access to Public Government Information).

Whereas the ILO Convention No. 169 establishes the requirements to carry out a prior and informed consultation, the Mexican Transparency Law establishes some basis to guarantee the right to public information when there is a project of great significance in the community. The conflict that has been created in San José del Progreso as a result of the presence of the mine has involved the information that has been concealed by all levels of government, which has created a climate of uncertainty, fostered and even aggravated conflict.

In an interview with the community authorities, Mauro Sánchez, the current municipal president, recognized that there wasn't an information process carried out by either the federal and state authorities regarding the concession for the mine, or by the mining company regarding the way it was planning on using the land it purchased.

The community's inconformity, organized through the Coordinator, and its rejection of the mine are related to a scenario where lack of information has been the norm, and which allowed the establishment of the mining project. There was no information about the consequences of the change to landholdings with the advent of the Program for Certification of *Ejido* Rights and Land Titling (PROCEDE by its initials in Spanish). There was no information about the value of the property or what it would be used for once it was purchased.

“...These are the consequences of [...] Amadeo's bad governing because he did not provide any information. During the assemblies he was asked to provide information about how the mine would function. He said that the Ejido Lands Commissioner would give more detailed information, but he did not want to be held accountable for issuing the permits. He said he was drafting a plan to have benefits for the community, such as jobs and tree planting. The community also asked Venancio, as municipal president, to provide reports, but he said that he did not know anything because his predecessors did not leave any information. The Commissioner gave a report and said that they still did not have the plan (agreement to work together with the mine) because it is a very long process. A sum of money was requested in that agreement, but to this day we do not know who is receiving that money because there is no communal authority.”¹¹

Mauro Sánchez, the municipal president, said that the current administration was the first to establish an agreement with the company, because they do not deliver their contribution in cash. Regarding this, the company committed to provide 6.5 million pesos every year in community projects as well as a scholarship program for the elementary school. The agreement is renewed every year, which is why in 2012 said agreement increased to 7 million pesos. Both groups are unaware of

¹¹ Interviews with block captains (*Jefes de Manzana*).

how these resources are spent or the real benefits that they bring. In addition, they do not know what benefits the company enjoys for its operations.

Signing the agreement mentioned above was possible because the mining company presented the community authorities with the corresponding environmental impact statements, which the municipal president committed to “*sending*” to the observation mission as he didn’t “*have them handy*.” By the writing of this report, these statements had not been received. With the agreement and impact statements, the municipal authorities granted the mining company a permit for the change of land use so that it could begin the exploitation of the mine. Nevertheless, it is not known if the agreement exists.

What makes the situation in San José especially serious is that an intense conflict already exists between those in favor and those against the mine. This conflict could be deescalated if the authorities took action on this matter, informing and establishing timely channels of communication and information with the people of the community who continue to have a number of questions about the impacts of the mine. However, far from fostering a climate of informed dialogue, each one of the levels of government blames the other for the conflict: for the municipal president, the problem is the state government that does not pay attention to them, for the state government the problem is the federal government that does not inform them about concessions.

All the information that the authorities have should, by now, be available to any citizen, but especially the people of San José del Progreso, who have lived through a serious conflict in their community in the last four years. The Transparency Law itself states, “The category of reserved cannot be used when the matter is regarding serious violations to fundamental rights or crimes against humanity.”¹² One example of serious violations to fundamental rights is the loss of the right to life. In this community there have already been two murders of people who reject the mine, which should be enough to make accessible any information regarding the mining project.

4.3. Right to collective property and territorial integrity

This right is recognized in the International Labor Organization’s Convention No. 169 Concerning Indigenous and Tribal Peoples in Independent Countries; the United Nations Declaration on the Rights of Indigenous Peoples (Article 8), the Political Constitution of the United Mexican States (Article 27, Section VII).

¹² “Ley Federal de Transparencia y Acceso a la Información Pública Gubernamental” (Federal Law of Transparency and Access to Public Government Information) (June 18, 2013 at 13:40pm)

According to Convention No. 169, governments must take measures in cooperation with interested communities with the goal of protecting and preserving the environment of the land in which they live. Furthermore, it imposes on States the duty of taking whatever necessary measures it has to determine what lands the interested communities occupy traditionally and to guarantee the effective protection of their rights to property and ownership.

On the other hand, the Mexican Constitution recognizes the legal status of communal landholdings and the *ejido* and it protects the right to property over their lands, both for human settlements and for productive activities. In the same way, the Federal Constitution states that the law will protect the integrity of indigenous peoples' lands. Because that protection does not exist within the Agrarian Law, Convention No. 169 must be applied in relation to Article 1º of the Constitution.

The right to the integrity of the San José del Progreso communal lands is being violated by the establishment of the Fortuna Silver Mines silver and gold mining company. The individualization of land and the loss of communal property is being fostered. Similarly, the loss of community institutions, such as the *ejido* communal assembly, the agrarian authorities, the community festival, the *tequio* or collective work, collective landholdings, is being fostered. All of the above is threatening the communal life of the town.

San José del Progreso owns its land under the *ejido* system. This system has been violated by the imposition of PROCEDE in 1999, a program that was imposed on *ejido* community members to privatize *ejido* lands. The implementation of said program in the San José del Progreso *ejido* created the favorable legal conditions so that the Fortuna Silver Mines company could sign usufruct contracts and could obtain, in the future, the ownership of these plots under the full individual ownership provision, thereby “legalizing” rigged contracts that threatened the collective ownership of the land.

Those interviewed by the Civilian Mission maintain that after the establishment of PROCEDE, the company began buying *ejido* land and that the *ejido* assembly could no longer stop it.

“...The land where the mine operates was bought through deception. [When] the previous mining company [was around], Engineer Ibarra was the person who managed the land. He bought it from whoever had territory adjoining the mine. He would purchase hectares that were worth 30,000 or 40,000 pesos at 200,000. At those prices, the campesinos sold out of need. [In] 2004-2005 PROCEDE tricked them [...]. They said that being the owner of their plots would make it easier to manage or sell them. But since then, it was known why the ejido was being disintegrated. There was no longer the need to have a plot of land to be able to buy land. Those who sold their lands never imagined a project as large as the one that came. Ibarra was from Minerale de Oaxaca. They took advantage of the people's ignorance. Ibarra paved the

way for Cuzcatlán. Of course, they only offered PROCAMPO [Direct Farm Support Program] benefits to those who had signed up with PROCEDE...”

Since April 5, 2009 there are no representation and oversight bodies in San José del Progreso because the former representatives were not recognized by the population after approving the mining project without consulting the assembly. Members of the Coordinator of the United Peoples of Ocotlán Valley (CPUVO) have begun a process to name new members of the *Ejido* Lands Commission and the Oversight Council without success, because the Office of the Agrarian Prosecutor has refused to issue an announcement and to begin the election process given the absence of the *Ejido* Lands Commission and the Oversight Council. This vacuum in agrarian authority weakens the community and puts in even greater risk the collective integrity of the *ejido* territory of San José del Progreso.

The federal government, through the then-called Ministry for Agrarian Reform and the Office of the Agrarian Prosecutor, is responsible for violating San José del Progreso’s right to territorial integrity by imposing PROCEDE, refusing to call for new elections for the *Ejido* Lands Commission and the Oversight Council, and creating legal conditions favorable to the mining project and to privatizing ejido lands.

4.4 Right to self-determination



Article 7, Section 1 of the International Labor Organization Convention No. 169 recognizes that “*The peoples concerned shall have the right to decide their own priorities for the process of development as it affects their lives, beliefs, institutions and spiritual well-being and the lands they occupy or otherwise use,*

and to exercise control, to the extent possible, over their own economic, social and cultural development.”

This right is also recognized in Article 1 of the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, Article 3 of the UN Declaration on the Rights of Indigenous Peoples, and

Article 2, paragraph A of the Political Constitution of the United Mexican States. Said documents recognize indigenous peoples' right to self-determination. Given this right, they are able to freely choose their political system and freely pursue their own economic, social, and cultural development.

In 2006, the mining company began a series of closed-door meetings with communal and municipal authorities to obtain permits to explore and exploit mineral resources. In the process, there was no participation by the San José del Progreso citizenry to authorize or reject of the project and/or decide what conditions it should meet. The federal authorities also participated in this process by deceitfully driving the *ejido* authority's decision to approve the permits and the lease of their land.

This process lasted approximately three years. Never did the federal or state authorities create spaces for citizen participation in the drafting of the project.

Similarly, according to testimony from community members from San José del Progreso, Cuajilote, and Maguey Largo, the company gave away numerous resources in the community and to corrupt municipal and *ejido* authorities:

"It was the way in which the mining company came in that bothered the community. The company managed to use numerous resources to give out in the community. Given this, approximately four hundred people signed a letter in 2008 against the mining company, we did not want to be against our [communal and municipal] authorities. However, the mining company bought them off. Now the company has a bunch of land in its hands and that land that it holds has been increasing little by little [and]...it is the mining company's fault, they have stepped on us, they have humiliated us."

In interviews conducted by the Civilian Observation Mission, there are well-founded conjectures about the involvement of the mining company in the political life of the community, primarily in the process of naming municipal authorities in 2010.

Those interviewed argue that the company gave out packages of food, money, and productive projects through the non-profit organization San José Defending Our Rights, which was created, according to testimonies, as a means to manage the resources from the mining company and to confront the San José del Progreso population. They also point out that, because of these actions, the elected municipal authority continues doing the same things that that allowed it to come to power: it only responds to the needs of the mining company, in turn giving gifts to the segment of the population that favors the project:

“We do not have a municipal president. We have our Coordinator, but we would like to have our own authorities, [...] it’s like those who have a father and those who do not. They don’t do anything to them with their weapons, or after the murders they had people protecting them. The current authorities have become murderers.”

To this date, it is seen that the mining company controls the community’s decisions by granting economic and material resources, as happened on the day that the Civilian Observation Mission visited the offices out of which the municipal authorities carry out their activities. They stated that the benefits that the mining company has brought to the community added up to seven million pesos in 2012. During the visit, the authorities convened a significant number of community members (approximately 400 people). At the end of the visit, authorities gave out blankets and mattresses to all those who participated in the meeting.

On the other hand, in an interview with the Civilian Observation Mission, the state authorities mentioned that it was not up to them to cancel or not cancel the mining project given that it is a federal issue. Furthermore, they argued that the state government is only responsible for promoting investment in projects of this nature. Finally, the state authorities recognized that the practices of mining companies that have investments in the state create conflicts in the communities where they establish projects.

Given these factors, since 2006, the Zapotec community of San José del Progreso has been denied the ability to intervene in decisions over the development of their own lands, as it is established by international human rights documents, as well as the preferential use and benefit of natural resources on the lands that they occupy as it is established in Article 2, Section VI of the Political Constitution of the United Mexican States. Furthermore, the Fortuna Silver Mines company is usurping the responsibilities that legally correspond to the State, which has remained practically absent in the San José del Progreso conflict.

4.5. Right to a healthy environment

Right recognized by the Universal Declaration of Human Rights (Art. 3) and the Political Constitution of the United Mexican States (Articles 4, 25, and 27).

The right to a healthy environment is recognized in Article 4 of the Federal Constitution stating *“all people have the right to a healthy environment for their development and wellbeing.”* The same precept imposes on the State the duty to guarantee this right for every person. Furthermore, it points out that environmental

damage and deterioration will generate legal liability for whoever violates the terms outlined by law.¹³

The execution of mining activities has impacts on the environment, on ecosystems, risks the lives and health of community members, and violates the right to a healthy environment for the development and well-being of the San José del Progreso citizenry through noise and dust emissions, effects on water and houses.

4.5.1. Noise and dust emissions

Those interviewed agreed that the work of mineral extraction carried out by the Fortuna Silver Mines company creates loud noise day and night, to such a level that it does not allow people who live on the town's main street and those who live near the mine site to sleep comfortably. This noise comes from underground and from above ground where the grinding mills are located.

The smoke and dust from the mine's mills affect the air that the population breathes and it damages clothes that are left out to dry overnight with a white powder. Similarly, the dust has caused crops to dry up and to produce a very strong smell. This dust also settles on the grass with which livestock is fed, increasing the peoples' uncertainty about the damage that this could have on the health of the animals.

San José del Progreso community members also point out the mining company's dump trucks which constantly circulate through downtown, the grinding mills and other vehicles that work for the Fortuna Silver Mines company as a source of noise and dust.

The following testimonies give an account of what is described above:

“...There is noise night and day because of the work at the mine. It doesn't stop. But with the arrival of the Civilian Observation Mission caravan they have turned the machines off so we wouldn't find out. On All Saints Day they did not respect the community. They let the noise be constant. It is not clear if it is the mill or the ventilator. We do not know what it is but it makes a horrible sound. It does not let you sleep. An impressive amount of dust is picked up. The size of a mine. The dust that rises is visible from Magdalena. They set up reflectors to disguise the great amount of dust generated. In the entrance on one side they set these giant mounds of dirt. The dust is not visible because it rises above these mounds. The dust is noticeable on the

¹³ Article 4 of the Constitution, paragraph six.

windshields of the cars. It is a very fine dust. When it sprinkles the dust is a whiter color. A black dust covered the crops and started to dry them. An impressive amount of dust comes out of the grass...”¹⁴

“...And on the main road at night they don’t let us sleep. Dump trucks and big trucks go up and down the road. And underneath the house [...] I don’t know if they are working there, but we can hear a noise from below. Since the mine started we are living in agony here...”

“In the afternoons we see the dust clouds that rise. It has not yet affected those of us who live up high because we are upwind. The wind takes all this dust that we see and takes it directly to Magdalena and the towns that are below.”¹⁵

4.5.2. Effects on the water

Those interviewed asserted that with the arrival of the mine, the water level in all the wells has decreased and has become dirty. The testimonies affirm that the Coyote River water has been contaminated, which has resulted in the deaths of animals who have drunk the water. It is also stated that the mining company is contaminating the groundwater, as a result of the opening of underground tunnels.

Hills and the landscape of the town have been destroyed with the construction of the tailings dam. The community lives with uncertainty over the risks that such a dam could bring to wells and streams that are located close to the mine site; especially if the dam’s retention wall and membrane break. The destruction of hills has provoked the loss of flora and the driving away of wild fauna.

“...[They are pulling] all the water [...] and our wells are drying. Here people live off of oyster mushrooms, there won’t be any more water for the oyster mushroom. In a while, there won’t be corn here. Many of us grow squash, radish, flowers. All using well water. When it is not rainy season we have to pump it. The problem is that today there isn’t even enough water. It is not enough for all the land. The harvests are not the same. The vegetables end up with spots because the water isn’t clean any more. Before it was crystal clear. Now when we pull it from the well it looks even dirtier. It is apparent that the water is being contaminated...”¹⁶

¹⁴ Interview in San José del Progreso. Women’s group.

¹⁵ Interview at the Municipal Offices in Maguey Largo.

¹⁶ Interview by the Civilian Observation Mission at the Municipal Offices in Cuajilote.



4.5.3. Damages to housing

The explosions in the mine, which happen every day, have caused damages to some people's homes, creating cracks on floors and walls, even on the roof, in both new and old buildings. Furthermore, there are damages to the roads because of the heavy machinery that the Fortuna Silver Mines uses.

Those interviewed attribute the damages to their homes to the underground explosions and to the noise and constant traffic of heavy dump trucks.

"...at night the cars don't let us sleep, the noise under the house we do not know if they are digging. My house also has cracks..."

4.5.4. Unhealthy environment for the population

The noise and the dust cause stress, respiratory illnesses and skin allergies in some children and elderly people. These occurrences worry some pregnant women who fear for the health of their unborn children because they are breathing the dust that comes from the mine.

"My daughter never got welts and a month ago she started getting them on her hands and legs."

"I have family in San José del Progreso who also got welts on their skin."¹⁷

4.6 Right to community health

The issue of health has experienced significant changes in its scope and reach. Currently, more health factors are being considered, such as the distribution of resources and differences based on a perspective of gender.

The UN's Committee on Economic, Social, and Cultural Rights interprets the right to health, defined in Article 12.1 of General Comment No. 14:

"As an inclusive right extending not only to timely and appropriate health care but also to the underlying determinants of health such as access to safe and potable

¹⁷ Woman from the El Cuajilote community, which is part of the San José del Progreso municipality.

water and adequate sanitation, an adequate supply of food, nutrition and housing, healthy occupational and environmental conditions and access to health-related education and information, including on sexual and reproductive health. A further important aspect is the participation of the population in all health-related decision-making at the community, national and international levels.”¹⁸

“Health is a fundamental human right indispensable for the exercise of other human rights. Every human being is entitled to the enjoyment of the highest attainable standard of health conducive to living a life in dignity. The realization of the right to health may be pursued through numerous, complementary approaches.”¹⁹

In this same observation, the concept of “*the highest attainable standard of health*,” which accounts for the essential biological and socioeconomic conditions of a person as well as the resources available to the State:

“There are a number of aspects which cannot be addressed solely within the relationship between States and individuals; in particular, good health cannot be ensured by a State, nor can States provide protection against every possible cause of human ill health [...] Consequently, the right to health must be understood as a right to the enjoyment of a variety of facilities, goods, services and conditions necessary for the realization of the highest attainable standard of health.”²⁰

The Civilian Observation Mission to San José del Progreso found that the community members’ right to health has been violated in various ways since the conflict that arose out of the establishment of the Fortuna Silver Mines company. The presence of the mine has led to a deterioration of the quality of healthcare that the citizenry of San José received, which was already precarious before the conflict.

“They started to shoot skyward and then at us and they shot me in the hand and the leg [...]. After 4pm, the clinic here is no longer open which is why I was taken to the specialty clinic and they started to heal me. When the police arrived they told me they would transfer me to the civil hospital, they did not see me at the specialty clinic until Monday and then I was transferred.”²¹

¹⁸ General Comment No. 14. “The right to the highest attainable standard of health”. UN Committee on Economic, Social, and Cultural Rights.

¹⁹ Ibid.

²⁰ Ibid.

²¹ Interview with family members and victims, November 19. “Testimony from Guadalupe Vásquez Ruiz” (Gunshot wound, photo with outstretched arm).

There are discrimination and conditions placed on access to services rendered by the Community Health Clinic. Medications are denied to CPUVO sympathizers and services are only available to those who are pro-mine. During appointments, doctors advocate for the respect of authorities, showing sympathy for the presence of the mine.

“It is worrisome. With the river, the water sometimes is very dirty. We are worried because we have a well that is right beside the river and we drink that water and yes, there are stomach issues. We women are discriminated at the health center. I was kicked out of the health center because we did not provide money for its construction. Sometimes they turn on the children at the health center, but how are they at fault?”²²

The Civilian Observation Mission manifests its concern over this issue, given that the population has not been presented with any environmental impact statement. In the interview with the municipal authorities, the municipal president committed to sharing said statement with the Mission, but these were not shared. The concerns of the Mission are not minor because various testimonies give an account of the serious health impacts that are affecting the San José community members and those who work at the mine.

“One mine worker had been working there for three years. Currently she suffers from hair loss on one side of her head, as well as problems with asthma. The mining company only gave her two weeks off and then she went back to work. She works in the mill.”²³

We noticed two patterns in violations to the right to health. On one hand, by denying or impeding access to services which are the responsibility of State institutions. Another pattern is the deterioration of environmental and health conditions that arises out of the presence of the mine, for which both the mining company and the State are liable. These two contribute to the increasing tensions and buildup of a confrontation between the people of San José del Progreso, which further deteriorates the health of the citizens of the community and forces us to consider that within the community, the conflict is felt every day, at all times, this being a catalyst of stress on the community members, leading to different emotional disorders among community members.

On Wednesday November 21, 2012 while the Human Rights Observation Mission was carrying out its duties, Estacio Vásquez Ruiz died of a heart attack. He was a member of the Coordinator of the United Peoples of Ocotlán Valley. For the

²² Interview in Cuajilote, November 20, 2012.

²³ Interview with youth in San José del Progreso.

Mission, it was obvious that the deterioration of his health was directly linked to the conflict in the community. One day before, after finishing the interviews with members of the Coordinator, Eustacio gave a brief message, which he closed in tears.

The conflict in San José del Progreso provoked by the presence of the mine has led to the systematic violation of different human rights. However, the violation of the right to health exemplifies the vulnerability to which community members who are sympathetic to the CPUVO are exposed, but also the different ways in which one single right can be violated and the relation that it has with other rights.

4.7. The Rights of Children and Adolescents

Article 3 of the Law of Protection of the Rights of Children and Adolescents states that the protection of the rights of children and adolescents aims to ensure full and comprehensive development, which means the opportunity to have physical, emotional, social, and moral development under conditions of equality.

In the case of San José del Progreso, this right has been infringed upon as a result of the confrontations and attacks perpetrated by armed groups and the internal socio-political conflict, for which the mining company and the municipal and state authorities bear much of the responsibility. Roundtables carried out with children found that in the community the conditions do not exist for a large part of this sector to develop emotionally, socially, and morally under conditions of equality. Children expressed their worry and fear, generated by the armed groups and contamination, especially of the air, produced by the mining company's excavation activities.

As a result of this, the right to health, guaranteed in Article 28 of the Law of Protection of the Rights of Children and Adolescents has also been infringed upon, as well as Article 33, which establishes the right to rest and play, which must be respected as basic components of children's development and growth.

The following testimony backs up the claim made above:

"We don't play anymore like we used to. Before, we felt safe; now our parents and families are divided, they got mad about the mine, and we can't get mixed up in those things; we can see that the mine divided us, and it also pollutes, it hurts us..."

It's important to mention that the children and adolescents interviewed stated that they have been discriminated against by the municipal authorities, because the scholarships and assistance for school supplies provided by the mining company are only available to groups that support the mining project. This discrimination is also expressed within the school where children are divided among themselves

between the children of *garroteros* (batters), from families who belong to CPUVO, and the children of *marrilleros* (iron bars), from families who belong to the promoting company group. As a result of this, the basic principles of non-discrimination and equality, outlined in article 3 of the same law, are also being infringed upon.

4.8. The Rights of Women

Women are the most impacted by the resistance activity against the mine, due to a series of events that have impacted their lives, especially those that have been left alone due to the death of their husband or son and who then have to take on the double responsibilities of caring for their families, educating, clothing, and feeding their children, at the same time as dealing with their grief. It is the women who live with constant worry for the health, safety and wellbeing of their young children. The absence of their husbands, in many cases, leaves them with multiple jobs and emotional burdens.

When their children are harmed, persecuted, murdered, or criminalized in their defense of community rights, it is the mothers who assume responsibility for their care and recovery, or at least they carry more of this responsibility than the fathers.

The Convention for the Elimination of all Forms of Discrimination Against Women (CEDAW) recognizes a series of rights held by rural women, including recognition of the important role and contributions of rural women; their particular circumstances related to adequate living conditions (shelter, hygiene, basic services, transportation, and communication); the right to participate in planning development programs and communal activities; to health services; to direct benefits provided by the social security system; to training and education; and to participate in self-help groups. It also guarantees rural women the right to access to resources for production, including credit, technology, means for commercialization, equality with respect to land rights, agrarian reform programs, and resettlement programs.²⁴

In the political realm, this international law recognizes womens' right to vote and to run for public office, participation in the creation and implementation of government policies, and participation in NGOs and civil society groups.²⁵

In San José del Progreso womens' rights to political participation, access to municipal services, health services, and physical and emotional wellbeing, recognized under the CEDAW, have been infringed upon. These rights have been

²⁴ Article 14 of the Convention for the Elimination of all Forms of Discrimination Against Women.

²⁵ Article 7 of the CEDAW.

violated by the Fortuna Silver Mines company and by municipal, state, and federal authorities, because women have not been allowed to fully participate in municipal elections to elect their local government. They have only had limited exercise of these rights because of the resistance they've carried out against the Cuzcatlán mining company. Furthermore, they have been criminalized for defending their territory and denied the right to benefits from public resources, municipal resources, and the ability to exercise their right to participate in community institutions like committees. In the roundtable with women the following testimonies were collected:

"There are also positive consequences. I say positive for us on a personal level, because before as women we didn't have a voice or a vote here. Here it was the men who ran things. The men were the ones who made decisions in the general assembly. And now it's not like that, because, maybe as a result of this, a lot of us women who are here have a voice and a vote, now the women participate more than the men." (Woman from San José del Progreso)

"Mr. Gabriel Ruiz used to harass the women in the health center committee, when they would go to work he would hide the cleaning supplies. We spoke with him and he told us not to bother him, that he was in charge there, and he gassed us. We asked why he wouldn't let us work, that he should fulfill his own obligations. To this date there hasn't been a new committee formed, he took away their post, even though the opportunity assembly elected us."

In San José del Progreso there have been at least two women widowed, who claim that their husbands died in situations related to defense of their land against mining. Additionally, the wives and mothers of the wounded have had to dedicate a lot of time to the care and recovery of their children. This situation can be seen in the extreme case of Rosalinda Dionisio and her mother, as a result of the wounds suffered by Rosalinda that threatened her life. To this day, she continues to suffer from physical, psychological, and emotional symptoms.

The Law of Womens' Access to a Life Free From Violence, published in the Official Record of the Federation on February 1, 2007, recognizes a series of womens' rights, and lays out the different kinds of violence against women. It defines violence within a community as individual or collective acts that violate fundamental womens' rights and that lead to their denigration, discrimination, marginalization or exclusion from the public sphere.²⁶

²⁶ Article 16 of the Convention for the Elimination of all Forms of Discrimination Against Women.

The Law of Womens' Access to a Life Free From Violence²⁷ defines **institutional violence** as acts or omissions by public servants from any government entity that discriminate or attempt to delay, obstruct, or impede the enjoyment and exercise of womens' human rights, or their access to policies intended to prevent, attend to, investigate, sanction, and eliminate different kinds of violence.

In terms of womens' labor, many of the testimonies coincide that within the mine women hold lesser jobs, they are not paid decent salaries, their children are not properly cared for, and the image held of them is as if they were prostitutes. These are all degrading towards the women, and they are discriminated against and excluded from public services because they oppose the mining project. Inhabitants of San José del Progreso further mentioned that they have reported cases of abortions caused by the mine. However, they do not dare to identify the individuals for fear of retaliation.

Some of the women denounced that in the case of San José del Progreso's Community Health Center there is discriminatory treatment against CPUVO sympathizers, and they have been denied health services and medication:

"For a time Mrs. Natalia was in charge of the DIF (Comprehensive Family Development agency), and around three years ago she told the wife of president Oscar Venancio that as long as the conflict was going on they wouldn't provide assistance to people, for example with the school breakfast program."

"As women we are discriminated against at the health center. I was kicked out of the health center because we didn't contribute money for the construction."

According to the women who have been a part of the opposition to the mining project, and who fight for the health and lives of their own children, the defense of the territory belonging to San José del Progreso has turned into a defense of life itself and of one's personal integrity against activity that generates violence against women:

"On one occasion, a doctor told me in relation to our struggle against the mine, that we could get uterine cancer because of the contamination, so that gave us more reason to fight."

"We are against the mining company, not for ourselves, who are already screwed, but for our little ones. Here a lot of communities are opposed to the mine, a lot."

²⁷ Article 18.

4.9. The right of free association and assembly

Recognized in the Political Constitution of the United Mexican States (Article 9), the Universal Declaration of Human Rights (Article 20.1), the International Agreement on Civil and Political Rights (Articles 21, 22), the American Convention on Human Rights (Articles 15 and 16), the American Declaration on the Rights and Responsibilities of Man (Articles XXI and XXII), and in the Declaration on the rights and responsibilities of individuals, groups, and institutions to promote and protect universally recognized human rights and fundamental freedoms (Article 5).

The right to association and assembly for legal purposes is clearly recognized in the Federal Constitution with the establishment of article nine that prohibits *“restricting the right to peaceful association and assembly for any legal purpose,”* granting Mexican citizens the exercise of this right in order to participate in political matters within the country. This same right is found in the Universal Declaration of Human Rights, which states that *“every person has the right to free peaceful assembly and association.”*²⁸

The American Declaration on the Rights and Responsibilities of Man also upholds this right and mandates that *“every person has the right to peaceful assembly with others, public protest, or passing assembly, in relation to their common interests of any sort.”*²⁹ Furthermore, it recognizes the right of every person to *“associate with others to promote, exercise, and protect their legitimate interests of a political, economic, religious, social, cultural, professional, syndical, or other nature.”*³⁰

The American Convention on Human Rights establishes the right to peaceful assembly without arms. The exercise of said right can only be subject to restrictions anticipated in the law, that are necessary in a democratic society, in the interest of national security, of public order and security, or to protect the health, public morality, or rights or freedoms of others.³¹ This same convention recognizes, *“the right to association for ideological, religious, political, economic, labor, social, cultural, sporting, or other purposes.”*³²

The UN Declaration on the rights and responsibilities of individuals, groups, and institutions charged with promoting and protecting human rights and universally recognized human rights and fundamental freedoms recognizes both individual and collective rights to peaceful assembly and protest; to form organizations,

²⁸ Article 20.1 of the Universal Declaration on Human Rights.

²⁹ Article XXI

³⁰ Article XXII

³¹ Article 15

³² Article 16.1

associations or non-governmental groups and affiliate or participate in these; to communicate with non-governmental and inter-governmental organizations.³³

In the exercise of the rights to association and assembly described herein and recognized by diverse legal bodies, in 2007 several residents of San José del Progreso came together to form the organization Coordinator of the United Peoples of the Valley of Ocotlán (CPUVO), with the objective of defending their territory against the imposition of the *San José* Mining Project, as well as the individual and collective human rights of its members.

For exercising these rights, the members of CPUVO have been criminalized by the municipal, state, and federal government. The current acting municipal president of San José del Progreso, Alberto Mauro Sánchez Vásquez, has called them fighters, hit men, and troublemakers in San José del Progreso and he says he laments that educated people get themselves into so much trouble. He criminalizes the exercise of the right to association, he rights them off as violent, he persecutes, harasses, and threatens them, and he murders them. According to members of CPUVO

“...The municipal president’s people are armed, they don’t wear uniforms and they are always at the private house they operate out of. This impedes free movement and it threatens the peace here because sometimes they’re drinking and there could be a conflict...”

...They wander around town when there are meetings, harassing people.

...With the conflict over the mine, everybody is armed; any time there’s a problem you hear gun shots right away, maybe they’re signals among them. People don’t go out anymore at night, nobody is out on the street at night anymore...

On June 16th I was shot with a bullet around 6 pm in the center of town. I was here playing ball and the assistant head of public works passed by in his truck and started to insult us. They said, “you’re going to die” and then they took out a gun and pointed it at us. People were gathered around because it was Saturday. They started to run and we were following them to make sure they didn’t hurt anybody else, then they turned around and kept insulting us, and we were unarmed, and they started shooting up in the air and then at us, and they shot me in my hand and my leg...”

The Civil Observation Mission interviewed Zacarías Martínez Orozco, Judicial Director of the State Police, doctor Ernesto López Saure, Assistant Ombudsperson

³³ Article 5

for Justice, and María Judith Cruz Chávez, head of the Division of Constitutional Processes and Human Rights of the state Public Safety Secretary, who claimed that they have set up check points that have only found handguns. They acknowledge that there are two groups that they classify as violent, but they did not release information about what types of weapons they may have and they did not acknowledge the presence of armed groups.

These government entities do not have a clear strategy or protocol to follow when there are confrontations between the two groups. When they were questioned about prevention strategies designed to prevent confrontations, they stated that they do not have any.

Exercising their right to assemble in order to defend their territorial rights, on March 16th, 2009, CPUVO, in an orderly and peaceful manner, shut down the mine's operations, demanding that officials from the Environment and Natural Resources Secretary and the Secretary of the Economy revisit the permits and authorizations granted for the mine's exploratory activities. This right was violated on May 6, 2009, when the police evicted the protestors.

"...We were evicted by 1,500 officers from different police forces. They had helicopters and dogs. And all of that just to remove 100 people. The state looked really bad. Their tactics were completely disproportionate..."

CPUVO's right to assembly and association has been criminalized. The state has refused to guarantee the exercise of this right. The government institutions responsible for protecting human rights, like the Office of Human Rights of the People of Oaxaca, have maintained their distance and have, to date, not made any recommendations regarding the various human rights violations committed against the people of San José del Progreso during the seven years of resistance against Fortuna Silver Mines.

4.10. Right to Freedom, Personal Safety, and Life

Articles 5 and 7 of the American Convention on Human Rights recognize the right of all persons to physical, psychological, and moral integrity, as well as freedom and personal safety. Physical integrity means the preservation and care for all parts of the body, psychological integrity is related to the preservation of all emotional, psychological, and intellectual faculties. Finally, moral integrity refers to the right of every person to lead their life according to their own convictions.

According to testimonies presented by citizens of San José del Progreso, interviews with municipal and state authorities, and review of relevant records during the Civil Mission, we observed that the right to freedom, personal integrity, and life have been systematically violated in the community of San José del

Progreso, so much so that the violence has reached all of the different groups that are connected to the issue: members of CPUVO, members of the organization “San José Defending Our Rights,” ecclesiastical groups, athletic groups, children, women, and youth. It is difficult to point to those responsible and to the masterminds and perpetrators of the problem. However, the municipal and state authorities and Fortuna Silver Mines share a high level of responsibility for the attacks against inhabitants of the community.

According to testimony from the citizens of San José, there is a strong presence of armed groups in the community, that did not exist before the arrival of Fortuna Silver Mines, and who are tied to the municipal authorities and defend the interests of the mining company. This situation has spread fear among the population because they carry out acts of intimidation, especially when CPUVO organizes meetings in the capitol of the municipality.

“Before the company arrived, the town was quiet, kids could play in the street, but it’s not like that anymore. They look for the smallest pretext to start a confrontation. The municipal president’s people are armed, they don’t wear uniforms, and they’re always at the authorities’ secondary offices. They wander around town when there are meetings, provoking and harassing people. We believe that they’re from outside the community, and that they have military training.”

The people interviewed by the Civil Mission also denounced that members of the municipal authorities are armed with financing from the mining company. In a communiqué issued by CPUVO in March, 2011, they published a photograph of Artemio Lidio Muñoz Vásquez, member of the non-profit organization “San José Defending Our Rights,” in a confrontation that took place on April 5, 2010; also included was a photograph of Amador Vásquez Gómez, municipal trustee, carrying a firearm that he used to threaten Bernardo Vásquez Sánchez, Rosalinda Dionisio and Eustacio Vásquez with death, all members of CPUVO.

It’s important to mention that all of the members of CPUVO who were interviewed have been victims of violence and threats from armed groups that support the mining company, as well as threats directly from municipal authorities. Those individuals interviewed also confirmed that they have presented formal complaints and evidence to the state government about the presence of said groups.

According to the testimonies collected, between January and November of 2012 the following individuals were injured with firearms: Bernardo Vásquez Gómez, Guadalupe Andrés Vásquez Ruíz, José Martínez Sánchez, Rosalinda Dionisio Vásquez, Álvaro Andrés Vázquez Sánchez, Martín Hernández Arango, Celso Vázquez Sánchez, Salvador Vázquez Martínez, Domingo Villanueva, Jorge Sánchez Hernández, Bertín Vázquez Ruíz, Pascasio Pérez Manuel, Carlos Sánchez Pérez and Abigail Vázquez Sánchez. Two individuals, Bernardo Méndez Vázquez and Bernardo Vázquez Sánchez, were murdered during that time. All are members of CPUVO.



Archivo General CPUVO



Archivo General CPUVO

4.10.1. Abuse of Authority and Excessive Use of Police Force



Colectivo Oaxaqueño Archive

On March 16th, 2009 approximately 250 inhabitants of San José del Progreso, Maguey Largo, Cuajilote and Magdalena Ocotlán blocked the entrance to the mine, demanding that officials from the Environment and Natural Resources Secretary and the Secretary of the Economy revisit the permits and authorizations granted to the mine. Two months later, on May 6, 2009, an alarm went out among the inhabitants of San José because approximately

1,000 Federal and State Police were preparing an operation to evict the people who were blocking the access to the mine. The operation was jointly planned between the state and federal government. During the eviction several people were injured and 22 were detained under charges of attacking roadways.

“The highway was full of police, helicopters, and dogs; they attacked us all: children, elderly, women. They teargassed us, they put the detained in pickup trucks, they stomped on them, and they handcuffed them. When they were taken to jail they made them stand out in the sun,

without any food, they wanted to cross their legs but the police would hit them so they couldn't sit down..."

These events violate Articles 11 and 13 that recognize the right to protection of honor and dignity, as well as the right to freedom of thought and expression recognized under the American Convention on Human Rights, as well as Article 14 of the Political Constitution of the United Mexican States, which establishes that no person may be deprived of their liberty except through a trial in previously established tribunals. It's important to note that during these events the police used excessive force, they physically attacked the protestors, and there were children and elderly people present. The eviction order was drafted by the municipal president of San José del Progreso and the order was given by the Public Safety Secretary of the state of Oaxaca, under the claim that CPUVO was violating the rights of Fortuna Silver Mines.

4.10.2. Right to Life

Article 3 of the Universal Declaration of Human Rights states that every individual has the right to life, liberty, and personal safety. In the case of San José del Progreso four people have been murdered.³⁴ The members of CPUVO attested during interviews that these murders are directly related to the conflict over the mine.

The former municipal president, Óscar Venancio, and the former Secretary of Health, Félix Misael, were murdered on June 19, 2010 in a conflict between residents of Maguey Largo and Cuajilote and the municipal authorities of San José del Progreso. This situation has yet to be clarified by the authorities responsible for dealing out justice in the state of Oaxaca.



Jonathan Treat

Bernardo Méndez Vásquez was murdered on January 18, 2012 when an armed group of supporters of the mining company and municipal police shot at community protestors who were upset about the destruction of the town drinking water infrastructure, presumably by employees of the mining company. According to testimony from a firsthand witnesses their aim was to

³⁴ Óscar Venancio Martínez Rivera, Félix Misael Hernández, Bernardo Méndez Vásquez, Bernardo Vásquez Sánchez.

assassinate Bernardo Vásquez Sánchez, however, they got confused and murdered somebody else instead, who was also a member of CPUVO. All of the testimonies compiled by the Civil Mission mention that the order to shoot was given by the municipal president of San José del Progreso:

“Bernardo [Méndez] was murdered because a police officer got confused. The police said over the radio: We’ve got trouble because Bernardo just arrived, and then the president said: ok, well, if he’s there, shoot him. But the officer wasn’t from here, he was from Garzona, so he killed Bernardo Méndez”.

Bernardo Vásquez Sánchez was murdered on March 15, 2012 when an armed group, presumed to have been hired by the municipal authority in San José del Progreso that, at the same time, is closely tied to the interests of the mining company, ambushed Bernardo, his brother Andres and Rosalinda Dionisio Sánchez by the crossroads at Santa Lucía Ocotlán at approximately 9 at night when they were headed to their community. Four months before being murdered, graffiti appeared in a drainage canal near the edge of the urban area and he received threatening text messages: *“your end is here,”* a threat that was carried out on March 15, 2012. Members of CPUVO told the Civil Mission that the state authorities were aware of these threats, but they did not take any preventive measures.

Faced with this situation, the women interviewed from San José del Progreso mentioned that they demand safety measures for the population, which consist of the following:

“Security for us isn’t that they come here with armed state police convoys, on the contrary, this brings a lot on insecurity and intimidation because they usually protect the ones who are against us. For us, there will be security when there’s an end to the impunity in our community.”

Finally, the Office of Human Rights of the People of Oaxaca maintains the following regarding the murders committed in the community:

“We have to be watchful regarding the implementation of justice. We must pay attention to make sure the authorities do their job well. If there are procedural violations, we can intervene. We monitor the Public Ministry to ensure they carry out their investigation properly but we cannot intervene in a judicial process.”

These murders are evidence of the negligence on the part of the authorities involved since, for more than six years CPUVO has alerted them about the social conflict generated by the mining company. They also demonstrate the weakness of the Mexican state to protect the fundamental right of all human beings: the right to life.

4.11. The Rights of Human Rights Advocates



According to articles 1, 5, 9, and 12 of the Declaration on the Right of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, all individuals have the right to meet or celebrate assemblies peacefully, to form organizations, associations, or non-governmental groups and affiliate or participate in them, in

the same manner, they have the individual or collective right to have efficient resources and to be protected in the case that those rights are violated.

In the case of San José del Progreso, the opposite of this declaration takes place, given that municipal authorities tend to criminalize the Coordinator of the United Peoples of Ocotlán Valley. The municipal president has identified those opposed to the mining company as a group of murderers, batterers, and people with individual and economic interests to whom all the weight of the law must be applied given that they enjoy total impunity. In the interview conducted to the municipal president Alberto Mauro, he said the following:

“there were concerns that seemed just and I would support them, but I won’t support their attitude anymore, the beatings, killing, that is not fighting for human rights...they are groups that wouldn’t have grown if the state government had applied the law”

Additionally, the municipal president exposed that Bernardo Vásquez Sánchez was murdered for being a problematic person, in addition to declaring that people against the mining company only want the municipal (government’s) power:

“Bernardo [Vásquez Sánchez] got into trouble with all the municipalities, he got into problems with the president of Ocotlán, in San Miguel Tilquiapam he was getting into problems with a dam that will be constructed in Paso de la Reyna, he had problems with the

state government, it is truly unfortunate that he was killed...the conflict is not with the mine, it is a group of people that want power.”

It is important to mention that none of the CPUVO members are undergoing criminal processes against them for crimes such as homicide, assault, or kidnappings. On the contrary, in only three years (2010-2012) there is documented information about 9 injured individuals³⁵ as a result of their work in the promotion and defense of their territory; in this sense, members of the CPUVO have received a countless number of threats and intimidations via text messages and directly in meetings with the municipal authority. In the mission, a citizen of the Maguey Largo community commented the following:

“In November 2011 we conducted a forum in the community to talk about the impacts of mining, before conducting the forum, the municipal president invited our agent to inform him about a few (mining) operations; the agent went to the meeting. However, the objective was not to inform, but rather to threaten that he would not allow the forum, that he would not allow strangers to come to the municipality and in addition, if the agent conducted the forum, the president would not be held responsible for the safety of its participants.”

On June 19, 2010, Martín Octavio García Ortiz, the priest of the region at the time, was assaulted, gravely injured, and kidnapped by members of the “San José Defending our Rights” Civil Association, threatening his integrity and putting his life in danger. The following testimony describes said aggression:

“they took him at 6 in the afternoon when he was going to the town to give mass, at that moment in front of the former hacienda building members of the San José Defending our Rights Civil Association took him. A lady took a brick and broke it giving blows to his head, Ángel Arango also hit him with the handle of a gun. They got him on his truck, continued beating him, and undressed him. At one in the morning they negotiated with the state police and they turned him in accusing him of being the mastermind of Óscar Venancio Martínez Rivera’s murder.”

³⁵ Martín Octavio García Ortiz, Abigaíl Vásquez Sánchez, Rosalinda Dionisio Sánchez, Álvaro Andrés Vásquez Sánchez, Bertín Vásquez Ruíz, Guadalupe Andrés Vásquez Ruíz, Celso Vásquez Sánchez, Pascasio Pérez Manuel, and Carlos Sánchez Pérez.

Given this context it is alarming that the statements of state authorities involved in the case³⁶ recognized the following in an interview conducted by the Civil Mission:

“There is a need for mechanisms and protocols that guarantee the human rights of advocates in San José del Progreso, but we are working on it.”

As a result of the murders, the Human Rights Ombudsman of the People of Oaxaca in coordination with the Public Safety Secretary, Health Services of Oaxaca, and the Coordinator of the United Peoples of Ocotlán Valley sent out security measures to San José del Progreso and specifically to two members of CPUVO. Even with these measures, the State does not fully guarantee the work of human rights advocates, as established in the Declaration on the Right of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms when murderers and aggressors continue to enjoy freedom and impunity.

4.12. The right to the administration of justice



Recognized in the Universal Declaration of Human Rights (Articles 8, 9, and 10); the American Convention on Human Rights (Article 25); the Declaration on the Right of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms Article 9.5); and the Political Constitution of the United Mexican States

(Article 17).

The Universal Declaration of Human rights recognizes that all persons have the right to effective recourse before competent national tribunals, that protect against acts that violate their recognized fundamental rights by the constitution or by the law.³⁷ This instrument prohibits arbitrary detention and exile,³⁸ and recognizes the

³⁶ Coordinator for Human Rights Services of the State of Oaxaca, Public Safety Secretary of the State of Oaxaca, Ombudsman Office of the State of Oaxaca, Health Services of Oaxaca, Human Rights Ombudsman of the People of Oaxaca.

³⁷ Article 8

³⁸ Article 9

right to be heard publicly and with justice by an independent and impartial tribunal for the determination an individual's rights or the review of whatever accusation is made against this person in penal matters.³⁹

The American Convention on Human Rights recognizes individuals' right to a simple and speedy recourse, or any other effective recourse before competent judges or tribunals, that protects against acts that violate recognized fundamental rights by the Constitution, the law or this convention, even when a violation is committed by individuals acting in the exercise of their official functions.⁴⁰

The State is obliged to conduct a timely and impartial investigation or adopt the necessary measures in order to conduct an inquiry when there are reasonable motives to believe that a violation has taken place against human rights or the fundamental freedoms in territories under its jurisdiction.⁴¹

The Mexican Constitution establishes that all individuals have the right to being administered justice by unobstructed tribunals in the time frames and terms indicated by the law, giving their resolutions in a fast, complete, and impartial manner.⁴²

The Coordinator of the United Peoples of Ocotlán Valley has denounced a series of human rights violations in San José del Progreso, such as the arbitrary arrests, torture, death threats, injuries, homicides, indiscriminate use of public force, illegal possession of weapons, intimidations, persecutions, abuse of authority, etc. Many of these crimes were committed by individuals linked to the Municipal President of San José del Progreso and the Fortuna Silver Mines company without any legal action against the responsible parties, thus denying access to justice.

Even with the homicides committed against Bernardo Méndez Vásquez and Bernardo Vásquez Sánchez and the injuries perpetrated against several individuals, the complaints against the masterminds of said crimes have not succeeded, endangering the lives of the population that is opposed to the Fortuna Silver Mines company. The family members express it in this manner:

³⁹ Article 10

⁴⁰ Article 25 of the American Convention on Human Rights

⁴¹ Article 9.5 of Declaration on the Right of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms

⁴² Article 17 of the Political Constitution of the United Mexican States.

“We want justice for our sons and daughters who have been assaulted and killed. On September 15, 2012, the municipal president passed in front of my house with his truck very close to where I was sitting and reading the newspaper—he laughed. What I want is for justice to be made because he is the mastermind of my son’s murder...”

“...We all know that they are the masterminds of the Bernardos’ deaths. The other party has always harassed them. They have also threatened the committees. The potable water crew has always received threats via telephone. It is believed that Bernardo Méndez was killed due to the police officer’s mix-up.

When one of the injured individuals was asked if a formal complaint was filed, this person indicated that it had, and when asked about the progress of the investigation, the response was:

“Nothing, the witnesses were taken to provide our testimony in the judicial offices, what we saw, we said everything. They only summoned us to correct information because they had the incorrect name of one witness and of a judge, but until this moment they have not called us to inform us how it is progressing...”

There is a permanent complaint filed in state courts by members of the Coordinator for the lack of action in the face of criminal activities. They put responsibility on the government because no action is taken against individuals carrying weapons. The government does not move despite the complaints filed.

“...There have been multiple complaints, but they have not paid attention to us. No one has been arrested for the murders or aggressions. Here, you can see the government’s hand. If a complaint is filed against someone from the Coordinator, the government immediately arrests them [...] This never happens to the mine’s sympathizers. The young man who was arrested said that they are in complete disadvantage. He was detained and searched. They did not do anything to the president’s people that came behind him. He told the police officer to please let him go. The police officer said, “let me ask my boss”. He did not call his supervisor, he called the president. The president said, “I do not have a problem with him, but it does not matter, he is with the others: fuck him.” The police officer said, it is not personal, but the president gives me money.

Your group does not give me anything. Then he proceeded to arrest him...”

“...Toward the end of July 2012: There was an attempt of a conflict. The council administrator had an AK-47. The health council with his gun. They took pictures of them and they took them to the State Congress. Nothing was done. They do not mobilize despite evidence. We have a case where the authorities are threatening citizens...”

On their part, the municipal authorities tacitly accept having participated in the events leading to the assassination of Bernardo Méndez, by affirming that on January 18th (day in which Bernardo Méndez was murdered), *“we defended ourselves. Bernardo Méndez died due to a stray bullet from his own people.”*

In the interview to representatives of the state executive branch conducted by the Mission, they indicated that the mining company had permits to carry weapons because the National Defense Secretary provided them, on top of the fact that they were assuming tasks that are the responsibility of the government; they affirmed:

“...we will only safeguard justice, we do not care if they are good or bad, the role of the executive with regard to megaprojects is one of promotion...”

What has been described up to this point leads to the conclusion that there is an evident violation to the administration of justice in detriment of CPUVO members, above all, because of the lack of investigation, indictments, and sanctions of masterminds of the homicides and injuries to the people described in this report. At this moment six people⁴³ have been arrested for the murders of Bernardo Méndez Vásquez and Bernardo Vásquez Sánchez.

For the crimes concerning threats, injuries, and illegal possession of weapons, no one has been arrested. In the meantime, complaints continue to increase concerning criminal activities in San José del Progreso.

⁴³ Carlos Sánchez Muñoz, Gabriel Martínez Vásquez and Gabriel Ruiz Arango for the murder of Bernardo Méndez Vásquez.

Albindo Rodríguez Gómez, Bartolo Asunción Aguilar Hernández and Domingo Marcelino Aguilar Hernández for the murder of Bernardo Vásquez Sánchez.

5. CONCLUSIONS AND RECOMMENDATIONS

To the three levels of the Mexican government (municipal, state, and federal)

1. Guarantee the right of association and meeting of the Coordinator of the United Peoples of Ocotlán Valley (CPUVO) members and of the people that defend land in the state of Oaxaca.
2. Thoroughly incorporate economic, social, cultural, and environmental rights to the approval process of the “*San José*” project and provide training on human rights obligations to all public officials involved in the process.
3. Guarantee the right to life and physical and psychological integrity of San José del Progreso’s population.
4. Weight citizen’s rights over mining companies’ rights and interests because under this framework human rights are being violated in the state of Oaxaca.
5. Guarantee womens’ rights to a life free of violence, implementing actions to prevent, attend to, investigate, sanction, and repair inflicted harm, an obligation being omitted by allowing, through action and omission, violence in San José del Progreso.
6. Comply with the legal obligations established in Mexican and international laws concerning the implementation of megaprojects and respect for human rights, including the application of ILO Convention 169 in cases relating to indigenous communities, and in all cases apply the principle of *pro persona* (in other words, when Mexican and international laws differ, the normative framework that provides the widest protection of human rights and to affected communities should prevail).

To Mexican federal authorities:

7. To the Environment and Natural Resources Secretary (SEMARNAT), facilitate the right to information, clarifying concession processes from mines to firms and the real effects caused by these projects in territories. All levels of government have violated the right to public access of information. This serious violation has favored mines’ presence, exacerbated the conflict in the community, and challenged members of San José’s population due to the unclear implications of a mining project in their territory, the benefits it generates, as well as its environmental impact. Authorities in all levels of

government are obligated to proactively guarantee access to all information concerning the project through widely publicized means.

8. Cancel the Progreso, Progreso II, Progreso II Bis, and Progreso III mining concessions authorized to the firm Minerales de Oaxaca S.A. de C.V. through the Secretary of the Economy because they were awarded without prior consultation and informed consent of San José del Progreso's residents, failing to comply with International Labor Organization convention 169, signed and ratified by the Mexican government.
9. Stop the Support Fund for Un-Regularized Agrarian Nuclei (FANAR), previously known as the Program for Certification of *Ejido* Rights and Land Titling (PROCEDE), in San José del Progreso given that it goes against traditional forms of organization in communities and has fomented the individualization and privatization of their *ejido* lands, favoring the imposition of the *San José* Mining Project that has dispossessed *ejido* land holders of their plots, endorsing contracts corrupted with the consent of agrarian authorities.
10. Submit the Environmental Impact Statement for the San José Mining Project approved by the Environment and Natural Resources Secretary to the full review of San José del Progreso's residents, creating the necessary conditions so that said review is developed freely, in an informed and autonomous manner while respecting the community's decision once these studies have been reviewed.
11. To the National Human Rights Commission, hold the necessary investigations to demonstrate the human rights violations of San José del Progreso's residents caused by the installation of the mining company Cuzcatlán in *ejido* land and send out the necessary recommendations to the municipal, state, and federal governments. In addition, assume an active role in the defense of communities facing enduring mining concessions without their prior consent.
12. To the Congress of the Union, kill the reform initiative to the Agrarian Law that threatens the integrity of communal territories and the indigenous communities of Mexico, specifically of the San José del Progreso *ejido* and implement the necessary measures to guarantee its cultural and spiritual integrity.
13. To the Office of the Agrarian Prosecutor, abstain from the promotion and imposition of the FANAR program and construct the adequate means for the

immediate constitution of an assembly in order to appoint new members to the *Ejido* Lands Commission and the Oversight Council of San José del Progreso, Oaxaca, facilitating the establishment of the agrarian authorities that the assembly chooses.

14. To the National Defense Secretary (SEDENA), implement means to verify that the municipal police counts with the required authority to carry weapons; it is recommended to create a mechanism to disarm violent groups denounced by the CPUVO.

To the authorities of the state of Oaxaca:

15. We recommend the complete implementation of the National Human Rights Commission and the Human Rights Ombudsman of the People of Oaxaca's recommendations that have direct or indirect relation to the rights of the affected communities by megaprojects.
16. Assume an active role in the defense of citizens facing human rights violations due to the installation of megaprojects in their territories. This can be done by intervening through monitoring, review, and interposition of legal resources for the revocation of mining concessions and Evaluation of Environmental Impact authorizations granted by the federal government, that do not comply with the legal formalities established in Mexican laws and international treaties.
17. To the Human Rights Ombudsman of the People of Oaxaca, respect and demand compliance with the right to information, the participation and the consultation of Oaxacan communities, providing complete and accessible information about mining concessions and megaprojects for all members of relevant communities, from the moment said megaprojects are in the planning stage and during the totality of the process. The state government must comply with the legal requirement that demands conducting public consultations before approving any megaproject.
18. Respect and demand compliance with the right to information and promote greater governmental transparency, assuring that all documents related to megaproject proposals are publicly accessible in an immediate form as well as disseminating all evaluations of the environmental impact in an easily accessible format and through diverse mediums.

19. To the Public Safety Secretary of Oaxaca, regulate operations and construct protocols for the intervention of law enforcement in the community of San José del Progreso.
20. To the Human Rights Ombudsman of the People of Oaxaca, conduct investigations in relation to the public complaints made by citizens of San José del Progreso in relation to the presence of armed groups in the community. Guarantee the right to life and conduct the corresponding investigations to clear up the murders of Bernardo Méndez Vásquez, Bernardo Vásquez Sánchez, Óscar Venancio y Félix Misael, as well as the injuries and threats to the members of the Coordinator of the United Peoples of Ocotlán Valley (CPUVO). In this manner, it is recommended to implement a protocol leading to the reparation of damages of attacked persons and the families of murdered persons and guarantee the human rights and security of CPUVO members and human rights advocates in the state of Oaxaca, and through the required measures and due processes, secure the complete access to justice in a timely manner.

To the government of Canada:

21. Urge all Canadian mining companies to immediately implement all principles of the United Nations Global Compact and the directives of the Organization for Economic Cooperation and Development (OECD) in all projects that are currently in the planning and operating stages.
22. Implement effective measures, legislative or of another kind, to assure that Canadian mining companies are held accountable before the Canadian judicial system for human rights violations committed outside Canadian borders.
23. Conduct an expedited investigation about the complaints made by members of CPUVO in relation to the link between Fortuna Silver Mines, the local authorities of San José del Progreso, as well as the alleged relations between said company and the armed groups in the community.

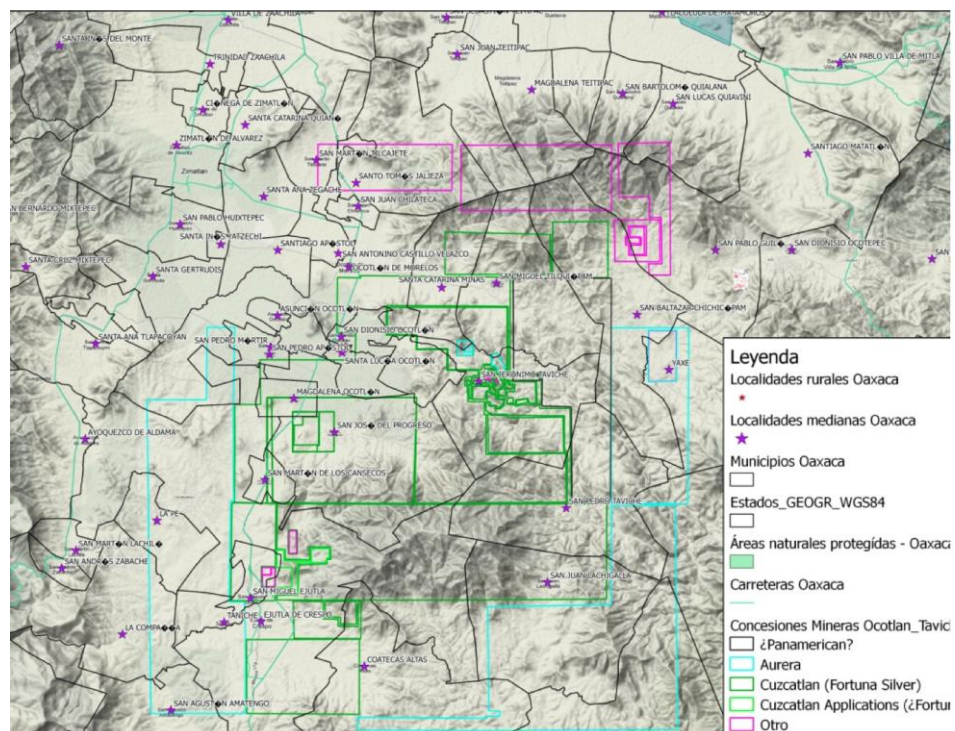
6. APPENDICES

Conflict Timeline

- March 16, 2009: Mine entrance taken over by 250 citizens of the San José del Progreso Municipality and Magdalena Ocotlán.
- March 20, 2009: Federal police, national defense, and state police units begin an operation to remove 17 tons of explosives from the mine. Media campaign against Father Martin begins.
- March 21, 2009: Then municipal president of San José del Progreso, Óscar Venancio Martínez, uses a firearm to threaten the mobilization in front of the mining company site.
- April 19, 2009: Communities protest on the Ocotlan-Ejutla highway, state government agrees to dialogue with CPUVO, but no agreement made at the negotiating tables was subsequently respected.
- May 6, 2009: Approximately 1,200 federal and state police officers carry out an operation to evict protesters using tear gas and destroying journalists' equipment. Several people are injured and 22 arrested during this operation.
- August 2, 2009: Confrontation between pro and anti-mining groups San José del Progreso.
- April 5, 2010: Resignation of *Ejido* Land Commissioner.
- May-November, 2010: *Ejido* members begin the process of naming a new *Ejido* Land Commissioner but the Office of the Agrarian Prosecutor does not allow the vote, arguing that the proper conditions do not exist for calling an *ejido* assembly.
- June 19, 2010: Municipal President Óscar Venancio Martínez and Health Counselor Félix Misael Hernández are murdered during a confrontation in the municipal agency of El Cuajilote. Nine members of CPUVO are later arrested and four people are seriously injured. The same day, Father Martin is kidnapped, beaten, and held under the charge of "mastermind" of the murder of the municipal president Óscar Venancio.
- July-December, 2010: Electoral process in the San José municipality. CPUVO denounces violations during the process due to the involvement of the mining company in the elections.
- January 1, 2011: After the elected municipal officials from the pro-mining company group assume office, members of the slate of candidates loyal to CPUVO take the municipal building to demand the nullification of the elections due to the denounced irregularities.
- September, 2011: The Fortuna Silver Mines Company begins operation exploiting primarily silver and gold, processing an average quantity of 1000 tons of rock material per day.
- January 18, 2012: There is a confrontation in the county seat of San José del Progreso, where Bernardo Méndez Vásquez is mortally wounded and Abigail Vásquez Sánchez is wounded in the leg, by an armed group made up of municipal police and alleged paramilitary groups.

- January 25, 2012: Members of CPUVO go to Mexico City to hold a protest in front of the Canadian embassy with the aim of denouncing the violence generated by the mining project in the community.
- March 15, 2012: At approximately 9:30 pm, Bernardo Vásquez Sánchez is murdered in an ambush in Santa Lucia Ocotlán, and his brother Andrés Vásquez Sánchez and Rosalinda Dionisio Sánchez, both members of CPUVO, are injured.
- March 21, 2012: CPUVO members and Mexican human rights organizations hold a protest in front of the Canadian embassy in Mexico City and at the Canadian Consulate in Oaxaca city to denounce the responsibility of the Fortuna Silver Mines Company in the murders of human rights advocates in San José del Progreso.
- June 16, 2012: Members of CPUVO are again attacked by members of the municipal government of San José del Progreso.
- October 22, 2012: A construction project to bring water from the Municipality of Ocotlán de Morelos to the mine project facilities is begun in the municipality of Magdalena Ocotlán. This project is guarded by state police and the Auxiliary Banking, Industrial, and Commercial Police (PABIC, by its initials in Spanish). Nearly 140 people from San José and Magdalena Ocotlán (including the municipal president of Magdalena) arrive to demand permits for the construction project. Nevertheless, federal and state authorities give no answer and the project is completed that very day. Due to these facts, the Human Rights Ombudsman of Oaxaca issues an early 02/2012 in order to protect the rights of the protesters.
- November, 2012: The Municipal President of San José del Progreso, Alberto Mauro Sánchez Muñoz, threatens Leovigildo Vásquez Sánchez and Álvaro Andrés Vásquez Sánchez (brothers of Bernardo Vásquez Sánchez) at the Santa Lucía crossroads of the Ocotlán-San José del Progreso highway.
- November 19-21, 2012: The Justice for San José del Progreso Civilian Observation Mission is held, later denouncing threats and harassment by municipal authorities during its activities.
- March 15, 2013: In commemoration of the first anniversary of the murder of Bernardo Vásquez, CPUVO holds a symbolic protest in front of the mine facility. An armed group arrives and fires guns in the direction of the protesters. Judicial Police prevents this group from approaching CPUVO members and human rights observers present.
- May 16, 2013: Death threats are found at the “la Zanja” site against C. Pedro Martínez and his family with the following messages: “YOU SHOULD HAVE NEVER TALKED BAD ABOUT THE PRESIDENT HE DOES NOT FORGIVE” “WE ARE WARNING YOU OR YOUR FAMILY ARE NEXT AFTER BERNARDO.” The Human Rights Ombudsman of the People of Oaxaca opens the file DDHPO/CA/413/(16)/OAX/2013, and files the corresponding complaint.

6.2. Mining concessions in Ocotlán, Ejutla and Zimatlán districts



Letter addressed to the president of the republic.

San Jose del progreso Ucatlan Oaxaca a 19 de Nov.
del 2012

Presidente Felipe Calderon me llamo Daniela y me dirijo de la manera mas atenta a usted para contarle como que esta cambiando en San Jose. Yo solo soy una niña de 10 años pero me da cuenta de muchas cosas ahora me da miedo cruzar la calle porque pasan muchos carros pipas y bolleos que con su humo contaminan el aire.

Junto de mi casa estan las oficinas del presidente Alberto Mauro Sanchez y todos los Domingos riegan como media pipa en el camino tambien gastan mucha agua cuando lavan sus carros.

Le pido que nos ayude por que la minera cuccatlan esta contaminando todo y es la culpable de que nuestro pueblo este dividido tambien han asesinado a 2 hombres muy luchadores por nuestra libertad por eso queremos que el gobierno sea justo.

En buena hora y sin mas decir me despido de usted.

QUEREMOS JUSTISIA
Y PROGRESO

(Transcription)

San José del Progreso Ocotlán, Oaxaca, November 19, 2012

President Felipe Calderon my name is Daniela and I write you in the most attentive manner to tell you what is changing in San José. I am only a ten year-old girl, but I notice a lot of things. I'm now scared to cross the street because a lot of cars, tanker trucks, and dump trucks pollute the air with their smoke.

Next to my house is the office of the president Alberto Mauro Sánchez and every Sunday they water the road with half a tanker truck; they also waste a lot of water when they wash their cars.

I ask that you help us because the Cuzcatlán mining company is polluting everything; it is responsible for the division in our town, they have also killed two men who have fought hard for our freedom that is why we want the government to be just.

In good time and without saying more, I wish you well.

WE WANT JUSTICE AND PROGRESS