

The La Platosa Conflict

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THE LA PLATOSA CONFLICT

Indigenous People and the Law

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THE CONFLICT

The community of El Ejido La Sierrita (the Ejido) has had a relationship with Canadian mining company Excellon Resources since 2004, when the parties signed a contract giving Excellon surface rights to a portion of their communally held land.¹ The Ejido hoped the project would be mutually beneficial and bring resources to their community but it has instead brought escalating conflict over unfair dealings. The Ejido has a long list of complaints about the company's conduct. They have been joined by other workers from outside the Ejido in their complaints about the right to unionize, the use of torture as workplace discipline and the death of employees due to unsafe working conditions in the mine.² Despite periods of solidarity, the Ejido's efforts to stop production at the mine have caused discord with workers from other communities not affected by the Ejido's contract with Excellon. Because of the complicated relationships that have developed, representation of the Ejido requires that the scope of complaints now brought against Excellon be limited to those that do not rely on outside parties. Given this, two inter-related complaints about water rise to the surface as being uniquely raised by the Ejido and will be the focus of the advocacy efforts that follow.

As part of the agreement, Excellon contracted to provide a water treatment plant that would allow the water extracted in the course of mining production to be safe enough for agricultural purposes.³ The treatment plant has not been provided and the extracted water instead

¹ Excellon. "Backgrounder –Revised January 23, 2015". Dated January 23, 2015. http://www.excellonresources.com/images/community_relations/2015-01-23_EXN_Backgrounder.pdf-breached_n_1840536.html.

² Mendelson, Rachel. "Excellon Blockade: Mexico Conflict Highlights Shortcomings Of Canadian Mining Oversight" Huffington Post, dated August 28, 2012. http://www.huffingtonpost.ca/2012/08/28/excellon-blockade-protest-mexico_n_1828923.html.

³ *Supra* note 1.

spills onto the Ejido land in its untreated state.⁴ The water from the mine has a high mineral content and both parties agree the wastewater is not fit for human consumption.⁵ The parties differ however in their opinion on the legal possibility of constructing the treatment plant and in their beliefs about the safety of the water for agricultural use.

Clause 4(G) of the Surface Rights Agreement (SRA) states that Excellon will build a treatment plant “in accordance with the necessary local and national permits.”⁶ Excellon’s perspective is that they cannot build a plant until the Ejido obtains the permits to do so.⁷ They further claim that the government is not awarding permits because extreme draught threatens the region’s water supply.⁸ The Ejido’s position is that no permit is needed since the water comes not from a new well but from water that is already being extracted by the mine.⁹ The Ejido has visited the federal water agency, CONAGUA, and was told that any permits would need to be acquired by Excellon.¹⁰ The Ejido conveyed this to Excellon, but Excellon has not visited CONAGUA or taken any other steps to build the treatment plant.¹¹

The Ejido had the wastewater being discharged onto their land independently tested by the National Autonomous University of Mexico (UNAM) as they were concerned about its

⁴ *Supra* note 2.

⁵ Sindicato Nacional de Trabajadores Mineros, Metalúrgicos, Siderúrgicos y Similares de la República Mexicana (SNTMMSSRM), Local 309 of the SNTMMSSRM et al. “Complaint Submitted to the Canadian National Contact Point Pursuant to the OECD Guidelines for Multinational Enterprises Concerning: The Operations of Excellon Resources Inc. at the La Platosa Mine in the Ejido “La Sierrita”, Durango State, México .” at 10. (May 29, 2012) http://miningwatch.ca/sites/default/files/oecd_complaint_excellon_28may2012.pdf.

⁶ Land rental contract signed by La Sierrita and Minera Excellon de México, S.A. de C.V. (April 6, 2008), in *supra* note 5 at 6.

⁷ *Supra* note 5 at 8.

⁸ *Supra* note 1.

⁹ *Supra* note 5 at 8.

¹⁰ *Ibid* at 9.

¹¹ *Ibid*.

environmental impact. UNAM is a public research university regarded by many educational rankings as the leading educational institute of the Spanish speaking world.¹² The tests revealed high levels of salt and arsenic.¹³ Because of the high levels of minerals, the Ejido fears that extended discharge of water will permanently damage the soil and render it unusable for agriculture.¹⁴ The Ejido filed a complaint with the Federal Environmental Protection Agency (PROFEPA) about the water damage, however PROFEPA ruled that the wastewater did not violate any environmental regulations that would require further investigation.¹⁵ Based on this, Excellon has dismissed the Ejido's concerns and believes the water discharged onto the land does not pose any environmental threats.

Multiple mechanisms have already been employed with respect to the activity at La Platosa however they have been largely unsuccessful. A complaint to the Corporate Social Responsibility (CSR) Counsellor of Canada seemed to gain the Counsellor's favour, but Excellon's refusal to participate necessitated that the review be dropped.¹⁶ A complaint was submitted to the OECD's National Contact Point (NCP) in Canada, but as the process for the mechanism dictates complaints be directed toward the host country NCP, no action was taken. A review of the conflict by the NCP in Mexico, after a May 2012 complaint, found the issues to be

¹² UNAM. "Portal de Estadistic Universitaria". Universidad Nacional Autonoma de Mexico. Retrieved November 19, 2012 via

https://en.wikipedia.org/wiki/National_Autonomous_University_of_Mexico.

¹³ *Supra* note 5 at 10.

¹⁴ *Ibid.*

¹⁵ Federal Environmental Protection Agency, "Administrative Resolution RULING No.: PFPFA.16.5/1407/2012." Durango MX (November 30, 2012).

http://www.excellonresources.com/images/community_relations/LaPlatosaPROFEPA_RptSpaEng.pdf.

¹⁶ *Supra*, note 1.

material but not yet proven.¹⁷ In July 2012, an Ontario Security Commission complaint was submitted for failure to disclose the material risk a potential contract rescission posed.¹⁸ In June 2014 the Permanent Peoples' Tribunal (PPT) found Canada complicit in human rights abuses for several explorations, including La Platosa, but the Tribunal has no access to remedy.¹⁹ In July 2013 the Canadian Pension Plan Investment Board (CPPIB) divested from the company following a divestment campaign by the United Steelworkers (USW), although causation of the decision is not established and the stock's poor performance likely had to do with low commodity prices.²⁰

The community began to protest when promises were not delivered and the company failed to follow through with discussions. A seven week blockade of the mine began on July 8, 2012 after a union leader was fired and the company cancelled a discussion they had planned with the community.²¹ Excellon was forced to declare *force majeure* as they could no longer continue production through the blockade. In August, Excellon filed a claim for damages for lost operations and requested rescission of the contract. El Ejido filed a similar claim for rescission a few days later alleging breach of contract for failing to deliver the promises and for exploring

¹⁷ Supra, note 1.

¹⁸ Mendeleon, Rachel. "Excellon Mine Blockade Breached By Mexican Security Forces, Company Regains Access (UPDATED)". Huffington Post, dated August 30, 2012. http://www.huffingtonpost.ca/2012/08/29/excellon-mine-mexico-blockade-breached_n_1840536.html.

¹⁹ Mining Watch Canada. "Guilty. Tribunal Finds that Canadian State Shares Responsibility for Mining Injustices in Latin America". Dated June 5, 2014. <http://miningwatch.ca/blog/2014/6/5/guilty-tribunal-finds-canadian-state-shares-responsibility-mining-injustices-latin>.

²⁰ McSorley, Tim and Dawn Paley. "Unfair Shares". The Dominion, dated October 30, 2013. <http://dominion.mediacoop.ca/story/unfair-shares/18791>.

²¹ Mendeleon, Rachel. "Excellon Blockade: Mexico Conflict Highlights Shortcomings Of Canadian Mining Oversight" Huffington Post, dated August 28, 2012. http://www.huffingtonpost.ca/2012/08/28/excellon-blockade-protest-mexico_n_1828923.html

Ejido land outside of the SRA. Excellon has offered to buy 10 hectares beneath assets that would be costly to relocate, but the Ejido is refusing to sell any land and maintaining that Excellon's tenancy should be cancelled.

Excellon's refusal to communicate with the Ejido and discuss the agreement terms exacerbates the conflict. Canada's former CSR Counsellor sympathized with the Ejido and was of the view that "Excellon's withdrawal represents a significant missed opportunity for the company to meet its stated interests of building relationships and reputation with Mexican stakeholders."²²

THE CLIENT COMMUNITY

El Ejido La Sierrita de Galeana, "the Ejido," is a group of communal landowners in the municipality of Tlahualililo, in the Mexican state of Durango.²³ The community is comprised of 127 collective landholders²⁴ who together own surface rights to 6,436 hectares of land.²⁵ The legal concept of the ejido is foreign to Canadians but common in Mexico, where 35,000 ejidos together rule almost half of all national territory.²⁶ Federal statutes create ejidos, but their bipartite structure is governed both by agrarian law's federal jurisdiction over land tenure and by

²² Office of the Extractive Sector Corporate Social Responsibility Counsellor, "Closing report: Request for review file #2011-01-MEX" (October 2011) at 5, online:

http://www.international.gc.ca/csr_counsellor-conseiller_rse/publications/2011-01-MEX_closing_rep-rap_final.aspx-?lang=eng

²³ ProDESC. "Ejido La Sierrita". Undated. http://www.prodesc.org.mx/en/?page_id=163.

²⁴ Mining Watch Canada. "Community Responds to Report Revealing Complicity of Canadian Embassy in Excellon Violations against La Sierrita". Dated February 25, 2015 at 5. <http://miningwatch.ca/news/2015/2/25/community-responds-report-revealing-complicity-canadian-embassy-excellon-violations>.

²⁵ *Supra* note 23.

²⁶ Luis Guillermo Cruz Rico and Ralp Cuervo-Lorens. "Communal Land Tenure Issues in Mexico: Challenges and Solutions" PowerPoint Presentation. PDAC Technical Session – Land Access at slide 4 (March 3, 2013).

customs and traditions.²⁷ Each ejido is made up of an *Assembly* of members, a *Comisariado* or *Board* acting as the ejido's legal representation and a *Supervisory Board*. As a legal entity with collective property rights over its land, an ejido can enter into contracts with third parties or transfer its land to third parties under a partnership so long as it does not extend past 30 years.²⁸

A product of the Mexican Revolution, ejido creation began in 1917 to break up privately held land amassed by a small group of wealthy landowners and return it to the farmer peasants.²⁹ These land grants continued to be created until recently, and in fact El Ejido La Sierrita was formed in 1980 when the community petitioned for a presidential resolution to gain formal land rights.³⁰ Not long after the Ejido formed, land laws in Mexican changed drastically with the enactment of the neoliberal *Agrarian Reform Law* of 1992.³¹ Mexico was preparing to open up to international competition as negotiations for the North American Free Trade Agreement (NAFTA) were underway,³² and in efforts to increase the efficient functioning of land markets the Government transferred all legal ownership of communally used land to ejidos, allowing them to privatize their land.³³

²⁷ Luis Guillerme Cruz Rico and Jorge A Vaquez Hidalgo. "Ejidos and Agrarian Communities in Mexico; Challenges and Opportunities for Canadian Industries" at 1.
<<https://www.linkedin.com/pulse/ejidos-agrarian-communities-mexico-challenges-cruz-rico>.

²⁸ *Supra* note 26 at slide 6.

²⁹ Muñoz Rios, Patricia. "Mexico: Canadian Mining Company Has Not Paid Rent for Indigenous Lands Since 2013", Blogpost dated Janury 23, 2015.

³⁰ *Supra* note 23.

³¹ Dennis John Peyton. "Kinds of Property: Ejido Property." Law Mexico Publishing 2009.
<<http://www.lawmexico.com/articles/Ejido%20Property.pdf>.

³² United States Agency for International Development. "USAID Country Profile: Property Rights and Resource Governance, Mexico." Accessed March 7, 2016.

http://www.usaidlandtenure.net/sites/default/files/country-profiles/full-reports/USAID_Land_Tenure_Mexico_Profile.pdf.

³³ *Ibid*.

Amidst the changes, the Ejido has continued to make the most of their arid land, growing maguey cacti and selling the plants to tequila producers.³⁴ As a rural community however, they lack access to essential resources like drinking water, drainage and medical care.³⁵ The community buys its drinking water from neighboring localities and travels about an hour south to the city of Gómez Palacio for medical attention and other necessities.³⁶ Given the lack of opportunity and high poverty levels, many of the community's working-age men have migrated to other cities and the United States.³⁷ Excellon's account is that only 20-25 persons currently live in the Ejido's community.³⁸

THE LAND

The Ejido is situated in the municipality of Tlahualilo and has an area of 3,709.8 km and a population of 22,244 as of 2010³⁹. The municipality borders the federal highway, across from which lies the municipality of Mapimí and the La Platosa Project. Beneath both municipalities lies the subject of Canadian company Excellon Resources' interest: Mexico's Carbonate Replacement Deposit (CRD) and silver belt. This CRD, like others, contains concentrates of lead, zinc and sulphide ore within carbonate formations and is a highly desired exploration target due to their its size, high grade and ease of processing. The high grade of a CRD means it contains and byproducts of zinc, lead and copper and up to 600 grams of silver and 6 grams of

³⁴ Cave, Angela. "Protecting Indigenous Communities from Mining". American Jewish World Services. Dated March 13, 2015. <https://ajws.org/stories/prodesc/>

³⁵ *Supra* note 23.

³⁶ *Supra* note 4 and 23.

³⁷ *Supra*, note 4.

³⁸ *Supra* note 1

³⁹ "Tlahualilo". *Catálogo de Localidades*. Secretaría de Desarrollo Social (SEDESOL). Retrieved 23 April 2014 from https://en.wikipedia.org/wiki/Tlahualilo_Municipality#cite_note-SEDESOL-1.

gold per tonne.⁴⁰ Mining consultants have identified the area as the best place on earth for silver mining, geologically speaking, and an emerging region for gold mining.⁴¹ The area is also attractive because of Mexico's increasing political support; the percentage of foreign ownership of minerals allowed has increased from 50% up to 100%.⁴² Straightforward mining and exploration regulations, a relatively quick permitting process and the absences of any royalty charges on production all give further evidence of Mexico's desire to grow the industry.⁴³ The central Government in particular benefits from increased mining investment as they exclusively collect income taxes from production; state and municipal bodies do not directly profit from mines they host.⁴⁴

EXCELLON RESOURCES

Excellon Resources is a junior exploration company incorporated in Ontario, with head offices in Toronto. Excellon trades on the Toronto Stock Exchange (TSX) as EXN, and on Open Transparent Connected Markets (OTC) as EXLLF. Late in Q2 2015, in the face of increasing government holding costs, Excellon reduced their land holding at Platosa to 20,947 hectares.⁴⁵ In Q3 2015, the Company invested only \$0.1 million in capital expenditures for mine development compared to \$1.1 million in Q3 2014.⁴⁶ They are currently undergoing an Optimization Project that must be financed, as the cash flow normally generated from La Platosa is not available in the

⁴⁰ Mining Markets. "How Mexico Reclaimed its Mantle as a Top Mining Nation." February 26, 2013. <http://www.miningmarkets.ca/news/how-mexico-reclaimed-its-mantle-as-a-top-mining-nation/>.

⁴¹ *Ibid.*

⁴² *Ibid.*

⁴³ *Ibid.*

⁴⁴ *Ibid.*

⁴⁵ *Supra* note 12.

⁴⁶ *Ibid.*

current low-commodity price environment.⁴⁷ Excellon's market capitalization as of February 26, 2016 is \$21.73 million.⁴⁸ This is a significant decrease from the value of \$132.7 million in August 2012.⁴⁹ There were about 60,000,000 common shares as of November 11, 2015.⁵⁰ The security has underperformed the S&P TSX by 23.69% during the last year.⁵¹ Its net profit margin is negative but is above industry average which suggests efficient operations.⁵²

THE LA PLATOSA PROJECT

In 1996, under the newly open environment, Excellon Resources acquired federal permits entitling them to the mineral and mining rights of approximately 41,000 hectares within the CRD belt.⁵³ Excellon has mining rights to all of the land the Ejido owns surface rights to.⁵⁴ Under the new laws, Excellon rents 1,1000 hectares of land from the Ejido. This land is used as a site to some of the physical infrastructure of the mine and for conducting underground exploration. The mine is the highest grade in Mexico with 800 grams of silver per tonne of resource and one of the lowest-cost silver mines in the country.⁵⁵ The company operates a small fleet of modern scoop trams and haulage trucks on the property.⁵⁶ The ore is removed and crushed on site and

⁴⁷ *Ibid.*

⁴⁸ Globe and Mail. "Excellon Resources Five Day Report" Accessed February 26, 2016.

<http://www.theglobeandmail.com/globe-investor/markets/stocks/summary/?q=EXN-T>

⁴⁹ Bhaswati Muckhopadhyia. "UPDATE 1-Excellon declares force majeure at Mexico mine". Reuters Markets. Posted August 8, 2012.

<http://www.reuters.com/article/excellonresources-forcemajure-idUSL4E8J854220120808>

⁵⁰ *Supra* note 12.

⁵¹ *Supra* note 49.

⁵² *Supra* note 19.

⁵³ Excellon. "Excellon Provides Updated Information Regarding La Platosa Illegal Action." Dated August 29, 2012. <http://www.excellonresources.com/index.php/investors/news/2012/72-excellon-provides-update-information-regarding-la-platosa-illegal-action>.

⁵⁴ *Ibid.*

⁵⁵ *Supra* note 41.

⁵⁶ Unknown. <https://mining-atlas.com/operation/Platosa-Silver-Lead-Mine.php>.

shipped to the mill in another town for processing in 38 tonne trucks.⁵⁷ As of August 29, 2012, the Ejido made up approximately 12% (30 of 250 people) of the workforce at La Platosa.⁵⁸ The rest of the workforce comes from the city of Bermejillo or other localities in Mapimí.

Excellon's Corporate Social Responsibility Strategy

Excellon does not currently have an articulated CSR strategy. Instead, its website has a “Community Relations” section that lists local development initiatives such as health care and education contributions, but does not specify which communities or which of the two mines in Mexico the initiatives relate to.⁵⁹ A review of the “Corporate Governance” section of their website includes their “Health, Safety & Environmental Committee Charter” which notes that the committee’s purpose is to assist the Board of Directors in fulfilling its oversight responsibilities with respect to the Board's “continuing commitment to improving the environment and ensuring that the Company's activities are carried out, and that its facilities are operated and maintained, in a safe and environmentally sound manner.”⁶⁰

Excellon does not appear to publicize its membership in the Prospectors and Developments Association of Canada (PDAC) or the Mining Association of Canada (MAC) and never makes any reference to the standards related to either association. The company’s 2013

⁵⁷ *Ibid.*

⁵⁸ Unknown. workforce <http://www.excellonresources.com/index.php/investors/news/2012/72-excellon-provides-update-information-regarding-la-platosa-illegal-action>.

⁵⁹ Excellon. “Community Relations.” Accessed March 8, 2016.

<http://www.excellonresources.com/index.php/community/community-relations>.

⁶⁰ Excellon Resources. *Health, Safety & Environmental Committee Charter: Amended and Restated Charter Adopted by the Board of Directors on August 14, 2014.*

http://www.excellonresources.com/images/Corporate/HSE_Committee_Charter_revised_Mar_14-2014.pdf.

response to the Ejido's *Shareholder Proposal* however notes that it is a longstanding member of PDAC and that the company joined MAC in March 2013.⁶¹ MAC's *Towards Sustainable Mining* initiative requires mandatory external verification of any company with a domestically located mine. Under the accountability process companies must prepare yearly self-assessments and in the third year of their membership, a qualified and independent external verifier will perform an assessment of the company's performance. The verifier critically reviews the company's self-assessments to "determine if there is adequate evidence to support the performance ratings the facility has reported." In the year of external verification, the company's CEO or most senior executive in Canada submits a letter to MAC that confirms an external verification has been conducted in accordance with the terms which MAC posts on its website as a means of public accountability. Aside from public disclosure, MAC does not have any disciplinary measure in place for non-compliant companies. For member companies incorporated in Canada with mine sites located abroad, this accountability process is entirely voluntary. As of March, 2016 Excellon is in its fourth year of membership, however the company has chosen not to make use of the *Towards Sustainable Mining* initiative.

It is noteworthy that Excellon has a relatively light CSR disclosure given that the company has been the subject of numerous community complaints. The reasoning behind this is not yet known, however it could be evidence of a deliberate strategy to limit legal risk. After a recent ruling in *Choc v Hudbay Minerals Inc.* voluntary human rights standards are have been seen by some as a liability. In the case the court in Ontario ruled that the parent company could potentially be found liable for a foreign subsidiary's human rights abuses.⁶² The court noted that one factor to be taken into account in determining proximity was that the parent had made public

⁶¹ *Supra* note 60.

⁶² *Choc v Hudbay Minerals Inc.* 2013 ONSC 1414. O.J. No. 3375.

statements to the effect that it had implemented the internationally recognized *UN Voluntary Principles on Security and Human Rights*. In 2013 Norton Rose Fullbright put out a bulletin reporting on the factor analysis saying “the adoption of international codes of conduct and best practices in managing human rights could impact the legal risks facing a Canadian parent company in its foreign operations.” The bulletin further warned that “Canadian companies need to exercise caution when implementing written policies and making public statements concerning their corporate social responsibility practices, including in the area of human rights.”⁶³ The motivation behind Excellon’s disclosure policy could be relevant to this dispute as encouraging adoption of industry best practices will likely not be successful if the company has already taken a firm decision to not claim adherence.

STANDARD

The Ejido’s conflict is somewhat challenging to present because the most obvious human rights abuses they have suffered were in relation to labour disputes. While their blockade camps were burnt and forcibly removed, only six women were affected and they do not report being hurt.⁶⁴ Collectively, the Ejido has suffered most from Excellon’s failure to engage with their contractual concerns and from alleged environmental damage which Excellon has evidence to seemingly refute. While this does pose a challenge to naming abuses in clear contravention of international human rights standards, the Ejido can rely on two standards to advance their case. PDAC’s e3 Plus Framework can be used to contest Excellon’s arguments that they are not at

⁶³ Duncan Janne, Robert I. Frank and Michael Torrance. “Corporate social responsibility: a new era of transnational corporate liability for human rights violations?” (September 2013), Norton Rose Fullbright (blog), online:

<http://www.nortonrosefullbright.com/knowledge/publications/104195/corporate-social-responsibility-a-new-era-of-transnational-corporate-liability-for-human-rights-violations>.

⁶⁴ *Supra* note 2.

fault for failing to fulfil contractual obligations related to the water treatment plant. The International Finance Corporation's (IFC) Performance Standards on Social & Environmental Sustainability (PSESS) can then be referenced to show that Excellon has failed to live up to internationally accepted standards for business conduct. In what follows, I will briefly review the relevant e3 Plus provisions and the provisions of the PSESS and provide an analysis of the standard most appropriate to serve the Ejido's needs.

PDAC's e3 Plus Framework

Excellon has not claimed compliance with the e3 Plus Framework, however e3 Plus has been advertised by the mining industry as the accepted best practice guideline. Because of this, it can be consulted to clarify confusion over what was expected of Excellon when they promised to install a water treatment plant for the Ejido. Under s 9.0, *Water Use and Conservation*, the e3 Plus e-toolkit *Excellence in Environmental Stewardship* specifies that a company must “ensure that all permits, including water extraction permits and authorizations, are in hand” before fieldwork commences.⁶⁵ Speaking specifically to when a water treatment plant for potable water is required by legislation or by the size of the camp, s 9.4 mandates that the company, not the community, “obtain water extraction and treatment permits where required.”⁶⁶ A similar provision exists for non-potable water under s 9.5: “For water extraction and storage: Obtain water extraction permits where required.”⁶⁷ Instructions further mandate the mining company to “install water supply pumps and pipelines in consultation with the owner/occupier of the land

⁶⁵ Prospectors & Developers Association of Canada. “E3 Plus: Excellence in Environmental Stewardship e-toolkit (EES) Version-01” (March 2, 2009) at 124.

⁶⁶ *Ibid*, at 125.

⁶⁷ *Ibid* at 126.

concerned, and in such a manner that vegetation and soil is not unduly disturbed.”⁶⁸ Nowhere is it suggested that a company might rely on the community to obtain water permits. This suggests that Excellon was not expected to defer to the community to obtain the permit. It also makes clear that companies should not be discharging water onto community land without their consultation, regardless of what the environmental effects might be.

IFC’s Performance Standards on Social & Environmental Sustainability (PSESS)

The IFC’s Sustainability Framework articulates the lender’s strategic commitment to sustainable development and is an integral part of what they call their “risk management” approach.⁶⁹ The PSESS are a part of the IFC’s Sustainability Framework and have become globally recognized as a benchmark for environmental and social risk management in the private sector.⁷⁰

The first of the PSESS’s eight standards, *Assessment and Management of Environment and Social Risks Impact*, covers the scope of conflict between Excellon and the Ejido by setting out what a relevant impact is. The standard calls for an Environmental and Social Management System (ESMS) to act as a “dynamic and continuous process initiated and supported by management” that involves engagement between clients, its workers, and local communities directly affected by the project.⁷¹ The ESMS is designed to be a methodological approach to

⁶⁸ *Ibid* .

⁶⁹ International Finance Corporation. “IFC Sustainability Framework” Online. Accessed April 10, 2016.

<http://www.ifc.org/wps/wcm/connect/Topics_Ext_Content/IFC_External_Corporate_site/Sustainability+and+Disclosure/Environmental-Social-Governance/Sustainability+Framework>

⁷⁰ *Ibid*.

⁷¹ International Finance Corporation, Environmental and Social Performance Standards and Guidance Notes, Washington DC: International Finance Corporation, 2012 at 9. Online: International Finance Corporation

managing environmental and social risks and impacts in a structured way on an ongoing basis.⁷²

The ESMS incorporates the following elements: (i) policy; (ii) identification of risks and impacts; (iii) management programs; (iv) organizational capacity and competency; (v) emergency preparedness and response; (vi) stakeholder engagement; and (vii) monitoring and review.⁷³

The PSESS includes provisions that indicate projects must not rely just on meeting environmental regulation minimums. The *Identification of Risks and Impacts* element notes that a project is responsible for its influence over “cumulative impacts that result from the incremental impact, on areas or resources used or directly impacted by the project, from other existing, planned or reasonably defined developments at the time the risks and impacts identification process is conducted.”⁷⁴ This scope of impact is further clarified by noting “cumulative impacts are limited to those impacts generally recognized as important on the basis of scientific concerns and/or concerns from Affected Communities.”⁷⁵ Listed examples of cumulative impacts include incremental contribution of gaseous emissions to an air shed or reduction of water flows in a watershed due to multiple withdrawals.⁷⁶ It is clear that the project must consider the concerns of the affected community even if the matter is not important on the basis of scientific concerns. The provision is especially relevant to the Ejido’s concern that the water discharged on their land will ruin the long-term agricultural capacity of their soil because it explicitly includes the incremental effect of environmental damage.

http://www.ifc.org/wps/wcm/connect/topics_ext_content/ifc_external_corporate_site/ifc+sustainability/our+approach/risk+management/performance+standards/environmental+and+social+performance+standards+and+guidance+notes.

⁷² *Ibid* at 5.

⁷³ *Ibid* at 7.

⁷⁴ *Ibid* at 8.

⁷⁵ *Ibid*.

⁷⁶ *Ibid*.

The PSESS's *Stakeholder Engagement* element regarding environmental impact is less clearly stated but it is still evident that Excellon has not met the standard. Stakeholder engagement is described as an ongoing process with the nature, frequency, and level of effort of stakeholder engagement able to vary considerably commensurate with the project's risks, impacts, and phase of development.⁷⁷ Stronger language however is used with respect to consultation on the identified impacts explained above. The PSESS state:

When Affected Communities are subject to identified risks and adverse impacts from a project, the client will undertake a process of consultation in a manner that provides the Affected Communities with opportunities to express their views on project risks, impacts and mitigation measures, and allows the client to consider and respond to them.⁷⁸

The extent of engagement required is commensurate with the project and the concerns raised by the affected communities.⁷⁹ Consultation is intended to be a two-way process that enables meaningful participation at a minimum of once a year.⁸⁰ Given the extensive concerns raised by the community and Excellon's failure to negotiate with them, it seems clear Excellon failed to meet this standard.

The *Resource Efficiency and Pollution Prevention* element makes specific reference to the use of water and project byproducts. The client "shall" adopt measures that avoid or reduce water usage so that the project's water consumption does not have significant adverse impacts on others if the project is a potentially significant consumer of water.⁸¹ The client "will" consider

⁷⁷ *Ibid* at 12.

⁷⁸ *Ibid* at 13.

⁷⁹ *Ibid* at 14.

⁸⁰ *Ibid*.

⁸¹ *Ibid* at 25.

the potential for cumulative impacts with uncertain and/or irreversible consequences.⁸² With respect to the water discharged by the La Platosa, the PSESS state:

Where waste generation cannot be avoided, the client will reduce the generation of waste, and recover and reuse waste in a manner that is safe for human health and the environment. Where waste cannot be recovered or reused, the client will treat, destroy, or dispose of it in an environmentally sound manner.⁸³

Excellon has failed to meet PSESS standards by not reusing the large quantities of water expelled from the mine in a time of extreme drought and by allowing high levels of salt and arsenic to leach into the soil.

Analysis of the PSSES

The PSSES is an attractive standard as it considers the community's perspective on cumulative effects of environmental damage when mandating stakeholder engagement. The PSSES also provide specific frameworks with respect to environmental assessments and minimum timeframes for stakeholder engagement, and therefore avoids criticisms of vagueness that other standards such as the OECD Guidelines for Multinational Enterprises (GMNE) attract.⁸⁴ Unlike the OECD GNME, the PSSES has not yet been exclusively relied on as the standard in any of the Ejido's complaints. The PSSES has also been widely accepted as a reliable standard on which to base binding sanctions. It has been endorsed by Canada's current Office of

⁸² *Ibid.*

⁸³ *Ibid.*

⁸⁴ Bernadette Maheandiran. "Calling for Clarity: How Uncertainty Undermines the Legitimacy of the Dispute Resolution System Under the OECD Guidelines for Multinational Enterprises" (2015) 205: Harvard Negotiation Law Review.

the Extractive Sector CSR Counsellor.⁸⁵ It has also been recommended as a standard in Bills C-300 and C-584, which were aimed at ensuring Canadian extractive companies comply with Canada's commitments to human rights if they are receiving government support. Both bills recommended that support from Export Development Canada (EDC) the Department of Foreign Affairs, Trade and Development (DFATD) be contingent on a company's compliance with the PSESS.⁸⁶ Most persuasive is the fact that the IFC's current constitution mandates that it not invest in companies who fail to reach compliance. While this does not apply to the Ejido, its availability signals that the standard can be relied on to sanction corporate behaviour. What's more, all OECD export credit agencies claim the PSES apply through non-binding Common Approaches agreements.⁸⁷

The robust provisions the PSES offer could also draw criticisms about the applicability of the standard to this conflict. Governance scholars Penelope Simons and Audrey Macklin point out that the PSES are robust because by their nature, they are a risk management tool to enable the IFC and IFC client companies to manage and improve their social and environmental performance for the purpose of avoiding liability.⁸⁸ There could be an argument that because of this, they are too robust to involuntarily be applied to a company that is not an IFC client. The IFC's own Compliance Advisor/Ombudsman (CAO) has found that while the PSES call for the ESMS system to be established, there is no framework in place that allows the IFC to monitor the actual effects of the system once it is in place. As of 2013, The IFC was unable to verify that

⁸⁵ Global Affairs Canada. "About Us." Canada. (Date Modified: February 2, 2015) http://www.international.gc.ca/csr_counsellor-conseiller_rse/about-us-a-propos-du-bureau.aspx?lang=eng.

⁸⁶ Sally Kang. "Directed Research Paper: Human Rights Ombudsman for the Extractive Sector" (2015) [Unpublished].

⁸⁷ Audrey Macklin, and Penelope Simons: *The Governance Gap: Extractive Industries, Human Rights, and the Home State Advantage* (Routledge 2014) at 132.

⁸⁸ *Ibid.*

its partners had implemented the necessary safeguards in 35% of cases.⁸⁹ While this criticism is relevant to the adoption of the PSSSES as a basis for mandatory sanctions, it does not necessarily detract from the standard's relevance to Excellon's past behavior.

MECHANISM & ACTION

Mechanism Options

The Ejido has spent considerable efforts engaging with a range of CRS mechanisms. At this point, their actions are motivated more by feelings of animosity towards the company and the desire to restore their dignity after being deceived.⁹⁰ They employed the most drastic mechanism, litigation, as reactionary claim one week after Excellon sued them for damages of lost profits caused by their blockades.⁹¹ If their claim is successful, the contract would be rescinded and Excellon would have to give back all of the land.⁹² The Ejido would also lose any benefit they hoped would flow from its agreement with the mine. While the terms of the agreement have not yet been fulfilled, they are generous and would greatly benefit the community if they were delivered as promised.⁹³ If the Ejido relies solely on litigation, there is also the risk that they will lose the claim and be further insulted by the process. The ideal outcome would include receiving the water treatment plant, preferential hiring, business concessions, rent payments, scholarships and community development initiatives that they

⁸⁹ Carey L Biron. "IFC Under Fire on Environment, Social Safeguards" Inter Press Service News Agency. (Washington: February 8, 2013) <http://www.ipsnews.net/2013/02/ifc-under-fire-on-environment-social-safeguards/>.

⁹⁰ Letter from Ancheita Alejandra, Executive Director, ProDESC to Business and Human Rights Resource Centre. "Re: Re: Excellon's Response to ProDESC Press Release on Agrarian Tribunal Hearing" (October 2, 2013).

http://webcache.googleusercontent.com/search?q=cache:_VkfPzfzqzo0J:business-humanrights.org/sites/default/files/media/documents/prodesc-response-to-excellon-resources-2-oct-13.doc+&cd=1&hl=en&ct=clnk&gl=ca&client=safari.

⁹¹ *Supra* note 1.

⁹² *Supra* note 2.

⁹³ *Supra* note 1.

expected when they entered into the agreement with Excellon. An equally important objective of the mechanism is one in which the community would feel they had meaningful participation. They need to be listened to, to be respected, and to receive the remorse of Excellon.

These objectives need to be considered when selecting a mechanism. Although most of the usual mechanisms have already been exhausted, the Ejido could repeat some previously employed mechanisms. They could re-submit a complaint to the OECD NCP with up-to-date evidence on the untreated condition of the water damaging the soil, as the previous NCP response noted lack of current evidence as a problem with the complaint. They could also re-submit a complaint to Canada's CSR Counsellor. Under Canada's new Extractive Sector CSR strategy, Excellon would have to participate in mediation or potentially lose the support of the EDC and the Canadian Embassy.⁹⁴ These mechanisms however are not desirable for numerous reasons. The primary concern is that they are voluntary mechanisms, and based on the failures of other similar voluntary initiatives, there is not much ground for optimism that they will succeed. Because the community is already deeply insulted, subjecting them to more voluntary mechanisms is not worth the risk of being further shut down. In lieu of binding sanctions, the best recourse for the Ejido is to pressure the company into compliance with the terms of the agreement.

Mechanism Target

Excellon has already faced pressure from the Ejido and NGO's and the conflict has only been exacerbated. Shareholders have also pressured the company and many financiers have in fact divested, however these pressures seem to not have noticeable effect on the company's

⁹⁴ Theresa Do Trinh. "Ottawa's responsible mining review awaited by NGOs" CBC News. February 26, 2014 <http://www.cbc.ca/news/politics/ottawa-s-responsible-mining-review-awaited-by-ngos-1.2543080>.

behaviours.⁹⁵ Pressure from the Government of Canada has not yet been felt by the company and may be able affect the necessary change in the company's position. The conflict between the Ejido and Excellon Resources is compounded by the strong economic interest that both the states of Mexico and Canada share in the company's success. Correspondence from the Canadian Embassy in Mexico seems to suggest that Canada's support is one of the reasons the Ejido's complaints have not been substantively addressed by the country specific mechanisms they have tried to access.⁹⁶

Given this, the best approach for securing a satisfactory remedy for the Ejido would engage the same pressures that up to this point have worked against the interests of the Ejido. If both governments can be persuaded to see the Ejido's satisfaction as an equally critical precursor to the economic benefits of Canadian mining projects in Mexico, they might use their influence with Excellon to broker a remedy that will satisfy the Ejido. Our approach will focus efforts on pressuring the Government of Canada. Canada directly supports Excellon and so has more influence over the company. Embassy correspondence from an Access to Information Request shows that it is Excellon, with the help of the Embassy, who holds the influence in its relationship with multiple levels of government in Mexico.⁹⁷ Additionally, it is less appropriate

⁹⁵ United Steelworkers. "Canadian Pension Plan Divests from Excellon Resources". Newswire, undated.<http://www.newswire.ca/news-releases/canadian-pension-plan-divests-from-excellon-resources-512732941.html>.

⁹⁶ Mining Watch Canada. "Community Responds to Report Revealing Complicity of Canadian Embassy in Excellon Violations against La Sierrita". Dated February 25, 2015. <http://miningwatch.ca/news/2015/2/25/community-responds-report-revealing-complicity-canadian-embassy-excellon-violations>.

⁹⁷ Mining Watch Canada. "Unearthing Canadian Complicity: Excellon Resources, the Canadian Embassy, and the Violation of Land and Labour Rights in Durango, Mexico." Mining Watch Canada and United Steelworkers (February 2013). http://miningwatch.ca/sites/default/files/excellon_report_2015-02-23.pdf.

for Canadians to pressure another government and such actions could potentially threaten the safety of Ejido members.

While this indirect approach does considerably expand the scope of any mechanism used, it is necessary as virtually all efforts to engage the company directly have already been used with little success. The scope could be restricted to applying pressure to the Canadian mining associations who share a similar interest. However, it's unlikely either MAC or PDAC would want to pressure Excellon into ceding to community demands given that the mandate of both organizations is to promote the interests of mining companies alone, and not the interests of general citizens. This is especially true considering Excellon may be reluctant to publically engage with any of the standards.

Mechanism Objective

While the legitimate concerns of the Ejido should not be diminished, it should be noted that many other communities have suffered more blatant human rights abuses from Canadian companies. To our knowledge, despite public and Government awareness of these abuses, the Government has not felt the need to pressure companies into better behaviour. To overcome this challenge a campaign from the Ejido must engage with the economic interests of Canada. The campaign should advocate for the adoption of a mandatory extractive-sector Ombudsperson in Canada who would hold the power to independently investigate complaints and make recommendations to the Government of Canada about the mining industry. Using the Ejido's story to pressure the Government to adopt an Ombudsperson will attract more attention because of the Government's strategic interest in the mining industry. This campaign is sufficiently relevant to a specific interest to create a high probability that the Government will respond.

Two attempts to adopt similar legislation have already garnered significant support, but both were narrowly defeated under Conservative leadership. The mining industry extensively lobbied MPs to ensure the bills would not pass. Industry criticism of the bills centered around a loss of competitive advantage for Canadian companies and suggested that voluntary mechanisms would better address any insufficiencies in corporate conduct overseas. While the grievances felt by the Ejido are not as drastic as other case studies, the Ejido is in a unique position to address these criticisms and petition for new legislation. Their story has demonstrated that voluntary measures are ineffective and they have shown that poor CSR is bad for business. The IFC standard can be integrated to show that the Canadian government, through the Embassy in Mexico, still offers Excellon substantial support in continuing their actions despite the fact that the company has violated a widely accepted standard.

Using the Ejido's story to pressure the government for extractive sector reforms has a three-fold objective. The obvious objective is to have responsible mining legislation enacted. While this may benefit the Ejido in the long run, it is not a direct answer to the Ejido's demands. The primary objective is to have Excellon dialogue with the community, apologize, and provide the water treatment plant they have promised. This could happen because of direct communication from Government officials to Excellon or by Excellon's own undertaking as a response to general pressure. The third objective is give the Ejido a platform to communicate their frustration and allies that will sympathize with their story. We believe Excellon would rather act in response to pressure than be seen as a company whose actions are so unsavoury they require previously resisted mining sector reform. Regardless of the outcome of Ombudsman legislation, the pressure campaign will be a success for the Ejido if the company communicates with them and makes good on its original promises.

Mechanism Action

To apply pressure, an awareness campaign will seek to influence Government actors directly and through increased public awareness. A public awareness campaign will tell the Ejido's story and will gather support for direct government pressure.

Website

To spread the story, a simple website should be created that will put a face to the conflict. A URL and a website template builder can be purchased for around \$30.00 through sites such as Wordpress.com. The content of the website will be similar in many ways to the website representing the plaintiffs in the cases against HudBay Minerals Inc. (see <http://www.chocversushudbay.com>).⁹⁸ The landing page will feature images of community members and a timeline of the conflict that lists all the mechanism employed to date. The website will also feature details of the conflict and relevant quotes to support the community's case. Information about the conflict should specifically address the criticisms that Ombudsperson legislation has faced, such as preference for voluntary measures and fear of damage to business interests. As the Ejido's story is spread, individuals can be directed to the website as a way to get more information and personalize the conflict. Most information about the Ejido found online comes from ProDESC, the Mexican NGO representing the Ejido. The language ProDESC uses is adversarial in nature,⁹⁹ and the NGO has been the subject of a smear campaign by Excellon.¹⁰⁰

⁹⁸ Klippensteins, Barristers & Solicitors. "About: Choc v. HudBay Minerals Inc. & Caal v. HudBay Minerals Inc." Accessed April 10, 2016. <<http://www.chocversushudbay.com/>>

⁹⁹ For example, see ProDESC. "Letter from the Ejido La Sierrita to the Canadian Mining Company Excellon, "Our Land Is not for Sale". Dated July 22, 2013.

¹⁰⁰ *Supra*, note 1.

This website will distance the Ejido somewhat from ProDESC so as to avoid coming under the same skepticism about motivations that ProDESC has.

Social Media Campaign

Twitter can be used to connect allies and direct individuals to the Ejido's website. Parties with large followings that have profiled the Ejido in the past can be contacted to help initiate support. Mining Watch Canada (@MiningWatch, 11,900 followers) and Rachel Mendleson at *The Huffington Post* (@RachelMendleson, 3,297 followers) have both published reports on the community.¹⁰¹ MP John McKay could also be contacted (@JohnMcKayLib, 4,391 followers) as the Ejido's story supports his efforts at mining reform with Bill C-300. Amnesty Canada (@AmnestyNow, 24,200 followers) has also featured the Ejido as part of its *Open for Justice Campaign*. Their campaign has its own hashtag, #OpenforJustice, that can be used as the core campaign hashtag along with a new hashtag, #miningombud. These high-profile tweeters can mention the Ejido and their website URL and use one the core hashtags along with a second hashtag that will help the tweet be picked up by new parties. To attract individuals interested in politics, the hashtags #cdnpoli, #elxn42 and #canada can be used. To reach communities interested in corporate accountability and human rights, #CSR and #humanrights can be used. The hashtag #4change has been identified by online branding services as one of the most popular hashtags related to social change and can be used to expand the reach of the message to those generally interested in positive change.¹⁰²

Tweets can also be directed towards relevant politicians and news sources that politicians follow. Current MPs who voted against past Ombudsperson bills should be targeted, especially

¹⁰¹ @MiningWatch. Twitter. Accessed April 10, 2016. <https://twitter.com/MiningWatch>.

¹⁰² #hashtags.org. "Hashtag Analytics for your Brand." <https://www.hashtags.org/>.

those that were not members of the governing party. For example, pressure can be levied against Charles Angus (@CharlesAngusNDP), the NDP MP for Timmins-James Bay whose riding is notable for its mining activity.¹⁰³ Tweets can also be directed to reporters at *The Ottawa Citizen*, *The Hill Times* and *Embassy News*. If they can help spread the Ejido's story, it will be harder for politicians to ignore. Potential targets include *Embassy News* reporter Sneh Duggal (@SnehDuggal), the parliamentary reporter for *The Ottawa Citizen*, Jason Fekete (@JasonFekete), editor of *The Hill Times* Kate Malloy (@KateMalloy), and the trade reporter for *The Hill Times* and *Embassy News*, Peter Mazereeuw (@PJMazereeuw).¹⁰⁴ The *Directory of Canadian Political Twit* compiles hashtags related to Parliament Hill activity and can be referenced for further targeting.¹⁰⁵ For example, it identifies The House of Commons Standing Committee on International Trade as #CIIT.

Letter Writing Campaign

A letter writing campaign can be used to directly target MPs in addition to twitter outreach. Amnesty Canada's *Open for Justice Campaign* has already been encouraging citizens to contact their MPs and demand "an extractive-sector Ombudsperson with the power to independently investigate complaints and make recommendations to corporations and the Government of Canada."¹⁰⁶ Their website provides a lobbying kit with talking points, questions

¹⁰³ Paul Weinberg. "Why Bill C-300 Failed." (November 15, 2010) < <http://www.straightgoods.ca/2010/ViewArticle.cfm?Ref=936&Cookies=yes>>.

¹⁰⁴ David Akin. "David Akin's On The Hill." Accessed April 10, 2016. < <http://www.davidakin.com/politicaltwits/media.htm>>.

¹⁰⁵ *Ibid.*

¹⁰⁶ Canadian Network on Corporate Accountability. "Take Action Today to ensure Canada becomes Open for Justice." (October 24, 2013) < <http://cnca-rcrce.ca/take-action-today-to-ensure-canada-becomes-open-for-justice/>.

and helpful tips for anyone phoning or visiting their MPs.¹⁰⁷ They also provide a sample letter to an MP outlining the need for an Ombudsperson. Individuals can use these resources and cite hearing about the story of the Ejido's conflict with Excellon as the reason for why they are contacting their MP. Another sample letter that uses the Ejido's story to respond to past criticisms of Ombudsperson bills can be posted on the community's website. The fact that the suggested voluntary measures are not working and that Excellon has lost significant profits should be emphasized. Additional efforts can be used to reach members of the opposition or MPs who voted against past Ombudsperson bills so that they feel pressure to change their vote on any future bill proposed.

Petitions

In addition to targeting individual MPs, a petition in support of new legislation can be directed towards Parliament. A Public Petition can be presented by an MP to the House during Routine Proceedings along with a 15 minute presentation. After presentation members' remarks are recorded and entered into Debates for the day as well as in the official record of House Proceedings. The Standing Orders require the Government to respond within 45 calendar days to every petition submitted to it.¹⁰⁸ Parliament's guidelines for petitions states "the Member whose role it is to make the presentation on behalf of the petitioners, is not required to be in agreement with the content of any petition he or she may choose to present, and no such inference is to be

¹⁰⁷ Amnesty International. "Campaign Backgrounder: Open For Justice."
<http://www.amnesty.ca/our-work/campaigns/open-for-justic>.

¹⁰⁸ House of Commons Detailed Article Compendium Procedure Online. "Presenting Petitions."
Canada. (October 2015) http://www.parl.gc.ca/About/House/compendium/web-content/c_d_presentingpetitions-e.htm

drawn.”¹⁰⁹ Chrystia Freeland can be asked to present as she is the Minister of Trade. If she declines, John McKay or other past supporters of Ombudsperson legislation can be asked. According to the rules, in order for a petition to be certified, “material such as maps, pictures, news articles, explanatory or supporting statements” cannot be attached to the petition.¹¹⁰ Because of this, the inclusion of the Ejido’s story will be limited. For this reason, the MP making the presentation before the House must be comfortable with sharing the community’s story as an example. The requirements for a petition should be easy to fulfill, as one only needs 25 signatures to be certified and presented.¹¹¹

The House has recently allowed E-Petitions to also be presented, however our preference is to still use a handwritten petition. An electronic petition must go through an initial verification, after which it is published on the Parliament of Canada website. An online petition must receive 500 valid signatures within 120 days in order for it to be certified and presented.¹¹² Aside from the risk that enough signatures would not be acquired, an online signature accessed through Parliament’s website also provides less opportunity to share the Ejido’s story. Research from one online consultancy group, Mediabadger, also suggests that online petitions do not as easily persuade governments. Prior to new methods for certification and presentation, politicians didn’t pay attention to online petitions “unless the signees represent a critical mass of their home

¹⁰⁹ Parliament of Canada. “Public Petitions: Current Guidelines for Petitions.” Canada. Accessed April 10, 2016.

<http://www.parl.gc.ca/marleaumontpetit/DocumentViewer.aspx?Sec=Ch22&Seq=3&Language=E>.

¹¹⁰ *Ibid.*

¹¹¹ ThoughtUndermined. “How to Petition Canadian Legislatures.” (February 21, 2012) <<http://thoughtundermined.com/2012/02/21/how-to-petition-canadian-legislatures/>>

¹¹² *Supra*, note 111.

constituents,” which is not usually the case given the online dissemination.¹¹³ Soliciting in-person signatures allows people to connect with the Ejido’s story in a more memorable and meaningful way and lets the petitioners share more info about the conflict.

To get personal signatures, advertising can be outsourced to relevant student clubs and faculties at colleges and universities across Canada. Most universities and colleges have clubs that are interested in human rights, including Oxfam and Amnesty International, who could set up booths with information about the Ejido and the need for a mining Ombudsmen in student centers to attract signatures. Engineers Without Borders and other clubs with an international focus can also be contacted. Student religious associations can also be contacted to make announcements at club gatherings, as can Spanish clubs. International Development, Political Science and International Studies Faculty list serves can also be contacted to share information about the Ejido and the Open for Justice Campaign and direct students towards petitions. A similar approach can be used at law schools by contacting the student chapters of Canadian Lawyers for International Human Rights (CLAHR) or other similar clubs. Business school associations related to sustainability can also be approached, such as the Ryerson Corporate Social Responsibility Student Association or the Schulich Centre of Excellence in Responsible Business. The benefit to collecting petitions from clubs and associations is that more individuals will take up the cause if they feel a connection to a group with similar interests. In research on social media campaigns as an alternative to litigation, scholar Tristan Morales has noted that

¹¹³Andy Levy-Ajzenkopf. “Does clicktivism count? A look at the effectiveness of online petitions” (July 5, 2012). Charity Village.
<https://charityvillage.com/Content.aspx?topic=Does_clicktivism_count_A_look_at_the_effectiveness_of_online_petitions#.VwtiBcf1bEx.

when individuals can work with someone they respect in a collective endeavour they become more attached the outcome of the goal and are more willing to work to see its success.¹¹⁴

Mechanism Evaluation and Client Involvement

The suggested public campaign will advance the story of the Ejido and is likely the best chance that the Ejido has of getting the benefits originally promised to them. Unfortunately, as efforts will be focused on Canada, the action plan would not be readily accessible to any Ejido members who might want to be involved. Until Excellon reaches out to the Ejido to discuss the contract terms, the Ejido will be largely kept in the dark. This might be a frustrating position for them as they have already spent several years waiting to see if anyone will listen to their complaints. Ideally, a mechanism would have more of a set framework so the Ejido could get feedback on any progress and the likelihood of success. To mitigate this they can be updated regularly on petition signature additions and if they have smartphones, they can participate on Twitter. This continued contact will also ensure that the campaign does not tell the Ejido's story without their involvement or input. There are some benefits to this distance however. The Ejido can continue with their daily schedule and hopefully smooth over tensions with the neighbouring communities who oppose the Ejido's efforts once the conflict is geographically removed.

There is also the risk that the Ejido will come under public criticism. It is expected that Excellon will take a hard stance in opposition to the campaign, and if it attracts support in its position the Ejido could feel even more disrespected. This would undoubtedly be a negative

¹¹⁴ Tristan Morales. "Social media campaigns as an emerging alternative to litigation" (2012) 38 Rutgers Computer & Technology Law Journal 1 at 12.

impact, but there is some value in fostering debate around the issue. If the campaign can encourage debate, decision makers are more likely to feel pressured to pay attention and address the issue.¹¹⁵ The Ejido should not be given the false idea that we can convince everyone their side of the conflict is correct. The value of a public awareness campaign is less about changing people's minds and more about influencing what they pay attention to.¹¹⁶

CONCLUSION

Frustrated by years of disrespect and the failures of voluntary corporate accountability measures, the Ejido has made a drastic call to end their agreement with Excellon Resources. This would leave them with none of the originally anticipated benefits. Political pressure seems to work against them to make their case against Excellon even more challenging. However, given the recent movements for a mandatory extractive-sector Ombudsperson in Canada, the Ejido has an opportunity to have their story heard by the policy makers in Canada. They can draw attention to the failures of the mining sector's voluntary CSR initiatives and demonstrate the extent of business disruption that can occur when internationally recognized standards like the IFC are not followed. By using their story to rebut the oft-cited criticism of past attempts to create Ombudsmen legislation, the Ejido can pressure a new government in Canada to adopt legislation that will make Canadian mining companies accountable for human rights abuses. By tying the pressure to the conduct of Excellon, we hope Excellon will in turn be pressured to remedy the conflict that fuels the public awareness campaign. Regardless of the outcome of the legislation, it will be hard for Excellon to continue ignoring the Ejido if its actions become the impetus for a

¹¹⁵ Hans-Dieter Klingemann and Andrea Römmele (eds) *Public Information Campaigns & Opinion Research* (London: Sage Publications, 2002) at 11.

¹¹⁶ *Ibid* at 12.

law reform campaign feared by the mining industry. If we can generate enough pressure to force Excellon to follow through on its initial promises, the Ejido can continue to benefit from rent payments and enjoy the satisfaction of knowing they were able to stand up for their rights.

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