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El Salvador: Foreign Mining Companies Still Trying To Pry Open Country's Gold Veins

by LADB Staff

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As global financial uncertainties push the price of gold skyward, North American mining companies, frustrated by El Salvador's continued refusal to allow extraction permits, are turning to a powerful intermediary the World Bank in an effort to strong-arm President Mauricio Funes' government. In mid-November, the bank's International Center for Settlement of Investment Disputes (ICSID) announced the formation of an arbitration committee to hear a multimillion-dollar suit that Canadian company Pacific Rim Mining filed last April against the Salvadoran government. Pacific Rim, which has spent years and a reported US\$77 million prospecting for gold in El Salvador, considers the government's refusal to grant extraction rights a breach of both Salvadoran and international law. The suit, Pacific Rim Mining claimed in an April press release, is based on the "government's improper failure to finalize the permitting process as it is required to do and to respect the company's...legal rights to develop mining activities in El Salvador." Through the ICSID, the Vancouver-based company hopes either to recover its expenses to the tune of US\$100 million or pressure the government into finally giving up access to El Salvador's gold. Pacific Rim believes its El Dorado mine, some 65 km west of San Salvador in the department of Cabanas, contains more than 1.2 million ounces of gold, a veritable treasure trove made all the more valuable by the precious metal's spiking price. In the past five years alone, the price of gold has shot up approximately 160% and currently sells for almost US\$1,200 per ounce. Cashing in on CAFTA Pacific Rim bases its suit on rules contained in the US-Dominican Republic-Central American Free Trade Agreement (CAFTA-DR), which El Salvador implemented in 2006 (see NotiCen, 2006-10-19). The agreement's Chapter 10 allows foreign companies that feel their profit potential is threatened by local governments to sue the host country for cash compensation. The CAFTA-DR rules are only supposed to apply to companies hailing from one of the trade pact's seven participating countries. Canada is not on that list. To avoid that stumbling block, Pacific Rim filed its ICSID suit via a fully-owned subsidiary, Pac Rim Cayman, headquartered in the US state of Nevada. Another foreign mining firm a joint-venture of US companies Commerce Group Corp. and San Sebastian Gold Mines, Inc. is threatening a suit of its own. In March, the partners, which own gold and silver mines near Santa Rosa de Lima in the department of La Union, filed a notice of intent to file their own cash demands with the ICSID. The pending CAFTA-DR lawsuits put President Funes, a former television journalist and member of the leftist Frente Farabundo Marti para la Liberacion Nacional (FMLN), in an awkward position (see NotiCen, 2009-03-19). As head of the one of the poorest and most violent nations in the hemisphere, Funes can hardly afford a costly corporate payout that might otherwise go toward social programs, much-needed domestic security, or infrastructure projects. On the other hand, bowing to the mining companies' demands could cost the president political capital. Polls suggest a majority of Salvadorans support a broad-based social and environmental movement that has coalesced in recent years against mining in general and Pacific Rim's El Dorado project in particular (see NotiCen, 2006-03-23). Complicating matters even more, according to Michael Busch, a research associate in New York City's Ralph Bunche Institute for International Studies, are the deadly floods set loose last month by Hurricane Ida as well as ongoing political instability in nearby Honduras

and Guatemala, which leave the Salvadoran leader without much support should he attempt to renegotiate CAFTA-DR provisions such as Chapter 10. "Funes finds himself in an incredibly tough position," said Busch. "Given everything he's facing right now, he really can't afford to lose this type of lawsuit, so I think it's likely he will reach some kind of negotiated settlement that'll probably take the form of the companies being able to reopen their mines." To dig or not to dig Leading the fight against the mines is La Mesa Nacional Frente a la Minería Metalica, an umbrella organization representing numerous environmental, religious, human rights, and community groups in northern El Salvador's Cabanas and Chalatenango departments. La Mesa is principally concerned about the effects El Dorado and other mines planned for the area would have on the environment and public health. Gold mining, they point out, relies heavily on cyanide, a notorious poison that could make its way into the water system. "The El Dorado mine is one of 29 precious-metals-extraction projects...that Pacific Rim, Commerce Group, and other mining companies plan to operate in the north. The majority are along the Rio Lempa, the country's largest river, which flows through two-thirds of the nation and provides more than half of San Salvador's drinking water," La Mesa spokesperson Vidalina Morales explained during an Oct. 15 speech in Washington, DC, where she and her colleagues were awarded the Institute for Policy Studies (IPS) 2009 Letelier-Moffitt Human Rights Award. "Pacific Rim said that it would use two tons of cyanide daily in El Dorado," Morales went on to say. "If the mine operated for 10 years, it would use 7,300 tons of this deadly poison. And if the other 29 projects were like El Dorado, they would spill 211,700 tons of cyanide into the water, air, and ground an unimaginable environmental and social catastrophe." Pacific Rim vehemently disagrees, boasting that the El Dorado mine would employ state-of-the-art technology to oxidize and destroy the cyanide. The company also plans to build a treatment plant to purify the mine's discharge water. It would set "new environmental-protection standards for Latin America" as well as provide much needed jobs (roughly 600) for the economically depressed region, according to the company's CEO Tom Shrake. The arguments outlined in an Environmental Impact Study (EIS) the company submitted four years ago failed to convince Funes' predecessor, former President Antonio Saca (2004-2009) of the conservative Alianza Republicana Nacionalista (ARENA) party. Saca sided instead with La Mesa, the Catholic Church, and other mining opponents to implement a freeze on extraction concessions. The anti-mining movement also has strong allies within the FMLN. In June, shortly after Funes took office (see NotiCen, 2009-06-04), FMLN legislator Lourdes Palacios introduced a bill to ban precious-metals mining outright. If the law is approved, Pacific Rim and other foreign mining firms will have six months to pack up their operations and leave the country. Silencing the critics Adding to the drama is the mysterious death of Marcelo Rivera, a community leader, FMLN member, and anti-mining activist in San Isidro, Cabanas, who disappeared June 18. His body was discovered two weeks later at the bottom of a well. An autopsy concluded Rivera was tortured and then strangled to death. Police arrested several suspects but continue to treat the matter as a typical case of gang violence. The activist's friends and family members are convinced otherwise, insisting Rivera's death had everything to do with his vocal opposition to the El Dorado mine. In the weeks following Rivera's murder, several journalists covering the case claimed they received death threats. Other community leaders, including Ramiro Rivera of Nueva Trinidad, Cabanas who miraculously survived after being shot eight times in the back have been physically attacked. A priest, Father Luis Quintanilla, was also targeted. On July 29, Quintanilla narrowly escaped a kidnapping and assassination attempt. "Mining companies employ terror mechanisms as a strategy to frighten the population that opposes their projects. That's the context in which Marcelo Rivera was killed," Alirio Hernandez of the Asociacion de San Isidro Cabanas (ASIC), a community group Rivera help found, told NotiCen. "In addition, they violate and try to break up the community

groups organized by people [who oppose the mines]." For Hernandez, the Rivera case represents a real litmus test for the six-month-old government of President Funes, El Salvador's first leftist leader. If the new leadership really wants to tackle the issue of rampant violence and challenge impunity, he explained, it must stop turning a blind eye to the political and economic undertones of such crimes. A handful of international organizations, including the influential New York City-based Human Rights Watch (HRW), agree. "To dismiss this brutal murder as a gang killing and not look into the circumstances and the menacing aftermath would have a chilling effect on El Salvador's civil society," said HRW Director José Miguel Vivanco. "For this investigation to be adequate and effective, the investigators need to pursue the possibility that the killing was politically motivated." Of course the other litmus test facing not only the Funes government but the mining companies and the World Bank as well is the question of what exactly will happen with El Salvador's valuable gold veins. Funes could set a powerful precedent by heeding La Mesa's demands and backing legislation to ban precious-metals mining. In doing so, however, he risks scaring off foreign investors by sending the message that El Salvador is simply not open for business. And, although the FMLN is currently El Salvador's dominant party, Funes still lacks a real majority in the legislature, making it far from certain such a ban would even pass. In the meantime, the World Bank's ICSID is positioned to set a precedent of its own. If it eventually rules in favor of the mining companies, the institution sends the message that under national law as interpreted by CAFTA-DR and other such trade agreements corporate interests hold more weight than national sovereignty.

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