4-14-2011

El Salvador Wins Key Round in Bout with Foreign Mining Firms

Benjamin Witte-Lebhar

Follow this and additional works at: https://digitalrepository.unm.edu/noticen

Recommended Citation
https://digitalrepository.unm.edu/noticen/9873

This Article is brought to you for free and open access by the Latin America Digital Beat (LADB) at UNM Digital Repository. It has been accepted for inclusion in NotiCen by an authorized administrator of UNM Digital Repository. For more information, please contact amywinter@unm.edu.
El Salvador Wins Key Round in Bout with Foreign Mining Firms

by Benjamin Witte-Lebhar
Category/Department: El Salvador
Published: Thursday, April 14, 2011

El Salvador has won an important first victory in an ongoing, high-stakes showdown with North American mining companies desperate to access the Central America nation’s precious-metals reserves.

On March 15, the Washington, DC-based International Centre for Settlement of Investment Disputes (ICISD), an arbitration court tied to the World Bank (WB), tossed out a US$100 million suit brought against the Salvadoran government by the US mining firm Commerce Group Corporation.

The ICISD based its decision on a technicality, ruling that the suit is inadmissible because Commerce Group had not halted ongoing court proceedings in El Salvador. The suit was not, however, "frivolous," the court determined. The ICISD ordered the two parties to split all associated court costs. The nearly two-year-old case is expected to set the Salvadoran government back some US$800,000.

"To conclude from Respondent’s victory that Claimants’ claims were 'frivolous' would be to go too far. Indeed, the Tribunal has been presented with no indication that Claimants were not serious about the claims they asserted in these proceedings, nor that Claimants pursued this matter in bad faith," the ICISD concluded.

Commerce Group, headquartered in Milwaukee, Wisconsin, filed the ICISD suit in mid-2009, three years after Salvadoran authorities revoked environmental permits the company needed to continue operating its gold mine in La Unión, near the Honduran border.

The company worked the San Sebastián mine between 1987 and 1999 but ceased operations when the international price of gold dropped against a then robust US dollar. Five years later, Commerce Group obtained the environmental permits it would need to reopen the mine, but in 2006 Salvadoran government authorities made an abrupt about-face, withdrawing the permits and refusing to renew the company’s extraction license.

El Salvador’s Ministerio de Ambiente y Recursos Naturales (MARN) claimed it had good reasons to block renewed operations at the mine, which residents had long said polluted nearby waterways. Research carried out in 2006 found that local water sources contained elevated levels of heavy metals, including aluminum, which tested at 1,800 times the recommended limit set by the World Health Organization (WHO).

"MARN will not grant permits for mining projects if the company’s environmental-impact assessment does not show that they’re going to protect the earth, aquifers, ground, air, and the health of the people who live in the communities," then minister of economy Yolanda de Gavidia said in July 2006.
Calling the decision "arbitrary, illegal, and unconstitutional," Commerce Group pursued legal action through the Salvadoran courts. When that did not work, it turned to the ICISD, where it was able to present its US$100 million suit based on rules in the US-Dominican Republic-Central America Free Trade Agreement (CAFTA-DR), which El Salvador implemented in 2006. The agreement's Chapter 10 allows foreign companies that feel their profit potential is threatened by local governments to sue their host country for cash compensation.

At the time Commerce Group filed its suit, gold was selling for approximately US$950 per ounce, up from US$600 in mid-2006, when the Salvadoran government first sent the message that the company was not welcome. In mid-1999, when Commerce Group stopped operating the San Sebastián mine, gold was selling just above US$250 per ounce. The precious metal is currently worth nearly six times as much, selling for US$1,467 per ounce.

A partial victory

The ICISD's decision to dismiss the suit was cause for celebration in El Salvador, an impoverished country that could ill afford a US$100 million private payout. "This is a victory for El Salvador. This is the first time that we won a case associated with CAFTA," said Attorney General Romeo Barahona, who flew to Washington, DC, to receive the court's ruling in person.

The ruling was also lauded by environmental groups, in both El Salvador and the US. "We are celebrating this victory together with the communities in El Salvador that have been suffering the effects of gold mining. Now it's time for Commerce Group to clean up the mess they've made in El Salvador," said Steve Watrous, head of the US-based activist group Midwest Coalition Against Lethal Mining.

The Sierra Club also welcomed the suit's dismissal but slammed the ICISD for sticking the Salvadoran government with half the legal bill. "We find it outrageous that the people of El Salvador will be forced to bear the burden of US$800,000 in legal fees spent defending the right to protect its people and environment," Rachel Ackoff, the organization's associate representative in Washington, said in a press statement.

The costly defense tab is not the only reason that the March court ruling, significant as it is, was only a partial victory for El Salvador, whose troubles vis-à-vis foreign mining interests are far from over.

Of particular concern is a second CAFTA-based multimillion-dollar lawsuit that, like the Commerce Group case, is also being handled by the ICISD. The company behind the second suit, Pacific Rim Mining, is a Canadian-based mining company that owns the El Dorado gold mine in Cabañas (NotiCen, March 23, 2006).

Pacific Rim filed the suit in April 2009, claiming the Salvadoran government breached both Salvadoran and international law by allowing the firm to spend five years—and a reported US$77 million—prospecting for gold, only to decide in the end to not grant the company extraction rights (NotiCen, Dec. 10, 2009).

The CAFTA-DR rules are supposed to apply only 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 ICISD suit via a fully owned subsidiary, Pac Rim Cayman, headquartered in the US state of Nevada. The ICISD is scheduled to resume hearings on the matter in early May.
Deadly resistance

For Salvadoran authorities, the multimillion-dollar lawsuit is just the latest in a string of problems associated with Pacific Rim, whose El Dorado mine has long raised objections among environmental and community activists.

Worried about the affects El Dorado and other proposed mining projects would have on local waterways—particularly the Río Lempa, El Salvador’s longest river—mining opponents joined forces in 2006 to form the Mesa Nacional Frente a la Minería Metálica, an umbrella organization representing numerous environmental, religious, human rights, and community groups in northern El Salvador’s Cabañas and Chalatenango departments.

The Mesa played a key role in influencing then President Antonio Saca (2004-2009) of the conservative Alianza Republicana Nacionalista (ARENA) party to issue a freeze on mining permits. His more moderate successor, President Mauricio Funes, has maintained that position, despite the intense legal pressure from Commerce Group and Pacific Rim, which filed their suits around the time Funes took office.

Funes cleared up any lingering doubts about his stance on the matter early last year, when he stated unequivocally that his government "is not approving any mining exploration or extraction projects (NotiCen, Jan. 28, 2010)."

The president made the Jan. 11 declaration shortly after two Cabañas activists opposing Pacific Rim’s El Dorado mine were murdered. The victims, 32-year-old Dora Sorto Recinos and Ramiro Rivera, were gunned down within a week of each other in December 2009 (NotiCen, Jan. 28, 2010 ). Both were members of the local environmental group Comité Ambiental de las Cabañas.

The body of a third El Dorado opponent, community leader Marcelo Rivera, was found six months earlier at the bottom of a well (NotiCen, Dec. 10, 2009). An autopsy concluded that Rivera, who went missing June 18, 2009, was tortured and then strangled to death.

Pacific Rim adamantly denies any connection to the killings. "There is no evidence indicating these violent acts bear any relation whatsoever to the debate on mining in the country," the company argued in a Jan. 4, 2010 press release.

The Mesa Nacional Frente a la Minería Metálica begs to differ, especially as opponents of the El Dorado mine continue to face menacing harassment. On Jan. 11, according to the Mesa, the local Cabañas radio station Radio Victoria received a written death threat, warning the station’s "loudest mouths" (identified as Elvis Zavala, Pablo Ayala, and Manuel Navarrete) they would be killed if they did not "stop making trouble." Twelve days someone threatened Mesa member Hector Berrios on the telephone.

During a Jan. 31 press conference, the anti-mining organization also reported that two people linked with the Marcelo Rivera case were recently murdered. Gerardo Abrego León, who testified against the men convicted of killing Rivera, was murdered on Jan. 2. Two weeks earlier, on Dec. 20, a young man named Darwin Serrano also showed up dead. Serrano is presumed to have participated in the activist’s murder. Because he was a minor, however, Serrano had been released from prison.