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El Salvador Mining Opponents Determined Not To Let Guard Down

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Anti-mining activists have enjoyed a fair share of success in El Salvador, where a five-year-old moratorium on metals extraction continues to keep would-be miners at bay. But, rather than rest on their laurels, organizations like La Mesa Nacional frente a la Minería Metálica, an influential umbrella group, remain active and alert, lobbying hard for policy changes that, in their opinion, would better protect the country from the still clear and present danger posed by corporate mining interests.

For starters, argue industry opponents, the government would do well to replace the moratorium with an all-out mining ban. In 2008, at the behest of then President Elías Antonio Saca (2004-2009), Salvadoran authorities stopped issuing new mining permits. The industry "freeze"—as the de facto moratorium is sometimes described—has continued under Saca’s more moderate successor President Mauricio Funes, who shares activists’ concerns about the negative effects metals mining could have on El Salvador’s already compromised fresh-water resources. "I will not put the public health of the population at risk in exchange for some additional income that we might receive," the president pledged back in 2011.

So far, however, the government’s anti-mining "policy" has depended on political whim, meaning there is no guarantee the freeze will survive future leadership changes, especially if the right manages to win back the presidency in next year’s national elections. What El Salvador needs instead, according to La Mesa and its allies, is a binding law—approved by the unicameral Asamblea Legislativa (AL)—that would prohibit mining outright and thus settle the matter once and for all.

La Mesa and its allies "want a lasting measure that would be applicable in law," Jennifer Moore, Latin America coordinator for the nonprofit organization MiningWatch Canada, told NotiCen. "They recognize that there’s real pressure on the state to weaken the terms of the moratorium and allow some type of mining to take place." MiningWatch Canada has worked closely with La Mesa in recent years as part of the US/Canadian coalition International Allies against Metallic Mining in El Salvador. Other members include Oxfam America and the Sierra Club.

President Funes has remained "true to his word" in keeping the moratorium in place, said Moore, who visited El Salvador this past May on a fact-finding mission. But his administration has failed to throw any real support behind La Mesa’s call for an outright mining ban. Instead, they have proposed "a temporary measure to prevent mining until the institutionality is in place to make it okay," she said. "That's not what Salvadoran civil society has been calling for."

"Permissive" trade deals

Anti-mining activists say Salvadoran authorities should also reconsider the country’s various trade deals. Of particular concern is the US-Dominican Republic-Central American Free Trade Agreement (CAFTA-DR). In 2009, three years after the trade deal went into effect, a pair of mining companies with interests in El Salvador used the CAFTA-DR to launch legal proceedings against the
Salvadoran government via the International Centre for Settlement of Investment Disputes (ICSID), a World Bank-affiliated investor-rights tribunal. The companies—Canadian firm Pacific Rim and US corporation Commerce Group—based their cases on the CAFTA-DR’s controversial Chapter 10, which allows foreign companies who feel their profit potential is threatened by local governments to sue their host country for cash compensation.

Commerce Group lost its case in 2011 on a technicality. The ICSID nevertheless ordered the Salvadoran government to split all associated court costs (NotiCen, April 14, 2011). Commerce Group is currently trying to appeal the decision. The Pacific Rim suit is still pending (NotiCen, June 21, 2012). The Canadian firm originally demanded compensation to the tune of US$100 million. This past April, it upped its claim to US$315 million, equivalent to nearly 2% of El Salvador’s total GDP. Government sources claim that El Salvador has already spent a reported US$7 million defending itself against the suits.

"In both cases, it’s completely unjust that we, the Salvadoran people, are the ones having to pay for all the legal costs required to defend the state in tribunals like the ICSID," La Mesa lamented in an April 3 press release. "The situation will be much worse if El Salvador ends up losing the suits and is required to pay what the mining companies are demanding."

To avoid such scenarios in the future, La Mesa argues, El Salvador ought to extricate itself from CAFTA-DR and other trade deals that leave the state legally beholden to foreign corporations. The umbrella group has shared its concerns with the Corte Suprema de Justicia (CSJ), asking the high court to nullify CAFTA-DR by declaring it "unconstitutional." La Mesa activists have staged protests in front of the CSJ on several occasions, most recently on July 10.

At the same time, mining opponents are lobbying the AL not to approve new accords, like a pending free trade agreement (FTA) with Canada, which could compromise the country’s interests further. "As long as there continue to be these laws and permissive trade deals that favor corporate interests over the public well-being, these kinds of cases, in which El Salvador must fork over public funds, will keep occurring," the La Mesa press release read. "This is precisely what's behind our rejection of current negotiations to sign a free trade agreement with Canada and an association agreement with the European Union."

### Lawsuits galore

A study issued recently by the Institute for Policy Studies (IPS), a Washington DC-based think tank, suggests that developing countries like El Salvador really do have cause for concern when it comes things like FTAs and bilateral investment treaties (BIDs). The report, "Mining for Profits in International Tribunals," concluded that transnational firms—particularly in the extractive industries (oil, gas and mining)—having been using such trade deals more and more as the basis for expensive suits against their developing-world host countries.

During the 1980s and 1990s, the ICSID heard just seven cases filed by oil, mining, or gas companies, the study found. In 2000, only three of those cases were pending. Right now, the tribunal is dealing with 60 such lawsuits, 19 of which are related to mining. IPS researchers Sarah Anderson and Manuel Pérez-Rocha determined, furthermore, that more than half of the ICSID’s pending oil-, mining-, or gas-company suits (51.6%) are against Latin American countries, even though only 14% of the tribunal’s 158 member governments hail form the region. Most of the other cases relate to Africa (20%) and Asia (16.6%).
"The ramifications of the BITs and FTAs have been to reduce countries’ power to uphold their sovereign rights, while granting transnational corporations increased access to their resources with less regulatory restrictions," the IPS report reads. "When nations do stand up for their rights and the public interest, corporations are able to sue them in international tribunals. This allows corporations to undermine countries’ democratic process, challenging national laws, and disregarding public opinion."

**Water worries**

Pérez-Rocha shared his findings first hand during a May 10 conference at the Universidad Centroamericana José Simeón Cañas (UCA) in San Salvador. During his presentation, the IPS associate fellow referred specifically to the suit by Pacific Rim, which he accused of trying to "extort" the Salvadoran people. "We will continue highlighting the Pacific Rim case internationally as an example of the perverse system that operates under the free-trade agreements," he said.

The conference was organized jointly by La Mesa and the International Allies against Metallic Mining in El Salvador as part of the latter’s three-day fact-finding mission. During their visit to El Salvador, the mission’s more than 40 delegates made their way to the department of Cabañas, where Pacific Rim is still hoping to resume work on its stalled El Dorado project. In recent years, several anti-mining activists have been murdered in the area. In late 2009, activists Dora Sorto Recinos, who was eight months pregnant, and Ramiro Rivera, who was ambushed while driving his pickup truck, were killed just days apart (NotiCen, Jan. 28, 2010). Six months earlier, the lifeless body of another outspoken critic of the El Dorado project, community organizer Marcelo Rivera, was discovered at the bottom of a deep well (NotiCen, Dec. 10, 2009).

Participants also visited a site just across the border in Guatemala, where another Canadian company, Goldcorp, is preparing to open the Cerro Blanco mine. A number of high-profile Salvadoran figures, including San Salvador Archbishop José Luis Escobar Alas, the country’s top-ranking Catholic Church leader, have joined activists in opposing the mine. Cerro Blanco’s many Salvadoran detractors see the mine as a potential health risk for residents on both sides of the border (NotiCen, Feb. 7, 2013). Once in operation, they warn, the mine will begin emptying toxins into the nearby Río Ostúa. From there, pollutants could make their way to Lago Güija, which hugs the border between the two countries, and later into the Río Lempa, El Salvador’s largest river and most-important single source of fresh water.

"One of the main impacts from industrial mining, besides the social and human rights impact, is the lasting effect on water," said MiningWatch Canada’s Jennifer Moore. "In El Salvador the water supply has, in large part, already been tremendously taxed. It’s also the most densely populated country in the region. Further pollution will have serious negative consequences. ... The cost is born by the local communities."

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