4-20-2017

El Salvador Votes for a Complete Ban on Metals Mining

Benjamin Witte-Lebhar

LADB Article Id: 80269
ISSN: 1089-1560

El Salvador Votes for a Complete Ban on Metals Mining

by Benjamin Witte-Lebhar
Category/Department: El Salvador
Published: 2017-04-20

After more than a decade of grassroots campaigning, corporate lobbying, punishing lawsuits, and high-stakes arbitration hearings, El Salvador has opted to end its tumultuous relationship with the metals-mining industry once and for all.

With support from across the political spectrum, lawmakers in the tiny Central American nation took the unprecedented step March 29 of outlawing metals mining outright. The Ley de Prohibición de la Minería Metálica, as the blanket ban is formally known, is considered the most sweeping anti-mining legislation issued anywhere on the planet, and drew immediate applause from academics, environmentalists, and civil society activists.

"El Salvador is the first country in the world to evaluate the costs and benefits of the mining industry for the country and to exercise its right to say no," researcher Andrés McKinley of the Universidad Centroamericana José Simeón Cañas (UCA) told the Inter Press Service (IPS) news agency.

The prohibition applies to both open-pit and underground mining, making it a crime not only to extract and process metals, but even to prospect for them. It also outlaws the use of cyanide, mercury, and other toxic chemicals associated with metals mining, but does not apply to rock quarrying or mining of non-metal materials like coal or salt.

The stated goal of the law is to protect the environment and safeguard the health of the Salvadoran people against the potential ill effects of an industry that requires massive amounts of water and has proved, in cases around the globe, to be a dangerous source of pollution. The risks are particularly high, critics have long argued, in the case of El Salvador, given its size, high population density, and well-documented water pollution problems (NotiCen, May 10, 2012, and Feb. 7, 2013).

"This is a historic, brave, and decisive decision. Territorially, our country is very small, and so practicing metals mining is practically suicidal," Guillermo Gallegos, the president of El Salvador's unicameral Asamblea Legislativa (Legislative Assembly, AL), told BBC Mundo.

Gallegos, a member of the center-right Gran Alianza por la Unidad Nacional (Great Alliance for National Unity, GANA), was joined by 68 of the AL's other 83 lawmakers in supporting the law. The bill also had broad backing from members of the governing Frente Farabundo Martí para la Liberación Nacional (Farabundo Martí National Liberation Front, FMLN) and the opposition Alianza Republicana Nacionalista (Nationalist Republican Alliance, ARENA).

"Today in El Salvador, water won out over gold," Johnny Wright Sol, a deputy with the hard-right ARENA, wrote on Twitter.

A long, hard road

The decision made waves internationally, earning write-ups in publication like The Guardian, in London, and The New York Times, which even dedicated an editorial to the subject on April 1. The editorial described the anti-mining law as "remarkable" and said that while it's unlikely to be

LADB Article Id: 80269
ISSN: 1089-1560

replicated elsewhere in Latin America, it could nevertheless prove influential by prompting "other countries to consider more carefully the toll mining takes on vulnerable communities and the need for tighter regulations and stronger enforcement of environmental rules."

In El Salvador, in the meantime, the ban is widely seen as cause for celebration. Activists in particular see it as the culmination of a dozen-year struggle that began very much at the grassroots level and cost a handful of people their lives. In 2009—in the span of just a few months—three mining opponents were killed in the northern department of Cabañas, where the Canadian firm Pacific Rim planned to operate a gold and silver mine called El Dorado (NotiCen, Jan. 28, 2010). A fourth activist, Juan Francisco Durán Ayala, 30, was murdered in 2011. "This law is awash in blood," lawmaker Guillermo Mata of the leftist FMLN told reporters.

The struggle also proved costly for El Salvador's cash-strapped government, which shelled out millions of dollars in legal fees to fight off international investor suits brought by Pacific Rim and by Commerce Group Corporation, a US firm. Both cases went before the International Centre for Settlement of Investment Disputes (ICSID), a business tribunal connected to the World Bank. Pacific Rim initially sought more than US$70 million in damages. Commerce Group demanded US$100 million.

The two companies filed their respective suits in 2009, after then-President Antonio Saca (2004-2009), a conservative who represented ARENA, introduced a de facto moratorium on metals mining. In practical terms, the moratorium amounted to a freeze on new or (in the case of Commerce Group) renewed extraction permits. The murders of the activists helped harden the resolve of Saca's more moderate successor, President Mauricio Funes (2009-2014) of the FMLN, who kept the moratorium in place despite the strong-arm tactics employed by the jilted mining companies.

In 2011, the ICSID dismissed the Commerce Group case on a technicality but ordered the parties to split the legal costs (NotiCen, April 14, 2011). The Pacific Rim suit, however, dragged on, even after the company was acquired, in 2013, by Australia-based OceanaGold. The new owners, in fact, upped the damages claim to US$250 million.

The ICSID didn't resolve the case until October 2016, siding in the end with El Salvador and ordering OceanaGold to pay the Salvadoran government US$8 million to help offset the accrued costs of the lengthy litigation (NotiCen, Nov. 3, 2016). In total, El Salvador spent a reported US$13 million on the case.

Troubling testimony

Six months later, the Canadian/Australian firm has yet to make good on its obligation, prompting the ICSID to issue another ruling, on March 28, ordering OceanaGold to also pay interest on the unpaid debt. And rather than give up on its gold mining ambitions in El Salvador, as was expected after losing the years-long quest for damages, the company reportedly spent the past several months again lobbying for permission to dig.

OceanaGold's recalcitrance may have been the last straw for mining opponents and their allies, especially in the influential Catholic Church, which supported the movement early on but stepped up its advocacy efforts in recent months. In February, San Salvador Archbishop José Luis Escobar Alas presented the legislature with a mining-ban draft bill drawn up by academics at the UCA. A month later, he led a march to the AL, again demanding that lawmakers take action on the issue.

LADB Article Id: 80269
ISSN: 1089-1560

The direct involvement of Escobar Alas and other top church officials proved to be decisive, observers argue. "[It] added an unprecedented level of social pressure that facilitated and accelerated the process," Jeannette Aguilar, director of the UCA's Instituto Universitario de Opinión Pública (University Institute of Public Opinion, IUDOP), told BBC Mundo. More specifically, it helped persuade ARENA lawmakers and others on the right to finally side with the blanket mining ban, versions of which had been presented to the AL at various times over the past decade or so.

Members of the legislature may also have been influenced by testimony given on March 28 by Carlos Padilla, the governor of Nueva Vizcaya province in the Philippines. Padilla spoke to the AL's Committee on the Environment and Climate Change about his province's own experience with OceanaGold, which operates a mine in Nueva Vizcaya called Didipio. "When the company came, our hill and our river were destroyed," the official AL website quotes Padilla as saying. "Many families lost their homes and were forcibly displaced, and others died after being submerged in an artificial lake that was built by the mine."

Earlier this year, Filipino authorities ordered operations at Didipio to be suspended. OceanaGold appealed the measure in February and is continuing to extract gold "as normal" pending resolution of the case, Bloomberg Markets reported on March 15. Padilla, during his presentation to Salvadoran lawmakers, described the decision to close Didipio as "a victory for our people, who have worked to defend their lands." But he also admitted, "We don't know what the future holds."

Pending challenges

The same could be said for El Salvador, which despite the March 29 vote, still has a few mining-related hurdles ahead. For one thing, OceanaGold continues to have a physical presence in the country. Activists are itching for the company to be gone for good. There is also the pending issue of OceanaGold's debt to El Salvador. When or if the company will make good on its US$8 million obligation (plus interest) is anybody's guess.

Mining opponents worry, too, about possible legal challenges to the ban and suggest that to shore up the legislation, President Salvador Sánchez Cerén ought to ratify it as soon as possible. They urge the Supreme Court, furthermore, not to consider any appeal or injunction that OceanaGold or other mining companies may file.

Enforcing the ban poses another challenge, particularly with regards to the hundreds of güiriseros, independent subsistence miners who eke out a living scratching for gold in the department of La Unión. The new law gives the güiriseros a two-year grace period to pack up their tools and find new ways to support themselves. But some of the miners say they'll simply ignore the law.

"What they're doing with us is an injustice, because this is how we support ourselves," a subsistence miner named William Bonilla told La Prensa Gráfica earlier this month. "What they say about us polluting [the environment] is a lie. They can come here and do tests if they want."

-- End --