



Office of the Attorney for the Defense of Human Rights in El Salvador – PDDH, Special Report:
"The legacy of the San Sebastián mine and the impacts on the
lives of affected populations"

Executive Summary

Introduction

The objective of this report is to analyze the socio-economic and environmental impacts of metal mining in the town of San Sebastián in Santa Rosa de Lima, the state of La Unión, from a multidisciplinary perspective of mine closures, as well as the impacts on the human rights of its populations.

The topics analyzed include:

- The deficiencies of the Mining Law as it exists today and the lack of state capacity to monitor compliance with the law.
- The issue with land ownership.
- The impact on the right to water.
- The cost of remedying the damage caused by mine acid drainage to the San Sebastián river.
- The impacts on the human rights of artisanal mines (güiriseros).

Section 1

This section outlines the methodology used throughout this report, based on the three different methods of data collection and subsequent calculation: *in situ*, or on-site; interviews with key informants; and the analysis of secondary research.

On-site research was based on Rapid Rural Appraisal. Interviews with key informants were unstructured and included open-ended questions. The secondary research was compiled over a period of six months. The complete project spanned 15 months.

Section 2

In this section mine closure laws in both El Salvador and the United States of America are analyzed, as well as international best practices. The laws applicable to the San Sebastián contamination case are identified and the way in which they were ineffective is demonstrated. The main causes of the said ineffectiveness is related to the insufficient clarity of the laws and the lack of state capacity to implement regulations.

Section 3

In this section the prohibition of metal mining activity in El Salvador will be analyzed, identifying that processes of production or acquisition of gold occur in the country through activities unregistered by official institutions. The statistics and figures calculated by the State institutions in relation to mining, therefore, do not reflect the true extent of the problem because the real amount of gold that is produced and marketed in the country is currently unknown.

Section 4

This section explores how, despite the fact that Santa Rosa de Lima, in the department of La Unión, is one of the municipalities with a high socio-economic performance at the national level -according to the Human Development Index (HDI)-, there are factors that drive much of the population of San Sebastián to participate in economic activities in the informal sector, especially mining, which is not regulated by state authorities.

Section 5

This section argue that the States's records of the Commerce Group Corporation (CGC) are unreliable since they have not been updated in the past five years. It could not be determined whether residents living within the mining zone have the right to own the land they actually reside on because it is not clear who would be the legal owner of the land where the mine is located.

Section 6

This section looks at how the water supply for the population relies heavily on natural water availability in the area, but this availability is low for the whole area surrounding the municipality of Santa Rosa de Lima. Organic, industrial, and agrochemical waste pollute the majority of surface and groundwater, and this is exacerbated in areas with limited sources of natural water available, as is the case with the community of San Sebastián.

The inhabitants of San Sebastián do not have access to uncontaminated sources of water, forcing them to pay for the liquid resulting in the following:

- To cover their minimal necessities, a household of 5 people may have to pay from USD \$7.47 up to USD \$24.60 per month.

- Drinking and cooking water (which constitutes between 10% and 20% of a household's total water consumption) is very difficult to obtain at a low cost.
- Each m³ of water consumed by households in San Sebastián costs between USD \$4.10 and USD \$2.50, while in the capital of El Salvador, San Salvador, a household of 5 people pays no more than USD \$0.25 for one m³.
- The low cost per m³ allows households in the capital a higher water consumption, usually around 22 m³ per month. In San Sebastián the monthly water consumption is between 3 m³ and 6 m³.
- Households in San Sebastián use between 16.5% and 18.9% of their income to acquire their water every month. On the other hand, households in San Salvador with an average salary of USD \$300 would be spending 2.5% of their income to meet their monthly water needs.

We conclude that there are also many risks to human health associated with water contamination but more research is required to establish the effects it has on the population of San Sebastián.

Section 7

It is established that the güiriseros in the town of San Sebastián use mercury as part of their gold extraction processes. The presence of mercury in the environment may be causing damage in the area but it cannot be known to what extent until studies are conducted to measure the content of mercury in the blood of the people and in the tissues of local animals.

It is argued that despite all the problems associated with the activities of güiriseros it is necessary to understand that ignoring their existence can only prolong both pollution and disease in the area. Likewise it is noted that it is unlikely that regulating the activities of güiriseros will provide a long term solution, but it is an urgent and necessary step to take.

Section 8

This section concludes that acid mine drainage is one of the most notable negative legacies of the San Sebastián mine. It is estimated that the total cost of preventing and remedying the effects of the drainage is, respectively, from USD \$70 000 and USD \$180 000, plus maintenance costs which ranging from USD \$15 000 and USD \$52 000 per year.

This report comes to an end with conclusions and recommendations for different State institutions and recommendations for the Commerce Group Corporation.

Recommendations

Based on the above findings and based on the legal and constitutional framework of our mandate, the Attorney for the Defence of Human Rights issues the following recommendations:

To the Executive Government:

- A. That the Ministry of the Environment and Natural Resources (MARN) carries out a study to determine the level of air and ground mercury pollution in San Sebastián and in the city of Santa Rosa de Lima, and take actions within its capacity in favour of the victims. The recommendations included in a study published by the MARN (MARN, 2103) and reported to this institution can be considered a starting point for taking action and proceeding to repair ecosystems and restore the rights of people living in San Sebastian.
- B. Given that the MARN study establishes that the lead levels in the ground in San Sebastián, in certain locations specifically, are greater than the established safety limits, the MARN should act urgently to reverse this situation. The first step is determining the levels of lead in the blood of the people living in the area; the second, to educate the population about how to deal with its presence, how to avoid and recognize the symptoms associated with lead poisoning. The final step is to help clean the environment of those living in the polluted areas. The same approach can be taken with other heavy metals whose presence in the area measure above human safety limits.
- C. That the government disclose the amount of the royalties paid by CGC between 1995-2005, as per the regulations of the current Mining Law. This description should include the amounts of royalties paid to the municipality of Santa Rosa de Lima and the mechanism by which the delivery of these funds was made.
- D. That the Executive urgently plans and implements a system for access to drinking water and sanitation for the inhabitants of San Sebastián, as was mentioned in the MARN, 2013 study and suggested by this institution.
- E. Authorities should be reminded that the supply of water through privatized means is not a solution to fix the problem of access to water in San Sebastián. This report has determined that the community pay exorbitant prices for water consumed through a system of private providers. Since access to water is a human right recognized by Resolution Number 64/292 of the United Nations, 2010, it is the obligation of the Salvadoran state to secure it.
- F. It is recommended that MARN use the environmental security feed paid by CGC and its subsidiaries in 2003 to help finance the costs of remediation of acid drainage.

- G. It is recommended that if CGC does not cooperate in financing part of the costs of remedying acid mine drainage, the government should take legal action on the basis of the Environment Law of (1998), using articles 85 and 86 subsection c, d, g, and h to file a lawsuit against CGC for environmental damage caused by the discharge of acid mine drainage in the San Sebastián river. Although it is possible that the discharge may have begun before CGC took possession, the company is still in part responsible for not taking the appropriate actions to remedy or improve the situation when it took possession of the mine.
- H. Further research should be conducted to investigate the relationship between chronic kidney disease and heavy metals in the environment around the town of San Sebastián. Therefore it is recommended that the Executive branch of government take the lead in this area and address the recommendation made in the concluding Observations on the last periodic reports of the country, by the United Nations' Committee of Economic, Social, and Cultural Rights, that the Salvadoran state, in cooperation with neighbouring countries, international bodies, and international cooperation, increase the necessary scientific resources for independent research of chronic kidney disease of unknown and rare causes, and then apply that knowledge for its prevention and cure, so affected people can benefit from scientific progress.
- I. Given that the San Sebastián mine does not have a pre-mining base line, the use of techniques evaluated by the United States' Geological Survey (USGS) to determine the amount of land that needs to be rehabilitated is recommended.
- J. Considering Pacific Rim's lawsuit against the government of El Salvador, and the lawsuit filed by CGC in 2009, the government should notify ICSID that mining and other harmful industries are beyond any possibility of arbitration. El Salvador has the right to take action under Article 25 (4) of the ICSID Convention in order to prevent similar lawsuits in the future.
- K. It is recommended that the Executive Body analyze its position expressed in the draft Special Law for the suspension of Administrative Procedures related to Exploration and Exploitation Projects in Metal Mining submitted to the Legislative Assembly by the Ministries of Economy and of Environment and Natural Resources, taking into consideration what has already been maintained by this institution in the *Opinion on the Draft Law on the Special Administrative Suspension Procedures relating to Exploration and Exploitation Projects in Metal Mining*, of October 15, 2012. It is appropriate to mention that there is a mining bill presented by civil society organizations that can be considered a starting point for analysis. The closure of the industry needs to be codified. As a minimum standard the current Mining Law needs to be based on a concept of closure to ensure that:

<<*The public health and safety will not be compromised in the future, and that subsequent use of mining sites is beneficial and sustainable in the long term for affected communities and that adverse socioeconomic impacts are minimized and socioeconomic benefits are maximized.*>> (Whitbread-Abrutat, Kendle and Copping, 2013: 638).

- L. It is recommended that the Executive Branch design and execute a short term program that includes palliative measures to reduce and mitigate the health impacts of güiriseros and the environment of the area; and a long-term program that allows a shift from dependence on mining to a more sustainable form of livelihood for the inhabitants of San Sebastian. This transition needs to incorporate the güiriseros as protagonists of their own decisions. This program could be based on the sustainable development of local industries whose main components should be producer cooperatives, and the active participation of the community in the efforts of rehabilitation and vocational readjustment of the güiriseros.
- M. Similarly, the Executive Branch should proceed to determine the level of mercury in the following groups: Artisanal Small Scale Miners (ASM), the inhabitants of San Sebastián, jewelers in Santa Rosa de Lima, their families and their neighbours, as well as coastal communities along the Guascorán river. Without this recognition, it's difficult to know whether the levels are tolerable, toxic, or lethal for the health of the people. Fortunately, there is a hair test that can determine mercury levels in people, referenced here. This test is simple, non-intrusive, inexpensive, and can be carried out locally by local health promoters with minimal training.
- N. The State should consider the option to proceed with signing and subsequent ratification of the Minamata Convention on Mercury, 2009. Through this agreement, reducing the use of mercury is promoted until its total elimination, which would give the state access to international resources to regulate the use of mercury in the country.
- O. That, pursuant to Article 57 of the Environment Law, which refers to the introduction, transportation, distribution and storage of hazardous substances; urgent action should be taken so that the container, currently abandoned in the area of the mine and that, according to the inhabitants of San Sebastián, contains sodium cyanide and other chemicals, be removed immediately from the San Sebastián mine to avoid possible disaster in the community. Domínguez *et al* have suggested six methods of disposal of sodium cyanide (2015:38) which means that the responsible authorities have many opportunities to take immediate action.
- P. Investigate the leases of CGC and its subsidiaries in order to clarify the status of the land tenure of the residents in the concession area of the mine. ISTA (and relevant government agencies) should use all its powers to support the people of San Sebastián in resolving their land tenure situation.

To the Legislative Assembly:

- A. Proceed urgently to the discussion and approval of a law definitively prohibiting metal mining in the country, based on the damage already caused to the people and the environment, as has been shown in the research of this report. With a Mining Prohibition proposal as has been elaborated by organized civil society, through the National Roundtable Against Metal Mining—as it has already been noted—it must seriously consider the provisions of this document and evaluate if they uphold the spirit and principles that the Republic's Constitution defends to ensure the achievement of the common good and the sustainable development of the country, as well as the contents of the core international human rights instruments of which the Salvadorian State is signatory.

To the Santa Rosa de Lima City Council:

- A. Report royalties received for mining processes executed within its jurisdiction and clarify the monetary amount intended as a contribution to the efforts of remediation of ecosystems and reparation of the damage caused by the impacts of mining in the San Sebastián area.
- B. Undertake a coordinated effort with the authorities of the Central Government to protect people and ecosystems under their jurisdiction; ensuring the development of a dignified life free of contamination.
- C. Perform all actions related to the control of the amount of mercury that is sold in the area and used in the activities of artisanal miners, to ensure the reduction of its use; to do this, there must, first, be a change in the method used to extract gold, and, second, a labor re-adaptation program for güiriseros, as has been done through projects in Nicaragua and the Philippines.

To the Commerce Group Corporation and its subsidiaries:

- A. The company must provide all the information it has available and which may lead to a detailed mineralogy of the lithology of the site. This will help a great extent, with the data required for the remediation of acid mine drainage site.
- B. Finance in part the costs of preventing and remedying acid mine drainage in San Sebastián, as a result of their activities in the area and in compliance with its obligations to human rights as bodies of society.

Checking and Monitoring Mechanisms

Given the broad functions and powers that the Constitution of the Republic and the Law of the Attorney for the Defense of Human Rights gives this Attorney, as well as various international human rights instruments, the following mechanisms are adopted to verify and monitor compliance with the recommendations:

This institution will remain vigilant of the actions of the CGC aimed at financing part of the cost of remediating acid mine drainage; similarly, if the state does not take action within its power, it will proceed to carry out actions at the international level that may require the state to protect affected populations and ecosystems.