

Impunity at the Mining Projects in El Salvador: Violation of Human Rights, Democracy, and National Sovereignty

The Case of Pacific Rim Mining Corporation against El Salvador¹

Vancouver-based Pacific Rim Mining, recently acquired by Australian-Canadian firm OceanaGold², has been trying to access gold deposits in northern El Salvador for close to a decade. In 2009, Pacific Rim launched a multi-million dollar lawsuit against El Salvador in a World Bank arbitration tribunal for not having granted the company the permit to put its El Dorado mine project into operation. OceanaGold, having bailed out Pacific Rim from near bankruptcy in November 2013, aims to strike a deal with the Salvadoran government or continue with the suit. However, OceanaGold is hedging its bets based on shaky grounds. Pacific Rim never fulfilled the necessary requirements to obtain its permit. Furthermore, communities in the surrounding department of Cabañas - and most Salvadorans - do not want mining in their country. As the smallest and most densely populated country in Latin America with already stressed water supplies, Salvadorans are unwilling to face the risks that industrial metal mining represents. OceanaGold's open-pit gold and copper project in the Philippines illustrates the costs of mining that Salvadorans do not want to bear. The company's lawsuit aims to undermine public debate and to contain democratic public policy-making.

Violation of the environmental rights and of public consulting in El Salvador

According to the Pacific Rim Company, the water resources in El Salvador will not be affected by its mining operations³. However, Pacific Rim never undertook adequate studies to understand, much less mitigate, the potential impacts from the El Dorado project. Early exploration activities gave rise to complaints of impacts on water supplies. An expert from the United States characterized the company's environmental assessment as unfit for consideration in the United States or Canada.

During Pacific Rim's exploration activities, local residents in Cabañas reported negative impacts, including "reduced access to fresh water, polluted water, impacts to livestock and adverse health impacts⁴." Rather than provide a serious response to public concerns about cyanide use in gold

¹ This document was used as the main input for this statement: Moore, Jen; Broad, Robin; Cavanagh, John; et. al. "Debunking 8 falsehoods by the Pacific Rim / Oceana Gold Company in El Salvador. 2014" http://www.ips-dc.org/reports/debunking_eight_falsehoods_by_pacific_rim_mining

²<http://politicsofpoverty.oxfamamerica.org/2013/12/oceanagold-bails-out-pacific-rim-mining-but-el-salvador-is-not-for-sale>

³ According to its CEO, Tom Shrake, "Rivers and water are loaded with chemicals. Why are they asking all these environmental things from us when they do not have it in their own economy? Our process would bring cleaner water ... These people claim to be environmentalists, but they are not. They are against the development. They are not in favor of the environment, if they were, they would support this mine ", Canadian Broadcasting Corporation, Sunday edition, Karin Wells, " High Stakes Poker ", January 11, 2013.

⁴ Center for International Environmental Law (CIEL) "Presentation of the Amicus Curiae Report to Pac Rim Cayman LLC v. Republic of El Salvador, ICSID Case No. ARB / 09/12" May 20, 2011.

processing and other mining impacts, Pacific Rim launched a “green mining⁵” campaign. As part of this, company representatives held public meetings in Cabañas at which they treated local residents with disrespect, trying to convince them that cyanide was safe enough to consume⁶.

Water quality, hydrogeology and geochemistry expert Dr. Robert Moran carried out a review of the company’s 2005 Environmental Impact Assessment and found that it would be unacceptable in Canada or the US. The study found a “near complete lack of baseline water quality and quantity data,” particularly regarding groundwater, and a “lack of transparency in the public consultation process.”⁷ He also found that the assessment did not include sufficient detail to allow for a serious evaluation of what measures would be needed to mitigate consequences of a possible seismic event in the area. In 2012, Salvadoran researchers⁸ found concentrations of arsenic in sediments above levels permissible in Canada⁹ from two rivers near the area in which Pacific Rim operated. Whether naturally occurring or a result of recent mining activity, this has raised further questions about the impacts the project has had or could have if it were advanced.

Experiences elsewhere in El Salvador further fuel local skepticism. A now-closed gold mine in eastern El Salvador, most recently owned by the Milwaukee-based Commerce Group Company, left water pollution from acid mine drainage. High levels of kidney and nervous system diseases have been observed among the local population¹⁰. A study¹¹ by the Salvadoran Ministry of the Environment in July 2013 found that the nearby San Sebastian river water contains nine times more cyanide and one thousand times more iron than is safe for human consumption¹². Instead of taking responsibility; Commerce Group sued the cash-strapped Salvadoran government for suspending its mining permits over these environmental concerns. However, due to lack of liquidity, Commerce Group lost the case.¹³

⁵ Jason Wallach, Upsidedownworld, "Pacific Rim Silent in Wake of Violence Against Anti-Mining Protesters in Cabañas, El Salvador," August 5, 2009.

⁶ The Nation Robin Broad and John Cavanagh; "Like Water for Gold in El Salvador" August 1-8, 2011; <http://www.thenation.com/article/192009/water-gold-el-salvador>

⁷ Robert Moran, Ph.D. "Technical Review of the El Dorado Mine Project Environmental Impact Assessment (EIA), El Salvador" October 2005.

⁸ From The Volcanology Institute of the University of El Salvador, in collaboration with the Association of Economic and Social Development (its Spanish acronym ADES).

⁹ ADES, Engineers Without Borders, Spanish Agency for International Cooperation (its Spanish acronym AECID) and Catalan Desenvolupament Cooperation (its Spanish acronym ACCD) "Sediments in the Titihuapa River" produced as part of the "Plan for Quality and Quantity in the basin of the River Titihuapa" published on July 28, 2012

¹⁰ Cidia Nineveh Ventura Cecilia Isabel Cortes and Diaz Quitanilla, "Characterization of Environmental Impacts Linked to Mortality in Residents Living in the Vicinity of the San Sebastián Mine, Santa Rosa de Lima, Union Department", 2011.

¹¹ Performed by the Ministry of Environment and Natural Resources of El Salvador in July 2013.

¹² Ministry of the Environment and Natural Resources (its Spanish acronym MARN), "MARN confirms presence of cyanide and iron in Rio San Sebastian, La Union," July 15, 2012; http://www.marn.gob.sv/index.php?option=com_content&view=article&id=1462%25marn.confirma-presencia-decianuro-yhierro-en-río-san-sebastian-launióncatid=1%25noticias-ciudadano&Itemid=77

¹³ Commerce Group Corporation, Arbitration Notice to the International Centre of Agreements for Investment Disputes, July 2, 2009. [Http://www.commercegroupcorp.com/images/cafta/002.07.02.09.Notice_of.Arbitration%5B1%5D.pdf](http://www.commercegroupcorp.com/images/cafta/002.07.02.09.Notice_of.Arbitration%5B1%5D.pdf)

Social Response

The environmental and water resource defense of El Salvador has driven one of the most successful social movements in recent years, being one of the first countries to halt metallic mining.¹⁴

Despite this, Pacific Rim accuses that it's some rogue or "anti-development" NGOs who are behind the campaign against mining¹⁵. Opposition to mining in El Salvador is broad-based and extends to the highest echelons of the Catholic Church. Local opposition emerged in response to people's experiences with Pacific Rim and gave rise to a national movement¹⁶ against mining in El Salvador.

The National Roundtable against Metallic Mining (or "The Mesa" as it is known) involves hundreds of communities and thousands of people throughout El Salvador. The NGOs participating in the Mesa include many respected environmental and grassroots organizations. The Mesa has achieved a strong international recognition.¹⁷

Cancelation of the Exploitation Permit by El Salvador's Government

In 2008 and 2009, both of the Salvadoran presidents, former and current, publicly committed to not approve any mining project during their terms, and to not extend Pacific Rim's exploitation permit given that Pacific Rim did not fulfill all requirements to obtain a mine exploitation permit, it never completed or submitted a feasibility study¹⁸, nor did it ensure it had purchased ownership

¹⁴ According to the President of the board of Pacific Rim, Catherine McLeod-Seltzer, "some NGOs against development encouraged the opposition to mining spreading lies. [I'm talking about groups like] OXFAM. They have groups in some of these areas that are very anti-developed. As for religious groups ... I do not think they control their people in the field. I think these are scoundrels who take advantage of the situation," CBC Sunday Edition, January, 2013.

¹⁵ In 2008, the Central American University (its Spanish acronym UCA) released the results of a survey in which 62.4% of the population in the areas affected by mining, opposed to mining. The Salvadoran Episcopal Conference is among the groups who have publicly opposed to mining in El Salvador. According to Archbishop Fernando Saenz Lacalle (Archbishop 1995-2008) "It is not right to risk the health of the population only for the few who do not live here can carry 97% of the huge profits and leave us with 100% of the cyanide." Website of the Archdiocese of San Salvador: <http://www.arzobispadosansalvador.org/index.php/sobre-nosotros>

¹⁶ In addition to concerns about the aforementioned impacts on the water, during exploration drilling, employees of Pacific Rim trespass private property of local people. A series of confrontations with a range of negative effects resulted in the owners refusing to sell their land to the company, and contributed to the emergence of local and national opposition.

¹⁷ In 2011, over 260 international organizations, including the International Trade Union Confederation (ITUC), joined the call with the La Mesa so that the Commercial Court of the World Bank dismissed the legal allegation of Pacific Rim. ([Http://www.ips-dc.org/articles/open_letter_to_world_bank_officials_on_pacific_rim-el_salvador_case](http://www.ips-dc.org/articles/open_letter_to_world_bank_officials_on_pacific_rim-el_salvador_case)) In 2011, the Salvadoran activist Francisco Pineda of the Environmental Committee of Cabañas won the prestigious Goldman Environmental Prize environmental Prize for having been among those who "led a citizen movement that managed to stop a gold mine from destroying water sources, such resource which is increasingly scarce in the country; and livelihoods of rural communities across the country" (<http://www.goldmanprize.org/2011/southcentralamerica>).

¹⁸ Richard Steiner, "El Salvador, Gold, Guns and Decisions: the El Dorado Gold Mine, violence in Cabañas, demands TLCA-RD and the national effort to ban mining," February 2010.

or authorization to work on the land above the proposed mine.¹⁹ Neither were the company's Environmental Impact Assessment and environmental permit, necessary to apply for an exploitation permit²⁰, ever approved.

Violence in Cabañas and attacks against environmental advocates.

Pacific Rim's activities in Cabañas generated conflict, aggravated divisions, and raised the stakes around current and potential economic benefits from mining. This has contributed to the raise of threats and violence, which have yet to be fully investigated. The emergence of local opposition to the mine in Cabañas brought local community organizations, priests, and journalists into direct tension with local politicians that supported Pacific Rim²¹. Conservationist Richard Steiner notes in a report that substantial company funds were provided for "local initiatives aimed at winning local consent for the project²²."

The discord in Cabañas led Steiner to conclude that the company's activities led to the creation of "corrosive communities," in which "an intense socio-political polarity has developed between proponents and opponents of mining [that has led] to social tensions, emotional stress, disintegration of civil society, political turmoil and violence²³."

Threats against anti-mining activists are reported to have begun in 2006²⁴. These culminated in violence in 2009 and again in 2011²⁵.

In June 2009, the body of community leader and vocal anti-mining activist Marcelo Rivera was found in a well with signs of torture, two weeks after he disappeared²⁶. Immediately afterward, threats were issued against local activists such as Father Luis Quintanilla, who was attacked twice in July 2009²⁷. Reporters at Radio Victoria have received constant threats²⁸.

¹⁹ Center for International Environmental Law (CIEL) "Presentation of the Amicus Curiae Report to Pac Rim Cayman LLC v. Republic of El Salvador, ICSID Case No. ARB / 09/12".

²⁰ Richard Steiner, February 2010.

²¹ At least since 2006, when threats to environmental and human rights defenders began, the right-wing ARENA party has mostly controlled local governments in Cabañas. See 2006 election results for the department of Cabañas in which six of nine municipalities were won by the ARENA party: elsalvador.com, "Municipal and Legislative Elections 2006: Interactive Map of Towns" [http:// www.elsalvador.com / Special / 2006/elecciones/home/index.asp](http://www.elsalvador.com/Special/2006/elecciones/home/index.asp)

²² Richard Steiner, "El Salvador - Gold, Guns, and Choice: the El Dorado gold mine, violence in Cabañas, CAFTA-DR claims, and the national effort to ban mining". February 2010 this report indicated that they have made several payments directly to several mayors in the region and were used for local things such as "projects, parties and significant discretionary funding." Furthermore, local mayors would be responsible for managing the royalties from the mine, if it were to be put into operation.

²³ Richard Steiner, February 2010.

²⁴ 36 Radio Victoria, "Chronology of Threats and Actions," 2012.

²⁵ Washington Office on Latin America, "Alarming Series of Violent Acts in Cabañas, El Salvador," February 8, 2011; http://www.wola.org/publications/alarms_series_of_violent_acts_in_cabanassalvador.

²⁶ Hector Berrios, Upsidedownworld, "Ramiro Rivera Shot to Death in Cabin," December 21, 2009; <http://upsidedownworld.org/main/content/view/2266/1/>.

²⁷ Jason Wallach, August 5, 2009.

²⁸ El Mercurio Digital (The Digital Mercury), "El Salvador: Community Radio in sight," July 12, 2011; <http://www.elmercuriodigital.net/2011/07/el-salvador-radio-comunitaria-en-la.html>; Hector Berrios, Upsidedownworld, December 21, 2009.

In December 2009, Ramiro Rivera Gómez, Vice President of the Cabañas Environmental Committee, was shot to death²⁹ followed six days later by the murder of activist Dora Alicia Recinos Sorto and her unborn child.³⁰ In late 2010 and early 2011, two gang members with information about Marcelo Rivera's murder were killed.³¹ In June 2011, Juan Francisco Durán Ayala, a volunteer with the Cabañas Environmental Committee, was also murdered³²

Shortly after the murders of Ramiro Rivera and Dora Alicia Sorto in 2009, the Sub-Director for the National Police Howard Cotto remarked: "Even if we suggest that the motive of these crimes have to do with mining or not... what is clear is that in all the areas where Pacific Rim began mining exploration, high levels of conflict occurred³³."

The Salvadoran Ombudsman for Human Rights has also stated that the acts of violence "are very probably related to each other, thus enabling us to infer that they are also linked to the victims' work in defense of the environment."³⁴ Immediately following the murder of Juan Francisco Durán in 2011, Salvadoran President Mauricio Funes called for a full investigation and offered, "more security to the environmental movement, because its struggles and demands are just³⁵."

Nonetheless, Salvadoran officials responsible for investigating the 2009 murders immediately depoliticized the potential motives for the crimes³⁶. Six people were convicted in Marcelo Rivera's case, but questions remain about the intellectual authors of the crime.³⁷ Nine have been arrested in the case of Ramiro Rivera and others from the community of Trinidad, but a full trial has yet to take place³⁸. Radio Victoria has not seen results from any investigations into the litany

²⁹ Richard Steiner, February 2010.

³⁰ <http://www.fidh.org/es/americas/El-Salvador/Asesinato-de-la-Sra-Dora-Alicia>

³¹ Voices on the Border, "Another Wave of Violence in Cabañas," January 5, 2011;

<http://voiceselsalvador.wordpress.com/2011/01/05/another-wave-of-violence-in-cabanas/>

³² SHARE Foundation, "President Funes Condemns murder of anti-mining activist," July 7, 2011.

³³ Edgardo Ayala, Latin American Press, "Activists Murdered," February 4, 2010;

<http://alainet.org/active/35974&lang=es>

³⁴ CIEL, March 12, 2011.

³⁵ SHARE Foundation, July 7, 2011.

³⁶ Edgardo Ayala, Latin American Press, "Activists Murdered," February 4, 2010;

<http://alainet.org/active/35974&lang=es>; and Theresa McGee, Briarpatch Magazine, "Canadian mining on trial: Murder, Impunity and Pacific Rim in El Salvador," January 1, 2012;

<http://briarpatchmagazine.com/articles/view/canadian-mining-on-trial>

³⁷ Voices on the Border, "Three Convicted for the Murder of Marcelo Rivera," September 22, 2010;

<http://voiceselsalvador.wordpress.com/2010/09/22/three-convicted-for-the-murder-of-marcelo-rivera/>. Note that a lawyer who worked in the Attorney General's Office in Camping lost his job after claiming that the investigation into the murder of Marcelo Rivera was corrupt and pushed for an independent investigation. See Theresa McGee, Briarpatch Magazine, January 1, 2012.

³⁸ Voices on the Border, "Preliminary Hearing for 9 Trinidad Murder Suspects Postponed ... Again," August 4, 2011; <http://voiceselsalvador.wordpress.com/tag/ramiro-rivera/>

of threats their group has received³⁹. The rate of impunity for violent crimes in El Salvador is 96%.⁴⁰

The Pacific Rim vs. El Salvador case at the ICSID.

The company Pacific Rim is using the rules of investor-state arbitration to subvert the democratic and national debate on mining in El Salvador, a matter that should not be decided by the World Bank's International Center for the Settlement of Investment Disputes (ICSID), as it has been demanded by more than 300 organizations globally in a letter to World Bank's President, Dr. Kim.⁴¹

Abusing the procedure designed to attract jurisdiction under the CAFTA -DR Pacific Rim made undertook a "jurisdiction shopping" to sue El Salvador and moved its subsidiary from the Cayman Islands to Nevada, United States. The move failed. However ICSID allowed the company to proceed with the case under the law of Salvadoran investment that allowed companies to resort to international tribunals. Since then, the law was amended to prevent other transnational companies from bypassing the Salvadoran courts and bring cases directly to ICSID.⁴² However, the amendment is not retroactive and the Pacific Rim suit continues; A hearing will take place before the case's court at ICSID in Washington, beginning on September 15, 2014 and then the court will give the final verdict.

The wide range of Salvadoran organizations opposed to mining in their country do not have a voice in the juridical process of the trial. Referees only consider whether or not the investment protection laws have been violated. The company's is demanding \$301 million dollars⁴³. The money already spent by El Salvador on its defense could have a much better use, and it is the impacts of the activities of the company to date that should be properly compensated and restored.⁴⁴

The consortium Oceana Gold, which acquired Pacific Rim and operates mines in New Zealand and the Philippines bets it will get a verdict in its favor and get from the Salvadoran Treasury the

³⁹ Email correspondence between MiningWatch Canada and Radio Victoria, December 2013; and Radio Victoria, "Chronology of Threats and Actions," 2012.

⁴⁰ Gabriel and Labrador and José Luis Sanz, El Faro, "Impunity in the killings reaches 96%, according to Minister of Security," February 22, 2012; <http://www.elfaro.net/es/201202/noticias/7669/>

⁴¹ <http://www.stopesmining.org/j25/index.php/campaigns/letter-to-the-world-bank>

⁴² Erick Cornejo, The Legislative Assembly of the Republic of El Salvador, "Consensus Dispute to reform the Investment Law," July 9, 2013; <http://www.asamblea.gob.sv/noticias/archivo-de-noticias/consenso-para-reformar-solucion-de-controversias-de-la-ley-de-inversiones#.UdyTHr6-dzg.facebook>

⁴³ Communication between Meg Kinnear of ICSID and Robin Broad, June 6, 2011 See also: http://www.minec.gob.sv/index.php?option=com_phocadownload&view=category&id=26:otrosdocumentos&Itemid=122

⁴⁴ Vidalina Morales, representative of the Bureau, said, "Since Pacific Rim did not comply with environmental laws and regulations, exploration activities caused widespread ecological damage, economic losses, social conflicts and corruption. That is, they wronged the country; and therefore must be judged. But on the contrary, the company is the one that is suing the Salvadoran state. The roles are reversed: The aggressor demands the victim. " Acceptance Speech on behalf of the National Roundtable Against Metallic Mining, the Letelier-Moffitt Human Rights Award in Washington, DC on October 17, 2009; <http://www.youtube.com/watch?v=zlsFnpsOmqq>

money which Pacific Rim argues failed to receive for not having been granted the operating license of the El Dorado mine in Cabañas.

Pyramidal structure of transnational mining

This case is also important because Pacific Rim is a "junior" company, which are generally engaged in exploration work. By having the certainty of finding gold deposits, often the project is sold to a larger company with more resources and operational capacity, like the Oceana Gold Corporation.⁴⁵The mining sector is made up of cartels and consortiums that conceal each other, and there is a monopoly and concentration among the largest, forming a "divine mining pyramid."⁴⁶

Conclusions

1 – The activities of Pacific Rim in the department of Cabañas in El Salvador have generated conflicts and aggravated divisions. This has contributed to a number of threats and acts of intimidation and violence that have not yet been fully investigated and the direct and indirect perpetrators of the crimes remain unpunished.

2 - It is necessary to count with an international agreement for transnational companies in which environmental and social impact assessments are submitted prior to approval of investment projects, and to establish mechanisms to monitor this requirement.

3 - The Pacific Rim vs El Salvador case demonstrates the need for a binding agreement on transnational corporations to ensure effective resources to victims of human rights violations and to address the imbalance in the international legal order given to the excessive rights that investment treaties give to foreign investors.

⁴⁵ For example, a similar situation happened in Guatemala: the Marlin mine was discovered by Francisco Gold and developed by Glamis Gold, and then became the property of Goldcorp Inc., through its subsidiary Montana Explorer from Guatemala. Another example occurred in Ecuador, where there have been over twenty junior companies; some already had "strategic alliances" with large companies or had already sold the project to a larger company.

⁴⁶ Moore, Jennifer, "Myths and Realities of Transnational Mining".