

# El Salvador's Gold Fight

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**As El Salvador transitions from decades of conservative rule to the administration of leftist President Mauricio Funes, the country faces an international showdown triggered by a restrictive free-trade agreement between the United States and Central America. Canada's Pacific Rim Mining Corporation is suing the government for its refusal to allow it to mine gold in El Salvador's rural north. If Pacific Rim succeeds in securing the \$100 million settlement it seeks, that would set a troubling precedent. At stake is a question that affects all nations: Can private interests trump national sovereignty under international law?**

Pacific Rim initiated arbitration proceedings against El Salvador with the World Bank's International Center for Settlement of Investment Disputes (ICSID) on April 30. The corporation argues that El Salvador violated investment rules in the U.S.-Dominican Republic Central America Free Trade Agreement (DR-CAFTA). (Confused already? Pacific Rim can sue El Salvador under the DR-CAFTA even though Canada isn't part of that accord because the firm has U.S. subsidiaries.)

Company officials charge that the government has violated their "investor rights" by refusing to approve an Environmental Impact Assessment (EIA) submitted by the company. Without this approval, Pacific Rim cannot obtain a mining permit.

The company insists that its operations pose no threat whatsoever to El Salvador's ecological stability and public health, but a wide array of community leaders, activists, and environmental experts disagree. They contend that Pacific Rim's assessment offers little evidence supporting the company's "green mining" claims, and serves as a smokescreen to obscure the adverse socioeconomic impacts gold mining is likely to produce in the small, densely populated nation. These social movements contend that it's Pacific Rim that should be sued. Says Rodolfo Calles of the anti-mining activist group Mesa Frente a la Minería Metálica: Pacific Rim and other "extractive companies in question have violated national laws, caused environmental damage, provoked economic losses, generated conflicts among communities, corrupted government officials, and offended religious leaders."

Thus far, El Salvador's movement against precious-metal mining in El Salvador has succeeded in compelling the government to fight Pacific Rim's strong-arming. But questions remain concerning Funes's resolve to stand defiant in the face of international pressure. These concerns have grown in recent weeks due to the murder of Marcelo Rivera, an anti-mining activist. Rivera was [kidnapped](#) on June 18. His body was found July 1. Activists are [challenging](#) Salvadorian authorities, who claim that this was an ordinary crime, to investigate what they say was a politically motivated assassination.

## Background

Pacific Rim began exploring the country's potential for gold exploitation nearly seven years ago, charting a vein system that covers considerable portions of El Salvador's northern reaches. It commenced operations at the invitation of the government's Ministries of the Economy and the Environment, which issued exploration permits in 2002 under the neoliberal administration of Francisco Flores. Since then, the corporation has identified some 25 sites for gold extraction across seven national departments, and invested upwards of \$80 million.

While global corporations haven't historically seen El Salvador as promising territory for mining, Pacific Rim significantly extended its base of operations as gold prices exploded on the international market. With the value of gold nearly tripling since 2001, the company assured shareholders that it was discovering "bonanza gold grades" and making "exciting gold discoveries" that would expand opportunities for future investment and high returns.

Meanwhile, Salvadorian environmentalists, civil society organizations, and others in the country grew increasingly alarmed about the potentially adverse effects of gold mining. Critics point to the threat of water and soil contamination from chemical residue in the wake of mining operations (miners use cyanide-laced water to extract gold from subterranean rock, which, experts contend, makes its way back to local reserves tapped for drinking). That all of Pacific Rim's sites are located along the country's longest river, the Rio Lempa, has environmentalists especially worried. The river's basin extends nearly halfway across the country, supplying much of the nation's drinking water. Moreover, the Lempa runs through Guatemala and Honduras as well, increasing the likelihood that contaminated water could spread throughout the region.

Pacific Rim denies that these concerns are real. The corporation claims that it would detoxify any water used for mining, leaving local water sources cleaner than they were previously. "You could basically stick a cup in the water and drink it," Pacific Rim's Barbara Henderson recently [boasted](#) to the *Miami Herald*. "We've met all conditions under the law. So there's no basis for the government of El Salvador to fail to make a decision [about issuing mining permits]."

Not so, say experts. Robert Moran, an independent, nonpartisan hydrogeologist, undertook a technical [review](#) of Pacific Rim's environmental assessment in 2005, concluding that "it would not be acceptable to regulatory agencies in most developed countries." In his final report, Moran notes that "The public EIA review process is clearly lacking in openness and transparency... only one printed copy of the EIA is available... within all of El Salvador. The public must review and submit written comments on this 1,400 page document within a period of ten working days. No photocopies or photos of any part of this document may be made." Moreover, Moran points out that the EIA completely ignores "many of the environmental impacts encountered at similar gold mining sites," and voiced concerns about the fact that "the significant uncertainty of [its] seismic risk calculations" and a number of other issues were presented in the document in English only.

## Local Activists Fight Back

These concerns were met with popular unrest. La Mesa Nacional Frente a la Minería Metálica in El Salvador (the National Working Group against Mining in El Salvador), an umbrella organization for coordinating nationwide action, has led the charge. Beginning with local organizing and small-scale protests, La Mesa and its partner organizations have managed to make mining a central issue in Salvadoran politics. (La Mesa will be a recipient of the Letelier-Moffitt Human Rights Award this year; The Institute for Policy Studies — which runs Foreign Policy In Focus — also hosts the annual [Letelier-Moffitt](#) awards ceremony.)

Activists scored an early victory when Pacific Rim agreed to freeze its operations at the company's Santa Rita mining site in 2006, while negotiating a resolution to its clash with local anti-mining organizations. Though the meeting failed to reach a mutually acceptable compromise, local organizers successfully used the gathering to attract the attention of the media and the government, and garner broad national and international support.

Momentum behind the movement increased further when the Conference of Bishops of the Roman Catholic Church issued a [statement](#) of opposition to mining operations in El Salvador. In addition to enumerating the adverse consequences of mining to El Salvador's people and environment, the bishops castigated Pacific Rim's economic justification for gold mining operations. "No material advantage," the bishops warned, "can be compared with the value of human life."

The combined effect of local resistance and religious backing had a decisive impact on government decision-making. With public opinion polls showing a clear majority in opposition to gold mining, and despite its initial enthusiasm for Pacific Rim's mining proposals, officials from the ruling conservative ARENA party refused to issue the company permits to begin extracting gold from underground

deposits. In essence, the government ceased to acknowledge Pacific Rim's existence. Repeated complaints and applications for permits were filed by the company with government ministries, and promptly ignored.

Since then, La Mesa has continued to push the envelope. Not trusting that government silence on the permits issue equaled support for their cause, the organization presented a bill for congressional consideration in 2006 that would ban all precious metal mining in El Salvador. While the bill was almost immediately withdrawn from deliberation, it wasn't forgotten. Shortly after Funes took power, the *Frente Fabarundo Martí para la Liberación Nacional* (a left-wing opposition party, better known as the FMLN) resurrected the proposed legislation and presented it to El Salvador's National Assembly for a vote. According to the [Latin American Herald Tribune](#), the proposed law would grant Pacific Rim and other foreign companies six months to discontinue operations before being ordered to leave the country.

## Legal Action

With its prospects for obtaining permits grinding to a standstill within the government bureaucracy, and opposition forces gaining the advantage locally, Pacific Rim filed a [notice of intent](#) in December 2008 to bring El Salvador before an international arbitration tribunal to resolve the dispute. Specifically, the company claimed that El Salvador violated the spirit of nondiscrimination enshrined in Chapter 10 of the DR-CAFTA agreement, by allowing domestic companies to pollute while denying the same privilege to Pacific Rim.

The agreement, which El Salvador signed in 2006, allows multinational corporations to sue governments covered by it for cash compensation when their potential for profit has been undermined by measures that are tantamount to expropriation. But because Canada isn't a signatory to DR-CAFTA, Pacific Rim isn't technically entitled to Chapter 10 protections as it claims. Nevertheless, the corporation routed the lawsuit through the backdoor of its U.S.-based subsidiary Pac Rim Cayman LLC, and relied on the services of an American lobbying firm to ensure support from Capitol Hill. Under DR-CAFTA's Chapter 10 proceedings, parties to a dispute are mandated to respect a 90-day consultation period before filing their claims in court. Pacific Rim's December filing ensured that their threatened lawsuit would coincide with El Salvador's national election three months later. According to Burke Stansbury, an activist with the Committee in Solidarity with the People of El Salvador (CISPES), the claim was timed to affect the electoral outcome. They "either us[ed] the threat of a lawsuit as leverage or [as] a strategy to help ARENA win the election," Stansbury [told](#) the *Pacific Free Press* in February.

If this was true, Pacific Rim miscalculated. Outgoing president Antonio Saca remained firm in his rejection of the corporation's demands, rendering the case a non-issue during the election. Yet Saca's refusal to give in to corporate pressure — whether politically motivated or based on genuine concern for his country — had the effect of kicking the Pacific Rim can down the road for the incoming Funes administration.

On April 30, Pacific Rim filed for arbitration with the ICSID, demanding a \$100 million payout for damages. "The company's claims under CAFTA," the company announced in a [press release](#), "are based on the government's breaches of international and Salvadoran law arising out of the government's improper failure to finalize the permitting process as it is required to do and to respect the company's...legal rights to develop mining activities in El Salvador."

La Mesa's Rodolfo Calles sees things differently. "Operating permits are not automatic; that is, the current mining law does not oblige the government to provide [permits] after having allowed exploration. Pacific Rim submitted an Environmental Impact Assessment that did not meet environmental requirements, and was not able to demonstrate that its mining projects would not pollute the environment...In our view, it is Pacific Rim that should be sued, not the Salvadoran state; It is the company that should compensate the country and not vice versa."

Early indications, however, suggest that Funes will pursue a compromise solution instead of risking a costly settlement. "We're not in a position to be losing litigation. That money should be allocated to social programs," El Salvador's Secretary of Technology recently [noted](#). Indeed, if the arbitration tribunal rules in Pacific Rim's favor, El Salvador would be profoundly crippled by the \$100 million

payout. Perhaps more troubling still, the verdict would send a signal to other multinationals in Central America that the law sides with corporate interests over the protection of local populations.

Nevertheless, a negotiated settlement offers equally disturbing possibilities. The most likely would be an amendment to existing environmental and mining laws, allowing foreign corporations easier access to El Salvador's natural resource deposits. In all likelihood, the Mesa Nacional/FMLN-sponsored anti-mining legislation would be shelved indefinitely, and opportunities for peaceful resolution of local concerns increasingly foreclosed.

On top of Pacific Rim's case, on March 16, another international mining firm added to the pressure by threatening an additional DR-CAFTA lawsuit. A joint venture of American companies, Commerce Group Corp. and San Sebastian Gold Mines, Inc. (Commerce/Sanseb), filed a notice of intent to claim compensation for additional \$100 million for the government's alleged failure to renew a permit to mine gold and silver at the San Sebastian Goldmine near Santa Rosa de Lima, in the department of La Unión in El Salvador.

The prospect of mounting lawsuits has led to calls from activists demanding that El Salvador revisit the terms of its international trade agreements. "The demand of Pacific Rim against El Salvador recalls the need to review international treaties signed by previous governments, especially CAFTA, and reverse — or at least modify — those aspects that are most harmful and violate our sovereignty."

## Hopeful Signs from Washington?

The mining companies' lawsuits — along with the violent repression of recent [protests](#) in Peru — represent the latest example of failure by U.S. trade agreements to bring prosperity and progress to the region. U.S. policymakers, including Barack Obama, seem to acknowledge as much: bilateral trade agreements with Panama and Colombia continue to stall, and pressure to amend the North America Free Trade Agreement (NAFTA) continues to build.

Yet hopes that the social movement against mining in El Salvador would find an ally in Obama have been unrealized. Obama, who voted against the passage of DR-CAFTA as a senator, spoke out passionately on the campaign trail against free trade agreements (FTAs) that privileged economic gain over the welfare of local populations under threat. And "with regards to provisions in several FTAs that give foreign investors the right to sue governments directly in foreign tribunals," Obama [promised](#), "I will ensure that this right is strictly limited and will fully exempt any law or regulation written to protect public safety or promote the public interest." As president, however, Obama has so far failed to meaningfully act on an issue he himself acknowledges desperately demands attention and change.

The president reportedly will [outline](#) a new vision of equitable trade in a major speech later this year at the Group of 20 meeting in Pittsburgh. There, Obama will hopefully forge plans for a new approach to trade that would meet his goal of [preventing](#) foreign corporations from gaining "an economic advantage by destroying the environment" and amend NAFTA and possibly other FTAs to "make clear that fair laws and regulations written to protect citizens...cannot be overridden at the request of foreign investors."

But by then, it could be too late for Salvadorans affected by Pacific Rim's activities. If Funes and other likeminded "partners" throughout the region, like Obama, fail to stand up for these communities under threat, a regrettable precedent — that concern for corporate profit overrides that for human beings and their environment — will be set, a precedent that would invest even Obama's most eloquent rhetoric with the hollow timbre of false promises.

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