

# Stop private firms exploiting poor states

A Cafta provision means a mining corporation can sue El Salvador for its gold. Obama can stop this from happening again



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As a senator, Barack Obama voted against the Central American Free Trade Agreement (Cafta), because it did "little to address enforcement of basic environmental standards in the Central American countries." A conflict over gold mining in El Salvador reveals that Cafta and similar deals may enable private firms to circumvent environmental laws and then parachute away with large sums of government money. This has to change.

The Vancouver-based Pacific Rim company says it has discovered gold deposits in El Salvador and wants to extract them. Gold extraction can require enormous amounts of water and toxic chemicals. Interestingly, the conservative government of Antonio Saca did not accept Pacific Rim's environmental impact statement and thus effectively denied the company the authority to extract gold.

In March last year, the left-leaning Mauricio Funes was elected president of El Salvador. Influenced by a broad civil society coalition and an external review of Pacific Rim's environmental impact statement conducted by an independent US hydro-geologist and geochemist, Funes backed the denial of permits as well.

The next month, Pacific Rim filed a claim under a provision in Cafta that allows foreign companies to bypass the domestic legal systems. The so-called "investor-state" dispute system in Cafta grants foreign investors the right to take El Salvador to an arbitral panel at the World Bank and sue the government for damages. Pacific Rim claims that El Salvador is obliged to let the firm start extracting gold.

But Canada is not a party to Cafta. So, Pacific Rim filed its lawsuit via its US subsidiary. According to the Investment Arbitration Reporter, Pacific Rim seeks damages of approximately \$100m from El Salvador. The claim is almost double the amount of US foreign aid to El Salvador, a country where 34.6% of the population lives on less than \$2 per day.

The lawsuit has accentuated conflicts over mining in El Salvador. Since it was filed, three anti-mining activists have been killed, including Dora Sorto Recinos – who was eight months pregnant and holding her two-year old child when she was shot.

In response to growing tensions, in mid-January of this year the new president condemned the murders and announced that his government would not authorise gold

extraction permits. "No one has convinced us that there are ways to extract minerals and metals, especially metals, without contaminating the environment and affecting public health," he explained.

According to Oxfam, the economic benefits of mining in El Salvador are relatively small, at only 0.4% of GDP, arguing thus, "national governments are less justified in ignoring or overriding local communities' opposition to proposed mining projects".

Last month El Salvador pledged to defend itself at the World Bank tribunal. El Salvador argues that their laws allow for a decision process "that may result in the denial of the application at different stages," and says the case should be thrown out because of unsubstantiated evidence.

Interestingly, PacRim has hired the same US law firm that represented Canadian-based Glamis Corporation in a case against environmental provisions related to US gold mining. The US government prevailed in that case in 2009, but only after mounting an aggressive multi-year defence. The world will be watching to see if El Salvador, a small developing country, will be as lucky. Analysts predict that a loss for the government could encourage other international mining firms to file dozens of similar claims.

On the campaign trail, Barack Obama said: "I will ensure that foreign investor rights are strictly limited and will fully exempt any law or regulation written to protect public safety or promote the public interest."

In office, Obama put together an advisory group to make recommendations to review US investment rules. Some members of the group strongly urged the president to make sure nations have the flexibility to protect their environment. When disputes do arise, they should be conducted on a state-to-state basis, rather than an investor-state forum where foreign firms directly sue national governments. At a minimum, foreign firms should be required to exhaust local judicial remedies before whisking into international tribunals.

Pacific Rim should stop panning for gold in the international investment tribunal and drop their law suit. But the Obama administration should act to prevent future such cases by making necessary changes to our trade and investment agreements. These policies should no longer give global corporations the power to take down environmental policy and parachute away with large sums of government funds.