



El Salvador civil society scores huge victory as law banning metal mining takes effect

CIVICUS speaks to Saúl Baños, a lawyer with the National Roundtable Against Metal Mining (Mesa Nacional Frente a la Minería Metálica) in El Salvador and executive director of one of its member organisations, the Foundation of Studies for the Application of Law. He speaks on the success of civil society in getting metal mining banned in the country and challenges that lie ahead.



Q: In late March a pioneering law was passed in El Salvador to ban metal mining in the country. What was the process leading to its approval, and what role did organised civil society play in it?

The Legislative Assembly passed the law banning metal mining on 29 March 2017. It is unprecedented for a country as small and impoverished as El Salvador to make such a sovereign decision against the interests of a powerful transnational corporation, and we consider it a victory even

though the contents of the law are not exactly as we had pushed for at first.

The new law prohibits the exploration, extraction, exploitation and processing of precious metals throughout the Salvadoran territory, with the exception of artisanal work in the manufacture, repair or commercialisation of precious metals or precious metal products, based on the consideration that the extraction of metals is harmful for both the environment and public health, particularly as a result of the overuse and pollution of water sources.

The process leading to the approval of the law was very long. The National Roundtable Against Metal Mining – a coalition of eleven human rights, environmental, religious, youth and grassroots organisations – has been active since 2004, and proposed its first Bill in 2006. The initial proposal, which sought to repeal the 1995 Mining Act, did not succeed. Later, around 2011, the ministries of the Economy and the Environment presented a new proposal to suspend administrative procedures related to mining. We did not agree with it, and therefore immediately introduced another mining ban initiative. Both initiatives, the government's and ours, came to be discussed in the Legislative Assembly's Committee on the Environment and Climate Change, but neither moved forward.

Q: How was the new law eventually passed after so many years of unsuccessful efforts?

First of all, the support coalition expanded considerably. The law that was eventually passed was proposed by a much larger group, of which the National Roundtable Against Metal

Mining was a part, and which was led by the Universidad Centroamericana José Simeón Cañas. Another important protagonist was the Catholic Church – the Episcopal Conference, bishops from various dioceses, and especially [Archbishop Monsignor Escobar Alas](#), who took up the proposal and, along other priests and social organisations, presented it to the Legislative Assembly. Then, on 9 March 2017, a massive march was held and so the president of the Legislative Assembly along with other members of Congress pledged to have the law passed by Easter.

Secondly, we ourselves learned along the way. In the beginning, our technical and scientific knowledge regarding the issue of gold exploitation and its effects was very limited. In fact, our first proposal demanded the complete replacement of the 1995 Mining Act, which regulates the extraction not just of metals but also of other mineral products such as stone and sand. Later we on decided to focus exclusively on the exploitation of precious metals, and specifically gold.

Lastly, the fact that last October El Salvador won the case initiated against it by the Pacific Rim/Oceana Gold Corporation before the International Centre for Settlement of Investment Disputes (ICSID) also accelerated the passage of the law. The private company had sued the Salvadoran State in 2009 for indirect expropriation and loss of profits, two figures that are recognised in the Free Trade Agreement between the United States of America, the Dominican Republic and Central America (DR-CAFTA). Following a process that lasted seven years, the company was sentenced to pay \$8 million. In our opinion, the case should have been closed at the early stage of recognition of jurisdiction. But the court decided that the case would continue through the application of El Salvador's Investment Law, which recognised ICSID's jurisdiction. The company lied, since it was of Canadian origin and therefore should not have benefited from CAFTA. However, it passed as American by obtaining a legal address in the United States simply by opening a Post Office Box address in Nevada. And so the case continued under Salvadoran domestic legislation. But the court eventually ruled unanimously in favour of the Salvadoran State – that is, even the court member who had been designated by the plaintiff finally sided with the State.

Q: What tactics did the National Roundtable Against Metal Mining use to promote the Bill?

Ours was not just a desk job. Over ten years, we did political and community work, we lobbied government actors and other decision makers, litigated, put together media campaigns and promoted public debate.

Along the process, three presidents of the Republic succeeded one another. As Antonio Saca (National Republican Alliance, 2004-2009) was nearing the end of his term, Pacific Rim/Oceana Gold sued the State, and it was him who then ordered that no further exploitation permits be issued to the company. The claim before the ICSID lasted for the entirety of the term served by Mauricio Funes (Farabundo Martí National Liberation Front-FMLN, 2009-2014). Funes' stance towards the company was firm ever since he was a presidential candidate and made a public commitment to the National Roundtable – we even made him sign a document to hold him accountable. The current president, Salvador Sánchez Cerén (FMLN, 2014-2019), inherited this commitment. And although both of them fulfilled their promise, the road was by no means obstacle-free. Even though the presidents had a clear position on the issue, there was always some public official who flirted with the mining companies.

There is also the fact that the Legislative Assembly is renewed every three years, and the turnover of representatives is high. During such a long process, the composition of both the Assembly and its Committee on the Environment and Climate Change shifted several times, and more often than not their new members were not up to speed on the subject – in fact, oftentimes they were rookie congressmen and congresswomen, so every time we needed to undertake the whole rapprochement and awareness-raising task from the basics. We worked intensively with the Committee on the Environment and Climate Change, whose members even paid a visit to the San Sebastián River, which has been polluted by mining since the 1980s. And the deputies saw for themselves the situation of the local dwellers, and so they began to understand that mining exploitation was not feasible under our countries' circumstances.

We also held popular consultations in five municipalities, through which the communities were able to express their opposition to mining. But community work was not easy, because Pacific Rim/Oceana Gold also did their job. Besides their lawsuit at the ICSID and their lobbying with politicians and public officials, the company had a “social arm” on the ground, the [El Dorado Foundation](#). The department of Cabañas, where their mining project is located, is one of the poorest in the country. In order to satisfy their basic needs, its inhabitants require government assistance, and in the absence of the State, the company found fertile ground to step in with community support. It sponsored schools, hired companies to provide medical care in the community, and so on. The company made beneficiaries sign attendance list sheets, oftentimes without any header, which we suspect were then presented as lists of people expressing support for mining. The company also acted in coordination with the mayors of these municipalities, who belonged to a party that sympathised with the cause of mining. These actions – it should be said – created a number of adepts to the company, because people started seeing it as meeting needs that nobody else would.

The company even organised a sort of tour in some facilities that had been set up as miniature mining ventures, where they brought students to show them what mining work was like. And they insisted it was safe: they talked of “green mining” and “responsible mining”. They also organised trips to Nicaragua: they hired buses and took people there so they could see what the mining exploitation process was like. This was done on a national scale: they basically sold the idea of mining as a panacea for the country's economic woes, as a source of employment for the population and as a source of income for the State. And some public officials believed this, so we had to work hard to counteract these lies.

Within this battle for public opinion we also paid attention to cross-border mining. El Salvador is a water-dependent country: its largest river, the Lempa, passes through Honduras and Guatemala before reaching Salvadoran territory. The region has a problem of water shortage, and mining uses huge amounts of water besides leaving water streams contaminated. The company insisted that they would establish rainwater reservoirs and that they would never mix contaminated and safe water. But there were some events, such as the collapse of a dam owned by the Samarco Corporation in Brazil, which had a lot of impact here. When this happened, we asked what if something similar happened in our country. In fact, last year the collapse of the walls of a reservoir containing molasses, a by-product of the processing of sugar cane, resulted in the pollution of a river. Countless fish died and the decontamination process took very long; there was also a judicial process that resulted in the company being forced to pay for the environmental damage. So we asked: what would have happened if, instead of molasses, which after all is an organic product, this had happened in a reservoir containing mining waste?

Lastly, with support from the Center for International Environmental Law, along the process we filed two amicus curiae briefs so that our arguments would be added to those presented by the defence of the State before ICSID. We do not know if they were taken into account, but in any case we did not stop at delivering the written documents, but we also did grassroots and media political work. Along the process, the National Roundtable became a point of reference on the issue.

Q: In addition to the already mentioned obstacles derived from the company's work at the grassroots level, did you experience any other difficulties or restrictions?

In doing media work we encountered challenges. When the ICSID ruling came out, conservative media did not give it enough coverage, and as a result the population did not come to appreciate the importance of the issue. In fact, this had a much greater impact abroad than domestically. The same happened when the law was passed: although coverage was better this time around, the news was somehow lost among other issues – particularly insecurity and crime – that are normally emphasised in the daily coverage of news.

In addition, the company had money, so when the Bill started moving forward in the Legislative Assembly the company began to publish statements, in the form of full-page colour advertisements in the most-read newspapers. In doing so, they manipulated the images of Pope Francis and of popular high officials from countries with mining. They also brought their own “experts” to various radio and television outlets so they would present “evidence” supporting their claim that mining is not hazardous to human health. These were paid slots that were made to look like news.

On the other hand, when we wanted to publish press releases against mining – by paying the current rates, of course – we encountered all sorts of obstacles, including censorship. We were asked to submit the statements in advance so that the editor-in-chief could review them, and we were warned that the newspaper retained the right to decide whether to publish them or not. With one of the latest ones, they even expected us to pay for the right of reply that the newspaper was going to grant to the mining company, which was aggrieved by our publication. I am a lawyer and I know the law, so I patiently explained once and again that we were under no such obligation. But that is how some of the media work.

In addition, people doing community work and present on the ground were often threatened and intimidated. Members of Radio Victoria, a community radio in the homonymous municipality in Cabañas, which played a key role, received threats for this as well as for other issues. They received anonymous messages that were slid under their doors; they got intimidating calls even while on air during broadcasts, and some had to leave the country as a result. On top of this, they faced hostile reactions by local government officials and investigative negligence by some police chiefs and the local prosecutor's office.

Throughout the years several members of our movement have been killed. In 2008 [Marcelo Rivera](#) disappeared, and after a long search his body was found inside a well, with his hands tied to his back with wire and with signs of torture. The next four murders in the area took place between March and December 2009, in the canton of Trinidad, in Sensuntepeque. Two of the assassinated activists were members of the Menjivar family and two belonged to the Rivera family. Other leaders were attacked but survived. Generally speaking, there was little investigation and the main hypothesis was that those deaths had been the work of gangs or common criminals. But we always maintained that they were connected to the

assassinated people's work against metallic mining in Cabañas, and that they were caused by ruptures in social fabric and peaceful coexistence resulting from the intervention of the company in the communities. But the struggle continued notwithstanding.

Ever since the law was passed, persecution against the comrades of the National Roundtable on the ground has decreased, and we have not received any more threats.

Q: Is the movement's agenda changing now that the law has been passed?

Our goal is not yet fulfilled; this is no time to rest on our laurels. The company has not yet done anything: it has not paid the \$8 million in damages; it has kept its El Dorado Foundation, and will keep its workers until August. Besides, it has also created smaller subsidiaries as its outward face at the domestic level. We believe that it is even possible that it might file a lawsuit of unconstitutionality against the law, and we need to be ready for that. In fact, we find it remarkable that the company did not immediately shut down its operations, given that the law is categorical in prohibiting metallic mining in the country, and that is the reason why we think they must be preparing to undertake legal actions.

On the other hand, we will urge the Executive to issue the regulations – procedures and agencies within the ministries of the Environment and the Economy – required to comply with the new law. For example, the law contemplates the need to provide alternative livelihoods for artisanal miners – which in reality are very few; their number is estimated in about 300 – so it is important to develop a policy in this regard. The process must be regulated so nobody obtains undue benefit; in fact, we have requested that a miners' census be held as soon as possible in order to regulate their activity, which by the way is also harmful to the environment and unsafe for the miners themselves.

Lastly, we continue to work on the ground because we are convinced that local communities have been the protagonists in this process, and therefore must know and understand the fruit of their work. They need to know the text of the law, which although brief contains technical and legal terms that may be the reason why it is not immediately intelligible for the population. So we are taking it to the communities, where we hold popular discussions of the law. Our community work seeks to ensure that communities become the defenders of a conquered right.

Q: How connected is Salvadoran civil society with its counterparts around the world? Have you received any kind of international solidarity and support along the way?

The limited funding that has been available to the National Table has come largely from international cooperation sources, and our efforts have received solidarity and support from the international community. By 2007 an international coalition called [International Allies Against Mining in El Salvador](#) was formed, including members mostly in the United States, but also in other countries. This coalition supported the National Table and the communities affected by mining projects through lobbying, by putting pressure so the law would be passed, by denouncing the impacts of mining activity and the investment treaties that allowed companies to operate with no oversight, and by urging the ICSID to act impartially, among other actions.

- Get in touch with the National Table against Metallic Mining through their [Facebook](#) page or visit FESPAD's [webpage](#), and follow [@no_mineria_sv](#) and [@FESPAD_sv](#) on Twitter.
- Civic space in El Salvador is rated as “narrowed” in the [CIVICUS Monitor](#).
- CIVICUS this month released the [2017 State of Civil Society report](#). This year the report has a special thematic focus exploring the often troublesome yet potentially beneficial relationship between civil society and the private sector. 27 guest articles from thought leaders around the world accompany this year's report.