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World Bank tribunal threatens El Salvador's development

Organization's investor protection panel disempowers marginalized communities

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by [Lauren Carasik](#) @LCarasik

Last week more than [300 international and national civil society organizations](#) wrote to the president of the World Bank, Jim Yong Kim, during its biannual meeting in Washington, denouncing the bank's involvement in the case of [Pac Rim Cayman LLC v. El Salvador](#). Canadian-based transnational mining corporation Pacific Rim sued El Salvador for failing to authorize an extraction permit after the company allegedly invested millions in the exploration of the El Dorado mine in the northeastern province of Cabañas. The controversy has ignited a debate over whether disputes between countries and corporate investors should be adjudicated in national courts or international tribunals.

Pacific Rim, purchased in November by Canadian-Australian OceanaGold, first filed the suit in 2009 arguing that El Salvador should provide compensation for lost investment and future profits. El Salvador claims [the company failed to follow proper protocols](#) for issuance of a license. It did not possess title to much of the land considered for the mining project, failed to secure the appropriate environmental authorizations and never submitted the final feasibility study. Despite significant domestic interest in the conflict, Pacific Rim did not allow national courts to adjudicate the case but instead [lodged its complaint at the World Bank's](#) investor protection tribunal. The company is asking for more than \$300 million, almost 2 percent of El Salvador's gross domestic product, in compensation for spending on exploration and for lost future profits.

Labor, grass-roots and human rights organizations argue it is inappropriate for the World Bank, whose mission is alleviating poverty, to preside over disputes

that threaten the self-determination of countries. The petitioners argued that Pacific Rim is using the bank's arbitration mechanism to subvert local governance over issues critical to the well-being of poor communities, which should take precedence over profits for transnational companies.

In June 2012 the [International Center for the Settlement of Investment Disputes \(ICSID\)](#), an arbitration mechanism under the [Dominican Republic–Central America Free Trade Agreement](#), [dismissed the suit](#), citing lack of jurisdiction, but allowed the suit to proceed under El Salvador's investment law. The law, which at the time provided for international resolution of disputes, has since been amended to ensure that disputes are adjudicated in national courts instead of international tribunals, [unless dictated by bilateral trade agreements](#).

Coercive mandates

The investor arbitration provisions in free trade agreements and bilateral investment treaties pit the interests of transnational capital against economic self-determination and sustainable development. Transnational corporations seeking to extract oil, minerals and gas in the developing world [are increasingly turning](#) to these mechanisms in order to protect their investor rights. These extractive industries are often supported by Western neoliberal economic policies and international financial institutions, such as the World Bank and International Monetary Fund, that finance and direct development initiatives that demand privatization and free trade.

Latin American countries are disproportionately affected by this tactic. As of March 2013, Latin American and Caribbean countries comprised only 14 percent of the 158 ICSID member states. But together, Latin American and Caribbean countries were responsible for 46 percent of the ICSID docket and more than 50 percent of the pending cases involving the extractive industries.

The World Bank claims to offer a neutral and cost-effective dispute resolution mechanism that is entirely consensual. But arbitration mandates built into trade and investment agreements compel impoverished countries to submit to its

jurisdiction. Far from alleviating poverty, the bank's removal of community and national control over local projects threatens to further impoverish marginalized communities that are most often affected by extractive projects. As Oxfam America concluded in its [2008 report](#) on the costs and benefits of mining in Central America, local community support and participation is essential to realizing the benefits and reducing the risks of such projects.

The people of El Salvador and their government do not want mining to ravage their landscape, degrade their environment and compromise their health.

The Pacific Rim case is also emblematic of a much broader global tension between development and environmental sustainability. The communities surrounding the proposed mine fear that pollution from it would threaten their already contaminated water supplies and degrade the environment. A number of local civil society organizations, including the [Catholic Church](#), oppose the extraction of minerals, and the vast majority of Salvadorans do not want the mines in their communities. Former President Tony Saca and outgoing President Mauricio Funes declined to issue a permit to Pacific Rim, and President-elect Salvador Sánchez Cerén has vowed to maintain the de facto moratorium on mining. El Salvador efforts to fend off the exploitation of its natural resources and protect the nation's environmental health will [reverberate globally](#).

El Salvador's water supply is already compromised: The country's Ministry of the Environment and Natural Resources has estimated that [90 percent](#) of the country's surface water is contaminated. Pacific Rim was planning an open-pit cyanide-leaching mine, a water-intensive extraction method that many believe would [further pollute](#) and deplete the region's already inadequate clean-water resources.

In addition, mining-related conflicts in [Guatemala](#), [Peru](#) and [Honduras](#) provide chilling examples of the devastating environmental and social effects of transnational mining projects. Communities surrounding proposed, inoperative and closed mines decry the widespread contamination and depletion of water

resources, deforestation, health harms to people and livestock, displacement, divisive local conflicts, the criminalization of human rights defenders and the intimidation and murder of anti-mining activists. Reports of environmental contamination at a mining site in the province of La Unión compounded concerns raised by local claims of property destruction, wells drying up and the murder of four anti-mining activists.

A costly precedent

El Salvador's struggle to maintain control over its development is being keenly watched. The outcome of this dispute will set an important precedent about the reach, legitimacy and costs of investor protection provisions in existing and future trade and investment agreements. Resistance to the investor-state dispute resolution framework is [animating opposition](#) to the proposed Trans Pacific Partnership, currently being negotiated under a shroud of secrecy, and the [Transatlantic Trade and Investment Partnership](#).

The people of El Salvador and their government do not want mining to ravage their landscape, degrade their environment and compromise their health. Stripping nations of their right to economic and environmental self-determination by privileging investors' rights through international arbitration mechanisms is undemocratic and disempowers communities that should derive some benefit from development in their neighborhoods. Corporations by nature owe their allegiance to shareholders, not good environmental stewardship or sustainable development. Allowing Pacific Rim to circumvent local mechanisms and hide behind an international tribunal will set a costly precedent for the global community.

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The views expressed in this article are the author's own and do not necessarily reflect Al Jazeera America's editorial policy.