

# El Salvador – When The Seeds Of Resistance Bloom



By Thomas Mc Donagh and Aldo Orellana López

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On 29th March 2017 legislators in El Salvador approved a blanket ban on all metal mining activities in the country – the first country in the world to do so. The historic vote came just six months after a World Bank tribunal ruled in favour of the country’s government in an international investment arbitration case brought by a Canadian mining corporation.

If ever there was an example of how the seeds of a local battle flowered into a formidable global campaign, it was this one. At a time when organised dissent is both under attack and more urgent than ever, we not only need to celebrate the victories that involve genuine international solidarity, we need to learn from them.

We sat down with five (of the many) people that have been deeply involved in this titan effort to reflect on what they achieved and how, and the lessons that they have learned in the process.

Our interviewees were Vidalina Morales from the Economic and Social Development Association of Santa Marta ([ADES](#)); Pedro Cabezas from Association for the Development of El Salvador, ([CRIPDES](#)) and Saul Baños from the Foundation for the Study of the Application of the Law ([FESPAD](#)) – all three are member organisations of the [National Roundtable](#) against Metallic Mining in El Salvador (Pedro Cabezas was also communications coordinator for the International Allies); Manuel Pérez-Rocha from the [Institute of Policy Studies](#) in Washington DC; and Jen Moore from [Mining Watch Canada](#).

We focus here in particular on what we can learn from the international campaign against the World Bank case, but also look at some aspects of the simultaneous effort to support the anti-mining struggle on the ground in El Salvador. The international legal case was just one of a range of intervention strategies used by the corporations involved. The organising effort that successfully countered all of them holds valuable lessons for strategic campaigning everywhere.

## ISDS – Investor State Dispute Settlement

In 2004, after two years of searching for gold in El Salvador, the Pacific Rim Mining Corporation requested permits to begin mining close to the Lempa River. After several years of negotiations, political manoeuvring and conflicts with the local communities that tragically cost the lives of four environmental activists –one of whom, Dora Alicia Recinos Sorto, was eight months pregnant- the request was declined on the basis that the company had not met the necessary regulatory requirements and a nationwide moratorium on all new mining projects was put in place.

The company cried foul. They maintained that they had been lead to believe that there was government support for their project and the change of mining policy was thus unfair and illegal and they should be compensated to the tune of the market value of the unexploited gold – \$314m later reduced to \$250m. They initiated an investor-state dispute settlement (ISDS) case at the World Bank’s International Centre for the Settlement of Investment Disputes (ICSID).

This ISDS system, despite existing for over 50 years, has only in the last ten years become a weapon of choice for multinational corporations. Over this time, the number of ISDS cases has exploded with 2015 setting an all time record of 74 [new cases](#) in just one year.

Pacific Rim is a Canadian company, also registered in the Cayman Islands tax haven. In its first attempt to bring the ISDS case against El Salvador it tried to use investment protections in the Free Trade Agreement between the US and Central America and the Dominican Republic (DR-CAFTA). To do so it set up a post-box address in the US state of Nevada. In 2012, ICSID declined jurisdiction under DR-CAFTA and in the Tribunal’s [decision](#), Pacific Rim in the USA was described as ‘more akin to a shell company’. However, despite this corporate manipulation of the legal system, the tribunal would later uphold jurisdiction under El Salvador’s domestic investment law and allow the case to proceed. (The following year El Salvador amended this law, no longer giving transnational corporations recourse to international tribunals.)

By 2013, Pacific Rim was in financial trouble and was bought out by Oceana Gold from Australia. By late 2016, after a long international campaign, the ICSID tribunal finally ruled against the company and ordered it to pay \$8 million towards El Salvador’s more than \$12 million in legal fees. The ruling was hailed as a major victory for the struggles in El Salvador and internationally.

It came at the end of several years of international campaigning and would pave the way for the outright ban on mining in the country that followed a few months later. The campaign holds a number of lessons – particularly with regard to how we can connect local and global struggles effectively.

## Narratives and Messaging

We should never underestimate a powerful narrative. This universal truth for campaigners was also one of the major lessons for our interviewees.



Mining pollutes and mining kills.  
Credit: Genia Yatzenko

### Water and Sovereignty – Connecting local issues to systemic ones

The story of a small Central American nation’s struggle to put the health of its population above the profits from gold mining was always going to grab some international attention. But when combined with the ways in which international governance institutions were being manipulated in favour of corporate interests, it became not just a powerful unifying narrative, but a story everybody wanted to tell.

According to Manuel Pérez-Rocha, “we were able to weave together the strands of this narrative, connecting water, health and the local defence of resources and territory to the imposition of corporate power by means of instruments such as ICSID...we all worked based on this narrative”. For Pedro Cabezas, this coherent narrative reflected “the shared vision of all of the actors involved in the struggle”. And so provided an important point of unity for the campaigners.

If we divide it in two, the first part of this narrative was about water, with the salient points being: El Salvador is a water stressed country; conditions are not right for mining in El Salvador; pollution from mining jeopardizes our water and therefore our health; mining puts the Lempa River – the primary source of water for more than half the population- at risk.

While Pacific Rim-Oceania Gold and mining proponents predictably attempted to frame [the issue](#) as an economic one – “it’s a no-brainer for such a resource-strapped government to cash-in on its underground mineral wealth” – the campaign managed to constantly bring the focus of debate back to the local defence of water and health – both in [local](#) and [international](#) coverage.

For Cabezas “focusing on the defence of water was always going to resonate at all levels – political, social, academic and economic....because of the grave water crisis that the country is going through....a crisis widely docu-

mented not only by government and local academic institutions, but also by international bodies such as the UN”.

For Jen Moore, connecting the idea of “water being more precious than gold”....and “the unjust means that corporations have to bully countries around in the globalized economy today” provided a real coherency between the local, the national and the international. And having a narrative that combined local concerns with global ones meant that a real diversity of groups could engage with the issues from a diversity of entry points or perspectives.



Protest in El Salvador. Credit Genia Yatzenko

The second strand of the messaging strategy was to focus on the issue of sovereignty and self-determination. Privatised justice for big business/unaccountable corporate-dominated tribunals/a weapon for Northern corporations to pressure governments: all of these ways of characterizing the free trade and investment rules system would resonate strongly in any context. But in post-colonial Latin America, in a country well used to Northern aggression, they were particularly powerful.

Working with international civil society experts, such as the Center for International Environmental Law, the [Institute for Policy Studies](#), Mining Watch, and Oxfam, as well as academics from the University of Central America in El Salvador, the American University and others, the campaign was able to base its analysis of the trade and investment system on [solid research](#).

This complex system was then translated into terms understandable to non-experts by making the connection very clear between the trade and investment regime and the issues that directly affect people’s lives – such as water and public health.

When Salvadoran attorney Yanira Cortez visited Canada in 2015, for example, she repeatedly [stated](#) that the amount being demanded in compensation by Pacific Rim in the ISDS case was equivalent to three years of the Salvadoran national health, education and public safety budgets combined.

## Delivering the message – Making it emblematic

A clear, evidence-based narrative is only as powerful as the ways in which its delivered and amplified.

If you do a Google search with the terms 'Pacific Rim' and 'El Salvador', you get over 359,000 results (and over 159,000 if you search 'Oceana Gold' and 'El Salvador'). The figures speak for themselves.

The case has been covered by publications as diverse as: the [Nation \(several times\)](#), the [Guardian \(several times\)](#), the [Huffington Post](#), the [Financial Times](#), the [Washington Post](#), [CBC](#), [Reuters](#), the [New York Times](#), the [BBC](#), the [London Review of Books](#), [CounterPunch](#) and [Upside Down World](#) – not forgetting [Xinhuanet](#) in China and [Kalikasan](#) in the Philippines, [Le Monde](#) in France, [Al Jazeera](#), and [TeleSur](#).

Even a folk [SONG](#) has been written about the case.

The extent of the coverage the case achieved was a result of working with a multitude of diverse allies on the one hand, and on the other, by connecting the case to on-going international campaigns on related issues. These included debates around new free trade deals like the TPP and TTIP; how mining and water relate to climate change and broader sustainability debates; as well as issues related to corporate accountability and human rights. Positioning the case in the international public imagination as a symbol of some of these broader struggles helped turn a localised struggle in to a powerful global symbol.

One very concrete result of the extensive international coverage was that it obliged local actors in El Salvador, including politicians, to take a position on the issue.

According to Saul Baños “a lot of local media outlets are co-opted in the service of local elites...the case was getting more attention outside the country than inside”. For him, the persistence of international allies in raising the profile of the issue “not only helped to explain the risks of the ISDS system but also meant that local politicians cannot avoid the issue.”

Another result was indirect pressure on the ICSID tribunal itself. Given the profile of the case and the coverage it was receiving, it is not surprising that one of the three tribunal members commented afterwards, off the record, that “civil society pressure in this case has been essential.” In the end they were passing judgement not just on a single case based on a local issue, but on all that the case came to represent after several years of ‘globalising the struggle’.

## Alliances and Solidarity

*“While the communities played a leading role in their territories, it didn't end there – [the struggle] went national, and then it went global”.*

*– Pedro Cabezas.*

Given the nature of the El Salvador case, with one front being fought on the ground in Central America, and the other internationally, it was inevitable that a diverse set of actors would be involved. What was less clear though was just how broad and diverse it would become, and how those alliances would function.

## Strength in diversity

From anti-mining activists in Canada to the Catholic Church hierarchy of El Salvador, and from the Maritime Union of Australia to the Central American University, for our interviewees, one of the major lessons from the campaign came from working alongside an extremely diverse group of allies.

For Vidalina Morales: “it’s not very common that communities are in agreement with the State. In terms of the [ISDS] lawsuit...the communities and their organizations were able to find common cause together with the State and its defence lawyers; we were all in close coordination.”

At the closing stage of the ISDS case, for example, while the company was doing everything in its power to postpone the result so that it could hold out for a negotiated settlement<sup>(1)</sup> with the government (i.e. some policy concessions or to allow the gold mine to go ahead), [simultaneous protests](#) were coordinated by civil society groups outside the World Bank offices in Washington DC and in San Salvador demanding that the tribunal delay no further and give its final result, while the government and its lawyers continued demanding the same thing inside the tribunal. A week later it did, in El Salvador’s favour.

Working hand in hand like this with the international investment law firm, Foley Hog, was another revelation for our interviewees. According to Perez Rocha in the run up to the ICSID tribunal’s decision, Foley Hog was “very open to civil society collaboration and figuring out the best ways to collectively apply pressure on the tribunal”. A team of investment lawyers rolling up their sleeves together with civil society groups was surprising to campaigners very much accustomed to seeing them as part of the problem.

Perez Rocha was also surprised by some other collaboration opportunities. Perhaps the most unexpected of these was with the US State Department. In the early stages of the ISDS case, after some pressure from the law firm representing El Salvador and civil society groups, the State Department agreed to submit an [informed opinion](#) to the ICSID tribunal to the effect that Pacific Rim in the USA was indeed just a shell company and shouldn’t be protected by CAFTA – an opinion the tribunal would later agree with.

For Perez Rocha, this was further evidence that “[the campaign] was a confluence of actors of very different kinds – this wasn’t just a civil society fight – we worked methodically with government officials, with the law firm, with the media and with the church”.

## The Role of Coordination

While the Roundtable against Metal Mining in El Salvador has its own coordination mechanism – a committee made up of representatives of five of the eleven core organizations takes on the role- coordination with such a diversity of international allies was bound to present other challenges.

For two years, between 2013 and 2015 Pedro Cabezas was responsible for coordination between the international allies and the Roundtable in El Salvador. For him, having this dedicated coordination role allowed them to improve communication between the two networks.

Meanwhile, a group called International Allies against Mining in El Salvador, coordinated primarily by Mining Watch Canada and the Institute for Policy

Studies (IPS) was established and to this day maintains regular communication with the Roundtable in El Salvador. The International Allies have monthly meeting calls and major decisions are sent to the Roundtable for feedback. A [website](#), [social media](#) and mailing list are used to communicate campaign updates

Despite these coordination mechanisms, for Jen Moore, among the biggest challenges were “maintaining good, fluid communication between international allies and national and local organizations...It requires a lot of intentionality and effort”. These challenges were overcome thanks to “the visits between the countries, persisting with the regular meetings and making a real effort to maintain permanent communication”. This allowed them to continuously refine strategy and allowed international allies to be prepared at crucial moments in the campaign.

Jen Moore was also aware that this coordination is made a lot easier when there are NGOs with paid staff involved. This allowed her, for example, to dedicate the necessary time to coordinate with other Canadian groups and to maintain a permanent link with the international coalition and the Roundtable. “These processes are not pretty. Differences always arise, but we showed that with really intentional coordination, a lot can be achieved”.

### “Two types of solidarity”

According to Cabezas, given that many of the groups working on the campaign internationally had a history of working in El Salvador dating back to the country’s civil war (1980-92) they had established personal and working relationships with members of the Roundtable. Groups such as Sister Cities, the Share Foundation, CISPES and Oxfam from the US; SalvAide from Canada; and the Romero Christian Initiative from Germany had a history of human rights work during the war, including supporting refugees (many of whom would later return to form the communities now resisting mining projects). According to Cabezas “their role had evolved over the years and when mining came along, they saw the abuse being carried out internationally by the corporation – and they got involved”.



Protest in Canada against the ISDS case

According to Perez Rocha “there was a lot of room to manoeuvre and a lot of flexibility because of the trust that existed between the organizations and the Roundtable”.

Perez Rocha’s organisation, the Institute for Policy Studies (IPS), had given their prestigious Letelier-Moffitt [Human Rights Award](#) to the El Salvador Roundtable against Metallic Mining in 2009. In accepting the award, Vidalina Morales said that it was an important international act of recognition that showed “the just, worthy and legitimate nature of our struggle”. Not only this, the prize was also an important step in consolidating the relationship

between the Roundtable and IPS that would be crucial in the international campaign against the ISDS case.

For Vidalina Morales the “active support of the international community is fundamental for the struggles of our people. For us there is no doubt that this is the only way that we will be able to advance in the emancipatory process of our people. Solidarity is more necessary and urgent than ever”. For Morales solidarity is “something that allows us to stand alongside the other person both in the good times and during the difficult times.....solidarity is mutual support.”

Perez Rocha described “two different types of solidarity”. For him, one of these is more common among development agencies where there is a vertical relationship between funders and the communities being funded. And the other, that he espouses, is when “money is not at the centre of the relationship; [in these relationships] there is one overarching struggle with shared objectives.”

Cabezas agreed, “when donors and development agencies are involved, they often want to determine strategy, and this sometimes causes conflicts”. When asked about how this was overcome in the campaign he continued “through constant careful negotiation and a lot of patience”. For Cabezas international groups “should engage with the case in their own spaces e.g. the company being Canadian meant there was a role for Canadians....but priority should be given to being a conduit for the voices of frontline communities”.

For Jen Moore, the role of international solidarity organisations was quite clear: “remaining in communication, staying informed, visiting El Salvador when possible and then keeping our own social base and the media informed...in order to counter the lies and falsehoods of the companies”. Making connections internationally was another. “Given that we work in different parts of the world, we were able to facilitate contacts so that the delegation of affected communities in the Philippines could share their experiences with the same company.”

## **Complementary objectives**

For Perez Rocha, another important factor in terms of solidifying the alliances with local groups, was to communicate early on that the focus of IPS’ work was on corporate power and the trade and investment system, and to explain how strengthening and lifting up a campaign like this one against the ISDS system in the global South contributed to both the Roundtable’s objectives in El Salvador and IPS’ broader international campaign goals. This common understanding of how these different goals complemented each other was crucial in order to globalise the struggle in ways that supported everyone’s overall objectives.

According to Jen Moore having clarity on long term objectives made it a lot easier to deal with differences in opinion regarding short-term tactics and objectives. For her clarity on the long term objective of banning metal mining outright in El Salvador “was fundamental for orienting the international campaign”.

## Actions

For our interviewees, having a clear, powerfully amplified narrative that connected local and global issues on the one hand, and investing time, energy and resources in consolidating alliances on the other, were the foundation stones for building the successful international campaign. We also asked them about some of the specific actions that they felt were particularly effective at maintaining momentum and pressure.

*They told us about attending the company's [AGMs](#) to pressure shareholders; protests in [Canada](#) and [Australia](#); actions at the World Bank offices in [Washington DC](#) and in San Salvador; an [open letter](#) to the head of the World Bank in 2011 signed by 244 international civil society organizations; [another in 2014](#) signed by over 300 international groups; two Amicus Curiae/Friends of the Court briefs submitted to the ICSID tribunal in [2011](#) and in [2014](#); protests at the Canadian embassies both in [El Salvador](#) and in [the US](#); the [2014 report Debunking 8 falsehoods](#) by Pacific Rim/Oceana Gold; the [2014 Month of Action](#); the [2016 report](#) on mining and supposed 'corporate social responsibility' in El Salvador; and a more recent open letter to Oceana Gold demanding that it pay up and pack up signed by 280 organisations from around the globe.*

While all of these campaign actions were significant, our interviewees put particular emphasis on some additional international initiatives.

## Delegations and Visits – Weaving a web of Solidarity

The most significant of the several visits to El Salvador organised by the International Allies, according to our interviewees, was the 2013 fact-finding trip. A delegation of 45 people from 22 organizations in 12 countries participated in five days of conferences and strategy workshops and visits to mining-affected municipalities in the north of the country. A documentary '[Gold Or Water](#)' was made based on the experience and according to Perez Rocha, "it was a real milestone in the campaign as it strengthened the links between people from the international organizations with the Salvadoran groups".

There were also several visits to the global North by Salvadorans. These included the 2013 [North American Tour](#) and the 2015 [Stop the Suits Tour](#) of Canada. For Jen Moore, this was important "to maintain the connections with people working in solidarity with El Salvador in Canada". For her, bringing the voices of affected communities directly to the home countries of the company's involved was a powerful way to demonstrate both to the public and to the authorities their "complicity in the structures that cause these problems".

Once Oceana Gold had taken over Pacific Rim, Vidalina Morales also went on the [Water Not Gold Tour](#) of Australia in 2013. In collaboration with Australian trade unions and other civil society groups, she spent two weeks there spreading the story of the impact this Australian company was having on her home country. The International Allies also [visited](#) the Philippines in 2013 to strengthen connections with communities affected by Oceana Gold's project and to document the impacts of mining there.

While international travel is often out of reach of most communities affected by extractive projects in Latin America, whenever there is a confluence of

interests and objectives, and therefore available resources, these trips are a powerful way to consolidate alliances, build trust and apply pressure on the corporations involved in their own back yard.

## Bringing The Case To International Fora

Another lesson for our interviewees was the importance of taking the case into international institutional spaces.

When five anti-mining activists were murdered between 2009 and 2011, the El Salvador case was brought before the Inter American Human Rights Commission which [issued](#) precautionary measures against the government of El Salvador. Next, the case was [presented](#) at the Permanent Peoples Tribunal (PPT) in Geneva Switzerland in 2014 with the help of groups like the Transnational Institute and the Institute for Policy Studies. For Saul Baños, while the rulings of the PPT are not legally binding, “they have political weight globally and are important ways to increase power”. A [statement](#) describing the human right violations of Pacific Rim-Oceana Gold was then submitted to the United Nations Human Rights Commission also in 2014, and the case has been taken up [by advocates](#) for a Binding Treaty for business and human rights at the UN.



Protest against the ISDS case in the USA

For Baños, all of these actions were important for raising the profile of the case and forcing it on to the government’s agenda “they [the government] are afraid of any kind of sanction that comes from an international body... this is why it’s important to further strengthen the international solidarity.”

## Reaping the Harvest

The struggles of local communities all over Latin America in defence of their basic resources are never just local affairs. The extraction sites for gold or other minerals, or for oil and gas, are just the starting point on supply chains that begin in places like El Salvador, but often end in high-consumption economies far away – many in the global North. The abuses of those that control and profit from these supply chains rarely come up against a commensurate internationally coordinated response. In the case of El Salvador, they did.

As international movements, one of the major things that the campaign tells us is that when we have a clear, shared understanding of the ways in which local and international struggles relate to and complement each other, we

can leverage the diversity of our relationships, privileges, power and resources to great effect.

In addition, the case leaves us with two other sets of overarching lessons.

The first relates to campaigning and strategy. We can never forget the basics of organising. Powerful narratives rooted in local realities, told and amplified well, are a powerful and unifying force. Relationships built on trust and intentional, committed (sometimes laborious) communications processes are the backbone of effective alliances. While international groups have no place dictating political strategy to local actors, this campaign showed the very effective ways that they can indirectly apply political pressure and the crucial role that they play in taking these struggles to the home countries of the corporations and institutions involved.

The second kind of lesson relates to the struggle ahead against the ISDS system itself. In its communiqué following the ISDS result, the El Salvador Roundtable stated that “El Salvador didn’t ‘win’ anything” – they just didn’t lose, there’s a difference. At the end of the day there is no corresponding mechanism for these communities to hold corporations legally accountable for their abuses. It’s a one-way street.

In the words of Vidalina Morales, “given the environmental damage, economic loss, social conflicts and corruption brought about by the corporation’s presence in El Salvador, they should have been the ones being sued... but no, the perpetrator sued the victim...in an upside down world.”

The Roundtable also described the ISDS system as “a form of blackmail” – a legal mechanism used to pressure governments with the threat of legal action, creating a ‘chilling effect’ on responsible public interest policies. Their rulings are based on the legal protections for investors granted in free trade and investment agreements and they have no obligation to balance these interests with social and environmental concerns.

The El Salvador context was relatively unique. The mining moratorium achieved there in 2009 meant that no new permits were issued in the intervening period, and the slow grind of national politics was able to run its course, and civil society pressure could slowly crystallise around an outright mining ban. But in other countries, where no such moratorium has existed, and where hundreds of permits or licenses have already been given, once communities and governments begin questioning the extractivist model, it’s too late. Changes to local or national laws result in a barrage of new ISDS cases – Colombia being a good [case in point](#). El Salvador makes very clear that progress on our most urgent environmental issues is intimately connected to the dismantling of corporate power.

In terms of the path ahead on ISDS, Perez Rocha suggests two urgent tasks. One is to lift the veil on the details of settlements between governments and corporations in ISDS cases. The [overall statistics](#) of ISDS case results, excluding these settlements, are regularly used to defend the system. But if we can show the ways that these settlements also force governments to put corporate interests over the public good, we can make even clearer the injustices at the heart of the system.

The second is to continue to make local campaigns emblematic. Pacific Rim/Oceana Gold Vs El Salvador and other emblematic cases need be replaced

with new high profile cases. He sees a real willingness to continue connecting other local struggles -around extractive projects [in particular](#)- to the global campaigns against corporate power and the free trade and investment regime.

In the words of Pedro Cabezas, “we have to continue globalizing the struggle!”.

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1 In the extractive industries, the majority of ISDS cases end with a settlement of some sort i.e. policy concessions to the corporations – this is one of the least understood and most nefarious results of the whole ISDS system.