

The Dangerous Path Toward Mining Law Reform in Honduras

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This is Part 3 of a three-part series on the enactment of provocative mining restrictions in Central America.

Throughout much of the country's history, Honduran authorities have worked closely and attentively with mining companies while their domestic agricultural resources remained a lesser priority. The awakening of democracy in the 1990s provided hope that domestic agriculture would get support, that land and water would be protected from the harmful effects of mining, and that the will of local citizens would be taken into account. After some progress in this direction, however, the environmental movement was dealt a severe setback in 2009 when the president, Manuel Zelaya, a sometime supporter of the environmental movement, was ousted. Still, the vision of an economy based on a strong domestic agriculture and environmental preservation has survived despite the risks it intrinsically poses to the indigenous and other environmental activists who are striving to achieve it.

Metal Mining Then and Now

In the 1880s, mining had become an integral part of the economy. As an important sector, it accounted for twice the export value of the banana industry, for which Honduras has been much better known. At that time, the government offered some 145 concessions to mining companies, about half of which were based in the U.S. or Europe. As mining was regarded as key to the country's development, then president Marco Aurelio Soto and his successors established "a pattern of full government cooperation with foreign entrepreneurs."¹

With over 85% of all mining exports under its control and 45% of the value of all of the country's exports, the New York and Honduras Rosario Company mine in San Juancinto was far and away the most successful in Honduras. Company president, Washington Valentine, attentively courted Honduran heads of state, even helping to finance their electoral campaigns, and could always count on their support in disputes with local adversaries in return.² In 1904, Valentine made note in his annual report to stockholders that, "The frequent and exaggerated reports of revolutions in Honduras are always to be anticipated" with a grain of salt. No one needed to be concerned as,

¹ James Mahoney, *The Legacies of Liberalism: Path Dependence and Political Regimes in Central America*, John Hopkins University, 2002, 173.

² Mahoney, *The Legacies of Liberalism*, 174.

Our relations with the government of Honduras are the most amicable. You enjoy the fullest support of all heads of departments who further your interests in every possible manner, as they always have done, whatever the prevalent political condition.³

In the years that followed, this steadfast confidence that the Honduran government would do the company's bidding was manifested regularly in subsequent annual reports. The 1917 report, for instance, boldly states that President Francisco Bertrand "and his liberal ideas for the development of the resources of his country have been the cause of highest encomium and his weighty assistance to your company in times of need has been of material good in the steady march to your works." Moreover, it went on, President Bertrand had actually weakened the Honduran political system, by having "*concentrated all political parties, thus assuring an uninterrupted and steady development of the nature wealth of the country.*"⁴

In the 1906 report, the issue of land rights in the area of the mine arose. Here too, it appears that the government was fully prepared to protect the interests of the company. "A few questions of right to lands within our property have arisen," Valentine stated, but these were "equitably settled without suits" with the exception of one then "in process of law" and to which "we anticipate an early decision in our favor."⁵

Land rights issues have remained critical for Honduras' rural population. Today, mining sites typically require many square miles of deforestation and topsoil removal. Explosives used to dig out an area can cause further environmental damage and respiratory problems for area residents. Cyanide and other hazardous substances used in the separation process often leach into the soil and water supply along with dissolved mine metals. These cause contamination and other adverse effects on the eco-system, generating serious illness among the local populations, and the death of livestock.

The devastating impact of Hurricane Mitch in 1998 made it possible to change mining law to more decisively favor mining companies. With public attention focused on recovery and reconstruction, Honduran Congress was able to slip the General Mining Law through just four weeks after the hurricane hit. Much of it had been written by elements of the mining industry itself.

The new law granted broad rights to mining companies, including the rights to freely explore throughout the country, to use unlimited amounts of local water, and to evict those already living on

³ W. S. Valentine, *Report of the New York & Honduras Rosario Mining Company*, New York City, New York, December 1, 1904, 8-9. Accessed through the Anderson Academic Commons at the University of Denver, http://www.columbia.edu/cu/lweb/digital/collections/cul/texts/ldpd_6283911_000/pages/ldpd_6283911_000_00000001.html.

⁴ W. S. Valentine, *Report of the New York & Honduras Rosario Mining Company*, New York, January, 1, 1917, 7.

⁵ W. S. Valentine, *Report of the New York & Honduras Rosario Mining Company*, New York, January, 1, 1906, 5.



land that had been granted to the companies.⁶ The companies also benefited from the provision of new tax exemptions and the reduction of environmental controls. In addition, the hurricane's sweeping damage throughout the country allowed the government to deploy military personnel into remote areas. Ostensibly for humanitarian purposes, the military is commonly used to enforce the widely unpopular provisions of the new mining law.⁷

Around the same time, Canadian and U.S. mining companies helped form the National Association of Metal Mining in Honduras (ANAMIMH), which would become a powerful lobbying organization for mining interests. In addition, a single government organization, the Directorate for the Promotion of Mining (DEFOMIN), became responsible both for promoting mining interests and for monitoring their compliance with environmental standards.⁸ Under such favorable conditions, mining companies descended on the country in large numbers.

Towards Reform

Opponents of the General Mining Law lost little time in organizing against it. The Civic Alliance for Democracy (ACD), a coalition of 35 organizations representing different communities across the country, soon formed and, as the name suggests, identified its mission as an exercise in grass-roots democracy. Members in the Catholic priesthood, including Cardinal Oscar Andrés Rodríguez in Tegucigalpa and Bishop Luis Alfonso Santos in the western province of Santa Rosa de Copán, provided high-profile leadership and support. The ACD also included a number of international organizations, including Christian Aid and Oxfam International.⁹

The ACD gathered strength as it documented the disastrous impacts of open pit and other forms of mining in rural areas. In one case, at the San Andres mine in Copán in 2003, a valve accidentally opened, causing the release of 400 gallons of cyanide into the Lara and Higuito Rivers. Hundreds of fish were killed and the health of the inhabitants of the area was endangered.¹⁰ In 2006, studies of water quality conducted near mining sites in Nuevo Palo Ralos and El Podernal found that the water

⁶ John Burdick, Philip Oxhorn, Kenneth M. Roberts, editors, *Beyond Neoliberalism in Latin America? Societies and Politics at the Crossroads*, Palgrave Macmillan, 2009, 125.

⁷ Joel Tickner, *Precaution, Environmental Science and Preventive Public Policy*, Washington D.C.: Island Press, 2002, 57.

⁸ Jennifer Moore, "Canada's Promotion of Mining Industry Belies Claims of Corporate Social Responsibility," *Americas Program*, July 18, 2012, <http://www.cipamericas.org/archives/7554>.

⁹ Instituto Centroamericano de Estudios Fiscales, *Diagnóstico de la Situación Minería en Honduras 2007-2012*, Tegucigalpa, June 2013, http://icefi.org/sites/default/files/diagnostico_de_la_situacion_minera_en_honduras_2007-2012_version_para_sitio_web.pdf. See also Canadian and Catholic Organization for Development and Peace, "Mining for Justice: The Struggle for Honduran Civil Society for Responsible Mining," September 9-17, 2007, http://www.ccic.ca/_files/en/what_we_do/002_trade_2009-05_devp_honduras.pdf.

¹⁰ Carolina Rivera, "Mining Law on the Brink of Overhaul," *Latinamerica Press*, March 9, 2007, <http://www.lapress.org/articles.asp?item=1&art=5062>.



contained dangerous levels of arsenic.¹¹

One of the most serious cases arose in connection with the San Martín mine in Siria, owned by the Canadian company Goldcorp. Goldcorp had been one of the first foreign companies to be granted a concession under the General Mining Law of 1998. Within a few years, water in the valley began to dry up – out of eighteen rivers in the area, fifteen had gone dry by 2009. Much of what remained had turned reddish-brown in color and residents complained that it had a peculiar odor. Those residing near the site began to experience high instances of cancer, skin conditions, respiratory and eye problems, and infant mortality.

The ACD's primary goal was to overturn the Mining Law of 1998 and establish a new set of standards to protect homes, communities and the environment, and to restore control over national resources to the national government. Contending that the Mining Law was unconstitutional and harmful to the country as a whole, the coalition urged leaders to cancel concessions wherever there were national parks, points of archaeological and cultural interest, and resident populations. They called for the cancelation of all mining operations involving the use of cyanide, mercury, and other toxic chemicals in accordance with national environmental law. They also called for an end to all mining activities in communities where residents had voted them down through referenda and open town meetings.¹²

Between 2006 and 2008, ACD staged numerous mass demonstrations throughout the country and provided support for residents who were resisting eviction in Macuelizo, Santa Barbara, and Santa Rosa de Copán. In many cases, the demonstrations resulted in beatings, injury, and even death as residents and protestors clashed with police, military, and private security forces. Having been beaten and threatened themselves, Bishop Santos, Berta Oliva of the Committee of the Relatives of the Disappeared (COFADEH), and other local leaders pleaded publicly with President Manuel Zelaya to embrace the cause and address the growing human rights problems associated with the mining industry.¹³

In 2006, Congressional president Roberto Micheletti, responding to public pressure, called for an outright ban on open pit mining. In addition, the Supreme Court struck down thirteen articles in the Mining Law of 1998, including the one allowing access by mining companies to unlimited amounts of water. In 2008, President Zelaya declared a moratorium on new concessions to mining companies

¹¹ Rights Action, "Cover-up: Goldcorp (Entre Mares) & the Government of Honduras Hide Information About Poisoning of Children and Adults," November 8, 2012, <http://www.rightsaction.org/action-content/cover-1-goldcorp-entre-mares-government-honduras-hide-information-about-poisoning>.

¹² Comunicación Comunitaria, "Las Organizaciones miembros de la Alianza Cívica por la Democracia se manifiestan contra la minería en Honduras," *Un Mundo América Latina*, July 17, 2007, <http://www.un-mundo.org/actualidad/leer.php/74867.html>.

¹³ Comité de Familiares de Detenidos Desaparecidos en Honduras (COFADEH) Hostigan y amenazan a miembros de la Alianza Cívica, August 26, 2007, <http://www.minesandcommunities.org/article.php?a=329>.



pending further observation. He subsequently established a commission that was tasked with rewriting the Mining Law.¹⁴

With support in all three branches of government, the ACD submitted a proposal for the new law that featured three central goals. First, it called for making environmental protection and guaranteeing the health of Hondurans a top priority. This included the elimination of open pit mining and the use of cyanide and other toxic substances in the mining process. The second goal was to require consultation with local communities in the form of referenda and open meetings before granting new licenses. The third objective was the need to defend the sovereignty of the country with respect to its natural resources and cede no other national territory to private mining companies beyond the 30 percent already granted.¹⁵

By all accounts, movement leaders were optimistic about the prospects for reform.

Backlash

President Zelaya, however, was ambivalent toward the ACD and the cause of environmental protection. On one hand, he had been willing to use government forces to crack down on activists, including those who simply wanted to remain in their homes. Yet, he included environmentalists in the deliberations of proposed changes to the Mining Law and worked with the ACD to influence the legislature. In addition, government repression eased as the process moved forward. By April 2008, a proposal was ready to be presented in Congress.¹⁶

In the mining industry, AMAMIMH and the Honduran Private Business Council (COHEP) were already working overtime to undermine both the proposal and the goals of the Zelaya administration. Deterred by their relentless media campaign, Zelaya began to waver and soon replaced his Minister of Natural Resources and the Environment, Mayra Mejía, with the more mine-friendly Tomás Vaquero. Vaquero then “practically shut off all dialogue with the ACD,” and thereby turned the issue over to the country’s legislature.¹⁷

By May 2009, the new mining bill had been drafted. Among its provisions was a prohibition against open-pit mining and use of toxic substances such as cyanide and mercury, an increase in taxation on the mining sector, and the requirement of community approval before mining concessions could be

¹⁴ “Carta de la ACD Honduras a Lic. Tomas Vaquero Ministro del Ambiente SERNA,” El Observatorio de conflictos mineras de américa latina (OCMAL), Oruro, Bolivia, June 5, 2008, <http://www.conflictosmineros.net/contenidos/17-honduras/4306-4306>; Commission of Truth, Elsie Monge Yoder, chair, “Report of the Commission of Truth: The Voice of Greatest Authority is That of the Victims,” Tegucigalpa, Honduras, April 2013, https://ccrjustice.org/sites/default/files/attach/2015/01/TrueCommission_Report_English_04_13.pdf.

¹⁵ “Carta de la ACD,” OCMAL.

¹⁶ Commission of Truth, Elsie Monge Yoder, chair, “Report of the Commission of Truth.”

¹⁷ Commission of Truth, Elsie Monge Yoder, chair, “Report of the Commission of Truth.”



granted. Debate within Congress was scheduled to begin August 16, 2009.¹⁸ That debate would never happen.

On June 28, in a military-backed coup, Zelaya was forced from his bed in the middle of the night, bundled onto a plane, and flown out of the country. So too were several members of his cabinet. The ACD and its followers took to the streets to protest the coup as Bishop Santos accused orchestrators of the coup of being “thieves and gangsters.”¹⁹ The Organization of American States (OAS) immediately condemned the coup, suspended Honduras’ membership in the organization, and called for Zelaya’s reinstatement. Under pressure from conservative Republicans, however, the Obama administration declined to condemn the coup. That November, the post-coup elections staged in the country were declared “free, fair and transparent” by the State Department, despite widespread reports of intimidation and violence against Zelaya’s supporters.²⁰

Interestingly, the putative winner of that election, Porfirio Lobo, had been defeated by Zelaya in Honduras’ previous presidential election in 2005. Not surprisingly, Lobo quickly made it clear that his administration would be taking a robust pro-mining position.

Corporate Social Responsibility?

While media attention was focused on the U.S. role in the coup, another actor was playing a critical role in the background—Canada. With 90 percent of foreign mining investments in Honduras, Canadian mining companies demonstrably had much at stake.²¹

As investigative journalist Jennifer Moore writes, “Canadian authorities refused to consider sanctions against the de facto coup regime and pressured other OAS members to do the same.” Once Lobo was elected, Canada provided unwavering support while ignoring the “targeted violence being meted out against journalists, LGBT activists, *campesino* leaders and environmental defenders.” At the same time, the Canadian Embassy subsequently set up meetings between Canadian mine company representatives and Honduran government officials with an eye toward writing a new general mining law, one much more friendly to the former’s own interests.²²

¹⁸ Moore, “Canada’s Promotion’s Promotion of Mining Industry.”

¹⁹ John Donaghy, “The Honduran Coup: Where is the Church?” Hermano Juancito, blog, August 24, 2009, http://hermanujuancito.blogspot.com/2009_08_01_archive.html.

²⁰ Telesur, “Hillary Clinton Implicated in Honduras Coup, Emails Reveal,” July 7, 2015, <http://www.telesurtv.net/english/news/Hillary-Clinton-Implicated-in-Honduras-Coup-Emails-Reveal-20150707-0022.html#comsup>.

²¹ Todd Gordon, “Military Coups are Good for Canadian Business: The Canada-Honduras Free Trade Agreement,” Global Research, March 3, 2011, accessed July 16, 2014, as cited in “Canada’s Controversial Engagement in Honduras,” by Sabrina Escalera-Flexhaug, Council on Hemispheric Affairs, August 11, 2014, <http://www.coha.org/canadas-controversial-engagement-in-honduras/>.

²² Moore, “Canada’s Promotion’s Promotion of Mining Industry.”



Such meetings continued over the next three years with the idea of “corporate social responsibility (CSR)” mentioned often.²³ The Honduran Foundation for Corporate Social Responsibility (FUNDAHRSE), founded in 2004, played a key role in these meetings, as did the Canadian government.²⁴ Over the next few years, President Lobo himself referred often to CSR as a means of making mining both profitable and sustainable. In his words,

Canada is an example to imitate and I ask our congress members to learn from their experience in mining, carried out in an environmentally friendly way, because our peoples cannot continue living in poverty while they are sitting on such riches.

To bring the point home, one Canadian government official drew a sharp contrast between Zelaya’s administration and that of Lobo, noting a “process of transformation from the anti-mining Zelaya administration to the pro-sustainable mining and pro-CSR Lobo government.”²⁵

Regardless of these pronouncements, the National Congress passed a new General Mining Law in January 2013 that invalidated the Supreme Court ruling in 2006. It also ended the moratorium on mining permits while providing for a modest tax increase on the industry. Government officials hailed the law as instrumental to development and looked ahead with excitement to the anticipated surge in mining investment.

For environmental activists, however, it was a crushing blow. In a public declaration signed by 21 civil society organizations, they condemned the law and accused the government of passing it in an atmosphere of secrecy, violence, and repression against activists. As they pointed out, the new law left water sources largely unprotected, allowed open pit mining even though it was opposed by 91 percent of Hondurans, provided for consultation only after concessions had been granted, denied public access to information about the technical and financial aspects of the mining projects, and allowed forced evictions resulting in the destruction of entire communities.²⁶

The Movement Regroups

In the years since the coup, government and private security forces have intensified their attacks against environmental activists. In fact, in terms of per capita killings, Honduras is now *the single most dangerous place in the world to be a grassroots environmentalist*.²⁷

²³ Moore, “Canada’s Promotion’s Promotion of Mining Industry.”

²⁴ FUNDAHRSE defines corporate social responsibility as “the continuous commitment of companies to contribute to sustainable economic development, improving the quality of life of its collaborators and their families, as well as of that of the local community and the society generally.” See Fundación Hondureña de Responsabilidad Social Empresarial, <http://fundahrse.org/fundahrse/que-hacemos/>.

²⁵ Moore, “Canada’s Promotion’s Promotion of Mining Industry.”

²⁶ MiningWatch Canada, “Honduran Mining Law Passed and Ratified But the Fight is Not Over,” January 24, 2013, <http://www.miningwatch.ca/news/honduran-mining-law-passed-and-ratified-fight-not-over>.

²⁷ Greg Grandin, “Happy Bloody Earth Day,” *The Nation*, April 22, 2015, <http://www.thenation.com/article/happy-bloody-earth-day/>.



Yet the movement in Honduras has courageously regrouped around new strategies. Among these have been legal challenges to the law itself. Last year, two organizations, the Honduran Institute for Environmental Law and the Honduran Center for the Promotion of Community Development, filed separate constitutional challenges to the 2013 Mining Law. These filings were made on behalf of two groups of petitioners, the Siria Valley Environmental Committee and the Lenca Indigenous Movement of La Paz. The petitioners hold that, in the process of passing the law, input from affected communities, grassroots organizations, and environmental NGOs was deliberately excluded. They also contend that at least twenty articles of the mining law violate the Honduran constitution and other related laws of the land as well as international treaties signed by the Honduran government.²⁸

At the international level, the newly formed National Coalition of Environmental Networks has openly criticized the World Bank for its support and promotion of mining practices in Honduras and has called on it to support local agricultural development instead. Through petitions and demonstrations, the Coalition points out that coffee farming, for instance, displaces fewer people, provides more jobs, produces a better distribution of wealth, and causes less environmental damage than does mining.²⁹

Finally, amid threats, harassment, injury and death, activists are now pursuing the painstaking strategy of going community-by-community to declare each a *municipio libre*, or free municipality. Through referenda and open town meetings, each community is encouraged to debate the effects of mining after visiting existing mine sites such as the one in Siria Valley. In the last two years, at least ten Honduran municipalities have voted to remain free of mining.³⁰

Today, Hondurans are fighting a bruising battle. Their government is driven by the pursuit of mining and other lucrative investments while it prevents ordinary people from having a voice in their country's day-to-day development. Where land rights are in dispute, the government regularly weighs on the side of the mining companies and against the communities affected by them. This should make us wonder how much has really changed since the time the Rosario Mining Company was founded in 1880, and just when Hondurans will be freed from the practices of the 19th century and the long reach of the industrialized west.

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²⁸ Honduprensa, "Honduran organizations fight to have Canadian-backed mining law declared unconstitutional, blog monitored by Periódicos Diarios de Honduras, February 26, 2015, <https://honduprensa.wordpress.com/2015/02/26/honduran-organizations-fight-to-have-canadian-backed-mining-law-declared-unconstitutional/>.

²⁹ Rights Action, "Hondurans Protest World Bank Mining Plan," as reported by Telesur, February 11, 2015, <http://www.rightsaction.org/action-content/no-mining-honduras-no-world-bank-investment-and-support-mining>.

³⁰ Asociación de Organismos No Gubernamentales de Honduras (ASONOG) "Declarando Municipios Libres de Minería," <http://mnigrhonduras.org/wp-content/uploads/2014/06/Sistematizacion-de-Municipios-libres-de-Minerria.pdf>.

